

Example:

Taxpayer, a manufacturer located outside of New Jersey, transports goods by a common carrier to a New Jersey facility where the customer takes possession of the goods. Since the common carrier is deemed to be an agent of the taxpayer, the common carrier's transportation of the goods into the possession of the customer in New Jersey results in receipts allocable to New Jersey.

iv. The sale of goods shipped from outside of New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside of New Jersey results in receipts which are not allocable to New Jersey.

Example:

Taxpayer, a non-New Jersey manufacturer, transports goods from outside of New Jersey to a New Jersey location by either a common carrier or a private transporter. The goods are picked up in New Jersey by a common carrier and transported further to a customer outside of New Jersey. Since the common carrier is deemed an agent of the seller regardless of the F.O.B. point, the shipment by the common carrier from a point in New Jersey to a point outside of New Jersey results in receipts not allocable to New Jersey.

2. Services performed in New Jersey;
3. Rentals from property situated in New Jersey;
4. Royalties from the use in New Jersey of patents or copyrights;
5. All other business receipts earned in New Jersey. See example in N.J.A.C. 18:7-8.7(c).

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
Substantially amended.

Amended by R.1989 d.311, effective June 19, 1989.
See: 21 N.J.R. 438(b), 21 N.J.R. 1744(c).

Exceptions to receipts allocable to New Jersey added at (a)1i-iv, with examples.

Statutory References

See N.J.S.A. 54:10A-6(B) as to factors includible in computing receipts fraction.

18:7-8.9 Receipts from sales of capital assets; when includible

(a) The gross receipts from sales of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) either within or without New Jersey should not be included in either the numerator or denominator of the receipts fraction. The net gains from such sales which are included in entire net income are the amounts which are properly to be included in the computation of the receipts fraction. For the purposes of the numerator in the computation of the receipts fraction, a net loss should not offset a net gain.

ILLUSTRATION
FACTS

	<u>Selling Price</u>	<u>Cost</u>	<u>Net Gain</u>	<u>Net Loss</u>
Property #1	\$1,000	\$ 600	\$400	
Property #2	2,000	2,200		\$200
Property #3	3,000	2,900	100	
			\$500	\$200
			(200)	
Amount of gain appearing on Schedule A			<u>\$300</u>	

The \$300 net gain is includable in the denominator of the receipts fraction in all cases. The computation to arrive at the amount to be included in the numerator is given in the following examples:

Example 1:

At the time of sale, Property #1 was located within New Jersey whereas Property #2 and #3 were located outside New Jersey.

Amount of N.J. Gains $\frac{\$400}{\$500} = 80\% \times \$300$ (net gain) = \$240
 Total Gains $\frac{\$500}{\$500}$

The amount of \$240 is to be included in the numerator of the receipts fraction.

Example 2:

At the time of sale, Property #1 and #3 were located outside New Jersey, whereas Property #2 was located within New Jersey.

Amount of N.J. Gains $\frac{-0-}{\$500} = 0\% \times \300 (net gain) = -0-
 Total Gains $\frac{\$500}{\$500}$

There is nothing attributable to this transaction which will affect the numerator of the receipts fraction.

Example 3:

At the time of sale, Property #1 and #3 were located within New Jersey, whereas Property #2 was located outside New Jersey.

Amount of N.J. Gains $\frac{\$500}{\$500} = 100\% \times \$300$ (net gain) = \$300
 Total Gains $\frac{\$500}{\$500}$

(b) Where the taxpayer's business is the buying and selling of real estate or the buying or selling of securities for trading purposes, these assets are not deemed to be capital assets and the gross receipts from the sales thereof are included in the same manner as other includable receipts.

Amended by R.1985 d.43, effective February 19, 1985.
 See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).

(a) substantially amended and examples added.

Statutory References

See N.J.S.A. 54:10A-6(B) as to what tangible personal property shall be includable when computing taxpayer's receipts fraction.

