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# Tab 1



# New Jersey Refund Opportunities: Corporation Business Tax

Reed Smith State Tax Webinar  
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# Agenda

- Extension of refund deadline
- Refund opportunities for 2015-2018
- Combined reporting effective in 2019

# Limitations Period

- Refunds:
  - ✓ Statute of limitations extended for 2015-forward
  - ✓ Deadline to file a claim for 2015 and 2016: 4/1/22
- Assessments:
  - ✓ Generally, open back to 2015 (unless waiver)
  - ✓ Deadline to assess does not close on 4/1/22 because State of Emergency has not ended
- Will refund period be extended?
  - ✓ Statute: refund and assessment periods equivalent
  - ✓ Taxpayer Bill of Rights: coterminous refund and assessment limitations

# **Separate Company Years: 2015-2018**



# Sales Fraction

- Tangible personal property
  - ✓ Taxpayer choice for dock sales
  - ✓ Ultimate destination for consumer products?
  - ✓ Wholesale electricity transactions
- Asset management services—apply statute not regulation and source to customer location
- Historic (pre-2019) rule for services:
  - ✓ Receipts sourced to “performance” location or “where earned” but de facto market sourcing if service performed on intangible object
  - ✓ 25:50:25 rule mitigates all-or-nothing approach

# Alternative Apportionment

- Transition to single factor, market sourcing
  - ✓ Under historic three-factor formula, courts routinely mitigated impact of 100% or 0% sales factor
  - ✓ Property and payroll fractions relevant in determining propriety of sales fraction
  - ✓ If receipts earned from out-of-state operations, distortive to not reflect those activities in factor
- Do royalties produce significant % of income?
  - ✓ Distortion from sourcing high-margin royalties using low-margin sales of goods or services
  - ✓ Alleviate distortion with separate-accounting or by “grossing up” royalties

# Addback of Expenses to Affiliates

- Interest expense
  - ✓ Payee files separate-company return anywhere?
  - ✓ “Reasonableness exception”
- Royalty expense—*Lorillard*
  - ✓ Taxpayer claimed exception because affiliated IHC paid CBT (albeit at lower effective tax rate)
  - ✓ Tax Court rules for taxpayer but Appeal Court reverses, holding that Division’s payment-of-tax requirement entitled to deference
  - ✓ Is addback scheme constitutional?
- Patents, know-how, and software—per se addback exception based on conduit rule

# Net Operating Losses

- Dividend “ordering rule”
  - ✓ NOLs carryovers absorbed by dividends
  - ✓ But if dividends non-unitary, exclude from tax base and save dividends for operating income
- Pre-2009 NOLs:
  - ✓ General rule is 7-year carryover
  - ✓ But if you conduct research anywhere, extend carryover to 15 (or even 20) years
- *ROP Aviation*—can you adjust NOL carryover if loss year closed for refund?

# Tax Base Issues

- Domestic Production Activities Deduction:
  - ✓ Division's audit policy: disallow the deduction
  - ✓ Don't add back DPAD if you engage in software development or food manufacturing
- *MCI* and federal consolidated return regulations
  - ✓ Applicable for CBT purposes even during separate-company reporting years
  - ✓ Reduce gain on sale of subsidiary?
- Foreign corporations:
  - ✓ Under *Infosys*, not taxable on foreign-source and treaty-protected income
  - ✓ Position still viable after combined reporting

# Partnership Nexus

- Nexus challenge?
  - ✓ Effect of case law
  - ✓ Division's litigation strategy
- Statutory change
  - ✓ Bright-line test
  - ✓ Statutory amendment changing policy or clarification of existing policy?

# **Combined Reporting Years: 2019 and Forward**

# Combined Reporting

- Effective for 2019 privilege period
  - ✓ Combined tax base for unitary members with common ownership
  - ✓ Each taxable member computes sales fraction for 2019; one sales fraction for 2020 forward
  - ✓ Bright-line unitary business test
- Foreign members
  - ✓ “Water’s edge” and “affiliated group” broadly defined
  - ✓ Use this to your advantage—include low-margin foreign affiliates under “selective worldwide election”



# Investment Companies

- Investment company election:
  - ✓ 90% of assets, receipts, and income from passive interest in other corporations or limited partnerships
  - ✓ Taxed on 40% of separate company taxable income
- Discriminates against Interstate Commerce because only NJ companies benefit
  - ✓ In-state taxpayers reduce tax from 100% to 40%
  - ✓ Potential remedy: out-of-state taxpayers also get to reduce tax by 60%
- Election still available even after combined reporting

## P.L. 86-272

- Division's guidance and draft regulations:
  - ✓ Not immune from CBT if *any* member of combined group exceeds solicitation
  - ✓ Intercompany sales can blow-up protection, even if eliminated as part of combination
- Basis for Division's position:
  - ✓ P.L. 86-272 protected member considered "taxable member" because subject to \$2,000 minimum tax
  - ✓ Beginning in 2020, statutory amendment treats combined group as "single taxpayer"
- Regardless of plain language, Division's position violates U.S. Constitution

# Net Operating Losses

- Switch to post-apportioned NOL deduction
  - ✓ Conversion of pre-2019 NOLs using 2018 apportionment factor
  - ✓ Consider alternative apportionment if 2018 factor lower than factor during loss year
- Sharing NOLs among group members
  - ✓ Post-combination losses freely sharable
  - ✓ Pre-combination losses trapped absent merger
- Dividend-ordering rule: NOLs absorbed only if payor is outside the group

# New Jersey Surtax

- Additional 2.5% tax imposed for 2018-2023
- Broad exemption for “public utilities”
  - ✓ Interest in railroad, bus, pipeline, gas, electricity distribution, water, oil, sewer, solid waste, or telephone operations?
  - ✓ Can take position that exempt from surtax—even if not a regulated utility

# Market Sourcing

- Market sourcing for services effective 2019
  - ✓ Where is “benefit received”?
  - ✓ >1 state, then use relative value of benefit received in New Jersey or “reasonable approximation”
- If customer has no regular-place-of-business in New Jersey, no receipts included in numerator
- Taxpayer choice: source services using actual value of benefit or “reasonable approximation”
- Creativity encouraged—3<sup>rd</sup> party data sources allowed for showing reasonable approximation

# Additional Materials and Information



Download [Here](#)



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## Other Links

- Reed Smith NJ Tax Practice Page: [www.reedsmith.com/njtax](http://www.reedsmith.com/njtax)
- YouTube Videos: <https://www.youtube.com/user/ReedSmithLLP>
- CPE/CLE Programs: <https://oncourse.reedsmith.com>



# Tab 2





**NEW JERSEY STATUTES ANNOTATED**  
**CHAPTER 10A. CORPORATION BUSINESS TAX ACT (1945)**  
**Current with laws through L.2020, c. 118 (Dec. 1, 2020)**  
**(Includes P.L.2018, c.48 and P.L.2018, c.131)**

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**N.J.S.A. 54:10A-1**

54:10A-1. Short title; Corporation Business Tax Act (1945)

This act shall be known as the Corporation Business Tax Act (1945).

Credits

L.1945, c. 162, p. 563, § 1.

N. J. S. A. 54:10A-1, NJ ST 54:10A-1

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

54:10A-2. Franchise tax; annual payment in lieu of taxes upon intangible personal property; exclusion from payment

Every domestic or foreign corporation which is not hereinafter exempted shall pay an annual franchise tax for each year, as hereinafter provided, for the privilege of having or exercising its corporate franchise in this State, or for the privilege of deriving receipts from sources within this State, or for the privilege of engaging in contacts within this State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office, in this State. And such franchise tax shall be in lieu of all other State, county or local taxation upon or measured by intangible personal property used in business by corporations liable to taxation under this act.

A foreign corporation shall not be deemed to be deriving receipts, engaging in contacts, doing business, employing or owning capital or property in the State, for the purposes of this act, by reason of (1) the maintenance of cash balances with banks or trust companies in this State, or (2) the ownership of shares of stock or securities in this State if such shares or securities are pledged as collateral security, or deposited with one or more banks or trust companies or brokers who are members of a recognized security exchange, in safekeeping or custody accounts, or (3) the taking of any action by any such bank or trust company or broker,

which is incidental to the rendering of safekeeping or custodian service to such corporation, or (4) notwithstanding any provisions of this section to the contrary, the operation of a motor vehicle or motorbus operated over public highways or public places in this State for the carriage of passengers in transit from a location outside this State to a destination in this State and for the carriage of those passengers in transit from a location in this State to a location outside this State.

A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Credits

L.1945, c. 162, p. 563, § 2. Amended by L.1973, c. 95, § 1, eff. April 25, 1973; L.2002, c. 40, § 1, eff. July 2, 2002; L.2013, c. 98, § 1, eff. Aug. 7, 2013.

N. J. S. A. 54:10A-2, NJ ST 54:10A-2

**N.J.S.A. 54:10A-3**

54:10A-3. Exempt corporations

The following corporations shall be exempt from the tax imposed by P.L.1945, c. 162 (C.54:10A-1 et seq.):

- (a) Corporations subject to a tax assessed upon the basis of gross receipts, other than the alternative minimum assessment determined pursuant to section 7 of P.L.2002, c. 40 (C.54:10A-5a), and corporations subject to a tax assessed upon the basis of insurance premiums collected;
- (b) Corporations which operate regular route autobus service within this State under operating authority conferred pursuant to R.S.48:4-3, provided, however, that the corporations shall not be exempt from the tax on net income imposed by section 5(c) of P.L.1945, c. 162 (C.54:10A-5);
- (c) Railroad, canal corporations, production credit associations organized under the Farm Credit Act of 1933,<sup>1</sup> or agricultural cooperative associations incorporated or domesticated under or subject to chapter 13 of Title 4 of the Revised Statutes<sup>2</sup> and exempt under Subtitle A, Chapter 1F, Part IV, Section 521 of the federal Internal Revenue Code (26 U.S.C. s.521);

- (d) Cemetery corporations not conducted for pecuniary profit or any private shareholder or individual;
- (e) Nonprofit corporations, associations or organizations established, organized or chartered, without capital stock, under the provisions of Title 15, 16 or 17 of the Revised Statutes, Title 15A of the New Jersey Statutes or under a special charter or under any similar general or special law of this or any other state, and not conducted for pecuniary profit of any private shareholders or individual;
- (f) Sewerage and water corporations subject to a tax under the provisions of P.L.1940, c. 5 (C.54:30A-49 et seq.) or any statute or law imposing a similar tax or taxes;
- (g) 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, provided, however, that the exemption hereunder shall continue only so long as the corporations remain subject to rules and regulations of the Federal Housing Authority and the Commissioner of the Federal Housing Authority holds membership certificates in the corporations and 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.<sup>3</sup> In order to be exempted under this subsection, corporations shall annually file a report on or before August 15 with the commissioner, in the form required by the commissioner, to claim such exemption, and shall pay a filing fee of \$25;
- (h) Corporations not for profit organized under any law of this State where the primary purpose thereof is to provide for its shareholders or members housing in a retirement community as the same is defined under the provisions of the “Retirement Community Full Disclosure Act,” P.L.1969, c. 215 (C.45:22A-1 et seq.);
- (i) 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 Banking and Insurance pursuant to section 11 of P.L.1960, c. 32 (C.17:22-6.45) to insure risks within this State;
- (j)(1) Municipal electric corporations that were in existence as of January 1, 1995 provided that all of their income is from sales, exchanges, or deliveries of electricity derived from customers using electricity within their municipal boundaries; and (2) Municipal electric utilities that were in existence as of January 1, 1995 provided that all of their income is

from sales, exchanges, or deliveries of electricity derived from customers using electricity within their franchise area existing as of January 1, 1995. If a municipal electric corporation derives income from sales, exchanges, or deliveries of electricity from customers using the electricity outside its municipal boundaries, the municipal electric corporation shall be subject to the tax imposed by P.L.1945, c. 162 (C.54:10A-1 et seq.) on all income. If a municipal electric utility derives income from sales, exchanges or deliveries of electricity from customers using electricity outside its franchise area existing as of January 1, 1995, the municipal electric utility shall be subject to the tax imposed by P.L.1945, c. 162 (C.54:10A-1 et seq.) on all income; and

(k) A rural electric cooperative which is exclusively owned and controlled by the members it serves and is subject to the provisions of P.L.2017, c. 297 (C.48:24-1 et al.), provided that all of the cooperative’s income from the sale and distribution of electricity is derived from sales, exchanges, or deliveries of electricity to members using electricity within its franchise area. If a rural electric cooperative derives income from sales, exchanges, or deliveries of electricity from customers using electricity outside its franchise area, that rural electric cooperative shall be subject to the tax imposed by P.L.1945, c. 162 (C.54:10A-1 et seq.) on income derived from those sales, exchanges, or deliveries.

