CHAPTER 7

CORPORATION BUSINESS TAX ACT

Authority

N.J.S.A. 54:10A–27.

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

Chapter 7, Corporation Business Tax Act, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1984 d.95, effective March 19, 1984. See: 16 N.J.R. 229(a), 16 N.J.R. 746(c). Subchapter 15, Urban Enterprise Zones Act, was originally filed and adopted as R.1984 d.496, effective November 5, 1984. See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a). Subchapter 16, International Banking Facilities, was adopted as R.1984 d.453, effective October 15, 1984. See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a). Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1989 d.196, effective March 14, 1989. See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1994 d.186, effective March 14, 1994. See: Source and Effective Date. As a part R.1994 d.186, effective April 18, 1994, Subchapter 6, Valuation, was repealed. 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 (Reserved)

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 (Reserved)

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 (Reserved)
18:7–3.15 Interest on underpayment of installment payments
18:7–3.16 Banking corporations and financial business corporations
18:7–3.17 Coordinator of tax credit
18:7–3.18 Recycling tax credit
18:7–3.19 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

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 (Reserved)
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

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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
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 of 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
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

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 through 18:7–16.5 (Reserved)

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).

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

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

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

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

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

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

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

18:7-3.16 Banking corporations and financial business corporations

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

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

18:7-3.17 Coordination of tax credit

(a) The priority of credits for a taxpayer under the Corporation Business Tax Act shall be the priority of statutory credits set forth in this section. The tax imposed for a fiscal or calendar accounting year pursuant to section 5 of P.L. 1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to section 3 of P.L. 1993, c.170 (N.J.S.A. 54:10A-5.6), then by any credit allowed pursuant to section 19 of P.L. 1983, c.303 (N.J.S.A. 52:27H-78), then by any credit allowed pursuant to section 12 of P.L. 1985, c.227 (N.J.S.A. 55:19-13), then by any credit allowed pursuant to section 42 of P.L. 1987, c.102 (N.J.S.A. 54:10A-5.3), then by a credit allowed under section 3 or 4 of P.L. 1993, c.171 (N.J.S.A. 54:10A-5.18 or 54:10A-5.19), then by any credit allowed pursuant to section 1 of P.L. 1993, c.175 (N.J.S.A. 54:10A-5.24), then by any credit allowed pursuant to section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A-15), the ride share tax credit. Section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A-15) shall reduce the taxes listed in section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A-15).

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

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

New Rule, recodified from 18:7-3.20 by R.1995 d.459, effective August 21, 1995.
See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).

Historical Note

A former N.J.A.C. 18:7-3.17 was recodified as N.J.A.C. 18:7-3.20, effective August 21, 1995.

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 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. 16:50–15 for information on the employer trip reduction program tax credit.

(b) The taxpayer may only claim a credit for expenditures for providing commuter transportation benefits provided the taxpayer has submitted a compliance plan or a revised compliance plan which includes the expenditures to the Department of Transportation in accordance with N.J.A.C. 16:50–15.1 through 15.5. 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 to have registered with the Department of Transportation or have an approved compliance plan or an approved amended compliance plan.

(c) 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).

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:

(4) Applicable expenses are any expenses or deductions which are directly or indirectly attributable to eligible gross income as defined in (a)2vii(3) above.

(See: N.J.A.C. 18:7-16 regarding international banking facilities.)

Amended by R.1983 d.62, effective March 7, 1983
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added new 10 and 11 to (a). Recodified old 10 as new 12 and added 4-6 to (b).
Amended by R.1984 d.453, effective October 15, 1984.
See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).
(b)7 added.
Amended by R.1985 d.562, effective November 4, 1985.
See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).
Substantially amended.
Amended by R.1987 d.335, effective August 17, 1987.
See: 19 N.J.R. 712(a), 19 N.J.R. 1568(b).
Substantially amended.
Amended by R.1992 d.289, effective July 20, 1992.
See: 24 N.J.R. 175(a), 24 N.J.R. 2628(b).
Revised text.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Amended by R.1997 d.204, effective May 19, 1997.
See: 28 N.J.R. 5158(a), 29 N.J.R. 2467(a).
In (a)1vii, inserted "For accounting or privilege periods ending on or before January 10, 1996,".

Case Notes

Benefits from safe harbor leases do not constitute "real intangible personal property", for purposes of corporate tax. Reuben H. Donnelley Corp. v. Director, Div. of Taxation, 128 N.J. 218, 607 A.2d 1281 (1992).

Interpretation of amendment to corporate tax governing safe harbor leases was not an administrative rule. Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation, 11 N.J.Tax 241 (1990), reversed 12 N.J.Tax 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

Corporate owner of safe harbor leased property could not include it in owner's business allocation factor. Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation, 11 N.J.Tax 241 (1990), reversed 12 N.J.Tax 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

State's inclusion of Federal obligations in taxpayer bank's tax bases under the Corporation Business Tax Act complied with the Federal public debt statute since the tax was nondiscriminatory; taxpayer bank's net worth and net income bases appropriately included the value of and income from the bank's holdings of state and local obligations. Garfield Trust Co. v. Director, Div. of Taxation, 6 N.J.Tax 462 (Tax Ct.1984), affirmed per curiam 7 N.J.Tax 663 (App.Div.1984), affirmed 102 N.J. 420, 508 A.2d 1104 (1986), appeal dismissed 107 S.Ct. 390, 479 U.S. 925, 93 L.Ed.2d 345.

Federal minimum tax for tax preference was not properly excludable from the taxpayer's entire net income in the calculation of New Jersey corporation business tax, since the Federal minimum tax is on income and not an excise tax on capital. Texaco, Inc. v. Director, Div. of Taxation, 4 N.J.Tax 63 (Tax Ct.1982).

18:7-5.3 Tax paid to foreign country or United States possession; when deductible from net income

(a) Where the taxpayer claims deduction for a tax paid to a foreign country or possession of the United States on a dividend received from a source without the United States this tax is deductible only if:

1. The tax was paid by the taxpayer itself, except that in the case of foreign taxes included in income pursuant to Section 78 of the Internal Revenue Code, subsection (b) of the Section shall apply; and

2. Such tax was not deducted in computing Federal taxable income; and

3. 100 percent of the dividend received is not deductible under paragraph 1 of subsection (b) of Section 5.2 of this Chapter; and

4. To the extent that the portion deducted shall not exceed 50 percent of the gross dividend.

(b) With respect to foreign taxes required to be included in income as dividends received under Section 78 of the Internal Revenue Code, no deduction from federal taxable income is permitted if 100 percent of the dividend received amount is deductible therefrom under paragraph 1 of subsection (b) of Section 5.2 of this Chapter.

1. However, if 100 percent of the foreign tax amount is not deductible from federal taxable income as dividends received under paragraph 1. subsection (b) of Section 5.2 of this Chapter then 50 percent of it may be deducted from federal taxable income; and

2. In addition, 50 percent of the foreign tax amount may be deducted from federal taxable income, even though these foreign taxes were not paid by the taxpayer itself.

