

(4) Applicable expenses are any expenses or deductions which are directly or indirectly attributable to eligible gross income as defined in (a)2vii(3) above.

(See: N.J.A.C. 18:7-16 regarding international banking facilities.)

Amended by R.1983 d.62, effective March 7, 1983

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

Added new 10 and 11 to (a). Recodified old 10 as new 12 and added 4-6 to (b).

Amended by R.1984 d.453, effective October 15, 1984.

See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).

(b)7 added.

Amended by R.1985 d.562, effective November 4, 1985.

See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).

Substantially amended.

Amended by R.1987 d.335, effective August 17, 1987.

See: 19 N.J.R. 712(a), 19 N.J.R. 1568(b).

Substantially amended.

Amended by R.1992 d.289, effective July 20, 1992.

See: 24 N.J.R. 175(a), 24 N.J.R. 2628(b).

Revised text.

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.1997 d.204, effective May 19, 1997.

See: 28 N.J.R. 5158(a), 29 N.J.R. 2467(a).

In (a)1vii, inserted "For accounting or privilege periods ending on or before January 10, 1996,".

Case Notes

Benefits from safe harbor leases do not constitute "real intangible personal property", for purposes of corporate tax. *Reuben H. Donnelley Corp. v. Director, Div. of Taxation*, 128 N.J. 218, 607 A.2d 1281 (1992).

Interpretation of amendment to corporate tax governing safe harbor leases was not an administrative rule. *Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation*, 11 N.J.Tax 241 (1990), reversed 12 N.J.Tax 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

Corporate owner of safe harbor leased property could not include it in owner's business allocation factor. *Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation*, 11 N.J.Tax 241 (1990), reversed 12 N.J.Tax 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

State's inclusion of Federal obligations in taxpayer bank's tax bases under the Corporation Business Tax Act complied with the Federal public debt statute since the tax was nondiscriminatory; taxpayer bank's net worth and net income bases appropriately included the value of and income from the bank's holdings of state and local obligations. *Garfield Trust Co. v. Director, Div. of Taxation*, 6 N.J.Tax 462 (Tax Ct.1984), affirmed per curiam 7 N.J.Tax 663 (App.Div.1984), affirmed 102 N.J. 420, 508 A.2d 1104 (1986), appeal dismissed 107 S.Ct. 390, 479 U.S. 925, 93 L.Ed.2d 345.

Federal minimum tax for tax preference was not properly excludable from the taxpayer's entire net income in the calculation of New Jersey corporation business tax, since the Federal minimum tax is on income and not an excise tax on capital. *Texaco, Inc. v. Director, Div. of Taxation*, 4 N.J.Tax 63 (Tax Ct.1982).

18:7-5.3 Tax paid to foreign country or United States possession; when deductible from net income

(a) Where the taxpayer claims deduction for a tax paid to a foreign country or possession of the United States on a

dividend received from a source without the United States this tax is deductible only if:

1. The tax was paid by the taxpayer itself, except that in the case of foreign taxes included in income pursuant to Section 78 of the Internal Revenue Code, subsection (b) of the Section shall apply; and

2. Such tax was not deducted in computing Federal taxable income; and

3. 100 percent of the dividend received is not deductible under paragraph 1 of subsection (b) of Section 5.2 of this Chapter; and

4. To the extent that the portion deducted shall not exceed 50 percent of the gross dividend.

(b) With respect to foreign taxes required to be included in income as dividends received under Section 78 of the Internal Revenue Code, no deduction from Federal taxable income is permitted if 100 percent of the dividend received amount is deductible therefrom under N.J.A.C. 18:7-5.2(a)2i.

1. However, if 100 percent of the foreign tax amount is not deductible from Federal taxable income as dividends received under N.J.A.C. 18:7-5.2(a)2i, then 50 percent of it may be deducted from Federal taxable income; and

2. In addition, 50 percent of the foreign tax amount may be deducted from federal taxable income, even though these foreign taxes were not paid by the taxpayer itself.

Amended by R.1999 d.116, effective April 5, 1999.

See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

In (b), changed N.J.A.C. references throughout.

18:7-5.4 Factors not adjustable to Federal taxable income

(a) No adjustment to Federal taxable income is permitted under this rule for:

1. Gains or losses not recognized for Federal income tax purposes under Section 351 or similar sections of the Internal Revenue Code but only to the extent that recapture or other provisions of the Code are not paramount to these sections.