#### Credits

L.1945, c. 162, p. 564, § 3. Amended by L.1949, c. 236, p. 739, § 1; L.1951, c. 130, p. 563, § 1; L.1960, c. 174, p. 716, § 1; L.1963, c. 59, § 1; L.1967, c. 48, § 1, eff. May 15, 1967; L.1972, c. 211, § 4; L.1973, c. 275, § 1, eff. Nov. 29, 1973; L.1975, c. 170, § 1, eff. Aug. 4, 1975; L.1991, c. 184, § 22, eff. Jan. 1, 1992; L.1993, c. 338, § 1; L.1997, c. 162, § 1, eff. Jan. 1, 1998; L.1998, c. 114, § 1, eff. Oct. 28, 1998; L.2002, c. 40, § 2, eff. July 2, 2002; L.2017, c. 297, § 20, eff. Jan. 16, 2018.

#### Footnotes

<sup>1</sup>

See 12 U.S.C.A. § 639 note.

N.J.S.A. § 4:13-1 et seq.

12 U.S.C.A. § 1701 et seq.

N. J. S. A. 54:10A-3, NJ ST 54:10A-3

**N.J.S.A. 54:10A-4**

54:10A-4. Definitions

For the purposes of this act, unless the context requires a different meaning:

(a) “Commissioner” or “director” shall mean the Director of the Division of Taxation of the State Department of the Treasury.

(b) “Allocation factor” shall mean the proportionate part of a taxpayer’s net worth or entire net income used to determine a measure of its tax under this act.

(c) “Corporation” shall mean any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument, any other entity classified as a corporation for federal income tax purposes, and any state or federally chartered building and loan association or savings and loan association.

(d) “Net worth” shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2) (F) of subsection (k) of this section. The foregoing aggregate of values shall

be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from the net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

In the case of banking corporations which have international banking facilities as defined in subsection (n), the foregoing aggregate of values shall also be reduced by retained earnings of the international banking facility. Retained earnings means the earnings accumulated over the life of such facility and shall not include the distributive share of dividends paid and federal income taxes paid or payable during the tax year.

If in the opinion of the ~~commissioner~~director, the corporation’s books do not disclose fair valuations the ~~commissioner~~director may make a reasonable determination of the net worth which, in his opinion, would reflect the fair value of the assets, exclusive of subsidiary investments as defined aforesaid, carried on the books of the corporation, in accordance with sound accounting principles, and such determination shall be used as net worth for the purpose of this act.

(e) (Deleted by amendment, P.L.1998, c. 114.)

(f) “Investment company” shall mean any corporation whose business during the period covered by its report consisted, to the extent of at least 90% thereof of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities for its own account, but this shall not include any corporation which: (1) is a merchant or a dealer of stocks, bonds and other securities, regularly engaged in buying the same and selling the same to customers; or (2) had less than 90% of its average gross assets in New Jersey, at cost, invested



in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities or consisting of cash on deposit during the period covered by its report; or (3) is a banking corporation, a savings institution, or a financial business corporation as defined in the Corporation Business Tax Act.

(g) "Regulated investment company" shall mean any corporation which for a period covered by its report, is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended.

(h) "Taxpayer" shall mean any corporation, [any combined group filing a mandatory or elective New Jersey combined return](#), and any partnership required, or consenting, to report or to pay taxes, interest or penalties under this act. "Taxpayer" shall not include a partnership that is listed on a United States national stock exchange.

(i) "Fiscal year" shall mean an accounting period ending on any day other than the last day of December on the basis of which the taxpayer is required to report for federal income tax purposes.

(j) Except as herein provided, "privilege period" shall mean the calendar or fiscal accounting period for which a tax is payable under this act.

(k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets.

For the purpose of this act, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report, or, if the taxpayer is classified as a partnership for federal tax purposes, would otherwise be required to report, to the United States Treasury Department for the purpose of computing its federal income tax, provided however, that in the determination of such entire net income,

(1) Entire net income shall exclude for the periods set forth in paragraph (2)(F)(i) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984, which is included in a taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of paragraph (8) of that section.

(2) Entire net income shall be determined without the exclusion,

deduction or credit of:

(A) The amount of any ~~specific~~ exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations.

(B) Any part of any income from dividends or interest on any kind of stock, securities or indebtedness, except as provided in paragraph (5) of subsection (k) of this section.

(C) Taxes paid or accrued to the United States, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia, or to any foreign country, state, province, territory or subdivision thereof, on or measured by profits or income, or business presence or business activity, or the tax imposed by this act, or any tax paid or accrued with respect to subsidiary dividends excluded from entire net income as provided in paragraph (5) of subsection (k) of this section.

(D) (Deleted by amendment, P.L.1985, c. 143.)

(E) (Deleted by amendment, P.L.1995, c. 418.)

(F) (i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on and after the effective date of P.L.1993, c. 172, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in effect after December 31, 1980, exceeds the amount of depreciation determined in accordance with the Internal Revenue Code provisions in effect prior to January 1, 1981, but only with respect to a taxpayer's accounting period ending after December 31, 1981; provided, however, that where a taxpayer's accounting period begins in 1981 and ends in 1982, no modification shall be required with respect to this paragraph (F) for the report filed for such period with respect to property placed in service during that part of the accounting period which occurs in 1981. The provisions of this subparagraph shall not apply to assets placed in service prior to January 1, 1998 of a gas, gas and electric, and electric public utility that was subject to the provisions of P.L.1940, c. 5 (C.54:30A-49 et seq.) prior to 1998.

(ii) For the periods set forth in subparagraph (F)(i) of paragraph (2) of this subsection, any amount, except with respect to qualified mass commuting vehicles as described in section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately prior to January 1, 1984,



which the taxpayer claimed as a deduction in computing federal income tax pursuant to a qualified lease agreement under paragraph (8) of that section.

The director shall promulgate rules and regulations necessary to carry out the provisions of this section, which rules shall provide, among others, the manner in which the remaining life of property shall be reported.

(G) (i) The amount of any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

(ii) The amount of treble damages paid to the Department of Environmental Protection pursuant to subsection a. of section 7 of P.L.1976, c. 141 (C.58:10-23.11f), for costs incurred by the department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the department to remove, or arrange for the removal of, the discharge.

(H) The amount of any sales and use tax paid by a utility vendor pursuant to section 71 of P.L.1997, c. 162.

(I) Interest paid, accrued or incurred for the privilege period to a related member, as defined in section 5 of P.L.2002, c. 40 (C.54:10A-4.4), except that a deduction shall be permitted to the extent that the taxpayer establishes by clear and convincing evidence, as determined by the director, that: (i) a principal purpose of the transaction giving rise to the payment of the interest was not to avoid taxes otherwise due under Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to arm's length contracts at an arm's length rate of interest, and (iii)(aa) the related member was subject to a tax on

its net income or receipts in this State or another state or possession of the United States or in a foreign nation, (bb) a measure of the tax includes the interest received from the related member, and (cc) the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

A deduction shall also be permitted if the taxpayer establishes by clear and convincing evidence, as determined by the director, that the disallowance of a deduction is unreasonable, or the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment under section 8 of P.L.1945, c. 162 (C.54:10A-8); nothing in this subsection shall be construed to limit or negate the director's authority to otherwise enter into agreements and compromises otherwise allowed by law.

A deduction shall also be permitted to the extent that the taxpayer establishes by a preponderance of the evidence, as determined by the director, that the interest is directly or indirectly paid, accrued or incurred to (i) a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States and the related member (aa) was subject to tax in the foreign nation on a tax base that included the payment paid, accrued, or incurred; and (bb) under which the related member's income received from the transaction was taxed at an effective tax rate equal to or greater than a rate of three percentage points less than the rate of tax applied to taxable interest by the State of New Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), provided however that the taxpayer shall disclose on its return for the privilege period the name of the related member, the amount of the interest, the relevant foreign nation, and such other information as the director may prescribe or (ii) to an independent lender and the taxpayer guarantees the debt on which the interest is required. The adjustments required by this subparagraph shall not apply to transactions between related members included in a combined group reported on a New Jersey combined return.

(J) (i) Amounts deducted for federal tax purposes pursuant to section 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199, except that this exclusion shall not apply to amounts deducted pursuant to that section that are exclusively based upon domestic production gross receipts of the taxpayer which are derived only from any lease, rental, license, sale, exchange, or other disposition of qualifying production

property which the taxpayer demonstrates to the satisfaction of the director was manufactured or produced by the taxpayer in whole or in significant part within the United States but not qualified production property that was grown or extracted by the taxpayer. “Manufactured or produced” as used in this paragraph shall be limited to performance of an operation or series of operations the object of which is to place items of tangible personal property in a form, composition, or character different from that in which they were acquired. The change in form, composition, or character shall be a substantial change, and result in a transformation of property into a different or substantially more usable product.

(ii) For privilege periods beginning after December 31, 2017, notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) or any other law to the contrary, for the purposes of determining the amount of income pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be taken as a deduction pursuant to section 199A of the Internal Revenue Code (26 U.S.C. s.199A).

(K) For privilege periods beginning after December 31, 2017, the interest deduction limitation in subsection (j) of section 163 of the Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-rata basis to interest paid to both related and unrelated parties, regardless of whether the related parties are subject to the add-back provision of either subparagraph (I) of paragraph (2) of this subsection or in section 5 of P.L.2002, c.40 (C.54:10A-4.4).

(3) The ~~commissioner~~director may, whenever necessary to properly reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

(4) There shall be allowed as a deduction from entire net income of a banking corporation, to the extent not deductible in determining federal taxable income, the eligible net income of an international banking facility determined as follows:

(A) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses;

(B) Eligible gross income shall be the gross income derived by an international banking facility, which shall include, but not be limited to, gross income derived from:

(i) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

(ii) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities;

(iii) Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph; or

(iv) Such other activities as an international banking facility may, from time to time, be authorized to engage in;

(C) Applicable expenses shall be any expense or other deductions attributable, directly or indirectly, to the eligible gross income described in subparagraph (B) of this paragraph.

(5) (A) (i) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section ~~and~~for privilege periods beginning on or before December 31, 2016.

(ii) For privilege periods beginning after December 31, 2016 and before January 1, 2019, entire net income shall exclude 95% of dividends which were included in computing such taxable income for federal income tax purposes, paid or deemed paid, to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section. For the purposes of calculating the tax liability owed for the paid or deemed paid dividends included in entire net income by this subsubparagraph (ii), the taxpayer shall use either their three-year average allocation factor for the taxpayer's 2014 through 2016 tax years reported on the taxpayer's tax returns or 3.5 percent, whichever is lower.