18:7-5.4 Factors not adjustable to Federal taxable income

(a) No adjustment to Federal taxable income is permitted under this rule for:

1. Gains or losses not recognized for Federal income tax purposes under Section 351 or similar sections of the Internal Revenue Code but only to the extent that recapture or other provisions of the Code are not paramount to these sections.

2. The general business credit allowed or allowable for Federal income tax purposes under Section 38 of the Internal Revenue Code.

i. This may not be taken as a deduction in computing the New Jersey net income tax base, nor as a credit, in any manner, in computing tax liability under the Act.

ii. Upon disposition of assets which qualified for a general business credit under Section 38 of the Internal Revenue Code, taxpayer must use the same basis for computing gain or loss for New Jersey net income tax purposes as employed for Federal income tax purposes.

3. Depreciation attributable to a decrease in the basis of depreciable property for Federal income tax purposes,

as a result of the general business credit allowed or allowable under Section 38 of the Internal Revenue Code.

i. This depreciation may not be taken as a deduction in computing the New Jersey net income tax base.

ii. Depreciation taken for New Jersey net income tax purposes must be reported at the same amount as reported for Federal income tax purposes for the same period.

Amended by R.1985 d.562, effective November 4, 1985.
See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).
(a)2 deleted; (a)1 amended; 3 and 4 renumbered as 2 and 3.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7–5.5 Entire net income; determining stock ownership

(a) The provisions of N.J.A.C. 18:7–4.5 and 4.6 relating to the manner or degree of direct or indirect stock ownership by a creditor are applicable in determining deductibility of interest paid or accrued to holders of 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(b) In determining the percent ownership of investment for purposes of computing the dividend exclusion, a taxpayer can aggregate its ownership of stock by basing its computation on its ownership equity in the payor. No part of such investment may be determined with reference to loans or advances but must be based upon investment in capital stock.

Example 1: Corporation A received a dividend from Corporation B and a dividend from Corporation C. Corporation A owns 90 percent of Corporation B. Corporation A owns 20 percent of Corporation C. Corporation B owns 70 percent of Corporation C. The remaining shares of Corporation B and Corporation C are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation A from its 90 percent owned Corporation B is excludible from entire net income.

Since the equity of Corporation A in Corporation C is 80 percent or more ownership, it may also exclude the dividends received from Corporation C from entire net income.

Ownership equity of Corporation A in Corporation C:

Direct investment in Corporation C		20%
Investment in Corporation B	90%	
Investment of Corporation B in Corporation C	70%	
Indirect investment in Corporation C	.90 × .70 =	63%
Aggregate ownership by Corporation A of the stock of Corporation C		83%

Example 2: Corporation D received a dividend from Corporation E and a dividend from Corporation F. Corporation D owns 90 percent of Corporation E. Corporation D owns 20 percent of Corporation F. Corporation E owns 60 percent of Corporation F. The remaining shares of Corporation E and Corporation F are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation D from its 90 percent owned Corporation E is excludible from entire net income.

Since the equity of Corporation D in Corporation F is less than 80 percent ownership, it may only exclude 50 percent of the dividend received from Corporation F from entire net income.

Ownership equity of Corporation D in Corporation F:

Direct investment in Corporation F		20%
Investment in Corporation E	90%	
Investment of Corporation E in Corporation F	60%	
Indirect investment in Corporation F	.90 × .60 =	54%
Aggregate ownership by Corporation D of the stock of Corporation F		74%

New Rule, R.1987 d.118, effective March 2, 1987.
See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
Old rule repealed.

Cross References

See N.J.A.C. 18:7–4.5 (Net worth; indebtedness includible) and 18:7–4.6 (Receivables offset against includible indebtedness) as to computing net worth.

Statutory References

See N.J.S.A. 54:10A–4(e) as to what may be included in "indebtedness owing directly or indirectly."

18:7–5.6 Adjustment of entire net income to period covered by return; how computed

(a) If the entire net income required to be reported is for a period other than a period covered by the taxpayer's Federal income tax return, the taxpayer shall compute its net income as follows:

1. Its Federal taxable income is first adjusted in the manner set forth on N.J.A.C. 18:7–5.1 through 5.4;

2. The result is then divided by the number of calendar months or parts thereof covered by the Federal income tax return;

3. The result is then multiplied by the number of the calendar months or parts thereof covered by the return under the Act. A part of a month shall be deemed to be a month.

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

Statutory References

N.J.S.A. 54:10A–17.

18:7–5.7 Right of Director to independently determine net income

If in the opinion of the Director the method employed in N.J.A.C. 18:7–5.6 does not properly reflect the taxpayer's net income properly apportionable to New Jersey under the Act for the period covered by its New Jersey return, the Director may determine entire net income solely on the basis of the taxpayer's income during such period.

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

Statutory References

N.J.S.A. 54:10A–17(a).

18:7–5.8 Calculation of gain in certain instances

(a) A selling parent corporation in a Federal I.R.C. 338(h)(10) transaction does not recognize gain on the sale of target stock for New Jersey purposes for acquisition dates occurring on or after January 14, 1992.

(b) Where a target corporation recognizes gain as the result of an I.R.C. 338(h)(10) election, the target reports and pays tax on such gain pursuant to N.J.A.C. 18:7–5.1(a).

Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Procedure for computing short period return".
New Rule, R.1996 d.378, effective August 5, 1996.
See: 28 N.J.R. 2515(a), 28 N.J.R. 3810(a).

18:7–5.9 (Reserved)

Repealed by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Formerly entitled "Procedure for computing when taxpayer alters corporate identity".

18:7–5.10 Right of Director to correct distortions of net income allocation factors; adjustments and redeterminations

(a) Whenever it shall appear to the Director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in a manner so as either directly or indirectly to distort its true entire net income or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under the Act, or whereby the activity, business, receipts, expenses, assets, liabilities, or net income of the taxpayer are improperly or inaccurately reflected, the Director is authorized and empowered, in his or her discretion and in whatever manner he or she may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the State and the allocation of entire net income or to make any other adjustments in any tax report or tax return as may be necessary to make a fair and reasonable determination of the amount of tax payable under the Act.

1. Where any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor; or

2. Any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by or through another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the Director may include in the entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from the transaction.

3. For purposes of this section, "fair and reasonable tax" is the tax that would have been payable by a taxpayer reporting the same transaction(s) on a separate entity basis where the parties to the transaction(s) had independent economic interests.

4. For purposes of this section, "substantial portion of stock" is the direct or indirect ownership of 20 percent or more of the outstanding shares of any class of stock. For purposes of arriving at this level of ownership the stock attribution rules of IRC section 318 will be used.

