

1. A newly organized corporation whose first accounting period established for Federal income tax purposes is less than 12 months;

2. A foreign corporation which acquires a taxable status in New Jersey subsequent to the commencement of its Federal accounting period, and whose first New Jersey Corporation Business Tax return embraces a period less than the accounting period reported upon the Federal income tax purposes;

3. Corporations which dissolve, merge, consolidate, withdraw, surrender or otherwise cease to have a taxable status in New Jersey prior to the close of a full twelve months accounting period;

4. A corporation which changes its accounting period.

(c) A corporation that has elected Federally to utilize the provisions of IRC 338(h)(10) shall be required to file for New Jersey purposes a one-day return under IRC 338 as if the (h)(10) election had not been made Federally.

Amended by R.1991 d.35, effective January 22, 1991.  
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).

Added (c).

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

As to the requirements which must be met in order to obtain a change in accounting period, see Change of accounting period, N.J.A.C. 18:7-11.5.

#### Statutory References

See N.J.S.A. 54:10A-4 as to definition of "fiscal year" and "privilege period"; 10A-17 as to right of Director to independently determine entire net worth and entire net income when the period covered by the taxpayer's report is other than that covered by his Federal income tax report or when it is a short period.

#### Case Notes

Taxpayer that separated from consolidated group was not required to file short-term returns. *Drake Bakeries, Inc. v. Taxation Div. Director*, 12 N.J.Tax 172 (1991) returns.

### 18:7-12.2 Short period returns; proration procedures

(a) Where a short period return is required, the entire net income is permitted to be prorated as follows:

1. For any short period return, the minimum tax for a New Jersey corporation and for a foreign corporation may not be prorated and at least the proper minimum tax amount must be paid.

2. With respect to net income, a domestic corporation filing a short period return shall not be entitled to prorate its adjusted net income. A foreign corporation whose short period return under the Act covers a period other than the accounting period reported upon for Federal income tax purposes, may prorate its adjusted entire net income by dividing its adjusted entire net income by the

number of calendar months or parts thereof covered by the Federal Income Tax Return and multiplying the result by the number of calendar months or parts thereof covered by the short period return. A part of a month shall be deemed to be a month.

3. With respect to net income, a foreign corporation whose short period return under the Act covers the same period as the accounting period reported upon for Federal income tax purposes shall not be entitled to prorate its adjusted entire net income.

4. Where a taxpayer is entitled and elected to allocate less than the full amount of its entire net income to New Jersey the allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return. For treatment of allocation on a short period return, see N.J.A.C. 18:7-12.3.

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-2 as to requirement to file a return under Act for each year taxpayer holds franchise; 10-4 as to definition of allocation factor, net worth, and net income; 10A-5 as to how taxpayer shall compute the amount of tax payable; 10A-6 as to how taxpayer maintaining place of business outside New Jersey shall compute his entire net income and entire net worth; 10A-15 as to fiscal or calendar accounting periods required; and 10A-17 as to right of Director to independently determine entire net worth and entire net income of taxpayer making short period report.

### 18:7-12.3 Short period returns; allocation

(a) In the case of a taxpayer entitled and electing to allocate less than the full amount of its entire net income to New Jersey, the applicable allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return.

(b) In that case, the allocation factors shall be applied to entire net income only after such entire net income shall have been prorated as indicated in N.J.A.C. 18:7-12.2.

(c) A taxpayer filing a one-day return recognizing gain on a step up in the basis of its assets would use a business allocation factor which would be based upon the property fraction (reflecting the location of the assets) and the receipts fraction (sourced to the location of the assets). There would be no payroll fraction for the short one-day period.

Amended by R.1991 d.35, effective January 22, 1991.

See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).

Added (c).

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 as to how taxpayer maintaining regular place of business outside New Jersey shall compute his entire net income, entire net worth, and 10A-17 as to right of Director to independently determine entire net income, entire net worth of taxpayer making short period return.

**18:7-12.4 (Reserved)****SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN****18:7-13.1 Assessment and reassessment**

(a) On its return, the taxpayer must compute the amount of tax payable under the law and must remit the amount of the indicated tax.

1. The Director shall cause the return to be examined and shall make any audit or investigation or reaudit he may deem necessary;

2. If the Director determines that there is a deficiency with respect to payment of any tax due under the Act, he shall assess or reassess the additional taxes, penalties and interest due the State, give notice of such assessment or reassessment to the taxpayer, and make demand upon it for payment;

3. There shall be added to the amount of any deficiency assessment or reassessment, interest at the rate of one and one-half percent per month or fraction thereof to be calculated from the date the tax was originally due and payable until December 8, 1987. On and after December 9, 1987, interest shall be calculated at the annual rate of five percentage points above the prime rate, compounded daily until the date of actual payment. On and after July 1, 1993, interest shall be calculated at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

4. If the failure to pay tax when due is explained to the satisfaction of the Director, the Director may abate the payment of any interest charge in excess of the annual rate of three percentage points above the prime rate.