(iii) For privilege periods beginning on and after January 1, 2019, entire net income shall exclude 95% of dividends which were included in computing such taxable income for federal income tax purposes, paid or deemed paid to the taxpayer by one or more subsidiaries owned by the

taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section.

(B) Entire net income shall exclude 50% of dividends which were included in computing such taxable income for federal income tax purposes, paid or deemed paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of 50% or more ownership of investment, such ownership of investment calculated in the same manner as the 80% or more of ownership of investment is calculated as described in subsection (d) of this section.

(C) To the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income based on the subsidiary's allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). This subparagraph (C) shall not apply to privilege periods ending on and after July 31, 2019.

(D) For privilege periods ending on and after July 31, 2019 but before July 31, 2020, to the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income.

(E) For privilege periods ending on and after July 31, 2020, for purposes of this paragraph (5), the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group.

(6) (A) Net operating loss deduction. For privilege periods ending before July 31, 2019, there shall be allowed as a deduction for the privilege period the net operating loss carryover to that period.

(B) Net operating loss carryover. A net operating loss for any privilege period ending after June 30, 1984 shall be a net operating loss carryover to each of the seven privilege periods following the period of the loss and a net operating loss for any privilege period ending after June 30, 2009 shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net

operating loss for any privilege period (the "loss period") shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior privilege periods to which the loss may be carried.

(C) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income without the net operating loss deduction provided for in subparagraph (A) of this paragraph and the exclusions in paragraphs (4) and (5) of this subsection.

(D) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover.

(E) Notwithstanding the provisions of this paragraph (6) of subsection (k) of this section to the contrary, for privilege periods beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss carryover shall be allowed and for privilege periods beginning during calendar year 2004 and calendar year 2005, there shall be allowed as a deduction for the privilege period so much of the net operating loss carryover as reduces entire net income otherwise calculated by 50%. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this subparagraph (E), the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by a period equal to the period for which application of the net operating loss was disallowed by this subparagraph.

Provided, that this subparagraph (E) shall not restrict the surrender or acquisition of corporation business tax benefit certificates pursuant to section 1 of P.L.1997, c. 334 (C.34:1B-7.42a) and shall not restrict the application of corporation business tax benefit certificates pursuant to section 2 of P.L.1997, c. 334 (C.54:10A-4.2).

(F) Reduction for discharge of indebtedness. A net operating loss for any privilege period ending after June 30, 2014, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code (26 U.S.C. s.108), for the privilege period of the discharge of indebtedness.

(7) The entire net income of gas, electric and gas and electric public utilities that were subject to, [or would have been subject to tax if doing business in this State](#), the provisions of P.L.1940, c. 5 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting the New Jersey depreciation allowance for federal tax depreciation with respect to assets placed in service prior to January 1, 1998. For gas, electric, and gas and electric public utilities that were subject to, [or would have been subject to tax if doing business in this State](#), the provisions of P.L.1940, c. 5 (C.54:30A-49 et seq.) prior to 1998, the New Jersey depreciation allowance shall be computed as follows: All depreciable assets placed in service prior to January 1, 1998 shall be considered a single asset account. The New Jersey tax basis of this depreciable asset account shall be an amount equal to the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all depreciable assets in service on December 31, 1997, increased by the excess, of the “net carrying value,” defined to be adjusted book basis of all assets and liabilities, excluding deferred income taxes, recorded on the public utility’s books of account on December 31, 1997, over the carryover adjusted basis for federal income tax purposes on December 31, 1997 of all assets and liabilities owned by the gas, electric, or gas and electric public utility as of December 31, 1997. “Books of account” for gas, gas and electric, and electric public utilities means the uniform system of accounts as promulgated by the Federal Energy Regulatory Commission and adopted by the Board of Public Utilities. The following adjustments to entire net income shall be made pursuant to this section:

(A) Depreciation for property placed in service prior to January 1, 1998 shall be adjusted as follows:

(i) Depreciation for federal income tax purposes shall be disallowed in full.

(ii) A deduction shall be allowed for the New Jersey depreciation allowance. The New Jersey depreciation allowance shall be computed for the single asset account described above based on the New Jersey tax basis as adjusted above as if all assets in the single asset account were

first placed in service on January 1, 1998. Depreciation shall be computed using the straight line method over a thirty-year life. A full year’s depreciation shall be allowed in the initial tax year. No half-year convention shall apply. The depreciable basis of the single account shall be reduced by the adjusted federal tax basis of assets sold, retired, or otherwise disposed of during any year on which gain or loss is recognized for federal income tax purposes as described in subparagraph (B) of this paragraph.

(B) Gains and losses on sales, retirements and other dispositions of assets placed in service prior to January 1, 1998 shall be recognized and reported on the same basis as for federal income tax purposes.

(C) The Director of the Division of Taxation shall promulgate regulations describing the methodology for allocating the single asset account in the event that a portion of the utility’s operations are separated, spun-off, transferred to a separate company or otherwise desegregated.

(8) In the case of taxpayers that are gas, electric, gas and electric, or telecommunications public utilities as defined pursuant to subsection (q) of this section, the director shall have authority to promulgate rules and issue guidance correcting distortions and adjusting timing differences resulting from the adoption of P.L.1997, c. 162 (C.54:10A-5.25 et al.).

(9) Notwithstanding paragraph (1) of this subsection, entire net income shall not include the income derived by a corporation organized in a foreign country from the international operation of a ship or ships, or from the international operation of aircraft, if such income is exempt from federal taxation pursuant to section 883 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

(10) Entire net income shall exclude all income of an alien corporation the activities of which are limited in this State to investing or trading in stocks and securities for its own account, investing or trading in commodities for its own account, or any combination of those activities, within the meaning of section 864 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on December 31, 1998. Notwithstanding the previous sentence, if an alien corporation undertakes one or more infrequent, extraordinary or non-recurring activities, including but not limited to the sale of tangible property, only the income from such infrequent, extraordinary or non-recurring activity shall be subject to the tax imposed pursuant to P.L.1945, c. 162 (C.54:10A-1 et seq.), and that amount of income subject to tax shall be



determined without regard to the allocation to that specific transaction of any general business expense of the taxpayer and shall be specifically assigned to this State for taxation by this State without regard to section 6 of P.L.1945, c. 162 (C.54:10A-6). For the purposes of this paragraph, “alien corporation” means a corporation organized under the laws of a jurisdiction other than the United States or its political subdivisions.

(11) No deduction shall be allowed for research and experimental expenditures, to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to section 1 of P.L.1993, c. 175 (C.54:10A-5.24) unless those research and experimental expenditures are also used to compute a federal credit claimed pursuant to section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

(12) (A) Notwithstanding the provisions of subsection (k) of section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal law, for property acquired after September 10, 2001, the depreciation deduction otherwise allowed pursuant to section 167 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined pursuant to the provisions of the federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001.

(B) The director shall prescribe the rules and regulations necessary to carry out the provisions of this paragraph, including, among others, those for determining the adjusted basis of the acquired property for the purposes of the Corporation Business Tax Act (1945), P.L.1945, c. 162.

(13) (A) Notwithstanding the provisions of section 179 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for property placed in service on or after January 1, 2004, the costs that a taxpayer may otherwise elect to treat as an expense which is not chargeable to a capital account shall be determined pursuant to the provisions of the federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2002.

(B) The director shall prescribe the rules and regulations necessary to carry out the provisions of this paragraph, including, among others, those for determining the adjusted basis of the acquired property for the purposes of the Corporation Business Tax Act (1945), P.L.1945, c. 162.

(14) Notwithstanding the provisions of subsection (i) of section 108 of

the federal Internal Revenue Code of 1986 (26 U.S.C. s.108), for privilege periods beginning after December 31, 2008 and before January 1, 2011, entire net income shall include the amount of discharge of indebtedness income excluded for federal income tax purposes pursuant to subsection (i) of section 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege periods beginning on or after January 1, 2014 and before January 1, 2019, entire net income shall exclude the amount of discharge of indebtedness income included for federal income tax purposes, pursuant to subsection (i) of section 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108).

(15) Entire net income shall exclude the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c. 149 (C.34:1B-248) and section 10 of P.L.2014, c. 63 (C.34:1B-251).

(16) (A) There shall be allowed as a deduction an amount computed in accordance with this paragraph.

(B) For purposes of this paragraph, “net deferred tax liability” means deferred tax liabilities that exceed the deferred tax assets of the combined group, as computed in accordance with generally accepted accounting principles, and “net deferred tax asset” means that deferred tax assets exceed the deferred tax liabilities of the combined group, as computed in accordance with generally accepted accounting principles.

(C) Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company’s financial statements prepared in accordance with generally accepted accounting principles, as of the effective date of this paragraph, shall be eligible for this deduction.

(D) If the provisions of sections 18 through 23 of P.L.2018, c.48 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to the members’ net deferred tax liability or an aggregate decrease to the members’ net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.

(E) For 10 years beginning with the combined group’s first privilege period beginning on or after January 1 of the fifth year after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a combined group shall be entitled to a deduction from combined group entire net income equal to one-tenth of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or

aggregate change from a net deferred tax asset to a net deferred tax liability. Such increase in the net deferred tax liability or decrease in the net deferred tax asset or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the unitary reporting requirements under sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided under this paragraph as of the effective date of this paragraph.

(F) The deferred tax impact determined in subparagraph (E) of this paragraph must be converted to the annual Deferred Tax Deduction amount, as follows:

(i) the deferred tax impact determined in subparagraph (E) of this paragraph shall be divided by the rate determined under section 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.);

(ii) the resulting amount shall be further divided by the New Jersey unitary business allocation factor that was used by the combined group in the calculation of the deferred tax assets and deferred tax liabilities as described in subparagraph (E) of this paragraph;

(iii) the resulting amount represents the total net Deferred Tax Deduction available over the ten-year period as described in subparagraph (E) of this paragraph.

(G) The deduction calculated under this paragraph shall not be adjusted as a result of any events happening subsequent to such calculation, including, but not limited to, any disposition or abandonment of assets. Such deduction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the deduction under this section is greater than combined group entire net income, any excess deduction shall be carried forward and applied as a deduction to combined group entire net income in future privilege periods until fully utilized.

(H) Any combined group intending to claim a deduction under this paragraph shall file a statement with the director on or before July 1 of the year subsequent to the first privilege period for which a combined return is required. Such statement shall specify the total amount of the deduction which the combined group claims on such form and in such manner as prescribed by the director. No deduction shall be allowed under this paragraph for any privilege period except to the extent claimed

on such timely filed statement in accordance with this paragraph.

(l) “Real estate investment trust” shall mean any corporation, trust or association qualifying and electing to be taxed as a real estate investment trust under federal law.

(m) “Financial business corporation” shall mean any corporate enterprise which is (1) in substantial competition with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, through discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; dealing in securities and shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers; or investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association or corporation in the form of bonds, notes or debentures commonly known as investment securities; or dealing in or underwriting obligations of the United States, any state or any political subdivision thereof, or of a corporate instrumentality of any of them. This shall include, without limitation of the foregoing, business commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks; provided that the holding of bonds, notes, or other evidences of indebtedness by individual persons not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with the business of national banks, shall not be deemed financial business. Nor shall “financial business” include national banks, production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual insurance companies duly authorized to transact business in this State, security brokers or dealers or investment companies or bankers not employing moneyed capital coming into competition with the business of national banks, real estate investment trusts, or any of the following entities organized under the laws of this State: credit unions, savings banks, savings and loan and building and loan associations, pawnbrokers, and State banks and trust companies.

