

6. On June 30, 1997 a New Jersey State chartered bank merges into another New Jersey State chartered bank. Under N.J.S.A. 54:10A-34(5), the surviving bank's return (BFC-1) for the 1998 privilege period will be based on its income from January 1, 1997 to December 31, 1997 and the income of the bank that merged into it from January 1, 1997 to June 30, 1997.

7. On July 31, 1997 a Pennsylvania state chartered bank merges into a New Jersey chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis using a CBT-100. The New Jersey State chartered bank will file on April 15, 1998, under N.J.S.A. 54:10A-34, a BFC-1 return for the 1998 privilege period that will be based on its income from January 1, 1997 to December 31, 1997. In addition, the Pennsylvania state chartered bank will file on November 15, 1997, a CBT-100 return for the pre-merger short period covering January 1, 1997 to July 31, 1997 under N.J.S.A. 54:10A-2 that will be based on its pre-merger 1997 income.

8. On July 31, 1997 a New Jersey State chartered bank merges into a Pennsylvania state chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis. The Pennsylvania state chartered bank's 1997 CBT-100 return filed April 15, 1998 for the calendar year 1997 will be based on its income from January 1, 1997 to December 31, 1997. In addition, the New Jersey State chartered bank will file on November 15, 1997 under N.J.S.A. 54:10A-2 a 1997 CBT-100 return reporting its pre-merger 1997 income. This return will be in addition to the BFC-1 return required to be filed, under N.J.S.A. 54:10A-34, by April 15, 1997 by the New Jersey State chartered bank for the 1997 privilege period that is based on its income for 1996.

9. On July 1, 1997 a national bank headquartered in New Jersey merges into a national bank headquartered in Pennsylvania. Prior to the merger, the New Jersey national bank was only doing business in New Jersey and the Pennsylvania national bank was only doing business outside of New Jersey. The Pennsylvania national bank reports for Federal tax purposes on the calendar year basis. The Pennsylvania national bank is required to file its first annual corporation business tax return (BFC-1) on April 15, 1998 for the privilege period 1998 with an assessment date of January 1, 1998 based on its income from July 1, 1997 through December 31, 1997 and the income of the New Jersey national bank that merged into it from the short period covering January 1, 1997-June 30, 1997.

New Rule, R.1997 d.254, effective June 16, 1997.
See: 29 N.J.R. 850(a), 29 N.J.R. 2708(a).

18:7-1.15 Investment company; definition

(a) "Investment company" means any corporation:

1. Whose business for the period covered by its return consisted to the extent of at least 90 percent of "qualified investment activities" which are: investing or reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities or the holding thereof after investing or reinvesting therein for its own account. As used in this rule, "qualified investment assets" are stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities and cash on deposit;

2. Which had for the period covered by the return 90 percent or more of its average gross assets in New Jersey, at cost, invested in "qualified investment assets" referred to in (a)1 above;

3. Which meets the numerical tests in (f) below;

4. Which is not a banking corporation as defined by the Act;

5. Which is not a financial business corporation as defined by the act; and

6. Which is not a merchant or dealer in stocks, bonds, or other securities, and which is regularly engaged in buying and selling such securities to customers.

(b) "Qualified investment assets" are measured by the taxpayer's assets as reported for book purposes at cost on a separate legal entity basis for balance sheet purposes. "Qualified investment activities" are measured by gross receipts and expenses as reported for Federal income tax purposes, and by adding thereto, Federal, state, municipal, and other obligations included in determining New Jersey entire net income, but not otherwise included in Federal taxable income. "Qualified investment activities" and "qualified investment assets" do not include the following specific assets or activities. The receipts, direct and indirect expenses and assets connected with the following will not be included in the numerator of any test:

1. The making and/or negotiating of loans. These activities are generally considered as either banking and/or financial business activities;

2. The renting or leasing of real or tangible personal property. These activities are generally considered financial business activities or other than investment activities;

3. The investment in general partnerships since the status of a general partner is not considered as consistent with a qualified investment activity and investments in general partnerships are not statutorily enumerated assets;

4. The direct day-to-day management of operations of affiliated corporations or the actual providing of services, directly or as an intermediary, for the benefit of affiliated corporations;

5. The buying and/or selling of stocks, bonds, notes, and other securities for the corporation's customers;

6. The buying and/or selling of real or tangible personal property whether it is classified as inventory, as operating assets, or as capital assets;

7. The direct investment in collectibles, including but not limited to stamps, pottery, cars, gold coins; or

8. The direct investment in trademarks or similar assets.

(c) "Receipts" include, but are not limited to, the gross payments received from others (affiliated or not) regardless of whether the receipt is accounted for as an item of income or reduction in expense:

1. For services performed;
2. For the sale or transfer of assets;
3. For income recognized from the liquidation of liabilities; and
4. From the investment or reinvestment of capital in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities, includible in computing entire net income.

