

Amended by R.1970 d.121, effective October 5, 1970.

See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).

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.1983 d.62, effective March 7, 1983.

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

Added "accounting period before July 1, 1986" to (a). Added "accounting period before April 1, 1983" to (a)1.i and ii. Added (3) to (a). Also added (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-5 as to how taxpayers should compute the amount of franchise tax payable.

Case Notes

Authorized share schedule is to be used only where it results in a lesser amount to add to a taxpayer's net income than an amount based on total corporate assets, in determining annual corporation franchise tax; corporation business tax liability not avoidable where taxpayer belatedly realized adverse tax consequences of decision to increase number of authorized shares, even though decision had no apparent business purpose, brought no advantage to the taxpayer and caused no disadvantage or detriment to the State. *General Trading Co., Inc. v. Director, Div. of Taxation*, 83 N.J. 122, 416 A.2d 37 (1980).

18:7-1.2 Total tax self-assessed

The total tax is self-assessed and payable by each taxpayer.

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 Section 1.1 (General provisions) of this chapter.

18:7-1.3 Definition of taxpayer

(a) The term "taxpayer" shall mean any corporation required to report or to pay taxes, interest on penalties under this Act.

(b) Any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court to conduct the business or conserve the assets of any corporation shall be subject to the tax imposed in the same manner and to the same extent as a corporation.

Statutory References

See N.J.S.A. 54:10A-4(h) as to official definition of "taxpayer."

See N.J.S.A. 54:10A-11 as to receivers and others subject to the tax imposed by this Act.

18:7-1.4 Definition of corporation

The term "corporation" shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument and includes any corporation created or organized under the laws of New Jersey and any foreign corporation which is authorized to do business, or is doing

business, or employs or owns capital or property or maintains an office in New Jersey in a corporate or organized capacity by virtue of creation or organization under laws of the United States or any state, territory or possession thereof, the District of Columbia, or any foreign country, or any political subdivision of the foregoing, which provided a medium for the conduct of business or the sharing of its gains.

Statutory References

See N.J.S.A. 54:10A-4(c) as to definition of "corporation".

18:7-1.5 Limited partnership associations subject to the Act

Limited partnership associations formed under N.J.S.A. 42:3-1 are subject to tax under the Act. No new limited partnership associations shall be formed in New Jersey in accordance with N.J.S.A. 42:3-1 et seq. after September 21, 1988.

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

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

Statutory References

N.J.S.A. 54:10A-4(c).

18:7-1.6 Taxable status; how created

(a) Every corporation not expressly exempted is deemed to have or to have acquired a taxable status under the Act and is required to file a return¹ and pay a tax thereunder provided it falls within any one of the following:

1. Existing under the laws of the State of New Jersey; or
2. If a foreign corporation,
 - i. Holding a general certificate of Authority to do business in this State issued by the Secretary of State; or
 - ii. Holding a certificate, license or other authorization issued by any other State department or agency, authorizing the company to engage in corporate activity within this State; or
 - iii. Doing business in this State; or
 - iv. Employing or owning capital in this State; or
 - v. Employing or owning property in this State; or
 - vi. Maintaining an office in this State.

¹ For reporting forms, see Section 14.20 of this Chapter.

Statutory References

See N.J.S.A. 54:10A-2 as to what acts constitute doing business in State of New Jersey for purposes of acquiring a taxable status.

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).

Nonresident corporation's commercial activities in state amounted to the "solicitation of orders". *Pomco Graphics, Inc. v. Director, Div. of Taxation*, 13 N.J.Tax 578 (1993).

Presence of property in New Jersey, maintenance of workplace in New Jersey employee's home, employee's encouragement to customers to pay due bills, handling of customer complaints and adjustments by employee and employee's supervision of corporation personnel exceeded the mere solicitation of orders and rendered a Pennsylvania corporation liable for payment of New Jersey corporation business tax. *Ringgold Coal Mining Co. v. Taxation Div. Director*, 4 N.J.Tax 321 (Tax Ct.1982).

18:7-1.7 Domestic corporations subject to tax

(a) The tax is imposed on every domestic corporation, with specified exceptions, for the mere possession of the privilege of having its corporate franchise.

(b) A domestic corporation not otherwise exempt is subject to tax for every fiscal or calendar accounting period, or part thereof, whether it does business, owns capital or property, maintains an office, or engages in any activity, whether within or without New Jersey.

(c) A domestic corporation is subject to tax even though it carries on its business entirely outside New Jersey.

Statutory References

See N.J.S.A. 54:10A-2 as to domestic corporations subject to New Jersey annual franchise tax.

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).

18:7-1.8 Foreign corporations subject to tax

(a) Qualifications for subject corporations. The tax is imposed on every foreign corporation having a taxable status as described in N.J.A.C. 18:7-1.6 with specified exceptions, and includes every corporation which does business, employs or owns capital or property, or maintains an office in New Jersey in a corporate or organized capacity, regardless of whether it has formally qualified or is authorized to do business in New Jersey.