(n) “International banking facility” shall mean a set of asset and liability accounts segregated on the books and records of a depository institution,

United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit as such terms are defined in section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the board of governors of the Federal Reserve System, 12 CFR Part 204, effective December 3, 1981. In the event that the United States enacts a law, or the board of governors of the Federal Reserve System adopts a regulation which amends the present definition of international banking facility or of such facilities' time deposits or extensions of credit, the Commissioner of Banking and Insurance shall forthwith adopt regulations defining such terms in the same manner as such terms are set forth in the laws of the United States or the regulations of the board of governors of the Federal Reserve System. The regulations of the Commissioner of Banking and Insurance shall thereafter provide the applicable definitions.

(o) "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. s.1361.

(p) "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 (C.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 (C.54:10A-5.22).

(q) "Public Utility" means "public utility" as defined in R.S.48:2-13.

(r) "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% interest in the entity and that derives at least 90% 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. s.1236.

(s) "Savings institution" means a state or federally chartered building and loan association, savings and loan association, or savings bank.

(t) "Partnership" means an entity classified as a partnership for federal

income tax purposes.

(u) "Prior net operating loss conversion carryover" means a net operating loss incurred in a privilege period ending prior to July 31, 2019 and converted from a pre-allocation net operating loss to a post-allocation net operating loss as follows:

(1) As used in this subsection:

"Base year" means the last privilege period ending prior to July 31, 2019.

"Base year BAF" means the taxpayer's business allocation factor as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period ending prior to July 31, 2019.

"UNOL" means the unabsorbed portion of net operating loss as calculated under paragraph (6) of subsection (k) of this section as such paragraph was in effect for the last privilege period ending prior to July 31, 2019, that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year subject to the limitations for deduction under such subsection, including any net operating loss sustained by the taxpayer during the base year.

(2) The prior net operating loss conversion carryover shall be calculated as follows:

(A) The taxpayer shall first calculate the tax value of its UNOL for the base year and for each preceding privilege period for which there is a UNOL. The value of the UNOL for each privilege period is equal to the product of (I) the amount of the taxpayer's UNOL for a privilege period, and (II) the taxpayer's base year BAF. This result shall equal the taxpayer's prior net operating loss conversion carryover.

(B) The taxpayer shall continue to carry over its prior net operating loss conversion carryover to offset its allocated entire net income as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on and after July 31, 2019. Such carryover periods shall not exceed the twenty privilege periods following the privilege period of the initial loss. The entire amount of the prior net operating loss conversion carryover for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the prior net operating loss conversion carryover which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the prior net operating loss

conversion carryover over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State.

(C) The prior net operating loss conversion carryover computed under this subsection shall be applied against the entire net income allocated to this State before the net operating loss carryover computed under subsection (v) of this section.

(v) “Net operating loss deduction” means the amount allowed as a deduction for the net operating loss carryover to the privilege period, calculated as follows:

(1) Net operating loss carryover. A net operating loss for any privilege period ending on or after July 31, 2019, shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State.

(2) Net operating loss. For purposes of this paragraph the term “net operating loss” means the excess of the deductions over the gross income used in computing entire net income, without regard to any net operating loss carryover, and computed without the exclusions in paragraphs (4) and (5) of subsection (k) of this section, allocated to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

(3) Reduction for discharge of indebtedness. A net operating loss for any privilege period ending on or after July 31, 2019, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108, for the privilege period of the discharge of indebtedness.

(4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period ending prior to July 31, 2019.

(5) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and

the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition, where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover; provided, however, this paragraph shall not apply between members of a combined group reported on a New Jersey combined return.

(w) “Taxable net income” means entire net income allocated to this State as calculated pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by subtracting any prior net operating loss conversion carryforward calculated pursuant to subsection (u) of this section, and any net operating loss calculated pursuant to subsection (v) of this section.

(x) “Affiliated group” means, for purposes of section 23 of P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, except such affiliated group shall include all U.S. domestic corporations that are commonly owned, directly or indirectly, by any member of such affiliated group, without regard to whether the affiliated group includes (1) corporations included in more than one federal consolidated return, (2) corporations engaged in one or more unitary businesses, or (3) corporations that are not engaged in a unitary business with any other member of the affiliated group.

For purposes of this subsection:

“U.S. domestic corporations” means: (1) business entities wherever incorporated or formed that are U.S. domestic corporations, are deemed to be, or are treated as U.S. domestic corporations under the provisions of the federal Internal Revenue Code; or (2) any entities incorporated or formed under the laws of a foreign nation that are required to file federal tax returns if such entities have effectively connected income within the meaning of the federal Internal Revenue Code; and

“commonly owned” means that more than 50 percent of the voting control of each member of an affiliated group is directly or indirectly owned by a common owner or owners, either corporate or non corporate, whether or not the owner or owners are members of the affiliated group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code (26 U.S.C. s.318).



(y) “Combinable captive insurance company” means an entity that is treated as an association taxable as a corporation under the federal Internal Revenue Code:

- (1) more than 50% of the voting stock of which is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the federal Internal Revenue Code, and not exempt from federal income tax;
- (2) that is licensed as a captive insurance company under the laws of this State or another jurisdiction;
- (3) whose business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent, members of its affiliated group, or both; and
- (4) 50% or less of whose gross receipts for the privilege period consist of premiums from arrangements that constitute insurance for federal income tax purposes.

A combinable captive insurance company shall not be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive insurance company that does not meet the definition of combinable captive insurance company shall be excluded as provided in subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

For purposes of this definition:

“Affiliated group” shall have the same meaning as that term is given by section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, except that the term “common parent corporation” as used in section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall mean any person, as defined in section 7701 of the federal Internal Revenue Code, 26 U.S.C. s.7701, and references to “at least 80%” in section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall be read as “50% or more.” Section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall be read without regard to the exclusions provided for in subsection (b) of that section.

“Gross receipts” includes the amounts included in gross receipts for purposes of paragraph (15) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. s.501, except that those amounts also include all premiums.

“Premiums” includes consideration for annuity contracts and excludes

any part of the consideration for insurance, reinsurance, or annuity contracts that do not provide bona fide insurance, reinsurance, or annuity benefits.

(z) “Combined group” means the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax under this chapter, and shall include all business entities, except as provided for under any section of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).

A combined group shall be treated, for privilege periods ending on and after July 31, 2020, as one taxpayer for purposes of paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for the income derived from the unitary business ; provided however, with regard to the surtax imposed pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) and for that purpose only, the portion of income that is attributable to a member which is a public utility exempt from the surtax shall not be included when computing the surtax due.

(aa) “Common ownership” means that more than 50% of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code, 26 U.S.C. s.318.

(bb) “Group privilege period” means, if two or more members in the combined group file in the same federal consolidated tax return, the same income year as that used on the federal consolidated tax return and, in all other cases, the privilege period of the managerial member.

(cc) “Managerial member” means if the combined group has a common parent corporation and that common parent corporation is a taxable member, the managerial member shall be the common parent corporation. In other cases, the combined group shall select a taxable member as its managerial member or, in the discretion of the director or upon failure of the combined group to select its managerial member, the director shall designate a taxable member of the combined group as managerial member.

(dd) “Member” means a business entity that is a part of a combined group.

A corporation exempt pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-1 et seq.) shall not be a member of a combined group.

(ee) “Nontaxable member” means a member that is: (i) not subject to tax pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) ; or (ii) (deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill).

(ff) “Taxable member” means a member that is subject to tax pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).

A New Jersey S corporation shall only be included as a taxable member of a combined group filing a New Jersey combined return if the New Jersey S Corporation elects to be included as a member and taxed at the same rate as the other members of the combined group. A New Jersey S corporation that does not elect to be included shall be excluded as a member of the combined return and shall file a separate return.

(gg) “Unitary business” means a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts. “Unitary business” shall be construed to the broadest extent permitted under the Constitution of the United States. A business conducted by a partnership which is in a unitary business with the combined group shall be treated as the business of the partners that are members of the combined group, whether the partnership interest is held directly or indirectly through a series of partnerships, to the extent of a partner’s distributive share of partnership income. The amount of partnership income to be included in the partner’s entire net income shall be determined in accordance with subsection a. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a partnership.

#### Credits

L.1945, c. 162, p. 564, § 4. Amended by L.1947, c. 50, p. 169, § 1; L.1948, c. 459, p. 1884, § 1; L.1958, c. 63, p. 186, § 1; L.1968, c. 250, §

1, eff. Aug. 16, 1968; L.1971, c. 267, § 1; L.1972, c. 89, § 1; L.1975, c. 171, § 7, eff. Aug. 4, 1975; L.1976, c. 28, § 1, eff. June 2, 1976; L.1979, c. 76, § 1, eff. April 11, 1979; L.1979, c. 86, § 22, eff. May 15, 1979; L.1979, c. 388, § 12, eff. Feb. 5, 1980; L.1981, c. 259, § 1, eff. Aug. 11, 1981; L.1981, c. 467, § 1; L.1982, c. 50, § 1, eff. June 30, 1982; L.1982, c. 55, § 1; L.1983, c. 422, § 1, eff. Jan. 5, 1984; L.1985, c. 143, § 1, eff. April 22, 1985; L.1985, c. 468, § 1, eff. Jan. 16, 1986; L.1989, c. 59, § 1, eff. April 14, 1989; L.1990, c. 79, § 2, eff. July 2, 1990; L.1993, c. 172, § 1, eff. July 7, 1993; L.1993, c. 173, § 1, eff. July 7, 1993; L.1995, c. 418, § 1; L.1997, c. 162, § 2, eff. Jan. 1, 1998; L.1997, c. 413, § 1, eff. Jan. 19, 1998; L.1998, c. 114, § 2, eff. Oct. 28, 1998; L.1999, c. 369, § 1, eff. Jan. 14, 2000; L.2001, c. 136, § 1, eff. June 29, 2001; L.2002, c. 40, § 3, eff. July 2, 2002; L.2004, c. 47, § 1, eff. June 29, 2004; L.2004, c. 65, § 24, eff. June 30, 2004; L.2005, c. 127, § 1, eff. July 2, 2005; L.2008, c. 102, § 1, eff. Nov. 24, 2008; L.2009, c. 72, § 2, eff. June 29, 2009; L.2014, c. 13, § 3, eff. June 30, 2014; L.2017, c. 313, § 4, eff. Jan. 16, 2018; L.2018, c. 48, § 3, eff. July 1, 2018, retroactive to Jan. 1, 2017; L.2018, c. 131, § 2, eff. Oct. 4, 2018, retroactive to Jan. 1, 2018, L.2020, c.109, § 3, eff. Nov. 4, 2020, retroactive to periods ending on or after July 31, 2019.

#### Footnotes

1

So in original; probably should read C.54:10A-5.41 and C.54:10A-4.6 to C.54:

N. J. S. A. 54:10A-4, NJ ST 54:10A-4

#### **N.J.S.A. 54:10A-4.1**

54:10A-4.1. Transitional energy facility assessment tax as State tax; federal taxable income calculations

Notwithstanding the use of the term assessment, the transitional energy facility assessment tax is a State tax within the meaning of section 164 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.164, pursuant to

which a deduction is allowed in arriving at federal taxable income for the taxable year within which it is paid or accrued and such amount shall be added back to entire net income pursuant to subparagraph (c) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c. 162 (C.54:10A-4).

#### Credits

L.1997, c. 162, § 68, eff. Jan. 1, 1998.