Case Notes

Rule held to impose restriction not warranted by statute; only net gain from sales of tangible personal property includable in receipts fraction of the business allocation formula of the Corporation Business Tax Act; income derived from the sale or redemption of short-term obligations and the interest increment realized upon the sale or redemption of such obligations issued at a discount were includable in receipts fraction of the business allocation formula. *American Telephone & Telegraph Co. v. Director, Div. of Taxation*, 4 N.J. Tax 638 (Tax Ct.1982), affirmed 194 N.J.Super. 168, 476 A.2d 800 (App.Div. 1984), certification denied 97 N.J. 627, 483 A.2d 157 (1984).

18:7-8.10 Receipts; compensation for services

(a) The numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned under this section if the service is performed within this State. If the service is performed both within and outside this State, the numerator of the receipts fraction includes receipts from services based upon the cost of performance or amount of time spent in the performance of such services or by some other reasonable method which should reflect the trade or business practice and economic realities underlying the generation of the compensation for services. Cost of performance is defined as all direct costs incurred in the performance of the service, including direct costs of subcontractors.

1. All amounts received by the taxpayer in payment for such services are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons and regardless of whether the receipt is accounted for as an item of income or a reduction in expense.

2. It is immaterial where the amounts were payable or where they actually were received.

Example 1: Taxpayer derives advertising revenues in the course of broadcasting television or radio programs. It sets its advertising rates based upon the listening audience it has succeeded in reaching. The appropriate method of assigning the portion of its advertising revenues attributable to services performed in New Jersey is based upon the proportion of its listening audience in New Jersey.

Example 2: Taxpayer earns income from the sale of long distance telephone communications service. It bills the originators of long distance telephone calls directly and for all calls placed by them. The appropriate method of allocating its long distance toll revenues attributable to services performed in New Jersey is based upon billings for calls originating in New Jersey.

(b) Commissions received by the taxpayer are allocable to New Jersey if the services for which the commissions were paid were performed in New Jersey. If the taxpayer's services for which commissions were paid were performed for the taxpayer by salesmen attached to or working out of a New Jersey office of the taxpayer, the taxpayer's services will be deemed to have been performed in New Jersey.

Example

The taxpayer is a New Jersey sales agent of a Pennsylvania manufacturer and receives in New Jersey an order from a New York customer. The order is forwarded to the manufacturer which accepts it and fills it by shipment direct to the customer. The taxpayer's commission is allocable to New Jersey.

(c) Certain service fees from transactions having contact with this state are allocable to New Jersey based upon the following:

1. Twenty-five percent of such fees are allocated to the state of origination.
2. Fifty percent of such fees are allocated to the state in which the service is performed.
3. Twenty-five percent of such fees are allocable to the state in which the transaction terminates.

Example 1: A taxpayer issues credit cards to its customers allowing funds to be obtained through the use of authorized machines located within New Jersey. A customer originates a transaction at a New Jersey location, and the taxpayer's computer, located outside this State, performs a credit check. Funds (or a bank draft) are received by the customer at the point of origin in New Jersey, where the transaction terminates. Taxpayer must allocate 50 percent of the service fee income earned from this transaction to New Jersey based upon the points of origination and termination. For purposes of this example the issuer of credit cards has nexus with New Jersey through physical presence in New Jersey.

Example 2: Taxpayer earns income by providing on-line internet access to customers located within New Jersey and outside New Jersey. Taxpayer's physical

equipment allowing such access is located outside New Jersey. Taxpayer must allocate 50 percent of its revenue from internet access charges to New Jersey based upon the origination and termination of such access from points within New Jersey. Absent specific identification of points of origination and termination, the customer's billing address will serve to locate these activities. For purposes of this example, the internet service provider has physical presence through a home office located in New Jersey.

Example 3: Certain lump sum payments for services performed within and without New Jersey must be apportioned in the following manner in order to result in a fair and reasonable receipts fraction.