2. The general business credit allowed or allowable for Federal income tax purposes under Section 38 of the Internal Revenue Code.

i. This may not be taken as a deduction in computing the New Jersey net income tax base, nor as a credit, in any manner, in computing tax liability under the Act.

ii. Upon disposition of assets which qualified for a general business credit under Section 38 of the Internal Revenue Code, taxpayer must use the same basis for computing gain or loss for New Jersey net income tax purposes as employed for Federal income tax purposes.

3. Depreciation attributable to a decrease in the basis of depreciable property for Federal income tax purposes, as a result of the general business credit allowed or allowable under Section 38 of the Internal Revenue Code.

- i. This depreciation may not be taken as a deduction in computing the New Jersey net income tax base.
- ii. Depreciation taken for New Jersey net income tax purposes must be reported at the same amount as reported for Federal income tax purposes for the same period.

Amended by R.1985 d.562, effective November 4, 1985.
 See: 17 N.J.R. 1538(a), 17 N.J.R. 2678(a).
 (a)2 deleted; (a)1 amended; 3 and 4 renumbered as 2 and 3.
 Amended by R.1994 d.186, effective April 18, 1994.
 See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

18:7-5.5 Entire net income; determining stock ownership

(a) The provisions of N.J.A.C. 18:7-4.5 and 4.6 relating to the manner or degree of direct or indirect stock ownership by a creditor are applicable in determining deductibility of interest paid or accrued to holders of 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(b) In determining the percent ownership of investment for purposes of computing the dividend exclusion, a taxpayer can aggregate its ownership of stock by basing its computation on its ownership equity in the payor. No part of such investment may be determined with reference to loans or advances but must be based upon investment in capital stock.

Example 1: Corporation A received a dividend from Corporation B and a dividend from Corporation C. Corporation A owns 90 percent of Corporation B. Corporation A owns 20 percent of Corporation C. Corporation B owns 70 percent of Corporation C. The remaining shares of Corporation B and Corporation C are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation A from its 90 percent owned Corporation B is excludible from entire net income.

Since the equity of Corporation A in Corporation C is 80 percent or more ownership, it may also exclude the dividends received from Corporation C from entire net income.

Ownership equity of Corporation A in Corporation C:

Direct investment in Corporation C		20%
Investment in Corporation B	90%	
Investment of Corporation B in Corporation C	<u>70%</u>	
Indirect investment in Corporation C	$.90 \times .70 =$	<u>63%</u>
Aggregate ownership by Corporation A of the stock of Corporation C		<u>83%</u>

Example 2: Corporation D received a dividend from Corporation E and a dividend from Corporation F. Corporation D owns 90 percent of Corporation E. Corporation D owns 20 percent of Corporation F. Corporation E owns 60 percent of Corporation F. The remaining shares of Corporation E and Corporation F are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation D from its 90 percent owned Corporation E is excludible from entire net income.

Since the equity of Corporation D in Corporation F is less than 80 percent ownership, it may only exclude 50 percent of the dividend received from Corporation F from entire net income.

Ownership equity of Corporation D in Corporation F:

Direct investment in Corporation F		20%
Investment in Corporation E	90%	
Investment of Corporation E in Corporation F	<u>60%</u>	
Indirect investment in Corporation F	$.90 \times .60 =$	<u>54%</u>
Aggregate ownership by Corporation D of the stock of Corporation F		<u>74%</u>

New Rule, R.1987 d.118, effective March 2, 1987.
 See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
 Old rule repealed.

Cross References

See N.J.A.C. 18:7-4.5 (Net worth; indebtedness includible) and 18:7-4.6 (Receivables offset against includible indebtedness) as to computing net worth.

Statutory References

See N.J.S.A. 54:10A-4(e) as to what may be included in "indebtedness owing directly or indirectly."

18:7-5.6 Adjustment of entire net income to period covered by return; how computed

(a) If the entire net income required to be reported is for a period other than a period covered by the taxpayer's Federal income tax return, the taxpayer shall compute its net income as follows:

1. Its Federal taxable income is first adjusted in the manner set forth on N.J.A.C. 18:7-5.1 through 5.4;
2. The result is then divided by the number of calendar months or parts thereof covered by the Federal income tax return;
3. The result is then multiplied by the number of the calendar months or parts thereof covered by the return under the Act. A part of a month shall be deemed to be a month.

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