N. J. S. A. 54:10A-4.1, NJ ST 54:10A-4.1

#### **N.J.S.A. 54:10A-4.2**

54:10A-4.2. Emerging technology or biotechnology companies; net operating loss carryover deductions

a. Notwithstanding the provisions of paragraph (6) of subsection (k) of section 4 of P.L.1945, c. 162 (C.54:10A-4) to the contrary, a taxpayer that has acquired a corporation business tax benefit certificate pursuant to the provisions of section 1 of P.L.1997, c. 334 (C.34:1B-7.42a), that includes the right to a net operating loss carryover deduction shall attach that certificate to any return the taxpayer is required to file under P.L.1945, c. 162 (C.54:10A-1 et seq.), and shall determine the amount of its net operating loss carryover deduction by multiplying the surrendered net operating loss by the new or expanding emerging technology or biotechnology company's anticipated allocation factor determined pursuant to subsection b. of section 1 of P.L.1997, c. 334 (C.34:1B-7.42a) and subsequently dividing the amount by the taxpayer's allocation factor determined pursuant to section 6 of P.L.1945, c. 162 (C.54:10A-6) for the tax year in which the surrendered tax benefit is used. The taxpayer shall otherwise apply the net operating loss carryover deduction as evidenced by the certificate according to the provisions of subsection (k) of section 4 of P.L.1945, c. 162 and any rules or regulations the director may adopt to carry out the provisions of this section.

b. A new or expanding emerging technology or biotechnology company that has surrendered an unused net operating loss carryover pursuant to the provisions of section 1 of P.L.1997, c. 334 (C.34:1B-7.42a), shall not be allowed a net operating loss carryover deduction based upon the right to such a deduction as evidenced by the corporation business tax benefit certificate and shall attach a copy of the certificate to any return the

taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.).

~~c. 162 (C.54:10A-1 et seq.)~~ The unused prior net operating loss conversion carryover deduction and unused net operating loss carryover deduction of a taxpayer under subsections (u) and (v) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall also qualify to be surrendered for the purposes of this section and section 1 of P.L.1997, c.334 (C.34:1B 7.42a) by a new or expanding emerging technology or biotechnology company. A taxpayer or combined group that has acquired a corporation business tax benefit certificate pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a prior net operating loss conversion carryover deduction or a net operating loss carryover deduction shall attach that certificate to any return the taxpayer or the combined group is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.) and shall determine the amount of its net operating loss carryover deduction in a manner prescribed by the director by regulation for the tax year in which the surrendered tax benefit is used.

The managerial member of a combined group shall be the member acquiring the prior net operating loss conversion carryover deduction and net operating loss carryover deduction on behalf of the combined group. The taxpayer or combined group shall apply the prior net operating loss conversion carryover deduction and net operating loss carryover deduction, as evidenced by the certificate, according to the provisions of section 4 of P.L.1945, c.162 (C.54:10A-4) or section 18 of P.L.2018, c.48 (C.54:10A-4.6) and any rules or regulations the director adopts to carry out the provisions of this section.

A member of a combined group may sell prior net operating loss conversion carryover to other members of the combined group, if otherwise applicable and allowable under this section and section 1 of P.L.1997, c.334 (C.34:1B-7.42a); provided, however, such sale of prior net operating loss conversion carryover shall be made at arm's length price at the same rate as though the sale was to an unrelated taxpayer.

#### Credits

L.1997, c. 334, § 2, eff. Jan. 12, 1998. Amended by L.1999, c. 140, § 3, eff. June 28, 1999; L.2020, c.109, § 4, eff. Nov. 4, 2020, retroactive to periods ending on or after Dec. 31, 2019.

N. J. S. A. 54:10A-4.2, NJ ST 54:10A-4.2

**N.J.S.A. 54:10A-4.3**

54:10A-4.3. Carryforward of the net operating loss deduction; extension

a. Notwithstanding the provisions of paragraph (6) of subsection (k) of section 4 of P.L.1945, c. 162 (C.54:10A-4) to the contrary, a taxpayer that has for the fiscal or calendar accounting period (referred to hereinafter as the “tax year”), qualified research expenses as defined in section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41, as in effect on June 30, 1992, paid or incurred for research conducted in this State, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, or medical device technology, shall be allowed to carry over a net operating loss for that tax year to each of the 15 tax years following the year of the loss.

b. As used in this section:

“Advanced computing” means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment;

“Advanced materials” means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials;

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

“Electronic device technology” means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices;

“Environmental technology” means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources; and

“Medical device technology” means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration.

c. Notwithstanding the provisions of subsection a. of this section, for tax years beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss carryover shall be allowed. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this subsection, the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by two years.

Credits

L.1997, c. 350, § 1, eff. Jan. 15, 1998. Amended by L.2002, c. 40, § 4, eff. July 2, 2002.

N. J. S. A. 54:10A-4.3, NJ ST 54:10A-4.3

**N.J.S.A. 54:10A-4.4**

54:10A-4.4. Computing entire net income; adjustments; exceptions; definitions

a. For the purposes of this section:

“Intangible expenses and costs” includes (1) expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the federal Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions; (3) royalty, patent, technical and copyright fees; (4) licensing fees; and (5) other similar expenses and costs.

“Intangible property” means patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets and similar types of intangible assets.

“Interest expenses and costs” means amounts directly or indirectly



allowed as deductions under section 163 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.163, for purposes of determining taxable income under the code to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange or disposition of intangible property.

“Related member” means a person that, with respect to the taxpayer during all or any portion of the privilege period, is: (1) a related entity, (2) a component member as defined in subsection (b) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, (3) is a person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, or (4) is a person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (1) through (3) of this definition.

“Related entity” means (1) a stockholder who is an individual, or a member of the stockholder’s family enumerated in section 318 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the stockholder and the members of the stockholder’s family own, directly, indirectly, beneficially or constructively, in the aggregate, ~~at least 50% or more~~ of the value of the taxpayer’s outstanding stock; (2) a stockholder, or a stockholder’s partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder’s partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, ~~at least 50% or more~~ per cent of the value of the taxpayer’s outstanding stock; or (3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the taxpayer owns, directly, indirectly, beneficially or constructively, ~~at least 50% or more~~ percent of the value of the corporation’s outstanding stock. The attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, shall apply for purposes of determining whether the ownership requirements of this definition have been met.

b. For purposes of computing its entire net income under section 4 of P.L. 1945, c. 162 (C.54:10A-4), a taxpayer shall add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions

with, one or more related members.

c. (1) The adjustments required in subsection b. of this section shall not apply if: (a) the interest expenses and costs and intangible expenses and costs are directly or indirectly paid, accrued or incurred to a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States ~~and the (i) related member was subject to tax in the foreign nation on a tax base that included the amount paid, accrued, or incurred and (ii) the related member’s income received from the transaction was taxed at an effective tax rate equal to or greater than a rate of three percentage points less than the rate of tax applied to taxable interest by the State of New Jersey pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5);~~ or (b) the taxpayer establishes by clear and convincing evidence, as determined by the director, that the adjustments are unreasonable; or (c) the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment under section 8 of P.L.1945, c. 162 (C.54:10A-8). Nothing in this subsection shall be construed to limit or negate the director’s authority to otherwise enter into agreements and compromises otherwise allowed by law.

(2) For the purposes of qualifying for the exception provided by subparagraph (a) of paragraph (1) of this subsection, the taxpayer shall disclose on its return for the privilege period the name of the related member, the amount of the interest expenses and costs and intangible expenses and costs deducted, the relevant foreign nation, and such other information as the director may prescribe.

(3) The adjustments required in subsection b. of this section shall not apply to the portion of interest expenses and costs and intangible expenses and costs that the taxpayer establishes by a preponderance of the evidence meets both of the following: (a) the related member during the same income year directly or indirectly paid, received, accrued or incurred the portion to or from a person that is not a related member, and (b) the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the taxpayer and the related member did not have as a principal purpose the avoidance of any portion of the tax due under Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes.

d. Nothing in this section shall require a taxpayer to add to its net income more than once any amount of interest expenses and costs and intangible expenses and costs that the taxpayer pays, accrues or incurs to a related member described in subsection b. of this section.

e. The adjustments required by this section shall not apply to transactions between related members included in a combined group reported on a New Jersey combined return.

f. Nothing in this section shall be construed to limit or negate the director's authority to make adjustments under paragraph (3) of subsection (k) of section 4 of P.L.1945, c. 162 (C.54:10A-4), section 8 of P.L.1945, c. 162 (C.54:10A-8), or section 10 of P.L.1945, c. 162 (C.54:10A-10).

#### Credits

L.2002, c. 40, § 5, eff. July 2, 2002. Amended by L.2018, c. 48, § 4, eff. July 1, 2018; L.2018, c. 131, § 3, eff. Oct. 4, 2018, retroactive to Jan. 1, 2018.

N. J. S. A. 54:10A-4.4, NJ ST 54:10A-4.4

#### **N.J.S.A. 54:10A-4.5**

54:10A-4.5. Net operating loss for privilege period ending after June 30, 1984; carry over; deduction

a. Notwithstanding any provision of subsection (k) of section 4 of P.L.1945, c. 162 (C.54:10A-4) or of the federal Internal Revenue Code, including but not limited to 26 U.S.C. s.381 or any successor or equivalent provision, that permits a corporation to use the net operating losses of another for federal income tax purposes following certain transactions, including but not limited to those qualifying as reorganizations under the provisions of subparagraph (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368, a net operating loss for a privilege period ending after June 30, 1984, may be carried over and allowed as a deduction only by the corporation that sustained the loss; provided, however, that in the case of a merger of two or more corporations pursuant to statute of this State or any other jurisdiction, the net operating loss may be carried over only by the corporation that sustained the loss and that is also the surviving corporation following the merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation. ~~No net operating loss shall be allowed as a deduction by a corporation resulting from a consolidation pursuant to statute of this State~~

b. Subsection a. of this section shall not apply: (1) between members of a combined group reported on a combined return in New Jersey, or (2) between members of an affiliated group reported on the elective combined return in New Jersey, or (3) if corporations that were parties to the merger would be members of the combined group reported on a combined return in New Jersey within one group privilege period subsequent to the date of the merger, unless there is an unforeseen delay due to required approvals from federal or other state regulatory authorities that delays the finality of the merger or acquisition. In a situation where there is delay due to the regulatory approval requirements of federal or other state regulatory authorities, the corporations may petition the director, in a form and manner prescribed by the director, documenting that the corporations' plan to be a combined group filing a New Jersey combined return upon approval of the merger or acquisition by the federal or other state regulatory authorities. Within 180 days of approval by the federal or other state regulatory authorities of the merger or acquisition, the corporations shall notify the Division of Taxation of the approval and the director shall issue a stamped certificate of attestation attesting that the net operating loss carryovers are not extinguished. The provisions of this paragraph (3) shall only apply to mergers and acquisitions occurring on or after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) and shall not apply to a binding agreement in effect prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

c. For privilege periods beginning on and after January 1, 2020, the provisions of the federal Internal Revenue Code, the federal rules, limitations, and restrictions, thereto, governing federal net operating losses, federal net operating loss carryovers with regard but not limited to: mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business, or any other ~~jurisdiction~~ provision that limits or reduces federal net operating losses and federal net operating loss carryovers, shall apply to New Jersey net operating loss carryovers under subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

The federal rules and regulations governing federal consolidated return net operating losses and net operating loss carryovers shall apply to New Jersey net operating loss carryover provisions of subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) as though the combined group filed a federal consolidated return, regardless of how the members of the

combined group filed for federal purposes to the extent consistent with the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).Credits

L.2002, c. 40, § 27, eff. July 2, 2002. Amended by L.2018, c. 48, § 25, eff. July 1, 2018; L.2018, c. 131, § 2, eff. Oct. 4, 2018, retroactive to Jan. 1, 2018, L.2020, c.109, § 5, eff. Nov. 4, 2020, retroactive to periods ending on or after Dec. 31, 2019.

