

1. "Gross income" for purposes of this subsection and N.J.A.C. 18:7-5.2(a)7iii means the result of adding the income amounts for gross receipts, or sales, dividends, interest, gross rents, gross royalties, capital gain, net income, net gain or loss from line 14(a); Part II, Federal Form 4797 and other income as adjusted for interest on Federal, state, municipal and other obligations not included in line 5 above and the dividend exclusion;

2. Gross income arrived at (f)1 above is the denominator;

3. The gross income included in (f)2 above resulting from the activities set forth in (a)1 through (a)7 above is the numerator; and

4. If the resulting percentage of (f)2 and 3 above is 75 percent or more, such corporation is a financial business corporation.

(g) A corporation that qualifies as a financial business corporation must file a Corporation Business Tax Return for Banking and Financial Corporations, Form BFC-1 and complete Schedule L apportioning the financial business conducted in New Jersey consistent with N.J.S.A. 54:10A-38 (Section 38 of the Corporation Business Tax Act).

Repealed by R.1979 d.45, effective February 6, 1979.  
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

Formerly entitled "Motion to report as investment company".

New Rule R.1987 d.335, effective August 17, 1987.

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

Amended by R.1993 d.364, effective July 19, 1993.

See: 25 N.J.R. 1841(a), 25 N.J.R. 3239(a).

#### **18:7-1.17 Application of the tax to licensees under the Casino Control Act; casino business consolidated return**

(a) Pursuant to N.J.S.A. 5:12-148(b), any business conducted by an individual, partnership, corporation, or any other entity, or any combination thereof, holding a license pursuant to the Casino Control Act shall, in addition to all other taxes imposed by that act, file a consolidated corporation business tax return pursuant to the Corporation Business Tax Act and pay the taxes indicated thereon.

(b) The consolidated return to be filed under the Casino Control Act is in addition to, and not in lieu of, any return due under the Corporation Business Tax Act. Provided, however, that where any corporation is a licensee under the Casino Control Act, it may exclude from the return due under the Corporation Business Tax any item of income, loss or deduction appearing on its consolidated return, but which would have been reported on its own separate return under the Corporation Business Tax Act for the year for which that item would otherwise have been reported. Provided further, that where any corporation is a partner in a licensee under the Casino Control Act, it may similarly exclude its share of distributable income or loss attributable to its partnership interest in the licensee which would

otherwise have been reported by it on its own separate return under the Corporation Business Tax Act.

1. In no event may the tax reduction arising out of any such exclusion exceed the portion of the tax paid with the consolidated return which is clearly attributable to the net effect of the existence of the amount which is duplicated in entire net income on the separate return filed under the Corporation Business Tax Act.

2. The return filed under the Corporation Business Tax Act shall reflect taxable income before net operating loss deduction and special deductions which is required to be reported to the United States Treasury Department for the purposes of computing its Federal income tax. Claims for exclusion for any duplication shall be separately identified in computing entire net income and be documented and reconciled on the return due under the Corporation Business Tax Act.

3. The amount of net worth reported on the separate return filed under the Corporation Business Tax Act by a corporate member of a consolidated group may be reduced by an amount also reported on the consolidated corporation business tax return of the casino business to the extent that such net worth would have been duplicated on both returns.

(c) The principles of consolidation are determined by regarding each casino hotel as though it were a single corporation reporting in its own right under the Corporation Business Tax Act. The rules governing consolidation under the Internal Revenue Code do not apply. The business conducted by each casino hotel shall give rise to an obligation to file a separate consolidated corporation business tax return based on all the business activities conducted with respect to that casino hotel. All licensees subject to common effective control, without respect to their form of organization or the form of license held, except for licenses issued to individuals in their capacity as employees, must join in filing the consolidated return. All transactions between or among them are to be eliminated in consolidation and shall not appear on the consolidated return. Accordingly, where the same licensee is a participant in the business conducted by more than one casino hotel, it must join in filing a consolidated return with each such business. A change in common effective control terminates the fiscal year for purposes of filing the consolidated return.

1. Common effective control is the power exercisable by any person or entity arising out of ownership or a contractual arrangement which joins more than one licensee and permits domination in the management of more than one licensee for the purpose of engaging in a single casino hotel business. Common effective control also occurs where a contractual arrangement permits more than one licensee to operate jointly a single casino hotel business. For example, where the same persons or entities simultaneously control voting stock, boards of directors or serve as or nominate managing partners or are

employed as managers or executives in more than one licensee which participates in the business activities conducted by the same casino hotel, or where a licensee executes a sale and leaseback of its property with another licensee and reserves by contract the option to recover its property, all such licensees shall join in filing the consolidated return. Notwithstanding an absence of common ownership, licensees joined in the operation of the business conducted by a casino hotel by management contract or partnership arrangement shall join in filing the return.