1. Securities and commodities brokers executing orders on an exchange are to allocate commissions derived from the execution of purchases or sales orders for the accounts of customers to New Jersey as follows:

- i. 80 percent of commissions on orders originating at any New Jersey place of business; plus
- ii 20 percent of commissions on orders executed on any exchange located in New Jersey.

2. Transportation revenues of an airline are from services performed in New Jersey based on the ratio of departures from New Jersey to total departures. Departures may be weighted as to cost and value of aircraft by type where weighting would give a more fair and reasonable business allocation factor.

3. Inland freight revenues must be segregated into two components. The numerator of the receipts fraction attributable to receipts from services performed within New Jersey is the sum of:

- i. A portion of such freight attributable to long distance hauling is calculated based upon the proportion of the taxpayer's costs of long distance hauling to the sum of the costs of long distance hauling, terminal operations and local pickup and delivery during the period covered by the return and included in the receipts fraction based upon the proportion of revenue miles in New Jersey to revenue miles everywhere; plus
- ii. The balance of freight revenues are in the numerator of the receipts fraction based on the proportion of total revenues from goods consigned to points within New Jersey to total freight revenues.
- iii. The computation of the receipts fraction must accompany the return.

Illustration

Local pickup and delivery costs and terminal operations costs				\$525,000
Long distance hauling costs				<u>225,000</u>
Total				<u>\$750,000</u>
Revenue miles in New Jersey				100,000
Total revenue miles				500,000
Consignments to points in New Jersey				<u>450,000</u>
Total freight revenues				\$1,000,000
\$1,000,000	×	$\frac{225,000}{750,000}$	×	$\frac{100,000}{500,000}$ = \$60,000
\$1,000,000	×	$\frac{525,000}{750,000}$	×	$\frac{450,000}{1,000,000}$ = \$315,000
Receipts from services performed within New Jersey				\$375,000
Assuming no other receipts enter into the computation, the receipts fraction is $\frac{\$ 375,000}{1,000,000}$ or .375000				

(d) If a taxpayer receives a lump sum in payment for services and also for materials or other property, the sum received must be apportioned on a reasonable basis.

1. That part apportioned to services performed is includible in receipts from services; and
2. That part apportioned to materials or other property is includible in receipts from sales;
3. Full details must be submitted with the taxpayer's return.

(e) Receipts arising from the sale of management, administration or distribution services to a regulated investment company shall be allocated to New Jersey to the extent that shareholders of the regulated investment company are domiciled in New Jersey in accordance with the procedure prescribed in this subsection.

1. The portion of receipts deemed to arise from services performed within New Jersey shall be determined by multiplying the total of such receipts from the sale of such services by a fraction. The numerator of the fraction is the average of the sum of the beginning of the year and the end of year balance of shares owned by the regulated investment company shareholders domiciled in New Jersey for the regulated investment company's taxable year for Federal income tax purposes which ends within the taxable year of the taxpayer. The denominator of the fraction is the average of the sum of the beginning of the year and end of year balance of shares owned by the regulated investment company shareholders. A separate **computation** is made to determine the allocation of receipts from each regulated investment company.

2. For the purposes of this section:

i. "Administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for a regulated investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined herein, to such company.

ii. "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of a regulated investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the Federal Investment Company Act of 1940, as amended.

iii. "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-2m in the case of an individual and under N.J.S.A. 54A:1-20 in the case of an estate or trust and, in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the shareholder's mailing address on the records of the regulated investment company. In the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

iv. "Management services" means the rendering of investment advice to a regulated investment company, making determinations as to when sales and purchases of securities are to be made on behalf of a regulated investment company, or the selling or purchasing of securities constituting assets of a regulated investment company, and related activities but only where such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to section 15(a) of the Federal Investment Company Act of 1940, as amended.

v. "Receipts" shall include amounts received directly from a regulated investment company as well as amounts received directly from the shareholders of such regulated investment company in their capacity as such.

vi. "Regulated investment company" means a regulated investment company as defined in N.J.S.A. 54:10A-4(g) and meets the requirements of Section 851 of the Federal Internal Revenue Code.

