

**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. See: Source and Effective Date. As a part R.1994 d.186, Subchapter 6, Valuation, was repealed effective April 18, 1994. See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b). 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

**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 through 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 "Tangible personal property"; definition and scope
- 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 over-payments
- 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).

**18:7-7.2 Regular place of business; definition**

(a) A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occu-

ped and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance. The following will assist in the determination of what is a regular place of business.

1. **Bona fide office:** An office in which an employee in attendance performs significant duties related to the business of the taxpayer. A token office, space of the taxpayer or any place where an employee does not actually perform significant duties constituting part of taxpayer's business does not constitute a regular place of business.

2. **Space of the taxpayer:** The taxpayer must be directly responsible for the expenses incurred in maintaining the regular place of business and must either own or rent the facility in its own name and not through a related person or entity. The regular place of business should be identifiable as belonging to the taxpayer by, for example, reflecting the taxpayer's name on the exterior and interior of the building and being listed in the taxpayer's name in a telephone book.

3. **Regularly maintained, occupied and used by the taxpayer in carrying on its business:** The taxpayer must regularly maintain, occupy and use the premises by employing one or more regular employees who are in attendance during normal working hours. Premises are not regularly maintained, occupied and used in the event employees are in attendance only on a part time basis and, in their absence, telephone messages are received by an answering service or recording device.

4. **Regular employee:** A regular employee must be under the control and direction of the taxpayer in transacting the taxpayer's business and/or performing work on behalf of the taxpayer. The officers of the taxpayer are generally deemed to be regular employees of the taxpayer while independent contractors and members of the taxpayer's board of directors are not regular employees of the taxpayer. The method or procedure by which a taxpayer reports the compensation paid to an individual (such as a W-2 form) shall not be conclusive as to whether the individual is a regular employee (See N.J.A.C. 18:7-8.14.):

i. The facilities of a public warehouse located outside New Jersey and utilized to store property of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer where the warehouse is not the space of the taxpayer.

ii. The facilities of an independent contractor located outside of New Jersey and used to store, convert, process, finish and/or improve the goods of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer.

iii. A job site, field office or other facility which is not regularly maintained, occupied and used in taxpayer's business or where administrative duties, such as performing payroll functions, telephoning, recordkeeping, banking, accounting, the hiring and firing of employees and similar functions are not performed, is not a regular place of business.

iv. The location of inventories outside of New Jersey in the possession of employees in their homes, or in

trucks, or in coin-operated machines do not represent space regularly maintained, occupied and used by the taxpayer in carrying on its business.

v. In the event the taxpayer's business is conducted by an independent agent or independent contractor, the place of business of the independent agent or independent contractor shall not be considered a regular place of business of the taxpayer. In addition, any employee of such independent agent or independent contractor shall not be considered a regular employee of the taxpayer.

(b) A taxpayer does not have a regular place of business outside New Jersey solely by consigning goods to an independent factor outside New Jersey for sale at the direction of either the consignor or consignee.

(c) The mere fact that a taxpayer is subject to an income or franchise tax in other jurisdictions shall not be determinative as to whether the taxpayer maintains a regular place of business outside of New Jersey where taxable status in that jurisdiction is based on criteria other than a regular place of business.

Amended by R.1985 d.54, effective February 19, 1985.

See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).

(a)1-2 deleted and new text (a)1-4 substituted; (c) added.

#### 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

Apportionment of franchise tax for multi-state corporations which maintain a regular place of business outside New Jersey other than a statutory office is not applicable to a corporation whose out-of-state offices consist of space in corporate engineers' personal homes used for their own convenience in connection with their employment. *Hoegaens Corp. v. Director, Div. of Taxation*, 145 N.J.Super. 352, 367 A.2d 1182 (App.Div.1976) and dissenting opinion.

Corporation which did not pay rent out of state did not maintain regular place of business out of state. *Hess Realty Corp. v. Director, Div. of Taxation*, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).