(d) "Reimbursements" received are payments having no element of profit in a transaction or element of covering indirect costs, and are received from others for expenses made on their behalf and are the true expenses of the entity making the reimbursement; hence, neither the expense nor its recovery should appear on the taxpayer's income statement for Federal purposes. Where taxpayer's accounting method displays such items on its income statement, such items will be removed from any calculations required under the regulations for the taxpayer receiving the reimbursement and included on the reimbursing company's return.

(e) A corporation electing to file as an investment company shall make its election on a timely filed original return or on a timely filed amended return, and shall substantiate its claim in accordance with the tests enumerated in this rule. Where the taxpayer does not clearly document its claim to investment company status through attached riders, the claim will be denied. An election made on an amended return shall be filed in accordance with the periods shown in N.J.A.C. 18:7-13.8(a) to be eligible for any refund claimed. An election to file as an investment company, once made, may only be revoked by the taxpayer within four years of the filing of the original return. The election to file as an investment company is a taxpayer election and may not be initiated by the Division of Taxation or granted by the Division outside the time frame prescribed.

(f) In order for a corporation to qualify as an investment company, it must meet the three-part business test and the asset test:

1. Business test (three parts):

i. (Income adjusted): For purposes of the 90 percent requirement provided by (a)1 above, taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions as reported for Federal income tax purposes, from cash and/or investment assets. Total income before deductions as reported for Federal income tax purposes must be adjusted as follows:

- (1) Add gross receipts or gross sales adjusted for gross profit (loss) reported for Federal income taxes;
- (2) Add gross sales price from the disposition of assets adjusted for capital gain or loss or net gain or loss reported for Federal income taxes;
- (3) Add interest on Federal, State, municipal and other obligations included in determining New Jersey new income, but not otherwise included in Federal total income;
- (4) Do not add any capital loss carry back or carry forward in computing total income.

ii. (Income unadjusted): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions, as reported for Federal income tax purposes, from cash and/or investment assets plus interest on Federal, State, municipal and other obligations not otherwise included in Federal taxable income and exclusive of any capital loss carryback or carryforward.

(1) A gain resulting from the disposition of an asset and reported on the installment basis for Federal income taxes is considered income for purposes of the investment company statute in the year in which the installment is received under both (c)1i and ii above. Income reported on the installment basis is treated as investment income only if it is generated by the sale of an investment asset. Interest income received in conjunction with each installment is deemed investment income.

iii. (Deductions): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have incurred 90 percent or more of its total deductions as reported for Federal income tax purposes, for holding, investing and reinvesting in cash and/or investment assets.

2. Assets test: For purposes of the 90 percent requirement provided by (a)2 above, at least 90 percent of the taxpayer's gross assets located in New Jersey, valued at cost, must consist of cash and/or investment assets, during the period covered by its report.

Assets Test: CBT-100 Schedule B (restated at cost)	
Cash	\$11,000
Accounts & Notes Receivable	12,000
Corporate Stocks	30,000
Bonds, Mortgages & Notes	30,000
NJ State & Local Gov't Obligations	15,000
Patents & Copyrights	20,000
All Other Intangible Personality	\$60,000
Total Investment Type Assets	\$178,000
Land	\$15,000
Furniture & Equipment	1,200
Total Real and Tangible Property	\$16,200
Total Assets	\$194,200
Ratio of Investment Type Assets to Total Assets equals 92%	
Corporation D qualifies as an investment company since it met each test.	

Example No. 5: Corporation A negotiates and discounts loans as opposed to merely investing in notes that were negotiated by others. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights and other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business for purposes of the Act.

Example No. 6: Corporation B makes or deals in secured or unsecured loans and discounts. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business prohibited by the Act from qualifying for the election.

Example No. 7: Corporation C rents or leases property in transactions that approximate secured loans. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since this is considered a financial business activity.

Example No. 8: Corporation D provides and charges Corporation O and other affiliates for general and administrative services it performs on behalf of Corporation O and the affiliates. The charges cover the cost, which includes a percentage of Corporation D's wages, depreciation expense, as well as other direct and indirect expenses incurred by Corporation D to provide these services. Corporation D must include such receipts in the denominator, but not the numerator, in calculating the tests provided under the rule. The charges made to O go beyond actual reimbursements and, while considered receipts, are not considered receipts from qualified investment activities within the meaning of

the rule. Where such inclusion causes the percentage to drop below the 90 percent requirement, the corporation will be denied its claim to investment company status.