Example 1

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the Tax Act because it maintains an office within the State.

Example 2

A foreign corporation which operates several retail stores outside New Jersey, leases an office in New Jersey for the convenience of its buyers when they come to New Jersey. It has several employees permanently assigned to such office. Salesmen call at the office to solicit orders from the buyers, and the merchandise is shipped to such office by the sellers. Upon receipt the merchandise is examined, separated by them to the various stores of the corporation outside New Jersey. The corporation is subject to the Tax Act because it maintains an office, is regularly doing business through its constituted representatives, and owns property in New Jersey.

Note: The foregoing examples illustrate conditions giving rise to taxable status without regard to whether or not the corporation holds a general or special certificate of authority to do business in New Jersey. It should be noted that if the corporation holds any certificate of authority, it is subject to the Act by virtue of that fact alone.

(b) Mandatory submission of affidavit; proof of authorization to do business. A foreign corporation which is subject to tax under the Act must submit an affidavit by a duly authorized corporate officer, stating whether or not the corporation at any time prior to the date of admitted subjectivity under the Act held any authorization to do business in New Jersey or carried on in this State any of the activities set forth in N.J.A.C. 18:7-1.6(b).

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

Statutory References

See N.J.S.A. 54:10A-2 as to foreign corporations subject to New Jersey annual franchise tax.

Case Notes

Nonresident corporation's commercial activities in state amounted to the "solicitation of orders". *Pomco Graphics, Inc. v. Director, Div. of Taxation*, 13 N.J.Tax 578 (1993).

Foreign corporation held to be doing business in New Jersey so as to be subject to the corporation business tax; requiring the corporation to file a business tax return was not a violation of due process. *Thomson-Leeds Co., Inc. v. Taxation Div. Director*, 8 N.J.Tax 24 (Tax Ct.1985).

Corporation's activities in New Jersey held to constitute "doing business" for the purposes of the corporation business tax; corporation business tax not limited to intrastate businesses. *Tamko Asphalt Products, Inc. of Maryland v. Glaser*, 5 N.J.Tax 446 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 342 (App.Div.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).

Presence of property in New Jersey, maintenance of workplace in New Jersey employee's home, employee's encouragement to customers to pay due bills, handling of customer complaints and adjustments by employee and employee's supervision of corporation personnel exceeded the mere solicitation of orders and rendered a Pennsylvania corporation liable for payment of New Jersey corporation business tax. *Ringgold Coal Mining Co. v. Taxation Div. Director*, 4 N.J.Tax 321 (Tax Ct.1982).

18:7-1.9 Doing business in New Jersey; definition and rules of construction

(a) The term "doing business" is used in a comprehensive sense and includes all activities which occupy the time or labor of men for profit.

1. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization within the State shall be deemed to be "doing business" for the purposes of this Act.

2. In determining whether a corporation is "doing business", it is immaterial whether its activities result in a profit or a loss.

(b) Whether a foreign corporation is doing business in New Jersey is determined by the facts in each case. Consideration is given to such factors as:

1. The nature and extent of the activities of the corporation in New Jersey;

2. The location of its offices and other places of business;

3. The continuity, frequency and regularity of the activities of the corporation in New Jersey;

4. The employment in New Jersey of agents, officers and employees;

5. The location of the actual seat of management or control of the corporation.

(c) A foreign corporation shall not be deemed to be doing business or employing or owning capital or property in this State for the purposes of the Act by reason of the following:

1. The maintenance of cash balances with banks or trust companies in New Jersey;

2. The ownership of shares of stock or securities kept in New Jersey in a safe deposit box, safe, vault or other

receptacle rented for the purpose, or pledged as collateral security, or deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts;

3. The taking of any action by any such bank or trust company or broker which is incidental to the rendering of safekeeping or custodian service to such corporation;

4. Any combination of the foregoing activities.

(d) If the only business activity of a foreign corporation within New Jersey consists of the solicitation of orders for sales of its tangible personal property, which orders are to be sent outside the State for acceptance or rejection and, if accepted, are to be filled by shipment or delivery from a point outside the State, then such corporation is not subject to tax in New Jersey, provided it is not subject to tax by virtue of other contacts. (See P.L. 86-272, 15 U.S.C. § 381.)

1. For the in-State activities of the foreign corporation to be immune from taxation for the purposes of "doing business," such activities must be limited solely to:

i. Speech or conduct that explicitly or implicitly invites an order; and

ii. Activities that neither explicitly nor implicitly invite an order but that are entirely ancillary to requests for an order.