N. J. S. A. 54:10A-4.5, NJ ST 54:10A-4.5

#### **N.J.S.A. 54:10A-4.6**

54:10A-4.6. Determination of entire net income from unitary business for taxable members of a combined group; calculation; inclusions and exclusions; tax credits

A taxable member of a combined group shall determine its entire net income from the unitary business as its share of the entire net income of the combined group in accordance with a combined unitary tax return made pursuant to this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11). The entire net income from the unitary business of a combined group is the sum of the entire net incomes of each taxable member and each nontaxable member of the combined group derived from the unitary business, which shall be determined as follows:

- a. For a member incorporated in the United States, the income to be included in the entire net income of the combined group shall be the member's entire net income otherwise determined pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).
- b. For a member not incorporated in the United States, the income to be included in the entire net income of the combined group shall be determined from a profit and loss statement that shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained, adjusted to conform it to the accounting principles generally accepted in the United States for the presentation of those statements and further adjusted to take into account any book-tax differences required by federal or State law. The profit and loss statement of each foreign

member of the combined group and the allocation factors related thereto, whether United States or foreign, shall be translated into or from the currency in which the parent company maintains its books and records on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. Income shall be expressed in United States dollars. In lieu of these procedures and subject to the determination of the director that the income to be reported reasonably approximates income as determined under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), income may be determined on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis.

c. (1) If a member of a combined group receives income from the unitary business from a partnership, the combined group's entire net income shall include the member's direct and indirect distributive share of the partnership's unitary business income.

(2) The distributive share of income received by a limited partner from a qualified investment partnership shall not be considered to be derived from a unitary business unless the general partner of such investment partnership and such limited partner have common ownership. To the extent that the limited partner is otherwise carrying on or doing business in New Jersey, it shall allocate its distributive share of income from a qualified investment partnership in accordance with subsection a. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136 (C.54:10A-15.7) as applicable. If the limited partner is not otherwise carrying on or doing business in New Jersey, its distributive share of income from an investment partnership is not subject to tax under this chapter.

d. All dividends paid by one member to another member of the combined group shall be eliminated from the income of the recipient.

e. Except as otherwise provided by regulation, business income from an intercompany transaction among members of the same combined group shall be deferred in a manner similar to the deferral under 26 C.F.R. s.1.1502-13, as determined by the director. Upon the occurrence of either of the events set forth in paragraphs (1) and (2) of this subsection, deferred income resulting from an intercompany transaction among members of a combined group shall be restored to the income of the seller and shall be included in the net income of the combined group as if the seller had earned the income immediately before the event:

(1) The object of a deferred intercompany transaction is: (a) resold by the

buyer to an entity that is not a member of the combined group, (b) resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged, or (c) converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged; or

(2) The buyer and seller cease to be members of the same combined group, regardless of whether the buyer and seller remain sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value between them.

In the case of an event set forth in paragraph (2) of this subsection, no portion of the income or loss shall be included in entire net income of the combined group, but shall be included in the entire net income of the respective member.

f. A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, be subtracted first from the combined group's entire net income, subject to the income limitations of that section applied to the entire net income of the group. A charitable deduction disallowed under section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, but allowed as a carryover deduction in a subsequent privilege period, shall be treated as originally incurred in the subsequent year by the same member and the provisions of this section shall apply in the subsequent privilege period in determining the allowable deduction for that privilege period.

g. A prior net operating loss conversion carryover incurred by a member of a combined group shall be deducted from the entire net income or loss allocated to this state pursuant to section 19 of P.L.2018, c.48 (C.54:10A-4.7) as follows:

(1) Such prior net operating loss conversion carryover deduction shall be allowed to offset only the entire net income allocated to this state of the corporation that created the prior net operating loss; the prior net operating loss conversion carryover cannot be shared with other members of the combined group.

(2) The prior net operating loss conversion carryover deduction computed under subsection (u) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be applied against the entire net income allocated to this state of the corporation that created the prior net operating loss before the net operating loss carryover computed under subsection h. of

this section.

The director shall provide regulations establishing rules on how each such corporation shall apply its prior net operating loss conversion carryover against its share of entire net income allocated as if filing on a separate entity basis.

A member of a combined group may sell prior net operating loss conversion carryover to other members of the combined group, if otherwise applicable and allowable under section 2 of P.L.1997, c.334 (C.54:10A-4.2) and section 1 of P.L.1997, c.334 (C.34:1B-7.42a); provided, however, such sale of prior net operating loss conversion carryover must be made at arm's length price at the same rate as though the sale was to an unrelated taxpayer.

h. A net operating loss carryover incurred by a member of a combined group shall be deducted from entire net income or loss allocated to this State pursuant to section 19 of P.L.2018, c.48 (C.54:10A-4.7) as follows:

(1) For privilege periods beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), if the computation of a combined group's entire net income allocated to this state results in a net operating loss, a taxable member of such group may carry over the net operating loss allocated to this state, as calculated under this section and sections 19 and 23 of P.L.2018, c.48 (C.54:10A-4.7 and C.54:10A-4.11), and shall be deductible from entire net income derived from the unitary business in a future privilege period to the extent that the carryover and deduction is otherwise consistent with subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4).

(2) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred by a combined group in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable member may share the net operating loss carryover with other taxable members of the combined group if such other taxable members were members of the combined group in the privilege period that the loss was incurred. Any amount of net operating loss carryover that is deducted by another taxable member of the combined group shall reduce the amount of net operating loss carryover that may be carried over by the taxable member



that originally incurred the loss.

(3) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred in a privilege period during which the taxable member was not a member of such combined group, the carryover shall remain available to be deducted by that taxable member or other group members that, in the year the loss was incurred, were part of the same combined group as such taxable member. Such carryover shall not be deductible by any other members of the combined group.

(4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19 and 23 of P.L.2018, c.48 (C.54:10A-4.7 and C.54:10A-4.11).

(5) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred by a combined group in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), and the taxable member departs the combined group and continues to be a taxpayer for the purposes of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the taxable member shall be entitled to take its respective portion of the combined group net operating loss carryover and the combined group shall not be entitled to use such portion of the net operating loss carryover.

i. Tax credits earned by a member of a combined group shall be utilized as follows:

(1) If a taxable member of a combined group earns a tax credit in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable member may share the credit with other taxable members of the combined group. Any amount of credit that is utilized by another taxable member of the combined group shall reduce the amount of credit carryover that may be carried over by the taxable member that originally earned the credit. If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning on or after the first day of the initial

privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable member may share the carryover credit with other taxable members of the combined group.

(2) If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable member may share the carryover credit with other taxable members of the combined group.

(3) If a taxable member of a combined group has a tax credit carryover derived from a privilege period during which the taxable member was not a member of such combined group, the credit carryover shall remain available to be utilized by such taxable member or other group members.

(4) To the extent a taxable member has more than one corporation business tax credit that it may utilize in a privilege period, whether such credits were earned by said member or are available to said member in accordance with paragraphs (1), (2) and (3) of this subsection, the order of priority of the application of the credits shall be as prescribed by the director.

j. An expense of a member of the combined group that is directly or indirectly attributable to the income of any member of the combined group, which income this State is prohibited from taxing pursuant to the laws or Constitution of the United States, shall be disallowed as a deduction for purposes of determining the combined group's entire net income.

k. Nothing in this section shall apply to:

(1) A corporation or combined group which is licensed, in whole or in part, as an insurance company under the laws of this State or of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Banking and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks within this State that is not a combinable captive insurance company. Notwithstanding a provision, if any, to the contrary in this section, the income of an insurance company that is not a combinable captive insurance company, the allocation or apportionment of income related thereto and the apportionment factors of an insurance company that is

not a combinable captive insurance company shall not be included in a combined unitary tax return filed under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11). In addition, the dividend exclusion provisions of paragraph (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating to dividends paid by insurance companies to non-insurance companies included in the unitary group shall not be affected by P.L.2018, c.48 (C.54:10A-5.41 et al.).

(2) A corporation that is regulated, in whole or in part, by the Federal Energy Regulatory Commission, the New Jersey Board of Public Utilities, or similar regulatory body of another state, with respect to rates charged to customers for electric or gas services and water and wastewater services.

l. (deleted by amendment, P.L. , c. ) (pending before the Legislature as this bill)

m. To the extent consistent with the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers shall apply to the New Jersey net operating loss carryover provisions under subsection h. of this section as though the combined group filed a federal consolidated return, regardless of how the members of the combined group filed for federal purposes.

n. The principles and provisions set forth in federal regulations promulgated pursuant to section 1502 of the Internal Revenue Code (26 U.S.C. s.1502), shall apply to the extent consistent with the Corporation Business Tax Act (1945), New Jersey combined group membership principles, New Jersey combined unitary return principles, and regulations set forth by the director.

o. For purposes of the deduction allowed in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a combined group shall be treated as one taxpayer; provided, however, a combined group shall only be eligible for the deduction if at least one of the taxable members is a banking corporation and the taxable member has an international banking facility. The income of the combined group shall not be eligible for the deduction allowed in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) if such income was already eliminated pursuant to other subsections of this section.

p. This section shall apply to world-wide group elective combined returns and affiliated group elective combined returns in accordance with

section 23 of P.L.2018, c.48 (C.54:10A-4.11). An election to file an affiliated group combined return shall be an election to treat all of the member's attributes and income as though they were from one unitary business.

q. The director shall promulgate rules and regulations necessary to carry out the provisions of this section.

#### Credits

L.2018, c. 48, § 18, eff. July 1, 2018. Amended by L.2018, c. 131, § 4, eff. Oct. 4, 2018, retroactive to Jan. 1, 2018; L.2020, c.109, § 6, eff. Nov. 4, 2020, retroactive to periods ending on or after July. 31, 2019.

N. J. S. A. 54:10A-4.6, NJ ST 54:10A-4.6

#### **N.J.S.A. 54:10A-4.7**

54:10A-4.7. Determination of allocation factor for taxable members of a combined group; calculation

A taxable member of a combined group shall determine its allocation factor for determining its share of the entire net income of the combined group, as determined pursuant to the provisions of section 18 of P.L.2018, c. 48 (C.54:10A-4.6), pursuant to sections 6 through 8 of P.L.1945, c. 162 (C.54:10A-6 through 54:10A-8); provided however:

a. In computing its denominator for the sales fraction, the taxable member shall use the combined group's denominator for that fraction. In computing the numerator of its sales fraction, each taxable member shall be treated as a separate taxpayer and that taxable member's numerator will include only that taxable member's receipts assignable to this State.

b. All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies, if 50 per cent or more of the combined group's entire net income is derived from the transportation of freight by air or ground.

c. In determining the numerator and denominator of the allocation factors of taxable members, transactions between or among members of the

combined group shall be eliminated.

d. The director shall promulgate rules and regulations necessary to carry out the provisions of this section.

Credits

L.2018, c. 48, § 19, eff. July 1, 2018.