Reduction in corporation business tax based on an allocation of tax basis due to maintenance of a regular place of business outside of the State denied because New York office was not a "regular place of business", since it was leased in the name of the parent corporation, the taxpayer paid no rent and did not maintain control over the premises, and because the full time employees at the office were all employees of the parent corporation. *Shelter Development Corp. v. Taxation Div. Director*, 6 N.J.Tax 547 (Tax Ct.1984).

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).

Corporation held not entitled to apportion part of its net income to other states because it did not maintain a regular place of business in other states; "regular place of business" test held not to violate commerce clause. *Rocappi Inc. v. Taxation Div. Director*, 3 N.J.Tax 311, 182 N.J.Super. 163, 440 A.2d 96 (Tax Ct.1981).

### 18:7-7.3 "Allocating" and "non-allocating" companies; definition

(a) A taxpayer which allocates a portion of its entire net income outside this State is referred to as an "allocating" taxpayer.

(b) A taxpayer which does not allocate any part of its entire net income outside this State is referred to as a "non-allocating" taxpayer.

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-4(b) as to definition of "allocation factor," and 54:10A-6 as to how to determine allocation factor for a taxpayer who maintains a 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).

### 18:7-7.4 Allocation factor; definition

"Allocation factor" means the proportionate part of a taxpayer's entire net income used to determine a measure of its tax under the Act.

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-4(b) as to definition of "allocation factor."

### 18:7-7.5 Allocation factor; application

If the taxpayer had a regular place of business outside New Jersey during the period covered by the return, its tax liability under the New Jersey Corporation Business Tax Act is measured by that part of its entire net income allocated to New Jersey according to a formula called the business allocation factor.

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

#### Historical Note

Laws of 1968, Chapter 250 eliminated the use of the asset factor for the purpose of allocating net worth, effective with respect to privilege periods commencing after December 31, 1968.

#### Statutory References

See Laws 1968, Chapter 250 as to elimination of asset factor for purpose of allocating net worth, effective with respect to privilege periods commencing after December 31, 1968. See N.J.S.A. 54:10A-4(b) as to definition of "allocation factor." 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.

### 18:7-7.6 (Reserved)

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

Section was "Optional short tax table in lieu of allocation of net worth".

### 18:7-7.7 (Reserved)

## SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

### 18:7-8.1 Business allocation factor; computation

(a) The business allocation factor is computed on the basis of the average percentage resulting from the following three fractions:

1. Average value of real and tangible personal property in New Jersey over the average value of such property both within and without New Jersey (this is usually referred to as the property fraction);
2. Receipts allocable to New Jersey over receipts both within and without New Jersey (this is usually referred to as the receipts fraction);
3. Payrolls allocable to New Jersey over payrolls within and without New Jersey (this is usually referred to as the payroll fraction).

(b) The business allocation factor is computed by adding together the percentages derived from the foregoing three fractions for the period covered by the return, and dividing the total of the percentages by three.

(c) However, if one of the fractions (property, receipts or payroll) is missing, the other two percentages are added and the sum is divided by two, and if two of the fractions are missing, the remaining percentage may be used as the business allocation factor. A fraction is not missing merely because its numerator is zero, but it is missing if both its numerator and its denominator are zero.

#### Statutory References

See N.J.S.A. 54:10A-6 as to how to compute business allocation factor.

#### Case Notes

Change in interpretation of safe harbor leasing provision did not require administrative rule making. *Reuben H. Donnelly Corp. v. Director, Div. of Taxation*, 128 N.J. 218, 607 A.2d 1281 (1992).

Corporate taxpayer was entitled to credit for corporate income tax paid in another state. *Kettler Realty Corp. v. Director, Div. of Taxation*, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Net worth determination that did not result in unfair or unreasonable tax would not be modified on judicial review. *Kettler Realty Corp. v. Director, Div. of Taxation*, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Interpretation of amendment to corporate tax governing safe harbor leasing provisions did not constitute rulemaking. *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 include the property in the 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.

**18:7-8.2 Method of arithmetic computation required**

In computing allocation percentages, division must be carried to six decimal places, for example .201614 or 20.1614 per cent.