5. Under N.J.S.A. 54:10A–10(b) interest should be charged on loans or advances made by one related party to another from the day after the debt arises until the debt is satisfied. With respect to intercompany trade receivables of related taxpayers, interest is not required to be charged on an intercompany trade receivable before the first day of the third calendar month.

i. If the creditor is regularly engaged in the business of making loans or advances, the arm's length interest rate should be charged. Upon failure to do so, the Division of Taxation can determine what interest should have been charged. Where the creditor is not in the business of loaning money or making advances, either an arm's length rate based on the facts and circumstances or a safe haven rate is acceptable. However, the safe haven rule does not apply to any loan or advance in which the interest or principal amount is expressed in a currency other than U.S. dollars.

ii. For interest paid or accrued on a loan or advance, a safe haven rate is one that is between 100 percent and 130 percent of the Applicable Federal Rate (AFR) as determined under Internal Revenue Code Section 1274(d) in effect on the date that the loan or advance is made. Adjustments for inadequate interest would be made at 100 percent of the AFR and adjustments for excessive interest would be made at 130

percent of the AFR. In the case of a sale-leaseback transaction, the lower limit would be 110 percent of the AFR. In determining the rate of interest actually charged on a written loan or advance, any original issue discount included in income by the lender or any bond premium deducted by the lender is to be taken into account.

6. Where a service by one member of a group to another member is rendered for less than an arm's length charge, the Division of Taxation may make appropriate allocations to reflect an arm's length charge for that service. The arm's length charge is equal to the costs or deductions incurred by the member performing the service, except in cases where the service is an integral part of the business activity of either member.

7. If tangible property is made available by one member of the group to another, the latter should be charged the arm's length rental charge.

8. Where one member of a group of controlled entities sells or otherwise disposes of tangible property to another at other than an arm's length price, a proper allocation will be made between the seller and the buyer using the following methods.

i. Comparable uncontrolled price method: This method must be used if there are comparable uncontrolled sales (sales between outsiders or a member and an outsider where the property sold and the circumstances involved are identical, or nearly identical, to those in the controlled sale). To the extent they are not identical, adjustments are made.

ii. Resale price method: If there are not comparable uncontrolled sales, the resale price method must be used if the standards for its application are met. A typical situation where this method is required is where a manufacturer sells products to a related distributor which, without further processing, resells the products to unrelated parties.

iii. Cost plus method: If the standards for application of the resale price method are not satisfied, either that method or the cost plus method is used, depending on which is more feasible and will produce a more accurate arm's length price. Normally, the cost plus method is appropriate where a manufacturer sells products to a related entity which performs substantial manufacturing, assembly, or other processing of the product or adds significant value by use of its intangible property (trademark, for example) before resale.

9. Under both the comparable uncontrolled price method and the resale price method, market conditions faced by the affiliate are taken into account. Thus, goods may be sold, for a period, at a price which is below the full cost of manufacture in order to establish or maintain a market.

i. Assuming that the requirements of one of the three methods in (a)8 are met, it must be used unless the taxpayer can show that some other method is clearly more appropriate. Where none of the three methods can reasonably be applied, some other appropriate method can be used.

ii. Where a taxpayer makes controlled sales of many different products or many sales of the same product and it is impractical to calculate an arm's length price for each product or sale, it is permissible to apply the proper method of pricing to product lines or other groupings. Also, the Division of Taxation may use statistical sampling techniques to verify or determine the arm's length price of all sales to a related entity.

10. The Division will apply equitable principles to prevent unjust situations from occurring.

(b) The application of this section is not limited to an agreement, understanding or arrangement existing between a taxpayer and any other corporation or any person or firm for the purpose of avoiding or evading tax under the Act. It is also applicable where adjustments and redeterminations relate to transfer pricing and other transactions between related persons or entities where evasion or tax avoidance are not a consideration. The Director may initiate adjustments under this section solely in the interests of determining a fair and reasonable tax, and without respect to any benefit arising out of inter-corporate relationships or the relationships of any person holding a substantial portion of the stock of a taxpayer. The Division shall not be limited to indices, trade practices, cost sheets, Internal Revenue Reports or any other factor in determining the appropriate transfer price for goods, services, intangibles or other dispositions made to related parties. Where the Director determines that there is an adjustment to net income under this section, he or she may also make a corresponding adjustment to the allocation factor.

(c) Where any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, the Director may adjust and redetermine items on any affected taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey. The following example is an illustration only and in no way shall be interpreted as a standard for calculating wages in a particular case.

Example: Corporation D entered into an employment agreement with its sole shareholder's spouse for the performance of services as an accounting clerk. The agreement called for the shareholder's spouse to monitor 10 accounts. For the service performed, the spouse is to receive an annual salary of $100,000 along with a substantial benefit package. The Director, upon audit, learns that the spouse works only five hours per week in completely performing the duties. The Director, based upon the going wage for such services, determines that the total compensation package would not exceed $10,000 a year and adjusts the taxpayer's expense to determine properly the net income and the taxpayer's wage fraction of the allocation factor and to provide dividend treatment for the disallowed wage compensation.

(d) Where any taxpayer, 20 percent or more of whose capital stock is owned either directly or indirectly by or through the same interests as those of the taxpayer, conducts any activity, transaction, or business with such interests which either directly or indirectly creates an artificial loss, net income, or allocation factor, the Director may adjust and redetermine such items on any taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey.

Example 1: Corporation E, the great grandparent of the taxpayer, borrows $1 million from the taxpayer. The agreement calls for the principal and interest at the rate of two percent per annum to be paid at the end of one year. Upon audit, the Director determines that a market interest rate given the economic conditions at the time of the loan and the circumstances of the borrower is 13 percent per annum. Therefore, he adds the additional income to the taxpayer's net income as reported, and adjusts the expense on the great grandparent's return, if it files in New Jersey.

Example 2: Corporation F is the parent company of over 10 subsidiaries and provides all administrative services for the 10 subsidiaries. Corporation F receives dividend income from its subsidiaries, interest income from other investments, and service fee income from the subsidiaries for the administrative services it performs on their behalf which are an integral part of the business activity of the parent. All costs incurred by the parent are charged to the subsidiaries based solely upon the total assets of each subsidiary. Upon audit, the Director determines that the service fee includes no profit element and that the allocation of the costs of the administrative services bears no relationship to the services provided to each subsidiary. Accordingly, the Director imputes an element of profit, and assigns the charges to each subsidiary by a method reflecting the actual costs incurred in providing the services to each subsidiary.

(e) The following examples are merely illustrative and are in no way intended to limit the scope of the Director's discretion to inquire into transfer pricing or the determination of a fair and reasonable tax:

Example 1: K Corporation, the manufacturer of a proprietary product, sells goods to its distributors and wholesale customers at a 50 percent profit. It also sells goods to related foreign corporations at a 5 percent gross profit for marketing by them overseas.

On a separate entity basis, in an arm's length transaction these sales would yield a 50 percent gross profit and the price which might have been paid or received for the goods includes an amount sufficient to reflect that 50 percent gross profit.

The Director may include additional profits in entire net income sufficient to reflect the arm's length price which might have been paid or received.

Example 2: L Corporation is the parent corporation in a vertically integrated oil company. Its marketing subsidiary is a taxpayer. The marketing corporation reports a significantly lower gross profit than other taxpayers selling the same generic products in volume.

L Corporation has set its transfer prices to its marketing subsidiary at a price $0.02 per gallon higher than published New York tanker port prices for its product because it deems, in good faith, that its brand name value and economies of scale are more properly attributable to the parent corporation. It also uses this transfer price to sell its product to all its independent retailers.

The fair price which might have been paid for the product sold by the marketing subsidiary would not be based upon "New York tanker prices" plus the lesser of representative contract carrier costs or the actual costs incurred for delivery. The Director would recognize the $0.02 per gallon higher price since that is the same price used for comparable sales to all uncontrolled entities for the audit period.

(f) Whenever the Director deems it necessary, in order properly to reflect entire net income of the taxpayer, he or she may determine the year or period in which an item of income, deduction, asset or liability shall be included, without regard to the method of accounting used by the taxpayer.

(g) The Director may require any person or corporation to submit whatever information under oath or affirmation, or to permit whatever examination of its books, papers and documents, as may be necessary to enable him or her to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not the person or corporation is subject to the tax imposed by the Act.

Amended by R.1992 d.231, effective June 1, 1992.
See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).

Revised section.

Statutory References

See N.J.S.A. 54:10A–4(k)(3) as to right of Director to determine the year in which an item of income or a deduction shall be included without regard to taxpayer's method of accounting, and 54:10A–10 as to Director's right to redetermine tax due when taxpayer's business records appear distorted.

Case Notes

Rule that a corporation's "net income" can be reduced by only 10 percent of the interest on indebtedness to a person or entity which owns 10 percent or more of the corporation's capital stock held applicable to corporate indebtedness owed to a corporation's parent; Division Director held without authority to recompute corporation's taxes to exclude such indebtedness from income; 10 percent rule held not violative of due process or equal protection; statutory amendments eliminating the 10 percent rule could not be applied retroactively. GATX Terminals Corp. v. Taxation Div. Director, 5 N.J.Tax 90 (Tax Ct.1982), affirmed in part, remanded in part per curiam 7 N.J.Tax 659 (App.Div.1985), certification denied 102 N.J. 337, 508 A.2d 213.

18:7–5.11 (Reserved)

New Rule, R.1978 d.30, effective January 27, 1978.
See: 10 N.J.R. 40(b), 10 N.J.R. 128(b).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "New jobs credit; salaries deduction".

18:7–5.12 Net operating loss deduction

A taxpayer may deduct a New Jersey net operating loss carryover as defined in N.J.A.C. 18:7–5.13 in computing its entire net income before exclusions and before the net operating loss deduction.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7–5.13 New Jersey net operating loss carryover

(a) A New Jersey net operating loss as defined in N.J.A.C. 18:7–5.15 for any taxable year ending after June 30, 1984 becomes a net operating loss carryover. The net operating loss carryover is carried to each of the succeeding taxable years and is reduced in each such succeeding year by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven years following the year of the loss, taking into account the normal or extended due date for filing the return for the seventh year succeeding the year of the loss. The net operating loss carryover may not be carried back to any year preceding the year of the loss. For this purpose, taxable year shall mean the accounting period covered by the taxpayer's return. In no event may a net operating loss carryover be used for a net operating loss deduction on the eighth return succeeding the loss year.

(b) The net operating loss may only be carried over by the actual corporation that sustained the loss. The net operating loss may, however, be carried over by the corporation that sustained the loss and which is the surviving corporation of a statutory merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation or is a part of a statutory consolidation. Section 4(k) of the Act defines entire net income in terms of a specific corporate franchise.

(c) Corporations acquired under Internal Revenue Code Section 338 do not lose their net operating loss carryover because the corporate franchise remains unchanged to the extent it does not fall within the provisions of N.J.A.C. 18:7–5.14.

Example 1: A domestic corporation dissolves pursuant to laws of the State of New Jersey and incorporates in another state. This newly formed corporation of another state is a new legal entity for corporation business tax purposes and the net operating loss carryover of the domestic corporation is not available to the new entity.

Example 2: The example below illustrates the net operating loss carryover for the full term of seven years and demonstrates the application of net operating loss deductions in the proper sequence.

Amounts From Returns									
Return Year	1984	1985	1986	1987	1988	1989	1990	1991	1992
Fiscal Year Ended	31-Dec-84	31-Dec-85	31-Dec-86	31-Dec-87	31-Dec-88	31-Dec-89	31-Dec-90	31-Dec-91	31-Dec-92
Line 28	($100,000)	(6,000)	(8,000)	(10,000)	50,000	8,000	(5,000)	2,000	10,000
NJ Adjustments	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
ENI before NOL ded. or exclusions	(95,000)	(1,000)	(3,000)	(5,000)	55,000	13,000	0	7,000	15,000
NOL Deduction	NA	0	0	0	55,000	13,000	0	7,000	9,000
ENI before exclusions	0	0	0	0	0	0	0	0	6,000
Dividend exclusion & IBF exclusion	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Entire Net Income	0	0	0	0	0	0	0	0	4,000
NOL Carryovers Applied									
1985	0								
1986	0	0							
1987	0	0	0						
1988	55,000	0	0	0					
1989	13,000	0	0	0	0				
1990	0	0	0	0	0	0			
1991	7,000	0	0	0	0	0	0		
1992		1,000	3,000	5,000	0	0	0	0	0
1993			0	0	0	0	0	0	0
1994				0	0	0	0	0	0
1995					0	0	0	0	0

Amounts From Returns Return Year Fiscal Year Ended	1984 31-Dec-84	1985 31-Dec-85	1986 31-Dec-86	1987 31-Dec-87	1988 31-Dec-88	1989 31-Dec-89	1990 31-Dec-90	1991 31-Dec-91	1992 31-Dec-92
1996						0	0	0	0
1997							0	0	0
1998								0	0
1999									0
Unused	20,000	0	0	0	0	0	0	0	0
Total	95,000	1,000	3,000	5,000	0	0	0	0	0

(d) The following explain and/or define the above table: Line 28 is the amount of the taxpayer's taxable income, before net operating loss deduction and special deductions which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax. NJ Adjustments are the statutory additions and deductions to line 28 that are peculiar to the New Jersey corporation business tax.

1. "ENI" means entire net income as defined in the Act and in these rules.

2. "NOL" means net operating loss.

i. Exclusions are the exclusions from entire net income for dividends received and the eligible net income of an international banking facility.