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

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

Amended by R.1985 d.43, effective February 19, 1985.

See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).

(c) substantially amended and examples and illustration added.

Amended by R.1989 d.439, effective August 21, 1989.

See: 21 N.J.R. 1106(a), 21 N.J.R. 2527(a).

Added subsection (e)1-2vi.

Administrative Correction to (c).

See: 21 N.J.R. 3477(a).

Administrative Correction to (c) and Example 1.

See: 22 N.J.R. 363(a).

Amended by R.1997 d.429, effective October 6, 1997.

See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).

Rewrote (a) and (c).

Statutory References

See N.J.S.A. 54:10A-6(C) as to includability of compensation for personal services in receipts fraction.

18:7-8.11 Receipts; rents and royalties

(a) Receipts from rentals of real and personal property situated in New Jersey, and royalties from the use in New Jersey of patents or copyrights, are allocable to New Jersey.

1. Receipts from rentals include all amounts received by the taxpayer for the use or occupation of property, whether or not such property is owned by the taxpayer.

2. Receipts from royalties include all amounts received by the taxpayer for the use of patents or copyrights, whether or not such patents or copyrights were originally issued to or are owned by the taxpayer.

3. A patent or copyright is used in New Jersey to the extent that activities thereunder are carried on in New Jersey.

(b) Receipts from royalties derived from trademarks utilized in business in New Jersey are deemed located in New Jersey.

Example 1: Corporation B is a Delaware corporation having legal title to certain trademarks. B licenses those trademarks to affiliated entities, and the affiliates pay B an arm's length royalty for their use. The trademarks are used by the affiliates within and outside New Jersey. Allocation of Corporation B's income from trademark royalties paid to it by affiliates is based upon the use of the trademarks in New Jersey by the affiliates. If an affiliate generates 10 percent of its sales revenue from the use of a trademark within New Jersey and 90 percent in other jurisdictions, 10 percent of the royalty paid by the affiliate to Corporation B for that trademark is apportioned to New Jersey by Corporation B.

Amended by R.1997 d.429, effective October 6, 1997.

See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).

Added (b).

Statutory References

See N.J.S.A. 54:10A-6(B)(5) as to includability of rents and royalties in computing receipts fraction.

18:7-8.12 Other business receipts

(a) All other business receipts earned by the taxpayer within New Jersey are allocable to New Jersey. Other business receipts include all items of income entering into the determination of entire net income during the year for which the business allocation factor is being computed and is not otherwise provided for in these rules. Examples of such business receipts include, but are not limited to, interest income, dividends, governmental subsidies or proceeds from sales of scrap.

(b) For treatment of dividends see N.J.A.C. 18:7-8.7(c)2, Example.

(c) For treatment of receipts from sales of capital assets, see N.J.A.C. 18:7-8.9.

(d) Receipts from the sale of real property situated in New Jersey are earned in New Jersey.

(e) Intangible income not apportioned by other provisions of these rules is included in the numerator of the receipts fraction where the taxable situs of the intangible is in this State. The taxable situs of an intangible is the commercial domicile of the owner or creditor unless the intangible has been integrated with a business carried on in another state. Notwithstanding that the commercial domicile is outside this State, the taxable situs is in New Jersey to the extent that the intangible has been integrated with a business carried on in this State.

Example: Taxpayer has its domicile outside this State. It is in the business of lending money, some of which is loaned to New Jersey residents. Interest income recognized from such loans is income derived from sources within this State and, as such, is earned in New Jersey. That interest income is includable in the numerator of the receipts fraction.

(f) For treatment of non-operational income, see N.J.A.C. 18:7-8.17.

Amended by R.1985 d.43, effective February 19, 1985.
See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Cross References

See subsection (g) of section 8.8 (Scope of allocable receipts) of this chapter as to treatment of dividends received from subsidiaries. See section 8.9 (Receipts of capital assets; when includible) of this chapter as to treatment of receipts of capital assets.