**Statutory References**

N.J.S.A. 54:10A-8.

**18:7-8.3 Right of Director to independently compute allocation factor**

(a) If it appears that the business allocation factor computed on the basis of all or any of the property-receipts-payroll fractions does not properly reflect the activity, business, receipts, capital, entire net worth or entire net income of the taxpayer in New Jersey, the Director may adjust or the taxpayer may request an adjustment of the business allocation factor.

(b) Reduction in tax for income duplicated on a return filed with another State pursuant to N.J.S.A. 54:10A-8 and this rule—100 percent allocation factor:

1. Eligibility:

i. Where the Business Allocation Factor under Section 6 of the Act is 100 percent and the taxpayer in fact paid a tax based on or measured by income to a foreign state, resulting in a duplication of income being taxed, it may, under Section 8 of the Act, apply for a reduction in the amount of its tax. The reduction is available only where the taxpayer in its own right acquired a taxable status in the foreign state by reference to at least one of the criteria described at N.J.A.C. 18:7-1.6 as if the New Jersey Corporation Business Tax Act were the law of that foreign state.

Example: S corporation does not maintain a regular place of business outside New Jersey, other than a statutory office. It was not a domestic corporation in State X, nor did it meet any of the other criteria described at N.J.A.C. 18:7-1.6 in that State which would have created a taxable status in New Jersey. Although it was not itself doing business in State X,

it was a member of an affiliated group of corporations which conducted a unitary business in that State and as such is permitted or required to join in filing a combined or consolidated return in State X. In fact, it did so.

Any duplication of income being reported to New Jersey and to State X may not form the basis for a reduction in the tax.

2. Method:

i. An eligible taxpayer computes its reduction on a rider attached to its return by demonstrating that a part of entire net income is duplicated on a return filed with another state. It must attach a copy of all relevant portions of the return filed with the foreign state relating to income reported, the computation of all components of its apportionment fractions and the computation of the tax paid to the foreign state. It must also submit a schedule apportioning all property, receipts and payroll to a common denominator defined consistent with the return. For purposes of calculating the reduction:

(1) It may be based upon only so much of adjusted entire net income appearing on its Corporation Business Tax Return as is reported to the foreign state;

(2) The formula apportionment used in the foreign state may not exceed the Business Allocation Factor as determined under Section 6 of the Act and these rules;

(3) It must be computed by using the lesser of the tax rates of the foreign state or the tax rate under the New Jersey Corporation Business Tax Act.

Example 1:

Corporation A does not maintain a regular place of business outside New Jersey other than a statutory office. As a consequence, its Business Allocation Factor is 100 percent. It sold land for \$250,000 which had a tax basis and book value of \$100,000 and was situated in State Y. Under the laws of State Y, the entire gain is directly allocable to that State and is taxed at an eight percent rate. It may determine the portion of its tax which is measured by net income as follows:

	New Jersey Tax Income Base	Duplicated in State Y
Gross income exclusive of gain on sale of land	\$ 500,000	
Net gain on sale of land	+ 150,000	\$ 150,000
Total income	650,000	
Deductions	- 447,778	
Taxable income before net operating deductions and special deductions	202,222	

Adjustments—N.J. Corporation Business Tax Deducted—add back	+ 20,000	
Entire net income	\$ 222,222	
Tax at 9%—before reduction	\$ 20,000	
Formula apportionment not used in State Y		100%
Duplication of income		150,000
Reduction—may not exceed 9%		× .08
Tax paid to State Y		<u>\$ 12,000</u>
Reduction	- 12,000	
Paid with return	<u>\$ 8,000</u>	

Leased (at 8 annual rentals)	+ 40,000	+ 100,000	
	<u>180,000</u>	<u>600,000</u>	.30
	200,000	1,000,000	.20
Receipts double weighted Payroll	90,000	300,000	+ .30
Total			<u>1.00</u>
Average 1.0 ÷ 4			<u>.25</u>

The formula apportionment had it been determined in State Z consistent with the Corporation Business Tax Act would have been:

Example 2:

Corporation B does not maintain a regular place of business outside New Jersey other than a statutory office. Its Business Allocation Factor is 100 percent. It did however start and complete a construction job in State Z and paid an income tax to that State at a ten and one-half percent rate. It may determine the portion of its Corporation Business Tax measured by net income as follows:

	New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss deduction and special deductions	\$ 227,500	\$ 227,500
Add ACRS \$15,000		
Less, NJ Depreciation <u>12,000</u>	3,000	-0-
Taxes imposed on or measured by income from State Z return 28,800		22,500
N.J.C.B.T. paid or accrued—add back <u>22,500</u>	22,500	
Municipal bond interest—add back	+ 7,000	+ -0-
	<u>\$ 260,000</u>	<u>250,000</u>
Dividend exclusion—NJ 10,000	- 10,000	- 10,000
State Z -0-		
Entire Net Income	<u>\$ 250,000</u>	
Portion of entire net income duplicated		240,000
Apportionment (computed below)		× .25
Tax @ 9%	22,500	<u>60,000</u>
Tax @ 10½%		<u>\$ 6,300</u>
Reduction 60,000 @ 9%	- 5,400	
Reduced Tax	<u>\$ 17,100</u>	

Corporation B computed its apportionment on its State Z return as follows:

	State Z	Everywhere	%
Property Owned	\$140,000	\$500,000	

	State Z	Everywhere	
Property owned	\$ 140,000	\$ 500,000	.28
Receipts	200,000	1,000,000	.20
Payroll	90,000	300,000	+ .30
			<u>.78</u>
Business Allocation Factor .78-3			<u>.26</u>

Since the apportionment fraction (.25) used in State Z does not exceed the Business Allocation Factor as it would have been determined under the Act and these Rules, it is used for purposes of determining the reduction.

Amended by R.1984 d.594, effective January 7, 1985.  
See: 16 N.J.R. 3001(a), 17 N.J.R. 115(c).  
(b) added.

Statutory References

See N.J.S.A. 54:10A-8 as to right of Director to independently adjust a taxpayer's allocation factor.

Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay Soled, 135 N.J.L.J. S53 (1993).

Case Notes

Corporate taxpayer was entitled to credit for income tax paid in another state. *Kettler Realty Corp. v. Director, Div. of Taxation*, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Redetermination of net worth tax which was not unreasonable or unfair would not be disturbed. *Kettler Realty Corp. v. Director, Div. of Taxation*, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Statutory three-factor was appropriate for corporate taxpayer that had paid taxes in another state. *Hess Realty Corp. v. Director, Div. of Taxation*, New Jersey Dept. of Treasury, 10 N.J.Tax 63 (1988).

18:7-8.4 "Tangible personal property"; definition and scope

(a) The term "tangible personal property" shall mean corporeal personal property, such as machinery, fixtures, tools, implements, goods, wares and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidence of an interest in property and evidences of debt.

(b) Tangible personal property within New Jersey.

1. Tangible personal property is within New Jersey if and so long as it is physically situated or located here, even though it may be stored in a bonded warehouse in this State.

2. Property of the taxpayer held in New Jersey by an agent, consignee or factor is (and property held outside New Jersey by an agent, consignee or factor is not) situated or located within New Jersey.

3. Mobile or movable property, such as construction equipment or trucks, is within New Jersey based on the ratio of time the property is used within the state to the time the property is used everywhere during the period covered by the return.

4. Ships are within New Jersey based on the ratio of time the vessels are in operation in New Jersey to the time the vessels are in operation everywhere, and including all sailing days, days in port for loading, unloading, ordinary repairs, refueling or provisioning as operation.

5. Aircraft used by airlines are within New Jersey based on the ratio of takeoffs in regular scheduled or charter flights that occur during revenue service from points in New Jersey to the total of all such takeoffs everywhere. Aircraft used other than by airlines in revenue service are within New Jersey based on the ratio of takeoffs from points in New Jersey to the total of all takeoffs everywhere when the aircraft are in use.