3. "IBF" means the eligible net income of an international banking facility.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).
Administrative Correction to (c), removing Examples 1:B and 2:C from Code.
See: 23 N.J.R. 1024(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay A. Soled, 138 N.J.L.J. No. 1, S64 (1994).

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Case Notes

Successor corporation; net operating losses of merged corporation. Richard's Auto City, Inc. v. Director, Div. of Taxation, 270 N.J.Super. 92, 636 A.2d 572 (A.D.1994), also published at 14 N.J.Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed 140 N.J. 523, 659 A.2d 1360.

Regulation governing net operating loss carryovers was not authorized. Richard's Auto City, Inc. v. Director, Div. of Taxation, 270 N.J.Super. 92, 636 A.2d 572 (A.D.1994), also published at 14 N.J.Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed 140 N.J. 523, 659 A.2d 1360.

Surviving corporation could not carryover loss of a merged corporation. Richard's Auto City, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

Change in 50% or more of ownership of corporation may remove corporation's right to carryover net operating losses. Richard's Auto City, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

18:7–5.14 Limitations to the right of a net operating loss carryover

(a) The net operating loss carryover automatically becomes zero when the cumulative effect of all its capital stock redemptions and sales after June 30, 1984 is a 50 percentage point change in the ownership of its voting stock and the corporation changes from the business giving rise to the loss. For this purpose the exchange of stock is a sale. Further, solely for this purpose and no other purpose in the Act, a business is defined in terms of the economic factors of production. The sequence in change of ownership and change in the business and the taxability of an exchange for Federal income tax purposes are irrelevant. The economic substance of the transaction is, however, paramount and may indicate forfeiture of a net operating loss carryover.

(b) The Director may disallow the carryover in those instances where the facts support the premise that a corporation was acquired for the primary purpose of the use of its net operating loss carryovers. In this context, to prevent the trafficking in loss corporations, the Director will consider the following facts:

1. Whether the physical location or other fixed assets of the loss corporation were used in a new business;

2. The extent of the termination of the existing work force of the loss corporation;

3. A price paid for the loss corporation in excess of the market value of the assets; and

4. Any other material deemed appropriate to the determination.

(c) No single factor shall be deemed on its own to be dispositive of the issue.

Example 1: B Corporation was wholly owned by a single stockholder. It operated a notably unsuccessful restaurant and built up significant net operating loss carryovers. The stockholder transferred 49 percent of his stock to an investor who has access to a recognized and uniformly profitable fast food franchise. B Corporation releases substantially all of its existing employees, disposes of its equipment and undertakes the fast food franchise business at a new location. Notwithstanding that B Corporation's sole stockholder sold less than 50 percent of his stock and the corporation still sells food in a heated state, the net operating loss carryovers to B Corporation become zero. The disposition of land, labor and capital until nothing remains except an empty corporate shell whose principal attributes are the apparent existence of an unused net operating loss carryover and some liquid capital in quest of an entirely new business is deemed to support the premise that the corporation was

acquired for the primary purpose of the use of its net operating loss carryover. The economic substance of the transaction would have been to transfer the loss carryovers to a new business which is precluded by the rule.

Example 2: C Corporation was a manufacturer of buggy whips and button hooks. Due to a declining demand for its products it has built up significant net operating loss carryovers. C Corporation has only one stockholder who sells 50 percent of his capital stock to a woman who has invented a cheap and well-styles perpetual motion machine for which there is a clamorous demand. C Corporation changes its name to D Corporation, retools and hires additional employees. It expands its plants, closes out its old product lines and realizes huge profits in its rejuvenation. D Corporation's net operating loss carryovers from its buggy whip days are unaffected by any of the above circumstances and may be claimed as a net operating loss deduction. The economic substance of the transaction is a mere restructuring of its manufacturing product line. It did not change its business where it only reallocated its economic factors of production.

Administrative Correction to (c), added Examples to section.
See: 23 N.J.R. 1024(a).

Case Notes

Surviving corporation could not carryover loss of a merged corporation. Richard's Auto City, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

Change in 50% or more of ownership of corporation may remove corporation's right to carryover net operating losses. Richard's Auto City, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 619 (1992), reversed, 14 N.J. Tax 436, certification granted 137 N.J. 167, 644 A.2d 614, reversed, reinstated 140 N.J. 523, 659 A.2d 1360.

18:7–5.15 Net operating loss

(a) A net operating loss is the excess of allowable deductions over gross income used in computing entire net income.

(b) Neither a net operating loss deduction nor any exclusions from entire net income are allowable deductions in computing a net operating loss.

(c) There is no net operating loss for any year that a Corporation Business Tax Return (CBT–100) is not filed or if filed does not report entire net income as a negative amount.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

18:7–5.16 Effect of audit adjustments

An audit adjustment to entire net income shall serve to revise the amount of any net operating loss for the year of the change and the net operating loss carryover to which it relates.

New Rule, R.1986 d.26, effective February 3, 1986.
See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

SUBCHAPTER 6. (RESERVED)

SUBCHAPTER 7. ALLOCATION

18:7–7.1 General instructions regarding allocation of net income

(a) No corporation, foreign or domestic (other than a corporation entitled and electing to report as an investment company, regulated investment company or real estate investment trust) is entitled to allocate any part of its entire net income outside New Jersey unless during the period covered by the return it maintained a regular place of business outside the State.

(b) In the absence of a regular place of business, 100 percent of its entire net income must be allocated to New Jersey.

(c) The mere ownership of assets outside New Jersey does not constitute a basis for allocating less than 100 percent of the taxpayer's net income to New Jersey.

(d) Where the taxpayer does not maintain a regular place of business outside New Jersey and its allocation factor is 100 percent and the taxpayer in fact pays a tax based on or measured by income to another state, see N.J.A.C. 18:7–8.3 which provides for the eligibility and method in computing a reduction in the tax for such taxpayer.

Amended by R.1985 d.54, effective February 19, 1985.
See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).
"Corporation" substituted for "taxpayer" and added "or real estate investment trust."
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–6 as to how to determine allocation factor for taxpayer maintaining regular place of business outside New Jersey.

Case Notes

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).

Regulations were valid. General Bldg. Products Corp. v. State, Div. of Taxation, 14 N.J.Tax 232 (1994), affirmed 15 N.J. Tax 213.

State's prohibition against filing of consolidated income tax returns by related corporations does not immunize subsidiary corporation from state taxation of any gain realized as result of deemed sale of its assets. General Bldg. Products Corp. v. State, Div. of Taxation, 14 N.J.Tax 232 (1994) affirmed 15 N.J. Tax 213.

Taxpayer that separated from consolidated group was not required to file two short-term returns. Drake Bakeries, Inc. v. Taxation Div. Director, 12 N.J.Tax 172 (1991).

The term "books of the corporation" includes financial statements prepared in accordance with applicable regulations in the sense encompassed by the term "financial reporting"; definition of the term by rule not necessary due to adequate legislative standard; Director's equity method of accounting in valuation of corporation's investments and subsidiaries not demonstrated to be unfair. Cities Service Co. v. Director, Div. of Taxation, 5 N.J.Tax 257 (Tax Ct.1983).