2. Consistent with N.J.A.C. 18:7-11.15(a), the separate return due under the Corporation Business Tax Act may not be consolidated.

3. Certain corporations that are members of affiliated or controlled groups may be required to file consolidated returns pursuant to N.J.S.A. 54:10A-10. See N.J.A.C. 18:7-5.11.

(d) Where a licensee is engaged in a business wholly unrelated to the casino hotel, or is engaged in the operation of more than one casino hotel, common costs must be apportioned in a reasonable manner consistently applied. The method of apportionment shall be disclosed on the consolidated return and may be adjusted by the Director where it shall appear to him to result in a distortion of tax liability.

(e) Where the licensees joining in filing the consolidated return do not have a common fiscal year, the return may be based upon the fiscal year of the casino operator as defined at N.J.A.C. 19:54-1.2 where all licensees join in making such an election. The other licensees may then include their respective financial condition and operations on the basis of their own fiscal years within which the consolidated year ends. Separate schedules reconciling timing differences in elimination of balance sheet items and items of entire net income attributable to the lack of a common fiscal year must be submitted as part of any such consolidated return. In the absence of this election, the return shall be based on a calendar year ending December 31. The reporting method, once adopted, is effective for all future returns unless the prior consent of the Director is obtained for a change.

(f) A legend shall be prominently displayed on the face of any return filed under this section identifying the return as a casino business consolidated return.

EXAMPLE

	Hotel Entity 1		Management Co. Entity 2		Eliminations		Consolidated		Duplications			
	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Entity 1		Entity 2	
Gaming Revenue	\$	\$1000	\$	\$0-	\$	\$	\$	\$1000	\$	\$1000	\$	\$0-
Other Income		200		0-				200		200		0-
Management Fees		0-		500	500			0-		0-		0-
Total Income		1200		500				1200		1200		0-
Management Fees	500		0-			500	0-		0-		0-	
Payroll Deductions	0-		200				200		0-		200	
Other Deductions	200		0-				200		200		0-	
Total Deductions	700		200				400		200		200	
Net Income	500		300				800					
Duplications									1000			(200)

Entity #1  
 Net Income ..... \$ 500  
 Adjustment for duplication ..... (1000)  
 Tax Base ..... \$ 0-

Entity #2  
 Net Income ..... \$ 300  
 Adjustment for duplication ..... ( 200)  
 Tax Base ..... \$ 300  
 Entity #2 may elect not to exclude duplications

New Rule, R.1985 d.453, effective September 3, 1985.  
 See: 17 N.J.R. 901(a), 17 N.J.R. 2145(a).  
 Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).  
 See: 35 N.J.R. 1573(a).  
 Added (c)3.  
 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.

18:7-1.18 Definition of S corporation

"S corporation" means a corporation included in the definition of an "S corporation" pursuant to section 1361 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1361.

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

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

Adopted concurrent new rule, 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.

### 18:7-1.19 Definition of New Jersey S corporation

"New Jersey S corporation" means a corporation that is an S corporation which has made a valid election pursuant to section 3 of P.L. 1993, c.173 (N.J.S.A. 54:10A-5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L. 1993, c.173 (N.J.S.A. 54:10A-5.22).

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

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

Adopted concurrent new rule, 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.

### 18:7-1.20 Definition of public utility

"Public utility" means "public utility" as defined in N.J.S.A. 48:2-13.

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

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

Adopted concurrent new rule, 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.

### 18:7-1.21 Definition of qualified investment partnership

(a) "Qualified investment partnership" means a partnership under this Act that has more than 10 members or partners with no member or partner owning more than a 50 percent interest in the entity and that derives at least 90 percent of its gross income from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stocks or securities or foreign currencies or commodities or other similar income (including, but not limited to, gains from swaps, options, futures or forward contracts) derived with respect to its business of investing or trading in those stocks, securities, currencies or commodities, but "investment partnership" shall not include a "dealer in securities" within the meaning of Section 1236 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1236.

1. If a partnership would otherwise qualify as a "qualified investment partnership," except that it has 10 or fewer partners, such partnership is deemed a "qualified investment partnership," if:

- i. It is managed by an independent third party for a fee;
- ii. There is no direct or indirect relationship between the manager and any of the partners; and
- iii. There is no direct or indirect affiliation between or among the partners.

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

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

Adopted concurrent new rule, 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).

Designated paragraph as (a), added 1.

### 18:7-1.22 Definition of savings institution

"Savings institution" means a State or Federally chartered building and loan association, savings and loan association, or savings bank.

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

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

Adopted concurrent new rule, 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.

### 18:7-1.23 Definition of partnership

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

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

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

Adopted concurrent new rule, 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.

