

CHAPTER 7
CORPORATION BUSINESS TAX ACT

Authority

N.J.S.A. 54:10A-27.

Source and Effective Date

R.1994 d.186, effective March 14, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Executive Order No. 66(1978) Expiration Date

Chapter 7, Corporation Business Tax Act, expires on March 14, 1999.

Chapter Historical Note

Chapter 7, Corporation Business Tax Act, was filed and became effective prior to September 1, 1969. Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1984 d.95, effective March 19, 1984. See: 16 N.J.R. 229(a), 16 N.J.R. 746(c). Subchapter 15, Urban Enterprise Zones Act, was originally filed and adopted as R.1984 d.496, effective November 5, 1984. See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a). Subchapter 16, International Banking Facilities, was adopted as R.1984 d.453, effective October 15, 1984. See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a). Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1989 d.196, effective March 14, 1989. See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1994 d.186. See: Source and Effective Date. As a part R.1994 d.186, Subchapter 6, Valuation, was repealed effective April 18, 1994. See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b). See, also, section annotations.

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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).

Example 2

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the Tax Act because it maintains an office within the State.

Statutory References

N.J.S.A. 54:10A-2.

Case Notes

Foreign corporation's contacts established minimal nexus with New Jersey to allow taxation without violating commerce clause. *Mark Andy, Inc. v. Taxation Div. Director*, 8 N.J. Tax 593 (1986).

18:7-1.12 Exempt corporations

(a) Corporations exempted from taxation under the Act include:

1. Telegraph, telephone, cable or telecommunications companies subject to tax under N.J.S.A. 54:30A-16 et seq. (including, without limitation, N.J.S.A. 54:30A-18.6); or any statute or law imposing a similar tax or taxes;
2. Railroad companies subject to tax under N.J.S.A. 54:29A-1, et seq.;
3. Energy, gas and electric companies subject to tax under N.J.S.A. 54:30A-49, et seq.; or any statute or law imposing a similar tax or taxes;
4. Corporations subject to a tax upon the basis of gross receipts, or insurance premiums collected;

5. Railroad, canal corporations, savings banks, agricultural cooperative associations incorporated or domesticated under N.J.S.A. 4:13-1 et seq. and exempt under Section 521 of the Federal Internal Revenue Code (26 U.S.C. 521), or building and loan or savings and loan associations;

6. Cemetery corporations not conducted for pecuniary profit of any private shareholder or individual;

7. Nonprofit corporations, associations or organizations not conducted for pecuniary profit of any private shareholder or individual, and established, organized or chartered without capital stock under the provisions of Titles 15, 15A, 16 or 17 of the Revised Statutes; or a special charter; or any similar general or special law of this or any other state (see N.J.A.C. 18:1-1.4(a) for exemption opinion procedures);

8. Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under Federal law by tenants, but:

i. The exemption under this subsection shall continue only as long as:

(1) The corporations remain subject to rules and regulations of the Federal Housing Authority; and

(2) The Commissioner of the Federal Housing Authority holds membership certificates in the corporations; and

(3) The corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat. 1246) as amended by subsequent Acts of Congress. (See 12 U.S.C.A. § 1701, et seq.)

ii. In order to be exempted under this subsection, corporations shall:

(1) Annually file a report on or before August 15 with the Director, in the form required by the Director, to claim exemption; and

(2) Shall pay a filing fee of \$25.00.

9. A corporation not for profit organized under any law of this State where the primary purpose of it is to provide for its shareholders or members housing in a retirement community as defined under the "Retirement Community Full Disclosure Act," N.J.S.A. 45:22A-1, et seq.;

10. Corporations which are licensed as insurance companies under the laws of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Insurance pursuant to section 11 of P.L. 1960, c.32 (N.J.S.A. 17:22-6.45) to insure risks within this State; and

11. Corporations exempt from the corporation business tax by virtue of the provisions of another New Jersey statute.

(b) See N.J.A.C. 18:1-1.4 for the procedure to obtain exemption opinion letters.

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-3 as to those corporations declared exempt from the annual New Jersey franchise tax.

Case Notes

Dental service corporation, though entitled to exemption from sales tax, was not tax exempt until it actually applied and was approved for that status; corporation not entitled to refund of sales tax paid prior to status approval. *New Jersey Dental Service Plan, Inc. v. Baldwin*, 7 N.J.Tax 421 (Tax Ct.1985), affirmed per curiam 8 N.J.Tax 335 (App. Div.1986).