6. Consistent with N.J.S.A. 54:10A-6(b), satellites used in the communications industry are included in the denominator of the property fraction but the numerator shall include a portion of such property based upon the ratio of ground stations serviced in New Jersey to the number of all such ground stations.

(c) Tangible personal property in transit.

1. Property in transit from a point in New Jersey to another point in New Jersey is situated or located in New Jersey.

2. Property in transit from a point outside New Jersey to another point outside New Jersey is situated or located without New Jersey.

3. Property, while in transit from a point outside New Jersey to a point in New Jersey or vice-versa does not have a fixed situs either within or without the State and, therefore, will not be deemed to be "situated" or "located" either within or without New Jersey and accordingly, such property while so in transit should be omitted from both the numerator and the denominator of the property fraction.

4. Property ceases to be in transit when it is delivered to or becomes subject to actual possession by the owner at the point of destination.

(b)3.-6. added.

**Statutory References**

See: N.J.S.A. 54:10A-6(A) as to computation of the property fraction.

**Case Notes**

Tax benefits obtained through safe harbor leases do not constitute "real intangible personal property" for purposes of Corporation Business Tax Act which permits corporation to include only its real and tangible personal property in the property fraction of the formula used for determining that portion of the corporation's net income and net worth attributable to its activity within the state. *Reuben H. Donnelley Corp. v. Director, Div. of Taxation*, 128 N.J. 218, 607 A.2d 1281 (1992).

**18:7-8.5 Business allocation factor; property fraction derived from average values**

(a) The percentage of the taxpayer's real and tangible personal property within New Jersey is determined by dividing the average value of such property within New Jersey by the average value of real and tangible personal property within and without New Jersey.

1. Average values in both the numerator and denominator shall be determined without deduction of any encumbrance.

(b) The term "taxpayer's real and tangible personal property" shall include property owned, leased, rented or used by the taxpayer during the period covered by the return and shall exclude property not yet in service or removed from service during that period. Property or equipment under construction (exclusive of inventory work in progress) is excluded from the property fraction until it is completed.

(c) The average values used in determining the property fraction of the allocation factor are normally based on book value with respect to property owned, including property on consignment (consignor). Leased or rented property is valued at eight times its annual rent, including any amounts (such as taxes) paid or accrued in addition to or in lieu of rent during the period covered by the return. Subrents do not reduce annual rents, but rather enter into the determination of the receipts fraction. Property that is used which is neither owned, leased or rented should be valued at book value but if the books do not disclose a fair value or disclose a minimal value then that property should be shown at fair value, which for this purpose would be market value, including, but not limited to, loaned property, bailments, etc. Property on consignment held by the consignee is considered property used. Leasehold improvements are treated as owned by the taxpayer. The numerator and the denominator shall take into account depreciation disallowed at N.J.A.C. 18:7-5.2 where the taxpayer accounts for its property on a Federal income tax basis on its books.

(d) The overriding objective is a fair and reasonable apportionment of entire net income by weighing the allocation factor for the portion of the real and tangible personal property owned, leased, rented or used in this state.

Amended by R.1987 d.137, effective March 16, 1987.  
See: 18 N.J.R. 627(a), 19 N.J.R. 464(a).

**Example 1:** Taxpayer is the lessor of equipment. Consistent with generally accepted accounting principles it accounts for its capital leases as completed sales. Consistent with principles of tax accounting, it accounts for that same leasing as net rental income which is reported as entire net income.

That entire net income is apportioned by use of the allocation factor which must include the property fraction. That property fraction must reflect the percentage of the taxpayer's real and tangible personal property within New Jersey, including the leased property, despite the fact that the property no longer appears on the books of the corporation in order to effect a fair and reasonable apportionment of entire net income.

**Example 2:** Taxpayer is engaged in long term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting. It recognizes income on a contract in a tax year where its property was removed to other taxing jurisdictions to work on unrelated construction in progress.

That property fraction must reflect the average value of the taxpayer's real and tangible personal property inside the state and everywhere during the period of construction to fairly and reasonably apportion the entire net income reported for the period covered by the return.