2. Examples of activities that may be considered non-immune are:

i. Repairs, maintenance, and installations;

ii. Collection or repossession activities;

iii. Credit investigations;

iv. Personnel courses or lectures;

v. Technical assistance;

vi. Customer complaint resolution if the sole purpose is not to ingratiate sales personnel with the customer;

vii. Approving or accepting orders or securing deposits on sales;

viii. Acquiring personnel for other than solicitation activities;

ix. Maintaining a display at a single location in excess of two weeks during the tax year;

x. Carrying samples for sale, exchange or distribution in any manner for consideration or other value;

xi. Owning, leasing, or maintaining in-state facilities such as a warehouse or answering service; and

xii. Consignment of personal property.

3. Examples of immune activities are:

- i. Solicitation of orders through advertising;
- ii. Carrying samples for display or distribution without charge;
- iii. Providing automobiles, owned or leased, registered or not registered in New Jersey, to sales personnel for their use in conducting protected activities;
- iv. Checking customer inventories without charge;
- v. Maintaining a display at a single location for less than two weeks during the tax year;
- vi. Recruitment, training, or evaluating of sales personnel;
- vii. A sales employee's in-home work space that is not paid for by the company; and
- viii. Mediating customer complaints if just to ingratiate sales personnel with the customer.

(e) Independent contractors may solicit or make sales or maintain an office without the company's loss of immunity. Sales representatives who represent a single principal would not be considered independent contractors. Immunity would be lost if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Amended by R.1995 d. 194, effective April 3, 1995. See: 27 N.J.R. 471(a), 27 N.J.R. 1440(b).

Statutory References

See N.J.S.A. 54:10A-2 as to what acts constitute doing business in New Jersey for purposes of acquiring a taxable status.

Case Notes

Foreign corporation held to be doing business in New Jersey so as to be subject to the corporation business tax; requiring the corporation to file a business tax return was not a violation of due process. *Thomson-Leeds Co., Inc. v. Taxation Div. Director*, 8 N.J.Tax 24 (Tax Ct.1985).

Corporation's activities in New Jersey held to constitute "doing business" for the purposes of the corporation business tax; corporation business tax not limited to intrastate businesses. *Tamko Asphalt Products, Inc. of Maryland v. Glaser*, 5 N.J.Tax 446 (Tax Ct.1983), affirmed per curiam 6 N.J.Tax 342 (App.Div.1984).

18:7-1.10 Foreign corporations engaged in interstate commerce

(a) A foreign corporation which falls within any of the categories creating a taxable status, as enumerated in N.J.A.C. 18:7-1.6 is subject to the Tax Act notwithstanding its business is wholly or partly in interstate commerce.

(b) Such tax is measured by entire net income allocable to New Jersey, including that derived from or used in interstate commerce.

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

Statutory References

See N.J.S.A. 54:10A-2 as to what acts constitute doing business in New Jersey for purposes of acquiring a taxable status.

18:7-1.11 Foreign corporations stocking goods in New Jersey

A foreign corporation which regularly maintains a stock of goods in New Jersey and makes deliveries to its customers from such stock shall be deemed to be doing business in New Jersey within the meaning of the Act.

Example 1

A foreign manufacturing corporation has its factories and offices located outside New Jersey. Its sole activity in New Jersey consists of holding or storing goods in a public warehouse in this State. It has no employees in New Jersey. The corporation is subject to the Tax Act because it owns property in New Jersey.

Example 2

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the Tax Act because it maintains an office within the State.

Statutory References

N.J.S.A. 54:10A-2.

Case Notes

Foreign corporation's contacts established minimal nexus with New Jersey to allow taxation without violating commerce clause. *Mark Andy, Inc. v. Taxation Div. Director*, 8 N.J.Tax 593 (1986).

18:7-1.12 Exempt corporations

(a) Corporations exempted from taxation under the Act include:

1. Telegraph, telephone, cable or telecommunications companies subject to tax under N.J.S.A. 54:30A-16 et seq. (including, without limitation, N.J.S.A. 54:30A-18.6); or any statute or law imposing a similar tax or taxes;
2. Railroad companies subject to tax under N.J.S.A. 54:29A-1, et seq.;
3. Energy, gas and electric companies subject to tax under N.J.S.A. 54:30A-49, et seq.; or any statute or law imposing a similar tax or taxes;
4. Corporations subject to a tax upon the basis of gross receipts, or insurance premiums collected;

(c) The aggregate annual credit allowed for a tax year shall be an amount equal to the sum of one-fifth of the allowable credit for qualified investment placed into service or use during a prior tax year, plus one-fifth of the allowable credit for qualified investment placed into service or use during the current tax year.

1. The amount of the credit shall not reduce the tax liability by more than 50 percent of that portion of the taxpayer's tax liability otherwise due for all tax years which is attributable to and the direct result of the taxpayer's qualified investment.

2. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A-5.7b.

3. If the credit exceeds the limitations in (c) through (c)2 above, the amount of credit remaining shall be refunded to the taxpayer. The amount refunded to the taxpayer shall not exceed 50 percent of the sum of the amount of property taxes timely paid in the taxable year pursuant to N.J.S.A. 54:4-1 et seq. and the amount of implicit property taxes paid through rent or lease payments in respect of property taxable pursuant to N.J.S.A. 54:4-1 et seq., and for which taxes another party that is not a related person is liable, which is attributable to and the direct result of the taxpayer's qualified investment. Any excess amount may not be carried forward.