Statutory References

See N.J.S.A. 54:10A-6(B) as to includibility of all business receipts earned within New Jersey in receipts fraction.

18:7-8.13 Business allocation factor; payroll fraction

(a) Wages, salaries and other compensation include all amounts paid for personal services rendered to the taxpayer, but do not include amounts paid of the taxpayer which do not have in them the element of compensation for personal services actually rendered or to be rendered.

(b) The percentage of the taxpayer's payroll allocable to New Jersey is determined by dividing the wages, salaries and other personal service compensation of the taxpayer's employees within New Jersey during the period covered by the return by the total amount of compensation of all the taxpayer's employees during the period.

1. All executive salaries are includible in both the numerator, as applicable, and the denominator.

2. In general, a taxpayer reporting to the Division of Employment Security in the New Jersey Department of Labor must allocate to New Jersey all wages, salaries and other personal service compensation, and other items reportable to that Division, including the portions thereof, in individual cases, over \$6,200 for the calendar year 1978 and \$6,600 for the calendar year 1979 and for subsequent years the amount prescribed by the New Jersey Department of Labor. (As a point of reference, such base wage amount for 1992 was \$15,300 and for 1993 was \$16,000.)

(c) Wages, salaries and other compensation are computed on the cash or accrual basis, in accordance with the method of accounting used by the taxpayer in reporting for Federal income tax purposes.

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

Statutory References

See N.J.S.A. 54:10A-6(c) as to treatment of wages, salaries and other personal service compensation of taxpayer's employees.

18:7-8.14 Definition of officers and employees

(a) Those officers and employees whose wages, salaries and other personal service compensation are required to be included in the computation of the payroll fraction of the business allocation factor include every individual, officer and general executive officer whose relationship with the taxpayer is that of employee and employer.

(b) Generally, the relationship of employer and employee exists when the taxpayer has the right to control and direct the individual not only as to the result to be accomplished by him but also as to the means by which such result is to be accomplished. If the relationship of employer and employee exists, the designation or description of the relationship, and the measure, method or designation of the compensation, are immaterial.

(c) Compensation paid to officers, such as the Chairman, President, Vice-President, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, Comptroller, and any other officer charged with and performing general executive duties of the corporation must also be included.

(d) A director of a corporation is not an employee; therefor compensation paid to directors for acting as such should not be included in either the numerator or denominator in computing the payroll fraction.

Statutory References

See N.J.S.A. 54:10A-6(c) as to includibility of wages, salaries, and other personal service compensation of officers of taxpayer, and 54:10A-7 as to definition and scope of "compensation" of officers and employees.

18:7-8.15 Compensation of officers and employees within New Jersey

(a) Compensation of officers and employees within this State shall include the entire amount of wages, salaries and other personal service compensation for services performed within or both within and without this State if:

1. The service is performed entirely within this State; or

2. The service is performed both within and without this State, but the service performed without the State is incidental to the individual's service within the State. For example, service which is temporary or transitory in nature or which consists of isolated transactions;

3. The service is not performed entirely in any state but some of the service is performed in this State; and

i. The base of operations, or, if there is no base of operations, then the place from which the service is directed or controlled, is in this State; or

ii. The base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State;

4. Contributions are not required or paid with respect to such service under an unemployment compensation law of any other state.

Statutory References

See N.J.S.A. 54:10A-6(C) as to includibility of compensation of officers of taxpayer, and 54:10A-7 as to definition and scope of "compensation" of officers.

18:7-8.16 Allocation: International Banking Facilities

Any banking corporation, having an international banking facility, which maintains a regular place of business (other

than a statutory office) outside of New Jersey, which elects to take the deduction from entire net income provided by N.J.A.C. 18:7-5.2(a)2vii, shall complete the allocation factor under this subchapter in the usual way. For the purpose of allocation, however, all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in N.J.A.C. 18:7-16.1, shall be included in both the numerator and denominator of the fractions described in this subchapter, whether or not such international banking facility income amounts are otherwise attributable to New Jersey.