As amended, R.1983 d.62, eff. March 7, 1983.

See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).

Added 3. to (a).

Amended by R.1986 d.284, effective July 21, 1986.

See: 18 N.J.R. 627(a), 18 N.J.R. 1487(a).

Substantially amended.

#### Law Review and Journal Commentaries

Taxes. Steven P. Bann, 136 N.J.L.J. No. 15, 78 (1994).

#### Case Notes

Regulation adjusting calculation of franchise taxes on corporations doing business in state was authorized. *Brunswick Corp. v. Director, Div. of Taxation*, 135 N.J. 107, 638 A.2d 805 (1994).

Regulation governing computations from property leased by multi-state corporate taxpayer did not exceed Director's authority. *Brunswick Corp. v. Director, Div. of Taxation*, 13 N.J.Tax 136 (A.D.1993), certification granted 134 N.J. 476, 634 A.2d 523, affirmed 135 N.J. 107, 638 A.2d 805.

Delegation to Director of Division of Taxation authority to compute interstate income applicable to New Jersey was not improper. *Brunswick Corp. v. Director, Div. of Taxation*, 11 N.J.Tax 530 (1991), affirmed 13 N.J.Tax 136, certification granted 134 N.J. 476, 634 A.2d 523, affirmed 135 N.J. 107, 638 A.2d 805.

Tax imposed on multistate corporate taxpayer was not limited to owned property. *Brunswick Corp. v. Director, Div. of Taxation*, 11 N.J.Tax 530 (1991), affirmed 13 N.J.Tax 136, certification granted 134 N.J. 476, 634 A.2d 523, affirmed 135 N.J. 107, 638 A.2d 805.

Determination of constitutionality of allocation corporate income to various states requires examination of evidence. *Silent Hoist & Crane Co., Inc. v. Taxation Div. Director*, 9 N.J.Tax 178 (1987).

Administrative fairness in allocation of corporate income requires determination of whether allocation property reflects corporation's activities. *Silent Hoist & Crane Co., Inc. v. Taxation Div. Director*, 9 N.J.Tax 178 (1987).

Evidence that allocation of corporate income to state is required to invalidate allocation. *Silent Hoist & Crane Co., Inc. v. Taxation Div. Director*, 9 N.J.Tax 178 (1987).

Lack of rational relationship between corporation's New Jersey presence through a real estate operation and its out-of-state manufacturing operations which the State sought to tax precluded taxation of the latter; no rational relationship found between the corporation's New Jersey presence and its securities portfolio to permit taxation of the portfolio's income; other factors of corporation's operation held insufficient indicia to warrant taxation of the corporation as a unitary business. *Silent Hoist & Crane Co., Inc. v. Director, Div. of Taxation*, 5 N.J.Tax 242 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 348 (App.Div.1984), reversed and remanded 100 N.J. 1, 494 A.2d 775 (1985) certiorari denied 106 S.Ct. 409, 474 U.S. 995, 88 L.Ed.2d 359, on remand 9 N.J.Tax 178.

#### 18:7-8.6 Average value; computation period

(a) Average value is generally computed on a quarterly basis where the taxpayer's usual accounting practice permits such computation.

(b) At the option of the taxpayer or the Director, a more frequent basis (monthly, weekly or daily) may be used. Where the taxpayer's usual accounting practice does not permit computation of average value on a quarterly or more frequent basis, a semi-annual or annual basis may be used where no distortion of average value results. If any basis other than quarterly is used on the return, such basis and the reasons therefor must be fully explained on a separate rider.

#### Case Notes

Provision in N.J.A.C. 18:7-3.4 for computation of tax based upon number of shares authorized compared to real and personal property alternative tax as mean average value on a quarterly basis. *General Trading Co., Inc. v. Director, Div. of Taxation*, 83 N.J. 122, 416 A.2d 37 (1980).

#### 18:7-8.7 Business allocation factor; determination of receipts fraction

(a) The percentage of the taxpayer's receipts within New Jersey is determined by ascertaining the taxpayer's receipts allocable to New Jersey during the period covered by the return and dividing the sum of the receipts by the taxpayer's total receipts within and without New Jersey during such period.