(b) For tax liabilities accruing prior to July 1, 1993, the Director may assess an additional tax at any time within five years from the date of the filing of the return or amended return. Any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993 shall continue to be in full force and effect. For tax liabilities accruing on and after July 1, 1993, the Director may assess an additional tax at any time within four years from the date of the filing of the return or amended return.

1. In the case of a false or fraudulent return with intent to evade the tax, the Director may assess the tax at any time.

2. Where no return has been filed as provided by law, the Director may make an estimate of the tax and assess the same at any time.

3. For tax liabilities accruing prior to July 1, 1993, where a return is filed before or after the due date prescribed in the statute, the Director may assess an additional tax, recompute and reassess the tax at any time within five years from the due date of the return, or from the date of filing of the return or amended return, whichever is later. For tax liabilities accruing on and after July 1, 1993, the period to assess additional tax is four years.

(c) Where, before the expiration of the period prescribed by law for the assessment of any additional tax, a taxpayer has consented in writing that such period may be extended, the amount of any additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

(d) If the amount of the taxable income for any year of any taxpayer as returned to the United States Treasury Department is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in the taxable income, or if a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, the taxpayer shall file a report of the change or correction or an amended return within 90 days after the final determination of any change, correction, renegotiation, computation, or recomputation.

(e) For reports or returns filed prior to July 1, 1993, and within five years from the date of filing the report of change or correction or an amended return, the Director may reexamine the return, recompute and reassess the tax, but without changing the allocation of entire net income within and without New Jersey as previously computed, and shall so notify the taxpayer. For tax liabilities accruing on and after July 1, 1993, the period of limitation to make a deficiency assessment runs for an additional four year period from the date of filing the report of change or correction or an amended return. The additional period of limitation will only be applicable to the increase or decrease in tax attributable to the adjustments in the changed or corrected income.

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.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Added text in (a)3 "December 8, 1987. On ..."; changed percentage points in (a)4 from "three quarters of one percent per month" to "three percentage points above the prime rate, compounded daily."

Administrative Correction: Incorporated (d)1 into (d) and deleted (d)2-3.

See: 22 N.J.R. 3504(a).

Amended by R.1992 d.404, effective October 19, 1992.

See: 24 N.J.R. 3275(a), 24 N.J.R. 3733(a).

Revised (a)4.

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.499, effective September 5, 1995.

See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).

#### Cross References

See Additional tax; change in Federal tax, N.J.A.C. 18:7-11.2, 18:7-11.3, 18:7-11.4, 18:7-11.6, 18:7-13.7.

#### Statutory References

See N.J.S.A. 54:10A-13 as to requirements and time limits for filing amended tax returns under the Act should a change, correction, or recomputation of Federally taxable income occur, and 49-6 as to Director's right to recompute and reassess any such deficiency assessment filed by taxpayer.

#### Case Notes

Computation of interest mitigated by absence of fraud. *General Trading Co., Inc. v. Director, Div. of Taxation*, 83 N.J. 122, 416 A.2d 37 (1980).

### 18:7-13.2 Hearing; protest

(a) Rules concerning the right of taxpayer to a hearing are:

1. Any taxpayer aggrieved by any finding or assessment of the Director may, within 90 days of the date of the notice of assessment or finding, file a protest in writing, in the form and manner described in N.J.A.C. 18:1-1.8, and may request a hearing;

2. Thereafter the Director shall grant an informal hearing to the taxpayer, if requested.

(b) Hearings before the Division of Taxation are to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

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.1991 d.23, effective January 22, 1991.

See: 22 N.J.R. 1995(a), 23 N.J.R. 219(a).

Reference to N.J.A.C. 18:1-1.8 added; (b), regarding powers of Director, deleted; (c) recodified to (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. 54:49-18 as to procedures and time limits for filing a protest against any assessment under the Act, and taxpayer's right to a hearing thereon.

### 18:7-13.3 Appeal

Any aggrieved taxpayer may, within 90 days after any final decision, order, finding, assessment or action of the Director made pursuant to the provisions of the Act, appeal therefrom to the Tax Court in accordance with pertinent provi-

sions of the State Tax Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

Amended by R.1989 d.508, effective October 2, 1989.

See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).

Reference to State Tax Uniform Procedure Law added. Text at (b) and (c) deleted in entirety.

#### Case Notes

Time and security requirements for Corporation Business Tax Act appeal (citing former rule as N.J.A.C. 17:18-1.23); failure to post security did not deprive Division of Tax Appeals of jurisdiction. *General Trading Co., Inc. v. Director, Div. of Taxation*, 83 N.J. 122, 416 A.2d 37 (1980).