## SUBCHAPTER 2. NATURE OF TAX

### 18:7-2.1 Nature of tax; in general

(a) The Act imposes a franchise tax on every domestic corporation not otherwise exempt, and upon every foreign corporation not otherwise exempt, falling within any of the taxable categories enumerated in N.J.A.C. 18:7-1.6.

(b) All corporations incorporated in New Jersey and all foreign corporations acquiring a taxable status in New Jersey immediately become subject to the tax.

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 those domestic and foreign corporations deemed to have acquired a taxable status.

### 18:7-2.2 Calendar and fiscal years; definitions

(a) The term "calendar year" means an accounting period ending on December 31.

(b) The term "fiscal year" means an accounting period ending on the last day of any month other than December.

**Statutory References**

See N.J.S.A. 54:10A-4(i) as to definition of "fiscal year."

**18:7-2.3 Federal calendar or fiscal year for reporting**

(a) In general, the calendar or fiscal year on the basis of which the taxpayer is required to report for Federal income tax purposes is the calendar or fiscal year on the basis of which it is required to report for purposes of the Act.

(b) Reports based on a 52-53 weeks account year will be accepted where that method of reporting is permissible and used for Federal tax purposes. If that method is used, a fiscal year which begins within seven days from the beginning of any calendar month shall be deemed to have begun on the first day of that calendar month, and any fiscal year which ends within seven days from the end of any calendar month shall be deemed to have ended on the last day of that calendar month.

(c) Subsection (b) above shall be used to determine the applicability of the Business Tax Reform Act, P.L. 2002, c.40 to a taxpayer having a 52-53 week year beginning on or about January 1, 2002.

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.

**18:7-2.4 Proof of Federal accounting period**

Every domestic and every foreign corporation which acquires a taxable status in New Jersey shall submit proof to the Division of Taxation, within 90 days of the date of incorporation or the date of acquisition of such taxable status, of the accounting period established by it 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).

**18:7-2.5 Proof of accounting period other than Federal basis**

A subject corporation which is not required to file a Federal income tax return shall also submit proof to the Division of Taxation, within 90 days of the date of incorporation or the date of acquisition of a taxable status, of the accounting period on the basis of which to report for purposes of the Act.

Amended by R.1979 d.45, effective February 6, 1979.

See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

**18:7-2.6 Subject corporations must file on basis of calendar year period unless otherwise permitted**

A subject corporation which is not required to file a Federal income tax return must file its Corporation Business Tax Return on the basis of a calendar year accounting period unless permission to employ a fiscal year basis has been granted in writing by the Division of Taxation upon application having been made.

Amended by R.1979 d.45, effective February 6, 1979.

See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

**18:7-2.7 Effect of failure by a corporation to establish accounting period**

A corporation which has not established an accounting period for Federal income tax purposes shall be deemed to be operating on the basis of a calendar year accounting period until proof has been submitted to the Division of Taxation of the establishment of a fiscal year accounting period 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).

**18:7-2.8 Effect of failure by a corporation to submit proof of an established fiscal year accounting period**

Every corporation which has not submitted satisfactory proof to the Division of Taxation that it is operating on a basis other than a calendar year accounting period for Federal income tax purposes, shall be deemed to be operating on the basis of a calendar year accounting period.

Amended by R.1979 d.45, effective February 6, 1979.

See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

**18:7-2.9 Effect of proof of established fiscal year accounting period submitted late**

Upon due proof of the establishment of a fiscal accounting period and the filing of a proper return covering such period accompanied by payment of the tax liability, a corporation shall be credited with any payment made in connection with a return previously filed on the basis of a calendar year period by reason of this regulation.

**18:7-2.10 Period of application of tax**

The tax is imposed for each calendar or fiscal period of the taxpayer, or any part thereof, during which the taxpayer had a taxable status as described in N.J.A.C. 18:7-1.6. See N.J.A.C. 18:7-1.6, (Taxable status; how created.)

**Statutory References**

See N.J.S.A. 54:10-15 as to annual payment of franchise tax for all or part of a taxpayer's annual or fiscal year accounting period.

## Case Notes

Rule provides that corporation business tax be imposed upon each calendar year or fiscal period of the taxpayer; business held subject to tax despite its winding down because it remained an enterprise employing money capital coming into competition with the business of national banks and still generating interest income. I.H.E. Financial Corp. v. Taxation Div. Director, 3 N.J. Tax 375 (Tax Ct. 1981).

**18:7-2.11 Component factors of tax base**

The tax for the period or partial period prescribed in N.J.A.C. 18:7-2.10 is measured by taxpayer's allocable entire net income. The tax liability may also be the Alternative

Minimum Assessment amount calculated pursuant to N.J.S.A. 54:10A-5a and N.J.A.C. 18:7-18.

As amended, R.1970 d.121, effective October 5, 1970.

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

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

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

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

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

Added the second sentence.

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.