(d) The credit shall only be applied against corporation business tax liability attributable to, and the direct result of, the taxpayer's qualified investment.

1. If the taxpayer's liability for corporation business tax, local property tax, and implicit property tax paid through rental or lease on property subject to local tax and for which taxes another party that is not a related person is liable, are not solely attributable to the taxpayer's qualified investment, then the amount of such taxes so attributable may be determined by multiplying the amount of tax due under those tax acts for the tax year by the ratio of compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey whose positions are directly attributable to the qualified investment, to total compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey.

2. Any credits allowable under N.J.S.A. 54:10A-5.3 (recycling tax credit), N.J.S.A. 52:27H-78 (urban enterprise zone credit), and N.J.S.A. 55:19-13 (urban development corporation credit) shall be applied against and reduce only the amount of corporation business tax not apportioned to the qualified investment under this act. Any excess of those credits may be applied against the amount of corporation business tax apportioned to the qualified investment under this act that is not offset by the amount of annual credit against the tax allowed under the act for the tax year, unless their application is otherwise prohibited by the applicable credit statutes.

(e) The unused portion of the credit shall be forfeited if the property is disposed of prior to the end of its recovery period, or ceases to be used in a new or expanded business facility, except where the cessation is due to fire, flood, storm or other casualty, pursuant to the provisions of N.J.S.A. 54:10A-5.10 and 5.11. Except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years pursuant to the calculation under N.J.S.A. 54:10A-5.10b. The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Law.

1. If the average number of employees attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit was based, the credit shall be redetermined and the excess forfeited for the current tax year and for each succeeding year pursuant to the calculations required under N.J.S.A. 54:10A-5.10c.

(f) N.J.S.A. 54:10A-5.13 requires the taxpayer to make written application to the Director of the Division of Taxation for allowance of the credit. No prior approval will be required if the return and Form 304 claiming the credit are filed on or before the original due date of the return. However, the return will be reviewed upon filing, and the Division will notify the taxpayer if the credit is disallowed. If the taxpayer applies for an extension to file Form CBT-100 or CBT-100S, a letter application from the taxpayer requesting allowance of the credit must accompany the request for extension, Form CBT-200T. The record-keeping requirements of N.J.S.A. 54:10A-5.12 for qualified property must be followed.

EXAMPLE

New Jersey Investment Tax Credit Calculation

Corporation ABC in 1994 purchases and installs the following at location D in New Jersey:

1. A newly constructed building for \$1,000,000;
2. Equipment with three year life for \$100,000;
3. Equipment with five year life for \$200,000; and
4. An airplane for \$100,000.

At location E in New Jersey, the corporation makes repairs on existing facilities for \$250,000.

At location F in New Jersey, the corporation purchases a building, owned and used by an unrelated party, for \$500,000.

All locations are in New Jersey. None of the locations are in an urban enterprise zone.

ABC in 1993 had 50 employees, all at location E, with annual payroll of \$2,000,000 and gross receipts of \$5,000,000. In 1994 ABC employs 120 people, 50 at location E, 65 at location D, and five at location F, all with income above \$30,000, and has gross receipts of \$10,000,000 and payroll of \$5,000,000. The 65 employees at location D are all newly hired New Jersey residents with total compensation of \$3,000,000. The corporation business tax liability for ABC in 1994 is \$10,000.

ABC should compute its 1994 New Jersey investment tax credit this way: (Line reference numbers are to Form 304 (1-95) New Jobs Investment Tax Credit.)

First, calculate the allowable investment base as follows:

Qualified investment:

line 4(a) with three year life	$0.35 \times \$ 100,000 = \$$	35,000
line 4(b) with five year life	$0.70 \times 200,000 =$	140,000
line 4(c) with seven year or more life	$1.00 \times 1,000,000 =$	1,000,000
line 5 Sum of lines 4(a), 4(b), and 4(c)		\$1,175,000
The investment base is \$1,175,000.		

(The airplane purchase does not qualify; the repairs at location E do not qualify; and the purchase of existing property at location F does not qualify. See N.J.S.A. 54:10A-5.5 and N.J.A.C. 18:7-3.22(b).)

Second, calculate the number of eligible new jobs created as follows in order to arrive at the new jobs factor:

line 6(a) Average New Jersey employment for this tax year	120
line 6(b) Average New Jersey employment for last tax year	50
line 6(c) Subtract line 6(b) from line 6(a)	70
line 6(d) Divide line 6(a) by 2	60
line 6(e) Number of eligible new jobs	65
line 6(f) Smaller of 6(c), 6(d), or 6(e)	60
line 7(a) Divide line 6(f) by 50 with no remainder	1
line 7(b) Multiply line 7(a) by .005	.005
line 7(c) Enter the smaller of .10 or line 7(b)	.005

(The number of eligible jobs is limited to 60, one-half total employment. ABC is, with \$10,000,000 in gross receipts, not a small taxpayer in 1994.)

The new jobs factor is .005.

Third, calculate the maximum annual credit:

line 8 Multiply line 7(c) \times line 2 \times .2	
	$.005 \times \$1,175,000 \times .2 =$
line 9 Qualified investment from prior two years	0
line 10 Aggregate Annual Credit:	
(Sum of lines 8, 9(a), 9(b), 9(c), and 9(d))	\$1,175

Fourth, calculate tax attributable to new investment which is eligible to be offset by the credit (which is proportional to compensation of new employees relative to all employees).

line 11 Compensation of all new jobs in New Jersey attributable to the qualified investment	\$3,000,000
line 12 Total compensation of all employees in New Jersey	\$5,000,000
line 13 Divide line 11 by line 12	.60
line 14 Enter tax liability from front page of CBT	
line 15 Multiply line 13 by line 11 CBT-100 page 1	6,000

Fifth, arrive at the allowable credit:

line 16 Multiply line 15 by 50 percent	\$3,000
line 17 Enter the smaller of line 10 or line 16	1,175

New Rule, R.1995 d.461, effective August 21, 1995.
See: 27 N.J.R. 840(a), 27 N.J.R. 3209(a).
Administrative correction.
See: 27 N.J.R. 4908(a).
Public Notice: Inflation adjustments.
See: 27 N.J.R. 4921(a).

18:7-3.23 Research credit

(a) A taxpayer shall be allowed a credit against its corporation business tax liability in an amount equal to 10 percent of the excess of the qualified research expenses for the fiscal or calendar accounting year over the base amount, and 10 percent of the basic research payments determined in accordance with IRC Section 41 as in effect on June 30, 1992, provided that IRC Section 41(h) relating to termination of the availability of the credit in 1995 shall not apply.

(b) For purposes of this section, the term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer:

1. In-house research expenses; and
2. Contract research expenses.

(c) In general, the term "in-house research expenses" means:

1. Any wages paid or incurred to an employee for qualified services performed by such employee;
2. Any amount paid or incurred for supplies used in the conduct of qualified research; and
3. Under Federal regulations prescribed, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

i. Paragraph (c)3 above shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection IRC 41(f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(d) "Qualified services" means services consisting of engaging in qualified research, or engaging in the direct supervision or direct support of research activities which constitute qualified research. If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of engaging in qualified research or engaging in the direct supervision or direct support of research activities which constitute qualified research, the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(e) The term "supplies" means any tangible property other than:

1. Land or improvements to land; and
2. Property of a character subject to allowance for depreciation.

(f) The term "wages" means:

1. In general, the term "wages" has the meaning given such term by IRC Section 3401(a).
2. For self-employed individuals and owner-employees, in the case of an employee (within the meaning of IRC Section 401(c)(1)), the term "wages" includes the earned income (as defined in IRC Section 401(c)(2)) of such employee.
3. Exclusion for wages to which targeted jobs credit applies, the term "wages" shall not include any amount taken into account in determining the targeted jobs credit under IRC Section 51(a).

(g) In general, the term "contract research expenses" means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

1. If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(h) Trade or business requirement may be disregarded for in-house research expenses of certain start-up ventures. In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of (b) above if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in

making such expenditures is to use the results of the research in the active conduct of a future trade or business:

1. Of the taxpayer; or
2. Of one or more other persons who with the taxpayer are treated as a single taxpayer under IRC subsection 41(f)(1).

(i) Base amount requirements are as follows:

1. In general, the term "base amount" means the product of:

- i. The fixed-base percentage; and
- ii. The average annual gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (hereinafter referred to as the "credit year").

2. In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

3. Fixed-base percentage requirements are as follows:

i. Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

ii. Start-up companies shall comply with the following:

(1) For taxpayers to which this subparagraph applies, the fixed-base percentage shall be determined under this subparagraph if there are fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(2) In a case to which this subparagraph applies, the fixed-base percentage is:

(A) Three percent for each of the taxpayer's first five taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses;

(B) In the case of the taxpayer's sixth such taxable year, one-sixth of the percentage which the aggregate qualified research expenses of the taxpayer for the fourth and fifth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(C) In the case of the taxpayer's seventh such taxable year, one-third of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth and sixth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(D) In the case of the taxpayer's eighth such taxable year, one-half of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, and seventh such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(E) In the case of the taxpayer's ninth such taxable year, two-thirds of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, and eighth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(F) In the case of the taxpayer's tenth such taxable year, five-sixths of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, eighth, and ninth such taxable years is of the aggregate gross receipts of the taxpayer for such years; and

(G) For taxable years thereafter, the percentage which the aggregate qualified research expenses for any five taxable years selected by the taxpayer from among the fifth through the tenth such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.

