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## 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).

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.

(c) The term "taxpayer" shall also mean any partnership required or consenting to report or to pay taxes, interest or penalties under this Act, provided that the term does not include a partnership that is listed on a United States national stock exchange.

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

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

Added (c).

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

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

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

#### 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

(a) 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.

1. The term includes any other entity classified as a corporation for Federal income tax purposes.

2. The term includes any State or Federally chartered building and loan association or State or Federally chartered savings and loan association.

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

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

In (a), added 1 and 2.

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

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

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

#### 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).

#### Case Notes

Taxpayer holding company did not qualify as investment company that could elect to have its corporation business tax calculated on 25% of its net income and net worth, due to provision of services to subsidiaries and participation in day-to-day operation of subsidiaries, and failure to show that such activities represented less than 10% of total activities or that qualified investment activities represented 90% or more of total activities. *International Thomson Business Information, Inc. v. Director, Division of Taxation*, 14 N.J.Tax 424 (1995).

#### 18:7-1.6 Subjectivity to tax; how created

(a) Every corporation not expressly exempted is deemed to be subject to tax under the Act and is required to file a return 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; or
  - vii. Deriving receipts from sources within this State; or
  - viii. Engaging in contacts within this State.

(b) A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Example 1: An entity regularly providing asset management services as defined in N.J.A.C. 18:7-8.10(e) from a location outside New Jersey to customers within New Jersey is subject to tax in New Jersey.

Example 2: A New York corporation delivers furniture into New Jersey by its company owned truck. The driver collects the payment from the New Jersey customer. The New York corporation is subject to tax in New Jersey.

1. An S corporation parent of a QSSS must register as a New Jersey S corporation, or make a valid election and consent to jurisdiction pursuant to N.J.S.A. 54:10A-5.22, N.J.S.A. 54:10A-5.23 and these rules;

2. The parent shareholder must consent to New Jersey taxation of its QSSS's income allocation by filing a CBT-100S that includes the assets, liabilities, income, and expenses of the QSSS. The property, receipts, and payroll of the QSSS must be included in the parent's allocation factor. Failure of the parent either to consent or to file a CBT-100S for any period will result in the denial of NJ-QSSS status, and the subsidiary will be subjected to taxation in New Jersey as a C corporation;

3. The New Jersey S corporation electing to be recognized as a QSSS must file a completed and properly executed form CBT-2553 by which its parent New Jersey S corporation consents to taxation of the QSSS's income and calculation of allocation fractions and factor by New Jersey. Form CBT-2553 must be executed by a qualified corporate officer of the New Jersey S corporation and by an authorized officer of the parent New Jersey S corporation. Form CBT-2553 must be filed before the 16th day of the fourth month of the first tax year that the NJ-QSSS election is to take effect; and

4. Any Federal S corporation that is treated Federally as a QSSS may be recognized in New Jersey as a NJ-QSSS provided the conditions of N.J.A.C. 18:7-20.2(c) have been met.

(d) Regardless of any provision in this section, every qualified NJ-QSSS must file a CBT-100S and pay the applicable minimum tax. Unless the NJ-QSSS formally dissolves through the Division of Revenue, it is required to file annually a Corporation Business Tax return, remit the required tax, and make an annual report to the New Jersey Division of Revenue. A failure to file a New Jersey Form CBT-2553 containing the corporate parent's consent to taxation by New Jersey will result in the denial of New Jersey QSSS status and will subject the entity to taxation in New Jersey as a C corporation.

(e) A Federal QSSS that elects to be treated as a NJ-QSSS for New Jersey tax purposes and that has previously filed the necessary election form (CBT-2553) may request to have the estimated corporation business tax payments transferred to its parent corporation's account for the year in which the New Jersey QSSS election was made. The NJ-QSSS must submit a written request, signed by an officer of the NJ-QSSS, together with a copy of the New Jersey S corporation election form (CBT-2553) to the New Jersey Division of Taxation. The

Division will transfer to the parent all of the NJ-QSSS's estimated payments except for a designated amount that will be used to satisfy the NJ-QSSS's current year minimum tax liability and the 50 percent estimated tax payment for the subsequent year.

(f) The following examples are provided for illustration.

Example 1:

Taxpayer is an S corporation for Federal and New Jersey purposes and is headquartered in Illinois with branches in New Jersey and other states. It recently set up a North Carolina QSSS, which has made the appropriate election to be treated as a disregarded entity for Federal purposes. Other than being a subsidiary of the parent, the QSSS has no operations in New Jersey.

The taxpayer intends to include income of the North Carolina QSSS in its allocation factor in order to allocate the parent's income among the various states in which it does business, including New Jersey. This treatment is permitted in New Jersey provided that the North Carolina QSSS registers with New Jersey or has filed a CBT-2553-Cert, files a separate CBT-100S, and pays the minimum tax. If the foreign QSSS does not register or file a completed CBT-2553-Cert, the income does not flow up to the parent's return.

Example 2:

A holding company was set up in November 2002 with a calendar year end. An S election for Federal and New Jersey purposes was made for the new holding company effective from its inception. After the new company was set up, it acquired all the shares of two existing Federal S corporations having a calendar-year accounting period, from the same owner. Federal and New Jersey QSSS elections are made effective in November 2002. One of the acquired corporations is a New Jersey S corporation, the other is a New Jersey C corporation.

The new holding company can make a timely New Jersey S corporation election since it was set up in November. The two acquired corporations, which change shareholders during their accounting year, cannot make New Jersey elections because their taxable years began in January. For them the time limit to make valid New Jersey S corporation elections had already passed for that year.

Amended by R.2007 d.204, effective July 2, 2007.

See: 39 N.J.R. 763(a), 39 N.J.R. 2544(a).

In the second paragraph of Example 1 of (f), inserted "or has filed a CBT-2553-Cert", inserted a comma following "CBT-100S", and added the last sentence.