N. J. S. A. 54:10A-4.7, NJ ST 54:10A-4.7

#### **N.J.S.A. 54:10A-4.8**

54:10A-4.8. Filing of combined unitary tax return; form; liability; notice

a. A combined group shall file a combined unitary tax return under this section in the form and manner prescribed by the director. The managerial member of the combined group shall file the combined unitary tax return on behalf of the taxable members of the combined group and shall pay the tax on behalf of such taxable members. The managerial member is authorized to file taxable member returns, file taxable member extensions for filing, pay taxable member liabilities, receive taxable member findings, assessments, and notices, make and receive taxable member claims, or file taxable member protests and appeals.

b. The privilege period for which the group shall file shall be determined as the privilege period of the managerial member. If a member of a combined group has a different fiscal or calendar accounting period from the group privilege period, that member with a different period shall report amounts from its return for its fiscal or calendar accounting year that ends during the group privilege period, provided no such reporting of amounts shall be required of such member until its first privilege period beginning on or after the first day of the initial privilege period of the managerial member for which a combined unitary tax return is required under this section and sections 18, 19 and 23 of P.L.2018, c. 48 (C.54:10A-4.6, C.54:10A-4.7 and C.54:10A-4.11).

c. Each taxable member of a combined group shall be jointly and severally liable for the tax due from any taxable member pursuant to P.L.1945, c. 162 (C.54:10A-1 et seq.), whether or not that tax has been self-assessed, and for any interest, penalties or additions to tax due from any taxable member under P.L.1945, c. 162 (C.54:10A-1 et seq.).

d. If a combined group is eligible to select the managerial member of the combined group, notice of the selection shall be submitted in written form to the director not later than the due date, or, if an extension of time to file has been requested and granted, not later than the extended due date of the combined unitary tax return for the initial privilege period for which such return is required. The subsequent selection of another designated taxable member shall be subject to the approval of the director.

e. For purposes of this section:

(1) Any notice shall be sent to the managerial member of the combined group at the last known address of the managerial member as indicated on either the last filing required or made under this Chapter or a subsequent electronic or written notice provided by the managerial member under rules prescribed by the director;

(2) The director may, at the director's sole discretion: (a) make any deficiency assessment against either the managerial member or a taxable member of the combined group; (b) refund or credit any overpayment to either the managerial member or a taxable member of the combined group; (c) require any payment to be made by electronic funds transfer; and (d) require the combined unitary tax return to be electronically filed.

f. The director shall promulgate rules and regulations necessary to carry out the provisions of this section.

Credits

L.2018, c. 48, § 20, eff. July 1, 2018.

N. J. S. A. 54:10A-4.8, NJ ST 54:10A-4.8

#### **N.J.S.A. 54:10A-4.9**

54:10A-4.9. Use of outstanding alternative minimum assessment credit to offset tax liability

A combined group filing a combined return that has any outstanding alternative minimum assessment credit or credits at the time of the effective date of the repeal of section 7 of P.L.2002, c.40 (C.54:10A-5a) shall be allowed to use the credit to offset the combined group's tax liability under paragraph (1) of subsection c. of section 5 of P.L.1945, c.165 (C.54:10A-5) for the group privilege period. The remaining

balance of the credit carryovers of members of the combined group from prior to the effective date of the repeal of section 7 of P.L.2002, c.40 (C.54:10A-5a) shall not reduce the combined tax liability below 50% of the tax owed by the group. The remaining balance of the credit may be carried over until used by the combined group.Credits

L.2018, c. 48, § 21, eff. July 1, 2018; L.2020, c.109, § 7, eff. Nov. 4, 2020, retroactive to periods ending on or after July. 31, 2019.

N. J. S. A. 54:10A-4.9, NJ ST 54:10A-4.9

#### **N.J.S.A. 54:10A-4.10**

54:10A-4.10. Determination of managerial member; duty to file return; notice

a. Determination of Managerial Member. If the combined group has a common parent corporation within the meaning of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), and that common parent corporation is a taxable member of the corporate group, the managerial member shall be the common parent corporation. In other cases, the combined group shall select a taxable member as its managerial member or, in the discretion of the director or upon failure of the combined group to select its managerial member, the director shall designate a taxable member of the combined group as managerial member. Once the election of the managerial member is made, the election shall be binding for 10 successive privilege periods, except as otherwise provided for by the director.

b. A combined group shall file a mandatory combined return under this section in the form and manner prescribed by the director. The managerial member of the combined group shall file the mandatory combined return on behalf of the taxable members of the combined group. The managerial member shall be required to file taxable member returns; file taxable member extensions for filing tax returns and other documents with the director; pay taxable member liabilities; receive taxable member findings, assessments, and notices; make and receive taxable member claims, or file taxable member protests and appeals; and shall be the responsible party liable for filing and paying the tax on behalf of the combined group.

c. The privilege period for the combined group is the privilege period of

the managerial member. If a member of a combined group has a different fiscal or calendar accounting period from the combined group's privilege period, that member with a different period shall report amounts from its return for its fiscal or calendar accounting year that ends during the group privilege period.

d. Each taxable member of a combined group shall be jointly and severally liable for the tax due from any taxable member pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), whether or not that tax has been self-assessed, and for any interest, penalties, or additions to tax due.

e. If a combined group is eligible to elect the managerial member of the combined group, notice of the election shall be submitted in writing to the director not later than the due date or, if an extension of time to file has been requested and granted, not later than the extended due date of the mandatory combined return for the initial privilege period for which a return is required. The managerial member shall be the designated agent and the responsible person for filing the combined return and paying the tax for the combined group. If another taxable member is subsequently designated as the managerial member, the subsequent designation shall be subject to the approval of the director.

f. The director is authorized to promulgate regulations with regards to installment payments, estimated payments, overpayments, refunds and any other filing or payment matters related to combined groups filing combined returns.

g. For privilege periods ending on and after July 31, 2019, a combined group must file a mandatory combined return. However, if privilege periods of the members of the combined group differ, the first mandatory combined return for the combined group shall be required for the privilege period of the managerial member.

h. The members of a combined group shall notify the director of a change in the combined group where a member dissolves, a merger of any kind occurs, a member withdraws from the group, a member ceases doing business, a member of the group is acquired by a third party not in the group, or additional members enter the group which are required to be included. Such notice shall be submitted in written form, as determined by the director, not later than the due date, or, if an extension of time to file has been requested and granted, not later than the extended due date of the combined unitary tax return for the privilege period in which a change in the combined group occurs.

i. Any notice shall be sent to the managerial member of the combined

group at the last known address of the managerial member as indicated on either the last filing required or made under this Chapter or a subsequent electronic or written notice provided by the managerial member under rules prescribed by the director.

j. The director may, at the director's sole discretion:

- (1) make any deficiency assessment against either the managerial member or a taxable member of the combined group;
- (2) refund or credit any overpayment to either the managerial member or a taxable member of the combined group;
- (3) require any payment to be made by electronic funds transfer; and
- (4) require the mandatory combined return to be filed electronically.

L.2018, c. 48, § 22, eff. July 1, 2018. Amended by L.2018, c. 131, § 5, eff. Oct. 4, 2018, retroactive to Jan. 1, 2018; L.2020, c.109, § 8, eff. Nov. 4, 2020, retroactive to periods ending on or after Dec. 31, 2019.

N. J. S. A. 54:10A-4.10, NJ ST 54:10A-4.10

#### **N.J.S.A. 54:10A-4.11**

54:10A-4.11. Determination of combined group on a world-wide or affiliated group basis

a. The managerial member of a combined group may elect to have the combined group determined on a world-wide basis or an affiliated group basis. If no such election is made, the combined group shall be determined on a water's-edge basis and will take into account the incomes and allocation factors of only the following members of the combined group:

- (1) each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States, excluding such a member if eighty per cent or more of both its property and payroll during the privilege period are located outside the United States, the District of Columbia, and any territory or possession of the United States;
- (2) each member, wherever incorporated or formed, if twenty per cent or more of both its property and payroll during the privilege period are

located in the United States, the District of Columbia, or any territory or possession of the United States;

(3) any member that earns more than 20% of its income, directly or indirectly, from intangible property or related service activities that are deductible against the income of other members of the combined group;

(4) each member that has income as defined under the Corporation Business Tax Act (1945), P.L.1945, c. 162 (C.54:10A-1 et seq.) and has sufficient nexus in New Jersey pursuant to section 2 of P.L.1945, c. 162 (C.54:10A-2).

b. A world-wide election or an affiliated group election is effective only if made on a timely filed, original return for a privilege period by the managerial member of the combined group. Such election is binding for, and applicable to, the privilege period for which it is made and for the five immediately succeeding privilege periods. Provided however, the election can be revoked prior to the expiration of the binding period by written request to the Director of Taxation for reasonable cause including but not limited to a substantial change in ownership, members of the combined group or principal business, or changes in tax law, regulation or policy.

c. If the managerial member elects to determine the members of a combined group on an affiliated group basis, the taxable members shall take into account the entire net income or loss and allocation factors of all of the members of its affiliated group, regardless of whether such members are engaged in a unitary business, that are subject to tax or would be subject to tax under this chapter, if doing business in this State.

d. The director shall promulgate rules and regulations necessary to carry out the provisions of this section.

Credits

L.2018, c. 48, § 23, eff. July 1, 2018.

N. J. S. A. 54:10A-4.11, NJ ST 54:10A-4.11

#### **N.J.S.A. 54:10A-4.12**

54:10A-4.12. Accrual of penalties or interest; conditions; waiver

Following the enactment of P.L.2018, c. 48 (C.54:10A-5.41 et al.), no



penalties or interest shall accrue for underpayment of tax for the provisions of P.L.2018, c. 48 (C.54:10A-5.41 et al.) applying retroactively to tax years beginning on or after January 1, 2017, that create an additional tax liability due to the provisions of P.L.2018, c. 48 (C.54:10A-5.41 et al.), provided, however, the additional payments must be made by either the second next estimated payment subsequent to the enactment of P.L.2018, c. 48 (C.54:10A-5.41 et al.), by December 31, 2018 for tax years beginning on or after January 1, 2017, or by the first estimated payment due after January 1, 2019 for tax years beginning on or after January 1, 2018. In the first tax year that a mandatory combined return is due pursuant to P.L.2018, c. 48 (C.54:10A-5.41 et al.), no penalties or interest shall accrue due to underpayment that may result from the switch from separate returns to mandatory combined returns, and any overpayment by a member of the combined group from the prior tax year will be credited as an overpayment of the tax owed by the combined group, credited toward future estimated payments by the combined group.

#### Credits

L.2018, c. 48, § 24, eff. July 1, 2018.

N. J. S. A. 54:10A-4.12, NJ ST 54:10A-4.12

#### **N.J.S.A. 54:10A-4.13**

##### 54:10A-4.13. Severability

If any material provision within a clause, sentence, paragraph, section, or part of P.L.2018, c. 48 (C.54:10A-5.41 et al.) or the application thereof shall be judged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of P.L.2018, c. 48 (C.54:10A-5.41 et al.), or the application of any part thereof to any other person or circumstance and, to this end, the provisions of each clause, sentence, paragraph, section, or part of P.L.2018, c. 48 (C.54:10A-5.41 et al.) are declared to be severable.

#### Credits

L.2018, c. 48, § 28, eff. July 1, 2018.

N. J. S. A. 54:10A-4.13, NJ ST 54:10A-4.13

#### **N.J.S.A. 54:10A-4.14**

##### 54:10A-4.14. Rules and regulations

Notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), to the contrary, the director may adopt, immediately, upon filing with the Office of Administrative Law, regulations that the director deems necessary to implement the provisions of P.L.2018, c. 48 (C.54:10A-5.41 et al.), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The director may thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c. 410 (C.52:14B-1 et seq.).

#### Credits

L.2018, c. 48, § 29, eff. July 1, 2018.

N. J. S. A. 54:10A-4.14, NJ ST 54:10A-4.14

#### **N.J.S.A. 54:10A-4.15**

##### 54:10A-4.15. Allowable deduction for computing entire net income

For privilege periods beginning on and after January 1, 2018, a taxpayer shall be allowed as a deduction for computing entire net income pursuant to section 4 of P.L.1945, c. 162 (C.54:10A-4), in the amount of the full value of the deduction that the taxpayer was allowed for federal income tax purposes and for which the taxpayer had taken for federal income tax purposes pursuant to section 250 of the federal Internal Revenue Code (26 U.S.C. s.250); provided, however, such deduction shall only be allowable in computing entire net income pursuant to section 4 of P.L.1945, c. 162 (C.54:10A-4) to the extent the corresponding amounts of income, that the deduction was attributable to and taken against for federal income tax purposes, have not been excluded or exempted pursuant to any provision of the Corporation Business Tax Act (1945), P.L.1945, c. 162 (C.54:10A-1 et seq.).