(3) The Director may in future prescribe rules providing that de minimis amounts of gross receipts and qualified research expenses shall be disregarded under (i)3ii(1) and (2) above.

iii. In no event shall the fixed-base percentage exceed 16 percent.

iv. The percentages determined under (i)3i above shall be rounded to the nearest 1/100th of one percent.

4. Consistent treatment of expenses is required. Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

i. The Director may in future prescribe rules to prevent distortions in calculating a taxpayer's qualified research expenses or gross receipts caused by a change in accounting methods used by such taxpayer between the current year and a year taken into account in computing such taxpayer's fixed-base percentage.

5. For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during the taxable year. In the case of a foreign corporation, there shall be taken into account only gross receipts which are effectively connected with the conduct of a trade or business within the United States.

(j) Qualified research, for purposes of this subsection, is defined as follows:

1. The term "qualified research" means research:

i. With respect to which expenditures may be treated as expenses under IRC section 174;

ii. Which is undertaken for the purpose of discovering information

(1) Which is technological in nature; and

(2) The application of which is intended to be useful in the development of a new or improved business component of the taxpayer;

iii. Substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in (j)3 below; and

iv. Does not include any activity described in (j)4 below.

2. For purposes of this subsection, the following tests shall be applied separately to each business component:

i. In general, paragraph (j)1 above shall be applied separately with respect to each business component of the taxpayer.

ii. The term "business component" means any product, process, computer software, technique, formula, or invention which is to be:

(1) Held for sale, lease, or license; or

(2) Used by the taxpayer in a trade or business of the taxpayer.

iii. Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component (and not as part of the business component being produced).

3. For purposes of (j)1iii above, the following are purposes for which research may qualify for credit:

i. In general, research shall be treated as conducted for a purpose described in this paragraph if it relates to:

(1) A new or improved function;

(2) Performance; or

(3) Reliability or quality.

ii. Research shall, in no event, be treated as conducted for a purpose described in this paragraph if such research relates to style, taste, cosmetic, or seasonal design factors.

4. The term "qualified research" shall not include, nor shall credit be allowed for, any of the following:

i. Research after commercial production, that is, any research conducted after the beginning of commercial production of the business component;

ii. Adaptation of existing business components, that is, any research related to the adaptation of an existing business component to a particular customer's requirement or need;

iii. Duplication of existing business component, that is, any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component;

iv. Surveys, studies, or similar activities as follows:

(1) Efficiency survey(s);

(2) Activity relating to management function or technique;

(3) Market research, testing, or development (including advertising or promotions);

(4) Routine data collection; or

(5) Routing or ordinary testing or inspection for quality control;

v. Except to the extent provided in rule, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in:

(1) An activity which constitutes qualified research (determined with regard to this subparagraph); or

(2) A production process with respect to which the requirements of (j)1 above are met;

vi. Foreign research, that is, any research conducted outside the United States;

vii. Any research in the social sciences, arts, or humanities; or

viii. Funded research, that is, any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

(k) Credit allowable with respect to certain payments to qualified organizations for basic research shall be as follows:

1. In general, in the case of any taxpayer who makes basic research payments for any taxable year;

i. The amount of basic research payments taken into account under (k)2 below shall be equal to the excess of such basic research payments, over the qualified organization base period amount.

ii. That portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of this paragraph.

2. Basic research payments shall be defined, for purposes of this subsection, as follows:

i. In general, the term "basic research payment" means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if:

(1) Such payment is pursuant to a written agreement between such corporation and such qualified organization; and

(2) Such basic research is to be performed by such qualified organization.

ii. In the case of a qualified organization described in (k)6iii or iv below (k)2i(2) above shall not apply.

3. For purposes of this subsection, the term "qualified organization base period amount" means any amount equal to the sum of the minimum basic research amount, plus the maintenance-of-effort amount.

4. Concerning the minimum basic research amount, for purposes of this subsection:

i. In general, the term "minimum basic research amount" means an amount equal to the greater of:

(1) One percent of the average of the sum of amounts paid or incurred during the base period for:

(A) Any in-house research expenses; and

(B) Any contract research expenses; or

(2) The amounts treated as contract research expenses during the base period by reason of this subsection (as in effect during the base period).

ii. Except in the case of a taxpayer which was in existence during the taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

5. Concerning the maintenance of effort amount, for purposes of this subsection:

i. In general, the term "maintenance-of-effort" amount means, with respect to any taxable year, an amount equal to the excess (if any) of an amount equal to: the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by the cost-of-living adjustment for the calendar year in which such taxable year begins, over the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

ii. Nondesignated university contributions, for purposes of this paragraph, means any amount paid by a taxpayer to any qualified organization described in (k)6i below:

(1) For which a deduction was allowable under IRC section 170; and

(2) In which was not taken into account:

(A) In computing the amount of the credit under this provision (as in effect during the base period) during any taxable year in the base period; or

(B) As a basic research payment for purposes of this section.

iii. Cost-of-living adjustment shall be defined as follows:

(1) In general, the cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under IRC section 1(f)(3), by substituting "calendar year 1987" for "calendar year 1989" in subparagraph (B) of Code Section 1(f)(3).