(g) An investment company may also qualify as a regulated investment company. See N.J.A.C. 18:7-1.13.

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
As amended, R.1982 d.34, effective February 16, 1982.
See: 13 N.J.R. 684(b), 14 N.J.R. 209(b).

(c) added.

Amended by R.1985 d.561, effective November 4, 1985.
See: 17 N.J.R. 1537(a), 17 N.J.R. 2677(a).

Substantially amended.

Amended by R.1990 d.482, effective October 1, 1990.
See: 22 N.J.R. 1904(a), 22 N.J.R. 3159(a).

Definition of investment company restructured; investment activities and assets, receipts, reimbursements, and timeliness of elections clarified further, pursuant to the holdings of the court in *National Wax Paper Company v. Director, Division of Taxation MC-539-78 (Tax Court 1981)* and *Milton Management, Inc. v. Director, Division of Taxation MC-386-72 (Division of Tax Appeals, 1975)*, and *Department of Environmental Protection v. Franklin Township, 3 N.J. Tax 105, 119 (Tax Court 1981)*, *aff'd 5 N.J. Tax 476 (App.Div.1983)*.

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

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

Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).

See: 35 N.J.R. 1573(a).

Added (g).

Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.

See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Provisions of R.2003 d.135 adopted without change.

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

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

In (f), inserted "1" following "provided by (a)" in 1i, substituted "(a)2" for "(b)2i and ii" in 2.

Statutory References

See N.J.S.A. 54:10A-4(f) as to those corporations included and those not included within the definition of an investment company.

18:7-1.16 Financial business corporation; definition

(a) "Financial business corporation" means a corporation that is, in fact, in substantial competition with the business of national banks, and which also employs moneyed capital with the object of making profit by its use as money through any of the following:

1. Discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt;

2. Buying and selling exchange;

3. Making of or dealing in secured or unsecured loans and discounts;

4. Dealing in securities or shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers;

5. Investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or

6. Dealing in or underwriting obligations of the United States, any state or any political subdivision thereof or of a corporate instrumentality of any of them.

7. Certain leasing transactions which approximate secured loans by meeting each of the following requirements:

i. Lessor must look primarily to the creditworthiness of the lessee in order to recover its investment.

ii. Lessor may not rely on repetitious leasing of the same property.

iii. The lease must be a net lease.

iv. The lessor must recover its full investment plus its cost of financing through the rental payments, tax benefits, and the residual value of the property.

(b) For purposes of this section:

1. "Tax benefits" means those benefits derived from depreciation and any investment tax credit related to the financed property.

2. "Residual value of the property" means the estimated value of the leased property at the end of the original lease as determined at the time the lease is executed.

3. "Net lease" means a lease under which the lessor will not, directly, or indirectly, provide or be obligated to provide for:

i. The servicing, repair or maintenance of the leased property during the lease term.

ii. The purchasing of parts and accessories for the leased property; however, the improvements and additions to the leased property may be leased to the lessee upon its request.

iii. The loan of replacement or substitute property while the leased property is being serviced.

iv. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

v. The renewal of any license or registration for the property unless such action by the taxpayer is clearly necessary to protect its interest as an owner or financier of the property.

(c) A financial business corporation shall not include:

1. Any enterprise that is not a corporation;

2. National banks;

3. Production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub. L. 91-181 (12 U.S.C. § 2091 et seq.);

4. Stock or mutual insurance companies authorized to transact business in this State;

5. Securities brokers or dealers, investment companies, or investment bankers not employing moneyed capital with the object of making profit by its use as money or in substantial competition with the business of national banks;

6. Real estate investment trusts;

7. Credit unions organized under the laws of this State;

8. Savings banks organized under the laws of this State;

9. Savings and loan or building and loan associations organized under the laws of this State;

10. Pawn brokers organized under the laws of this State; and

11. State banks and trust companies organized under the laws of this State.

(d) A financial business corporation may not qualify as an investment company as that term is used in N.J.A.C. 18:7-1.15.

(e) The business of national bank is defined, and may be redefined from time to time, by the Congress of the United States at 12 U.S.C.A. 21, et seq. (The National Banking Act).

1. "The business of national banks" as used in N.J.S.A. 54:10A-4(m) and this section means the business of the bank itself and does not include bank subsidiaries, holding companies or affiliates.

(f) A corporation may qualify as a financial business corporation provided that 75 percent of its gross income is derived from the activities enumerated in (a)1 through (a)7 above. For purposes of making this computation, gross

income shall be the sum of the amounts reported on line 1 and lines 4 through 10 of Schedule A on Form BFC-1, adjusted as follows: