

CHAPTER 7

CORPORATION BUSINESS TAX ACT

Authority

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

Source and Effective Date

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

Chapter Expiration Date

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

Chapter Historical Note

Chapter 7, Corporation Business Tax Act, was filed and became effective prior to September 1, 1969.

Subchapter 9, Assets Allocation Factor, was repealed by R.1979 d.45, effective February 6, 1979. See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1984 d.95, effective March 19, 1984. See: 16 N.J.R. 229(a), 16 N.J.R. 746(c).

Subchapter 15, Urban Enterprise Zones Act, was adopted as R.1984 d.496, effective November 5, 1984. See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a).

Subchapter 16, International Banking Facilities, was adopted as R.1984 d.453, effective October 15, 1984. See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1989 d.196, effective March 14, 1989. See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994. See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1999 d.116, effective March 12, 1999. See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

Subchapter 17, Partnerships; Subchapter 18, Alternative Minimum Assessment; and Subchapter 19, Filing Fee Payments by Professional Corporations were adopted as special new rules by R.2003 d.135, effective February 27, 2003. Subchapters 17, 18 and 19 were adopted as R.2003 d.370, effective August 22, 2003. See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Chapter 7, Corporation Business Tax Act, was readopted as R.2004 d.367, effective September 1, 2004. See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

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

Subchapter 3B, Film Tax Credits, was adopted as new rules and Subchapter 15, Urban Enterprise Zones Act, was recodified as Subchapter 3A by R.2007 d.203, effective July 2, 2007. See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

Subchapter 3B, Film Tax Credits, was renamed Film and Digital Media Tax Credits by R.2009 d.143, effective May 4, 2009. See: 40 N.J.R. 6944(a), 41 N.J.R. 2049(b).

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

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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) If a corporation ceases to exist as the result of an action such as a merger or if its New Jersey S status terminates, for example, the short period return for the disappearing corporation or corporation losing its New Jersey S status would be due on the 15th day of the 4th month after the close of the short year ending on the date of the merger or on the day before the S corporation disqualifying event.

Example: A corporation had been granted New Jersey S status for the period beginning January 1, 1998. The elec-

tion terminated on April 6, 1998 due to merger. The due date for the return for the short period January 1, 1998 to April 6, 1998 (that is, through the close of business on the date that the merger occurs) is August 15, 1998 which is the 15th day of the 4th month after the close of the period. An automatic six-month extension of the time to file the CBT-100S is available by making a tentative return and paying the tentative tax on form CBT-200T by August 15, 1998.

Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).

Added (c).

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

Amended by R.1999 d.116, effective April 5, 1999.
See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

Rewrote (c); and added (d).

Amended by R.2004 d.367, effective Oct. 4, 2004.

See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

Deleted existing (c); recodified (d) as (c).

Cross References

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

Statutory References

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

Case Notes

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

18:7-12.2 Short period returns; proration procedures

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

1. For any short period return, the minimum tax for a New Jersey corporation and for a foreign corporation may not be prorated and at least the proper minimum tax amount must be paid.
2. With respect to net income, a domestic corporation filing a short period return shall not be entitled to prorate its adjusted net income. A foreign corporation whose short period return under the Act covers a period other than the accounting period reported upon for Federal income tax purposes, may prorate its adjusted entire net income by dividing its adjusted entire net income by the number of calendar months or parts thereof covered by the Federal Income Tax Return and multiplying the result by the number of calendar months or parts thereof covered by the short period return. A part of a month shall be deemed to be a month.
3. With respect to net income, a foreign corporation whose short period return under the Act covers the same period as the accounting period reported upon for Federal income tax purposes shall not be entitled to prorate its adjusted entire net income.

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

Amended by R.1979 d.45, effective February 6, 1979.

See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

Amended by R.1994 d.186, effective April 18, 1994.

See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Statutory References

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

18:7-12.3 Short period returns; allocation

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

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

Amended by R.1991 d.35, effective January 22, 1991.

See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).

Added (c).

Amended by R.1994 d.186, effective April 18, 1994.

See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Amended by R.2004 d.367, effective October 4, 2004.

See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

Deleted (c).

Statutory References

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

18:7-12.4 (Reserved)

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

18:7-13.1 Assessment and reassessment

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

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

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

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

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

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

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

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

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

(c) Where, before the expiration of the period prescribed by law for the assessment of any additional tax, a taxpayer has consented in writing that such period may be extended, the amount of any additional tax due may be determined at

any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.