(2) If the base period of any taxpayer does not end in 1983 or 1984, IRC section 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which the base period ends for 1989. Such substitution shall be in lieu of the substitution under (k)5iii(1) above.

6. For purposes of this subsection, the term "qualified organization" means any of the following organizations:

i. Educational institutions, that is, any educational organization which:

(1) Is an institution of higher education (within the meaning of IRC section 3304(f)), and

(2) Is described in IRC section 170(b)(1)(A)(ii).

ii. Certain scientific research organizations, that is, any organization not described in (k)6i above which:

(1) Is described in IRC section 501(c)(3) and is exempt from tax under IRC section 501(a);

(2) Is organized and operated primarily to conduct scientific research; and

(3) Is not a private foundation.

iii. Scientific tax-exempt organizations, that is, any organization which:

(1) Is described in:

(A) IRC section 501(c)(3) (other than a private foundation); or

(B) IRC section 501(c)(6);

(2) Is exempt from tax under section IRC 501(a);

(3) Is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph i pursuant to written research agreements; and

(4) Currently expends:

(A) Substantially all of its funds; or

(B) Substantially all of the basic research payments received by it, for grants to, or contracts for basic research with, an organization described in (k)6i above.

iv. Certain grant organizations, that is, any organization not described in (k)6ii or iii above which:

(1) Is described in IRC section 501(c)(3) and is exempt from tax under IRC section 501(a) (other than a private foundation);

(2) Is established and maintained by an organization established before July 10, 1981, which meets the requirements of (k)6iv(1) above;

(3) Is organized and operated exclusively for the purpose of making grants to organizations described in (k)6i above pursuant to written research agreements for purposes of basic research; and

(4) Makes an election, revocable only with the consent of the U.S. Secretary of the Treasury, to be treated as a private foundation for purposes of U.S. Code Title 26 (other than IRC section 4940, relating to excise tax based on investment income).

(l) Definitions and special rules shall be as follows:

1. The term "basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include:

i. Basic research conducted outside of the United States; or

ii. Basic research in the social sciences, arts, or humanities.

2. The term "base period" means the three-taxable-year period ending with the taxable year immediately preceding the first taxable year of the taxpayer beginning after December 31, 1983.

3. For purposes of determining the amount of credit allowable under subsection (k)1 above, for any taxable year, the amount of the basic research payments taken into account under subsection (k)2 above:

i. Shall not be treated as qualified research expenses under (k)1i above; and

ii. Shall not be included in the computation of base amount under (k)1ii above.

4. For purposes of applying (b) above to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of (g)1 above).

5. The term "corporation" shall not include:

- i. An S corporation;
- ii. A personal holding company (as defined in IRC section 542); or
- iii. A service organization (as defined in IRC section 414(m)(3)).

(m) For Special Rules, see IRC section 41(f).

(n) Notwithstanding any provision in this section to the contrary, other than calculations made pursuant to (u) below, a credit can be claimed for only those research activities that are performed in New Jersey.

(o) Notwithstanding any provision in this section to the contrary, a credit for increased research activities is allowed based on qualified expenditures made in taxable years beginning on and after January 1, 1994.

(p) The filing of a consolidated tax return by a controlled group of corporations shall not be permitted.

(q) Section references are to the Internal Revenue Code, unless otherwise noted.

(r) The research credit shall be generally allowed for qualified research. Qualified research is that which is limited to scientific experimentation or engineering activities designed to aid in the development of a new or improved product, process, technique, formula, invention, or computer software program held for sale, lease, or license, or used by the taxpayer in a trade or business. For in-house research expenses, this trade or business requirement will be met if the principal purpose for conducting the research is to use the results of the research in the active conduct of a future trade or business. The research credit shall generally not be allowed for the following types of activities:

- 1. Research conducted after the beginning of commercial production;
- 2. Research adapting an existing product or process to a particular customer's need;
- 3. Duplication of an existing product or process;
- 4. Survey or studies;
- 5. Research relating to certain internal-use computer software;
- 6. Research conducted outside the State of New Jersey;

7. Research in the social sciences, arts, or humanities; or

8. Research funded by another person (or government entity.)

(See IRC Section 41 and regulations thereunder for other definitions and special rules concerning the research credit.)

(s) The research and expenditure tax credit is determined as follows:

1. First, calculate fixed-base percentage. Fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983 and before January 1, 1989 is of the aggregate gross receipts of the taxpayer for such taxable years.