18:7–11.16 Return to be filed by an S Corporation

(a) Except as may be provided otherwise by this Section, an S corporation, that is, one which has made an election under Section 1361 et seq. of the Internal Revenue Code of 1954 as amended and supplemented, must complete its New Jersey Corporation Business Tax Return on its own separate basis as though no election had been made under the Federal Statute.

(b) Except as may be provided otherwise by this section, in preparing its Corporation Business Tax Return the taxpayer cannot assume that ordinary income or loss (Federal taxable income) is equal to Federal taxable income before net operating loss deduction and special deductions for New Jersey Corporation Business Tax purposes, when the taxpayer has elected Federal S corporation treatment. Certain amounts not necessarily limited to I.R.C. Section 179 expenses, and 1120–S dividends that qualify for the dividend exclusion are not included as part of the S corporation's ordinary income (loss) computation, but rather are passed directly through to the shareholder on the Federal Form K–1 Schedule. For Corporation Business Tax purposes these amounts are included in the computation of entire net income, as if the corporation were a C corporation and no Federal S corporation election were made.

Example 1: S Corporation has 1985 taxable income for Federal tax purposes of $100,000. However, not included in computation of such amount is a $5,000 Federal I.R.C. Section 179 expense and $10,000 of S Corporation dividends received from a different corporation which qualify for the Federal dividend exclusion. Barring any other difference between Federal taxable income and New Jersey taxable income per Schedule A, Form CBT–100, New Jersey taxable income before net operating loss deduction (NOL) and special deductions is computed as such:

$100,000	Federal Taxable Income
(5,000)	I.R.C. Section 179 Expense
10,000	Qualifying S Corporation Dividends
$105,000	New Jersey Taxable Income Before NOL and Special Deductions

Example 2: S Corporation is liquidating under I.R.C. Section 337. When disposing of its real property during the 12 month distribution period, the corporation recaptures for Federal tax purposes $5,000 of I.R.C. Section 291 expenses which an S Corporation does not include as part of Federal taxable income if it were an S Corporation for the three preceding years before the Federal I.R.C. Section 337 election and the I.R.C. Section 1363(b) election. Since the S Corporation is treated as a C Corporation for State tax purposes, the I.R.C. Section 291 recapture is part of taxable income before net operating loss and special deductions on Schedule A, Form CBT–100.

(c) With respect to tax years beginning after July 7, 1993, S corporation status may be elected for New Jersey purposes by the shareholders of a Federal S corporation. The filing of an election form CBT–2553 with the Division to be recognized as a New Jersey S corporation is required. A New Jersey S corporation is entitled to pay its tax at a preferential rate as provided in N.J.S.A. 54:10A–5(c)(2) and (3) and to report and pay its tax liability on Form CBT–100S.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1986 d.464, effective November 17, 1986.
See: 18 N.J.R. 1686(b), 18 N.J.R. 2332(a).
(b) added.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–2 as to requirement for annual filing of return under this Act despite other arrangements for filing a Federal return.

Case Notes

Foreign S corporation's distribution to New Jersey taxpayer would be treated as if received from accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 639 A.2d 301, 135 N.J. 301.

Absent other evidence, distribution from foreign S corporation to New Jersey taxpayer would be treated as from accumulated earnings. Laurite v. Director, Div. of Taxation, 12 N.J.Tax 483 (1992), affirmed 14 N.J.Tax 166, certification denied 639 A.2d 301, 135 N.J. 301.

Pass-through losses and gains are to be excluded when calculating net gains and losses. Walsh v. State, Dept. of the Treasury, Div. of Taxation, 10 N.J. Tax 447 (1989), affirmed and remanded 240 N.J.Super. 42, 572 A.2d 222.

18:7–11.17 Copies of tax returns or other information required

(a) The Director may by general rule or by special notice require any taxpayer to submit copies or pertinent extracts of its Federal income tax returns, or of any other tax return made to any agency of the Federal Government, or of this or any other state, or of any statement or registration made pursuant to any state or Federal law pertaining to securities or securities exchange regulation.

(b) The Director may require all taxpayers to keep whatever records he may prescribe, and he may require the

production of books, papers, documents and other data, to provide or secure information pertinent to the determination of the tax and its enforcement and collection.

(c) The Director may, also by general rule or special notice, require any taxpayer to make and file information returns, under oath, of facts pertinent to the determination of the tax or liability for tax pursuant to such regulations, at whatever times and in whatever form or manner and to whatever extent he may prescribe under law.

Statutory References

See N.J.S.A. 54:10A–14 as to right of the Director to require taxpayer to submit pertinent extracts for its Federal income tax return, other returns to government agencies, or other records.

18:7–11.18 Reproduction of forms

(a) Subject to conditions and requirements of this section, the Director will accept for filing purposes reproductions of the New Jersey Corporation Business Tax Return Forms CBT–100, CBT–100–X, and CBT–200T in lieu of the official forms printed and furnished by the Director. Anyone contemplating the use of reproduced forms is cautioned to observe that the conditions herein stated may vary from the Federal regulations relating to reproduction of Federal tax forms.

(b) In order to be acceptable for filing purposes, reproduction of Forms CBT–100, CBT–100–X, and CBT–200T must meet the following conditions and requirements:

1. Reproductions must be facsimiles of the complete official form, produced by photo-offset, photo-engraving, photo-copying or other similar reproduction processes;

2. Reproductions must be on paper of substantially the same color, weight and texture and of a quality at least as good as that used in the official form;

3. Reproductions must be of the same size as that of the official form, both as to overall dimensions of the paper and the imagery produced;

4. Format of pages shall adhere to following:

i. It is preferable that both sides of the paper be used in making reproductions. However, reproduction on one side will be acceptable.

ii. All reproductions must result in the same page arrangement as that of the official form and the spacing of the printed matter on each individual page and the fold must be the same as on the official form.

iii. Separate pages must be fastened together in numerical order.

iv. Each separate page must be clearly identified, by listing at the top of the page the corporate name and New Jersey serial number.

5. The color and quality of the reproduction of the printed matter must be substantially the same as that of the official form, and the filled-in information must be entirely legible;

6. The taxpayer's full and correct name and address and identifying serial number as it appears on the pre-stenciled form furnished by the Director must be typed or printed on the reproduction;

7. All filled-in information on Page 1 of the Return must be typed or printed;

8. Reproductions of forms may be made after insertion of the tax computations and the other required information;

9. All signatures on forms to be filed must be original signatures, affixed subsequent to the reproduction process;

10. The Director does not undertake to approve or disapprove the specific equipment or process in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. It should be noted, however, that photostats do not meet all the above conditions;

11. The Director does not undertake to approve or disapprove the specific writing medium or style of writing to be used, but requires that the filled-in information on the reproduced form be of good quality black-on-white with hand writing of satisfactory legibility.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–18 as to authority of Director to design tax return forms and determine the information to be required thereon.

