

18:7-8.10 Receipts; compensation for services; allocation for certain special industries

(a) The numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned under this section if the service is performed within this State. If the service is performed both within and outside this State, the numerator of the receipts fraction includes receipts from services based upon the cost of performance or amount of time spent in the performance of such services 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. Cost of performance is defined as all direct costs incurred in the performance of the service, including direct costs of subcontractors.

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.

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.

(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) Certain service fees from transactions having contact with this State are allocable to New Jersey based upon the following:

1. Twenty-five percent of such fees are allocated to the state of origination.
2. Fifty percent of such fees are allocated to the state in which the service is performed.
3. Twenty-five percent of such fees are allocable to the state in which the transaction terminates.

Example 1: A taxpayer issues credit cards to its customers allowing funds to be obtained through the use of authorized machines located within New Jersey. A customer originates a transaction at a New Jersey location, and the taxpayer's computer, located outside this State, performs a credit check. Funds (or a bank draft) are received by the customer at the point of origin in New Jersey, where the transaction terminates. Taxpayer must allocate 50 percent of the service fee income earned from this transaction to New Jersey based upon the points of origination and termination. For purposes of this example the issuer of credit cards has nexus with New Jersey through physical presence in New Jersey.

Example 2: Taxpayer earns income by providing on-line internet access to customers located within New Jersey and outside New Jersey. Taxpayer's physical equipment allowing such access is located outside New Jersey. Taxpayer must allocate 50 percent of its revenue from internet access charges to New Jersey based upon the origination and termination of such access from points within New Jersey. Absent specific identification of points of origination and termination, the customer's billing address will serve to locate these activities. For purposes of this example, the internet service provider has physical presence through a home office located in New Jersey.

4. 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. Trucking companies deriving revenues from transporting freight will calculate their receipts fraction using mileage as follows: The taxpayers' receipts are multiplied by a fraction, the numerator of which is the number of miles in New Jersey and the denominator of which is the mileage in all jurisdictions. For convenience, taxpayers required to maintain mileage records in compliance with the International Fuel Tax Agreement pursuant to N.J.S.A. 54:39A-24 and to N.J.A.C. 13:18-3.12 shall make calculations using such records.

(1) In addition, with regard to the property fraction, movable property such as tractors and trailers shall be allocated to this State using the same mileage fraction set forth in (c)4iii above. Such allocated movable property shall be added to the fraction formed by non-movable property in New Jersey over non-movable property everywhere to arrive at the property fraction.

(2) With regard to the payroll fraction, wages of mobile employees such as drivers shall be allocated to New Jersey based upon mileage as set forth in (c)4iii above. Such allocated payroll shall be added to the fraction formed by non-mobile employee wages in New Jersey over non-mobile wages everywhere to arrive at the payroll fraction.

(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 asset management services shall be allocated to New Jersey in accordance with the following procedures:

1. In the case of asset management services directly or indirectly provided to individuals, receipts shall be allocated to New Jersey if the domicile of the individual is in New Jersey.
2. In the case of asset management services directly or indirectly provided to a pension plan, retirement account or institutional investor, such as private banks, national and international private investors, international traders or insurance companies, receipts shall be allocated to New Jersey to the extent the domicile of the beneficiaries of the plan, beneficiaries of the account or beneficiaries of the similar pool of assets held by the institutional investor is in New Jersey.

i. In the event the domiciles of the beneficiaries are not or cannot be obtained, a reasonable proxy may be used to allocate receipts to New Jersey that reflects the trade or business practice and economic realities underlying the generation of receipts from the asset management services. The burden of demonstrating the reasonableness of the method rests on the taxpayer. Based on specific facts and circumstances, reasonable proxies used to allocate receipts to New Jersey may take into account, among other things, the latest available population census data, the domicile of the sponsor of the plan, account or pool of assets, the sponsor's New Jersey payroll apportionment factor or the sponsor's ratio of New Jersey employees to total employees.

3. In the case of asset management services directly or indirectly provided to a regulated investment company, receipts 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 following:

i. 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 that 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.