Year	Qualified Research Expenses	Gross Receipts
1984	\$ 2,000,000	\$ 10,000,000
1985	4,000,000	15,000,000
1986	6,000,000	20,000,000
1987	8,000,000	30,000,000
1988	10,000,000	25,000,000
Total	\$30,000,000	\$100,000,000

$$\frac{\$ 30,000,000}{\$100,000,000} = 3\% \text{ fixed base percentage}$$

2. Next, compute the base amount. The base amount is the average gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (credit year) multiplied by the fixed base percentage.

Year	Gross Receipts
1990	\$ 25,000,000
1991	20,000,000
1992	35,000,000
1993	30,000,000
Total	\$120,000,000
divided by 4 =	
Average Gross Receipts	\$ 30,000,000
Fixed Base Percentage	× 3%
Base Amount	\$ 900,000

3. Then, compute current qualified research expenses.

	Total Costs Incurred	Research Tax Credit Qualified Research Expenses
Wages	\$ 750,000	\$ 500,000
Supplies	250,000	250,000
Depreciation	100,000	-0-
Overhead	250,000	250,000
Total	\$1,350,000	\$1,000,000

Then compute the research tax credit.

Current year qualified research expenses	\$1,000,000
Less: Base Amount	(900,000)
Total incremental research expenses	\$ 100,000
Research tax credit %	× 10%
New Jersey research tax credit	\$ 10,000

(t) Credit for increased research activities shall take priority as specified by N.J.S.A. 54:10A-5.246. If any amount of property or expenditures is included in the calculation of the research credit, or for which a credit is allowed, then no such amounts can be allowed for the recycling credit, manufacturing and employment investment credit, and the new jobs credit.

(u) If taxpayer has research within and outside New Jersey and cannot determine the amount of New Jersey qualified research expenses for the period beginning after December 31, 1983 and before January 1, 1989, calculate the amount to be used in the numerator of the ratio to arrive at the fixed base percentage as follows: take the figure for qualified research and development expenses everywhere for the period and multiply it by the average of the average of the payroll fraction and the property fraction used on the corporation business tax returns for the corresponding years in question. This amount becomes the numerator of a fraction whose denominator is taxpayer's aggregate gross receipts everywhere for the period.

(v) Any Federal deduction under IRC Section 174 will be the same for New Jersey purposes, since there is no New Jersey provision for a separate modified state tax credit amount under such circumstances.

(w) The credit allowable in any given tax year cannot exceed 50 percent of the tax liability otherwise due on the return.

(x) The amount of the credit cannot reduce the tax liability to any amount less than the statutory minimum provided in N.J.S.A. 54:10A-5(e).

(y) The amount of the tax year credit allowable which cannot be applied for the tax year due to certain limitations may be carried over, if necessary, to the seven accounting years following a credit's tax year.

(z) Credits allowable shall be applied in the order of the credits' tax years.

New Rule, R.1995 d. 462, effective August 21, 1995.
See: 27 N.J.R. 842(a), 27 N.J.R. 3210(a).

SUBCHAPTER 4. ENTIRE NET WORTH

18:7-4.1 (Reserved)

Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).

Added last sentence to (a). Added last sentence to (b)5.
Amended by R.1984 d.453, effective October 15, 1984.
See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).

(c) added.
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 "Entire net worth; definition; computation".

18:7-4.2 (Reserved)

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

Section was "Effect on net worth of investment in subsidiaries".

18:7-4.3 (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 "Investment in subsidiaries allows proportionate reduction for calculating net worth".

18:7-4.4 (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 "Net worth; right of director to independently determine".

18:7-4.5 Indebtedness owing directly or indirectly

(a) "Indebtedness" is not limited in scope by the duration thereof and thus includes all debts due, whether money, goods or services, including, inter alia, accruals of salaries, bonuses and dividends, as well as interest accrued on all indebtedness.

(b) "Indebtedness owing directly or indirectly" includes but is not limited to all indebtedness owing to any stockholder or shareholder and to members of his immediate family where a stockholder and members of his immediate family together or in the aggregate own or beneficially own 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(c) "Immediate family" includes the collective body of persons, consisting of parents, children and other relatives, living together in one household in a permanent and domestic character under one head or management.

(d) Direct indebtedness: In the case of a creditor, corporate or otherwise (other than an individual), including an estate, trust or other entity, indebtedness is includible by reason of direct holding of taxpayer's stock by the creditor whether or not the creditor is functioning as a mere conduit of funds from a third party source.

(e) Indirect indebtedness: Indebtedness must be owing directly or indirectly to a 10 percent shareholder. Indebtedness owing by a taxpayer to a commonly controlled creditor is presumed to be owing indirectly to the common parent. However, indebtedness between commonly controlled debtors and creditors may not be attributable as owing indirectly to the common shareholder if it can be shown that the common shareholder was in no way the source of the funds. The taxpayer must establish that the common shareholder was not the source of the funds since it has the burden of defeating the presumption. The taxpayer must conclusively establish that:

1. The creditor is merely a conduit of funds from an unrelated third party source; or
2. The indebtedness was from funds generated by the creditor from its own operations and clearly not in any way attributable to or funded by the common shareholder.