(b) The receipts of the taxpayer are to be computed on the cash, accrual or other method of accounting used in computation of its net income for Federal income tax purposes. However, the numerator and denominator of the receipts fraction must, in any event, relate to the entire net income recognized during the period covered by the return.

**Example 1:**

Taxpayer is engaged in long-term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting whereby it recognizes the net income on its contracts in their entirety in the year of completion.

The composition of the receipts fraction must be determined in harmony with the entire net income to which it relates. The numerator and denominator of the receipts fraction must reflect the entire contract revenues on completed contracts recognized in entire net income during the period covered by the return.

**Example 2:**

Taxpayer recognizes income on a sale for tax purposes on the installment method. The numerator and denominator of the receipts fraction should include the same proportion of the sale as is prorated as recognized income to the year covered by the return.

(c) Entire net income shall be included or excluded as follows:

1. All income which is included in entire net income enters into the numerator and denominator of the receipts fraction.

2. Any income which is excluded from entire net income is also excluded from the numerator and denominator of the receipts fraction, except for banking corporations with international banking facilities as provided in P.L.1983, c.422. See N.J.S.A. 54:10A-6.

**Example:**

Dividends recognized as income for purposes of determining Federal income tax but which are excluded from entire net income under Section 4(k)(1) of the law must also be excluded in computing the receipts fraction.

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

(b) substantially amended and Examples added.

**Statutory References**

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

**18:7-8.8 Scope of allocable receipts**

(a) Unless otherwise noted herein, receipts from the following are allocable to New Jersey:

1. Sales of tangible personal property where shipments are made to points in New Jersey. Delivery of goods to a purchaser in this State is a shipment made to a point in New Jersey regardless of the F.O.B. point or the fact that the goods may subsequently be resold and shipped to a point outside this State.

i. The sale of goods shipped to a New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

**Example:**

Taxpayer, a manufacturer located outside of New Jersey, transports goods directly to a customer's location in New Jersey. Since possession of the goods is transferred in New Jersey, shipment is deemed to be in this State resulting in receipts allocable to this State.

ii. The sale of goods shipped to a non-New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

**Example:**

Taxpayer, a manufacturer located outside of New Jersey, transports goods into New Jersey where such goods are picked up by a non-New Jersey customer or a customer's representative in New Jersey for further transportation outside of this State. Since possession of the goods passed between the taxpayer and its customer in New Jersey, the sale results in receipts allocable to New Jersey.

iii. The sale of goods shipped by a taxpayer from outside of New Jersey to a New Jersey customer by a common carrier results in a receipt allocable to New Jersey. The common carrier is deemed an agent of the seller regardless of the F.O.B. point.

**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.

#### 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 includible when computing taxpayer's receipts fraction.

### 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	<u>100</u>	<u>    </u>
			\$500	\$200
			<u>( 200)</u>	
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:

#### 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) Receipts from services performed within New Jersey are allocable to New Jersey.

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.

(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) Where a lump sum is received by the taxpayer in payment for services within and without New Jersey, the amount attributable to services performed within New Jersey is to be determined on the basis of the relative values of, or amounts of time spent in the performance of those services within and without New Jersey, 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. Full details must be submitted with the taxpayer's return.

#### 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.

1. 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.

i. 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:

(1) 80 percent of commissions on orders originating at any New Jersey place of business; plus

(2) 20 percent of commissions on orders executed on any exchange located in New Jersey.

ii. 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.

iii. 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:

(1) 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

(2) 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.

(3) 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				225,000		
Total				<u>\$750,000</u>		
Revenue miles in New Jersey				100,000		
Total revenue miles				500,000		
Consignments to points in New Jersey				450,000		
Total freight revenues				<u>\$1,000,000</u>		
\$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).

#### 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.

#### 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 includable) of this chapter as to treatment of receipts of capital assets.

#### Statutory References

See N.J.S.A. 54:10A-6(B) as to includability 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.