### 18:7-13.4 Service of notice on taxpayers

(a) Any notice required to be given by the director pursuant to the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., may be served personally or by mailing the same to the person for whom it is intended, addressed to such person at the address given in the last report filed by that person pursuant to the provisions of the State Tax Uniform Procedure Law, or of any State tax law, or if no report has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it was addressed. A notice may at the prescription of the director include on its face a designation which shall identify the notice for purposes of communication.

(b) An assessment notice pursuant to N.J.S.A. 54:49-5, N.J.S.A. 54:49-6 or N.J.S.A. 54:49-7 shall contain the statements required pursuant to subsections a, b, and f of N.J.S.A. 54:48-6.

(c) An assessment notice pursuant to N.J.S.A. 54:49-5, 54:49-6 or 54:49-7 shall include a statement of the reason for the assessment sufficient to inform a reasonable lay person of the statutory requirements which in the opinion of the Director require the assessment, the actions or omissions of the taxpayer which require the assessment, or the nature of the insufficient documentary evidence, if any, which has prompted the assessment, including:

1. In the case of an underpayment or failure of payment, a statement of the corresponding alleged correct amount and correct date of payment; and

2. In the case of a failure to file a return, a statement of the alleged required filing date.

(d) A refund determination notice pursuant to N.J.S.A. 54:49-15 shall include the statements required pursuant to subsections b, d and f of N.J.S.A. 54:49-6.

(e) A final determination notice pursuant to N.J.S.A. 54:48-18 shall include the statements required pursuant to subsections c and f of N.J.S.A. 54:48-6.

(f) The lack of any statement otherwise required to be included with a notice pursuant to this section or the lack of any description otherwise required pursuant to (c) of above shall not invalidate such notice.

(g) All notices of assessment related to final audit determination and "Notice and Demand for Payment of Tax" letters will be sent by registered or certified mail.

Repeal and New Rule, 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. 54:50-6 as to form of service of notice required of the Director to be given to the taxpayer.

#### 18:7-13.5 Closing agreements

(a) The Director is authorized to enter into a written agreement with any taxpayer relating to the liability of such taxpayer in respect to any tax, fee, penalty or interest imposed by the Act, which agreement shall be final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

1. The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of this State; and

2. In any suit, action or proceeding, the above agreement, or any determination, assessment, collection, payment, cancellation, refund, abatement or credit made in accordance with it shall not be annulled, modified, set aside or disregarded.

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. 54:53-1 through 54:53-6 as to effect of closing agreements between Director and taxpayer.

#### 18:7-13.6 Time for payment of tax

(a) The annual franchise tax must be paid to the Director in full on or before the due date of the return. For accounting periods ending on or after December 31, 1980, the annual franchise tax, including any estimated or installment payments required to be made pursuant to N.J.A.C. 18:7-3.13 must be paid to the Director in full on or before the due date of the return.

1. For due dates of returns see N.J.A.C. 18:7-11.7;

2. For penalties upon failure to file returns or pay taxes when due, see N.J.A.C. 18:7-14.1 and 2.

(b) Installment payments are due on or before the respective due dates as set forth in N.J.A.C. 18:7-3.13.

(c) A taxpayer which ceases to be subject to tax under the Act must pay the entire tax for each fiscal or calendar accounting period or part of a period during which it had a taxable status. See N.J.A.C. 18:7-11.11.

Amended by R.1982 d.6, effective January 18, 1982.  
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).

(a): Added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "For accounting periods ending on or after December 31, 1980 . . . return".

(b) added.

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-15 as to requirements for use of fiscal or calendar year accounting periods and due dates thereunder.

#### 18:7-13.7 Additional tax; change in Federal tax; interest to be charged

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commissioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, within 15 days after the date of the Division's assessment letter to the taxpayer, the taxpayer must remit that additional tax together with interest thereon at the rate of three quarters of one percent per month or fraction thereof from the original due date of the New Jersey Corporation Business Tax Return for the accounting period involved to the date of payment on December 8, 1987, whichever is earlier, and on or after December 9, 1987 at the annual rate of five percentage points above the prime rate to be compounded daily from the date such tax was originally due to the date of actual payment, and on or after July 1, 1993 at the rate of three percentage points above the prime rate assessed for each month or fraction thereof compounded annually at the end of each year, from the date such tax was originally due to the date of actual payment.

(b) However, if the taxpayer failed to notify the Director of any change in Federal net income within 90 days as required by the Act and its provision, any additional tax resulting from a change, plus interest thereon computed as indicated in (a) above, shall be deemed to have been due within 15 days after notification was required to be filed with the Director.

(c) For penalties in case of failure to pay tax when due see N.J.A.C. 18:7-14.1 and 14.2.

Amended by R.1986 d.284, effective July 21, 1986.  
See: 18 N.J.R. 627(a), 18 N.J.R. 1487(a).

(a) substantially amended.

Amended by R.1988 d.407, effective September 6, 1988.  
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Substantially amended (a).