4. As used in (e)1 through 3 above:

i. "Asset management services" means the rendering of investment advice, making determinations as to when sales and purchases are to be made, or the selling or purchasing of assets and related activities. As used in this section, "related activities" means administration services, distribution services, management services and other related services.

ii. "Administration services" means and includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services but does not include trust services.

iii. "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of a regulated investment company.

iv. "Management services" means the rendering of investment advice, making determinations as to when sales and purchases of securities are to be made or the selling or purchasing of securities and related activities.

v. "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:1-2o 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 mailing address of the beneficiary of the plan, account or other similar pool of assets based upon the sponsor's records with respect to any such beneficiary or the shareholder's mailing address on the records of the regulated investment company. For purposes of (e)3 above, 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.

vi. In addition to amounts received directly from a regulated investment company, "receipts" shall also include amounts received directly from the shareholders of such regulated investment company in their capacity as such.

vii. "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.

viii. "Sponsor" means the party that has contracted directly with the beneficiaries of the plan, account or similar pools of assets.

5. See N.J.A.C. 18:7-1.6 regarding foreign advisors having customers in New Jersey.

(f) Receipts from the services of a registered securities or commodities broker or dealer shall be sourced to New Jersey if the customer is located within the State.

1. For purposes of this subsection:

i. "Securities" has the meaning provided by paragraph (2) of subsection (c) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475;

ii. "Commodities" has the meaning provided by paragraph (2) of subsection (e) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475; and

iii. "Registered securities or commodities broker or dealer" means a broker or dealer registered as such by the Federal Securities and Exchange Commission or the Federal Commodities Futures Trading Commission.

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).

Amended by R.1997 d.429, effective October 6, 1997.

See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).

Rewrote (a) and (c).

Administrative correction.

See: 30 N.J.R. 3660(a).

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

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

Rewrote (e); added (f).

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

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

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

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

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

In (c)4, rewrote iii.

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.

(b) Receipts from royalties derived from trademarks utilized in business in New Jersey are deemed located in New Jersey.

1. Receipts from royalties derived from trademarks utilized both within and outside New Jersey will be allocated to New Jersey based upon the use of the trademarks in New Jersey in relation to all use by the licensee.

2. Receipts from royalties derived from trademark license agreements, which wholly or in part authorize the licensee to sell or market products or services, are sourced to New Jersey in the same ratio as the licensee recognizes in its sales fraction receipts from sales related to the trademarked items or services.

Example 1: Corporation B is a Delaware corporation having legal title to certain trademarks. B licenses those trademarks to affiliated entities, and the affiliates pay B an arm's length royalty for their use. The trademarks are used by the affiliates within and outside New Jersey. Allocation of Corporation B's income from trademark royalties paid to it by affiliates is based upon the use of the trademarks in New Jersey by the affiliates. If an affiliate generates 10 percent of its sales revenue from the use of a trademark within New

Jersey and therefore is recognizing 10 percent of the affiliate's revenue in its New Jersey receipts fraction numerator and 90 percent in other jurisdictions, 10 percent of the royalty paid by the affiliate to Corporation B for that trademark is apportioned to New Jersey by Corporation B.

Amended by R.1997 d.429, effective October 6, 1997.

See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).

Added (b).

Amended by R.2006 d.121, effective April 3, 2006.

See: 37 N.J.R. 4528(a), 38 N.J.R. 1583(a).

Added (b)1 and 2; in Example 1, added "and therefore is recognizing 10 percent of the affiliate's revenue in its New Jersey receipts fraction numerator".

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).

Case Notes

Place to or from which shipment is made is not relevant to the determination of whether receipts must be included in numerator of receipts fraction under statute requiring inclusion of 'all other business receipts' earned in New Jersey in receipts numerator for computation of corporation business tax for taxpayer which does business in New Jersey and maintains regular place of business in another state; issue is solely whether receipt was earned by taxpayer within New Jersey. *Stryker Corporation v. Director, Division of Taxation*, 773 A.2d 674 (2001).

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 includible) 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.