18:7–11.19 through 18:7–11.21 (Reserved)

SUBCHAPTER 12. SHORT PERIOD RETURN

18:7–12.1 Short period returns; when required

(a) In general, every corporation must file a return for each fiscal or calendar accounting period or part thereof during which it has or had a taxable status in New Jersey. In certain cases, the taxpayer will be required to file a return covering an accounting period of less than 12 months. This may necessitate an adjustment of entire net income.

(b) Some of the circumstances which require the filing of short period returns are:

1. A newly organized corporation whose first accounting period established for Federal income tax purposes is less than 12 months;

2. A foreign corporation which acquires a taxable status in New Jersey subsequent to the commencement of its Federal accounting period, and whose first New Jersey Corporation Business Tax return embraces a period less than the accounting period reported upon the Federal income tax purposes;

3. Corporations which dissolve, merge, consolidate, withdraw, surrender or otherwise cease to have a taxable status in New Jersey prior to the close of a full twelve months accounting period;

4. A corporation which changes its accounting period.

(c) A corporation that has elected Federally to utilize the provisions of IRC 338(h)(10) shall be required to file for New Jersey purposes a one-day return under IRC 338 as if the (h)(10) election had not been made Federally.

Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (c).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Cross References

As to the requirements which must be met in order to obtain a change in accounting period, see Change of accounting period, N.J.A.C. 18:7–11.5.

Statutory References

See N.J.S.A. 54:10A–4 as to definition of "fiscal year" and "privilege period"; 10A–17 as to right of Director to independently determine entire net worth and entire net income when the period covered by the taxpayer's report is other than that covered by his Federal income tax report or when it is a short period.

Case Notes

Taxpayer that separated from consolidated group was not required to file short-term returns. Drake Bakeries, Inc. v. Taxation Div. Director, 12 N.J.Tax 172 (1991) returns.

18:7–12.2 Short period returns; proration procedures

(a) Where a short period return is required, the entire net income is permitted to be prorated as follows:

1. For any short period return, the minimum tax for a New Jersey corporation and for a foreign corporation may not be prorated and at least the proper minimum tax amount must be paid.

2. With respect to net income, a domestic corporation filing a short period return shall not be entitled to prorate its adjusted net income. A foreign corporation whose short period return under the Act covers a period other than the accounting period reported upon for Federal income tax purposes, may prorate its adjusted entire net income by dividing its adjusted entire net income by the number of calendar months or parts thereof covered by the Federal Income Tax Return and multiplying the result by the number of calendar months or parts thereof covered by the short period return. A part of a month shall be deemed to be a month.

3. With respect to net income, a foreign corporation whose short period return under the Act covers the same period as the accounting period reported upon for Federal income tax purposes shall not be entitled to prorate its adjusted entire net income.

4. Where a taxpayer is entitled and elected to allocate less than the full amount of its entire net income to New Jersey the allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return. For treatment of allocation on a short period return, see N.J.A.C. 18:7–12.3.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–2 as to requirement to file a return under Act for each year taxpayer holds franchise; 10–4 as to definition of allocation factor, net worth, and net income; 10A–5 as to how taxpayer shall compute the amount of tax payable; 10A–6 as to how taxpayer maintaining place of business outside New Jersey shall compute his entire net income and entire net worth; 10A–15 as to fiscal or calendar accounting periods required; and 10A–17 as to right of Director to independently determine entire net worth and entire net income of taxpayer making short period report.

18:7–12.3 Short period returns; allocation

(a) In the case of a taxpayer entitled and electing to allocate less than the full amount of its entire net income to New Jersey, the applicable allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return.

(b) In that case, the allocation factors shall be applied to entire net income only after such entire net income shall have been prorated as indicated in N.J.A.C. 18:7–12.2.

(c) A taxpayer filing a one-day return recognizing gain on a step up in the basis of its assets would use a business allocation factor which would be based upon the property fraction (reflecting the location of the assets) and the receipts fraction (sourced to the location of the assets). There would be no payroll fraction for the short one-day period.

Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (c).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–6 as to how taxpayer maintaining regular place of business outside New Jersey shall compute his entire net income, entire net worth, and 10A–17 as to right of Director to independently determine entire net income, entire net worth of taxpayer making short period return.

18:7–12.4 (Reserved)

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

18:7–13.1 Assessment and reassessment

(a) On its return, the taxpayer must compute the amount of tax payable under the law and must remit the amount of the indicated tax.

1. The Director shall cause the return to be examined and shall make any audit or investigation or reaudit he may deem necessary;

2. If the Director determines that there is a deficiency with respect to payment of any tax due under the Act, he shall assess or reassess the additional taxes, penalties and interest due the State, give notice of such assessment or reassessment to the taxpayer, and make demand upon it for payment;

3. There shall be added to the amount of any deficiency assessment or reassessment, interest at the rate of one and one-half percent per month or fraction thereof to be calculated from the date the tax was originally due and payable until December 8, 1987. On and after December 9, 1987, interest shall be calculated at the annual rate of five percentage points above the prime rate, compounded daily until the date of actual payment. On and after July 1, 1993, interest shall be calculated at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

4. If the failure to pay tax when due is explained to the satisfaction of the Director, the Director may abate the payment of any interest charge in excess of the annual rate of three percentage points above the prime rate.

(b) For tax liabilities accruing prior to July 1, 1993, the Director may assess an additional tax at any time within five years from the date of the filing of the return or amended return. Any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993 shall continue to be in full force and effect. For tax liabilities accruing on and after July 1, 1993, the Director may assess an additional tax at any time within four years from the date of the filing of the return or amended return.

1. In the case of a false or fraudulent return with intent to evade the tax, the Director may assess the tax at any time.

2. Where no return has been filed as provided by law, the Director may make an estimate of the tax and assess the same at any time.

3. For tax liabilities accruing prior to July 1, 1993, where a return is filed before or after the due date prescribed in the statute, the Director may assess an additional tax, recompute and reassess the tax at any time within five years from the due date of the return, or from the date of filing of the return or amended return, whichever is later. For tax liabilities accruing on and after July 1, 1993, the period to assess additional tax is four years.

(c) Where, before the expiration of the period prescribed by law for the assessment of any additional tax, a taxpayer has consented in writing that such period may be extended, the amount of any additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

(d) If the amount of the taxable income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in the taxable income, or if a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, the taxpayer shall file a report of the change or correction or an amended return within 90 days after the final determination of any change, correction, renegotiation, computation, or recomputation.