18:7-1.13 Regulated investment company; definition

"Regulated investment company" means any corporation which for a period covered by its return is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended. (See 15 U.S.C.A. § 80a-1 et seq.)

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-4(g) as to official definition of "regulated investment company".

18:7-1.14 (Reserved)

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

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

18:7-1.15 Investment company; definition

(a) "Investment company" means any corporation:

1. Whose business for the period covered by its return consisted to the extent of at least 90 percent of "qualified investment activities" which are: investing or reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities or the holding thereof after investing or reinvesting therein for its own account. As used in this rule, "qualified investment assets" are stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities and cash on deposit;

2. Which had for the period covered by the return 90 percent or more of its average gross assets in New Jersey, at cost, invested in "qualified investment assets" referred to in (a)1 above;

3. Which meets the numerical tests in (f) below;

4. Which is not a banking corporation as defined by the Act;
5. Which is not a financial business corporation as defined by the act; and
6. Which is not a merchant or dealer in stocks, bonds, or other securities, and which is regularly engaged in buying and selling such securities to customers.

(b) "Qualified investment assets" are measured by the taxpayer's assets as reported for book purposes at cost on a separate legal entity basis for balance sheet purposes. "Qualified investment activities" are measured by gross receipts and expenses as reported for Federal income tax purposes, and by adding thereto, Federal, state, municipal, and other obligations included in determining New Jersey entire net income, but not otherwise included in Federal taxable income. "Qualified investment activities" and "qualified investment assets" do not include the following specific assets or activities. The receipts, direct and indirect expenses and assets connected with the following will not be included in the numerator of any test:

1. The making and/or negotiating of loans. These activities are generally considered as either banking and/or financial business activities;
2. The renting or leasing of real or tangible personal property. These activities are generally considered financial business activities or other than investment activities;
3. The investment in general partnerships since the status of a general partner is not considered as consistent with a qualified investment activity and investments in general partnerships are not statutorily enumerated assets;
4. The direct day-to-day management of operations of affiliated corporations or the actual providing of services, directly or as an intermediary, for the benefit of affiliated corporations;
5. The buying and/or selling of stocks, bonds, notes, and other securities for the corporation's customers;
6. The buying and/or selling of real or tangible personal property whether it is classified as inventory, as operating assets, or as capital assets;
7. The direct investment in collectibles, including but not limited to stamps, pottery, cars, gold coins; or
8. The direct investment in trademarks or similar assets.

(c) "Receipts" include, but are not limited to, the gross payments received from others (affiliated or not) regardless of whether the receipt is accounted for as an item of income or reduction in expense:

1. For services performed;
2. For the sale or transfer of assets;

3. For income recognized from the liquidation of liabilities; and

4. From the investment or reinvestment of capital in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities, includible in computing entire net income.

(d) "Reimbursements" received are payments having no element of profit in a transaction or element of covering indirect costs, and are received from others for expenses made on their behalf and are the true expenses of the entity making the reimbursement; hence, neither the expense nor its recovery should appear on the taxpayer's income statement for Federal purposes. Where taxpayer's accounting method displays such items on its income statement, such items will be removed from any calculations required under the regulations for the taxpayer receiving the reimbursement and included on the reimbursing company's return.

(e) A corporation electing to file as an investment company shall make its election on a timely filed original return or on a timely filed amended return, and shall substantiate its claim in accordance with the tests enumerated in this rule. Where the taxpayer does not clearly document its claim to investment company status through attached riders, the claim will be denied. An election made on an amended return shall be filed in accordance with the periods shown in N.J.A.C. 18:7-13.8(a) to be eligible for any refund claimed. An election to file as an investment company, once made, may only be revoked by the taxpayer within four years of the filing of the original return. The election to file as an investment company is a taxpayer election and may not be initiated by the Division of Taxation or granted by the Division outside the time frame prescribed.

(f) In order for a corporation to qualify as an investment company, it must meet the three-part business test and the asset test:

1. Business test (three parts):

i. (Income adjusted): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions as reported for Federal income tax purposes, from cash and/or investment assets. Total income before deductions as reported for Federal income tax purposes must be adjusted as follows:

(1) Add gross receipts or gross sales adjusted for gross profit (loss) reported for Federal income taxes;

(2) Add gross sales price from the disposition of assets adjusted for capital gain or loss or net gain or loss reported for Federal income taxes;