(e) For reports or returns filed prior to July 1, 1993, and within five years from the date of filing the report of change or correction or an amended return, the Director may reexamine the return, recompute and reassess the tax, but without changing the allocation of entire net income within and without New Jersey as previously computed, and shall so notify the taxpayer. For tax liabilities accruing on and after July 1, 1993, the period of limitation to make a deficiency assessment runs for an additional four year period from the date of filing the report of change or correction or an amended return. The additional period of limitation will only be applicable to the increase or decrease in tax attributable to the adjustments in the changed or corrected income.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Added text in (a)3 "December 8, 1987. On . . ."; changed percentage points in (a)4 from "three quarters of one percent per month" to "three percentage points above the prime rate, compounded daily."

Amended by R.1989 d.196, effective April 17, 1989.
See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).
At (a) annual percentage rate changed from five to three percentage points above prime; at (b) language added in parentheses regarding exception on or after December 9, 1987.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

See N.J.S.A. 54:10A–13 as to requirements and time limits for filing amended tax returns under this Act should a change, correction, or recomputation of Federally taxable income occur, and 49–6 as to possible deficiency assessments and attendant penalties and interest after final tax report is filed.

18:7–13.8 Claims for refund; when allowed

(a) For claims accruing prior to July 1, 1993, the two year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. For claims accruing on and after July 1, 1993, the statute of limitations period for filing a claim for refund is four years. All claims barred by the two year statute of limitations on July 1, 1993 shall continue to be barred. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. A claim for refund is considered filed on the date it is received by the Division of Taxation (contrast N.J.A.C. 18:7–11.7(b)).

(b) For claims accruing prior to July 1, 1993, the two year period for filing a claim for refund relating to an amended return ("additional self–assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment. For claims accruing on and after July 1, 1993, the refund claim period is four years.

(c) For purposes of the application of this rule only:

1. A Tentative Return and Application for Extension of Time to File New Jersey Corporation Business Tax Return (CBT–200T) and an installment voucher are not returns;

2. A Corporation Business Tax Return (CBT–100) is a return; and

3. A Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA–100) (or a CBT–100–X) is an amended return.

(d) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service pursuant to N.J.A.C. 18:7–11.8(a) that results in a diminution of entire net income for any year, the two year limitation period for filing a claim for refund based on that diminution for the return year at issue begins on the date that the timely filed Form IRA–100 is filed with the Division. For claims accruing on and after July 1, 1993, the limitation period is four years from the date that the timely filed Form IRA–100 is filed with the Division. Unless the IRA–100 or CBT–100–X is filed in a timely fashion under N.J.A.C. 18:7–11.8(a), the refund claim will not be considered.

(e) As it relates to claims accruing prior to July 1, 1993, where a taxpayer files an amended return with the Internal Revenue Service (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7–11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within two years of the later of filing or payment of the original return self-assessment (CBT–100). For claims accruing on and after July 1, 1993, the claim for refund must be filed within four years.

(f) Where the Director makes an assessment and taxpayer properly protests the assessment pursuant to N.J.A.C. 18:7–13.2, taxpayer may establish that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. The Director upon audit and verification will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment pursuant to N.J.S.A. 54:49–16. After a final determination has been issued, taxpayer has 90 days in which to appeal to the Tax Court if it is dissatisfied with the determination. The offset procedure is not considered a refund action pursuant to N.J.S.A. 54:49–14.

(g) Where the Director assesses additional tax by way of a deficiency assessment or final determination and the taxpayer pays the deficiency, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim.

(h) If a taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A–8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7–8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the statute, plainly noting on the filed return its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7–10.1. In addition, a copy of form CBT–100–X, Claim for Refund, must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) Unless these rules provide otherwise, the claim for refund required to be filed with the director is made on Form CBT–100–X and is addressed to:

Audit Adjustment Branch
50 Barrack Street, CN 019
Trenton, NJ 08646–0019

The following examples apply to claims accruing on and after July 1, 1993:

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within four years of the filing of the delinquent CBT–100. A penalty for late filing of the CBT–100 may be imposed under N.J.S.A. 54:49–4.

Example 2: One year after filing a CBT–100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer files a Form CBT–100–X claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. Any taxpayer filing an amended return with the Internal Revenue Service must file an amended return with New Jersey within 90 days. N.J.S.A. 54:10A–13. If the CBT–100–X claiming a refund had not been filed within 90 days of filing the Form 1120X (see N.J.S.A. 54:10A–13), the refund would not be granted regardless of whether the claim was received prior to the expiration of the applicable refund statute of limitation period.

Example 3: Taxpayer receives a deficiency assessment with which it disagrees. It does not contest the assessment with the Division or in Tax Court within 90 days. It pays the assessment and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. It files a claim for refund within four years of having made its payment of the assessment. Since it did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:10A–19.2, the claim must be rejected. The assessment proceeding is not converted to a refund action by filing a refund claim.

Example 4: Taxpayer did not contest an estimated tax assessment (N.J.S.A. 54:49–5). More than four years after having paid it, the taxpayer concludes that it was erroneous. Subsequently, taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA–100) or CBT–100–X relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

Repeal and New Rule, R.1989 d.508, effective October 2, 1989.
See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).
Amended by R.1993 d.660, effective December 20, 1993.
See: 25 N.J.R. 1842(a), 25 N.J.R. 5943(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Amended by R.1995 d.499, effective September 5, 1995.
See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).

Statutory References

See N.J.S.A. 54:49–14 as to claims for refunds.

Case Notes

Corporation business tax refund period began to run from time of payment of tax upon filing of return and not time of payment of penalty and interest assessed by Division of Taxation; refund claim was time barred. Don Dan Const. Co. v. Director, Div. of Taxation, 14 N.J.Tax 569 (1995).

Limitations period for seeking refund of corporate taxes was not extended by furnishing IRS with extended return. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

Second corporate business tax return triggered limitations period for seeking refund of corporate taxes paid. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

Equitable considerations did not entitle corporate taxpayer to extension of limitations period for seeking refund of corporate taxes. 26 U.S.C.A. § 338; N.J.S.A. H.B. Acquisitions, Inc. v. Director, Div. of Taxation, 12 N.J.Tax 60 (1991).

18:7–13.9 Payment of refunds; rejection of claims; interest on overpayments

(a) If upon examination of a claim for refund, it shall be determined by the Director that there has been an overpayment of tax, the amount of the overpayment and the interest on the overpayment if any, shall be credited against any liability of the taxpayer under any state tax law.

(b) If there is no liability the taxpayer shall be entitled to a refund of the tax so overpaid and the interest on the overpayment, if any.

(c) If the Director shall reject the claim for refund in whole or in part, he shall make an order accordingly and serve a notice upon the taxpayer.

(d) For tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later. The interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date the interest begins to accrue to the date of the refund. The interest will begin to accrue on the later of the date of the filing by the taxpayer of the refund claim or requested adjustment, the date of the payment of the tax, or the due date of the report or return. No interest will be paid on an overpayment of less than $1.00. Interest will not be paid on an overpayment if the taxpayer requests that the overpayment be applied to future tax liabilities.

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