#### Credits

L.2018, c. 131, § 1, eff. Oct. 4, 2018, retroactive to Jan. 1, 2018.

N. J. S. A. 54:10A-4.15, NJ ST 54:10A-4.15

**N.J.S.A. 54:10A-5**

54:10A-5. Amount of franchise tax

The franchise tax to be annually assessed to and paid by each taxpayer shall be the greater of the amount computed pursuant to this section or the alternative minimum assessment computed pursuant to section 7 of P.L.2002, c. 40 (C.54:10A-5a); provided however, that in the case of a taxpayer that is a New Jersey S corporation, an investment company, a professional corporation organized pursuant to P.L.1969, c. 232 (C.14A:17-1 et seq.) or a similar corporation for profit organized for the purpose of rendering professional services under the laws of another state, or a person operating on a cooperative basis under Part I of Subchapter T of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq., there shall be no alternative minimum assessment computed pursuant to section 7 of P.L.2002, c. 40 (C.54:10A-5a).

The amount computed pursuant to this section shall be the sum of the amount computed under subsection (a) hereof, or in the alternative to the amount computed under subsection (a) hereof, the amount computed under subsection (f) hereof, and the amount computed under subsection (c) hereof:

(a) That portion of its entire net worth as may be allocable to this State as provided in section ~~6~~<sup>6</sup>, multiplied by the following rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net worth; 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar on all amounts of allocated net worth in excess of \$300,000,000.00; provided, however, that with respect to reports covering accounting or privilege periods set forth below, the rate shall be that percentage of the rate set forth in this subsection for the appropriate year:

Accounting or Privilege

The Percentage of the Rate

Periods Beginning on or

to be Imposed Shall be

after:

April 1, 1983

75%

July 1, 1984

50%

July 1, 1985

25%

July 1, 1986

0

(b) (Deleted by amendment, P.L.1968, c. 250, ~~§~~s.2.)

(c) (1) For a taxpayer that is not a New Jersey S corporation, 3 1/4% of its entire net income or such portion thereof as may be allocable to this State as provided in ~~section 6~~sections 6 through 10 of P.L.1945, c. 162 (C.54:10A-6 through C.54:10A-10), plus such portion thereof as is specifically assigned to this State as provided in section 5 of P.L.1993, c. 173 (C.54:10A-6.1); provided, however, that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1967, the rate shall be 4 1/4%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5 1/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7 1/2%; and that with respect to reports covering privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%; provided however, that for a taxpayer that has entire net income of \$100,000 or less for a privilege period and is not a partnership the rate for that privilege period shall be 7 1/2% and provided further that for a taxpayer that has entire net income of \$50,000 or less for a privilege period and is not a partnership the rate for that privilege period shall be 6 1/2%.

For privilege periods ending on or after July 31, 2019, for a combined group filing a mandatory or elective combined return, for the portion of a taxable member's activities that are independent from the unitary business of the combined group filing a mandatory unitary combined return where the taxable member independently has nexus with this State, and for a taxpayer that files a separate return, the tax rate shall be applied against taxable net income plus such portion thereof as is specifically assigned to this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

(2) For a taxpayer that is a New Jersey S corporation:

(i) for privilege periods ending on or before June 30, 1998 the rate determined by subtracting the maximum tax bracket rate provided under N.J.S.54A:2-1 for the privilege period from the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period; and

(ii) For a taxpayer that has entire net income in excess of \$100,000 for the privilege period,

for privilege periods ending on or after July 1, 1998, but on or before June 30, 2001, the rate shall be 2%,

for privilege periods ending on or after July 1, 2001, but on or before June 30, 2006, the rate shall be 1.33%,

for privilege periods ending on or after July 1, 2006, but on or before June 30, 2007, the rate shall be 0.67%, and

for privilege periods ending on or after July 1, 2007 there shall be no rate of tax imposed under this paragraph; and

(iii) For a taxpayer that has entire net income of \$100,000 or less for privilege periods ending on or after July 1, 1998, but on or before June 30, 2001, the rate for that privilege period shall be 0.5%, and for privilege periods ending on or after July 1, 2001, there shall be no rate of tax imposed under this paragraph.

(iv) The taxpayer's rate determined under subparagraph (i), (ii) or (iii) of this paragraph shall be multiplied by its entire net income that is not subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c. 162 (C.54:10A-6 through C.54:10A-10) plus such portion thereof as is specifically assigned to this State as provided in section 5 of P.L.1993, c. 173 (C.54:10A-6.1). **For privilege periods ending on or after July 31, 2019, the tax rate shall be applied against taxable net income.**

(3) For a taxpayer that is a New Jersey S corporation, in addition to the amount, if any, determined under paragraph (2) of this subsection, the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period multiplied by its entire net income that is subject to federal income taxation or such portion thereof as may be allocable to this State pursuant

to sections 6 through 10 of P.L.1945, c. 162 (C.54:10A-6 through C.54:10A-10). **For privilege periods ending on or after July 31, 2019, the tax rate shall be applied against taxable net income.**

(d) Provided, however, that the franchise tax to be annually assessed to and paid by any investment company or real estate investment trust, which has elected to report as such and has filed its return in the form and within the time provided in this act and the rules and regulations promulgated in connection therewith, shall, in the case of an investment company, be measured by 40% of its entire net income and 40% of its entire net worth, and in the case of a real estate investment trust, by 4% of its entire net income and 15% of its entire net worth, at the rates hereinbefore set forth for the computation of tax on net income and net worth, respectively, but in no case less than \$250, and further provided, however, that the franchise tax to be annually assessed to and paid by a regulated investment company which for a period covered by its report satisfies the requirements of Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal Revenue Code shall be ~~\$250.~~<sup>2</sup>**250. For privilege periods ending on or after July 31, 2019, the tax rate shall be applied against 40% of its taxable net income in the case of an investment company, and against 4% of its taxable net income in the case of a real estate investment trust.**

(e) The tax assessed to any taxpayer pursuant to this section shall not be less than \$25 in the case of a domestic corporation, \$50 in the case of a foreign corporation, or \$250 in the case of an investment company or regulated investment company. Provided however, that for privilege periods beginning in calendar year 1994 and thereafter the minimum taxes for taxpayers other than an investment company or a regulated investment company shall be as provided in the following schedule:

Period Beginning	Domestic	Foreign
In Calendar Year	Corporation	Corporat
	Minimum Tax	Minimum
1994	\$ 50	



1995	\$100		0
1996	\$150	\$250,000 or more but less than \$500,000	\$1,000
1997	\$200	\$500,000 or more but less than \$1,000,000	\$1,500
1998	\$200		
1999	\$200	\$1,000,000 or more	\$2,000
2000	\$200		
2001	\$210		

and for calendar years 2002 through 2005 the minimum tax for all taxpayers shall be \$500, and for calendar year 2006 through calendar year 2011 the minimum tax for all corporations, and for privilege periods beginning in calendar year 2012 and thereafter the minimum tax for corporations that are not New Jersey S corporations shall be based on the New Jersey gross receipts, ~~as defined for the purposes of this section pursuant to section 7 of P.L.2002, c. 40 (C.54:10A-5a),~~ of the taxpayer pursuant to the following schedule:

and for calendar years 2002 through 2005 the minimum tax for all taxpayers shall be \$500, and for calendar year 2006 through calendar year 2011 the minimum tax for all corporations, and for privilege periods beginning in calendar year 2012 and thereafter the minimum tax for corporations that are not New Jersey S corporations shall be based on the New Jersey gross receipts, ~~as defined for the purposes of this section pursuant to section 7 of P.L.2002, c. 40 (C.54:10A-5a),~~ of the taxpayer pursuant to the following schedule:

New Jersey Gross Receipts:

Minimum Tax:

Less than \$100,000

0

\$50

\$100,000 or more but less than \$250,000

\$75

New Jersey Gross Receipts:

Minimum Tax:

Less than \$100,000

5

\$37

\$100,000 or more but less than \$250,000

2.50

\$56

\$250,000 or more but less than \$500,000

0

\$75

\$500,000 or more but less than \$1,000,000

125

\$1,000,000 or more

500

provided however, that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax shall be \$2,000 for the privilege period ; provided, however, for privilege periods ending on and after July 31, 2019, the minimum tax of each taxable member of a combined group filing a mandatory or elective New Jersey combined return shall be \$2,000 for the group privilege period.

(f) In lieu of the portion of the tax based on net worth and to be computed under subsection (a) of this section, any taxpayer, the value of whose total assets everywhere, less reasonable reserves for depreciation, as of the close of the period covered by its report, amounts to less than \$150,000, may elect to pay the tax shown in a table which shall be promulgated by the director.

(g) Provided however, that for privilege periods beginning on or after January 1, 2001 but before January 1, 2002 the franchise tax annually assessed to and paid by a taxpayer:

(1) that is a limited liability company or foreign limited liability company classified as a partnership for federal income tax purposes shall be the amount determined pursuant to the provisions of section 3 of P.L.2001, c. 136 (C.54:10A-15.6); or

(2) that is a limited partnership or foreign limited partnership classified as a partnership for federal income tax purposes shall be the amount determined pursuant to the provisions of section 4 of P.L.2001, c. 136 (C.54:10A-15.7).

(h) Provided however, that for privilege periods beginning on or after January 1, 2002 the franchise tax annually assessed to and paid by a taxpayer that is a partnership shall be the amount determined pursuant to the provisions of section 12 of P.L.2002, c. 40 (C.54:10A-15.11).

(i) (Deleted by amendment, P.L.2008, c. 120)

\$1, Credits

L.1945, c. 162, p. 566, § 5. Amended by L.1947, c. 50, p. 171, § 2; L.1948, c. 459, p. 1886, § 2; L.1953, c. 236, p. 1716, § 1; L.1954, c. 88, p. 538, § 1; L.1958, c. 63, p. 189, § 2; L.1959, c. 162, p. 638, § 1; L.1959, c. 190, p. 761, § 1; L.1966, c. 134, § 1, eff. June 17, 1966; L.1968, c. 112, § 1, eff. June 25, 1968; L.1968, c. 250, § 2, eff. Aug. 16, 1968; L.1970, c. 93, § 1; L.1972, c. 25, § 1, eff. May 17, 1972; L.1972, c. 89, § 2; L.1975, c. 162, § 1, eff. July 22, 1975; L.1979, c. 280, § 1, eff. Jan. 8, 1980; L.1982, c. 55, § 2; L.1983, c. 75, § 1, eff. Feb. 24, 1983; L.1993, c. 173, § 2, eff. July 7, 1993; L.1995, c. 246, § 1; L.1997, c. 40, § 1, eff. March 27, 1997; L.2001, c. 23, § 1, eff. Feb. 2, 2001; L.2001, c. 136, § 2, eff. June 29, 2001; L.2002, c. 40, § 6, eff. July 2, 2002; L.2006, c. 38, § 2, eff. July 8, 2006; L.2008, c. 120, § 1, eff. Dec. 19, 2008; L.2011, c. 84, § 1, eff. June 30, 2011; L.2018, c. 48, § 5, eff. July 1, 2018; L.2018, c. 131, § 6, eff. Oct. 4, 2018, retroactive to Jan. 1, 2018.

#### Footnotes

1

N.J.S.A. § 54:10A-6.

2

26 U.S.C.A. § 852(a).

N. J. S. A. 54:10A-5, NJ ST 54:10A-5

#### **N.J.S.A. 54:10A-5a**

54:10A-5a. ~~Alternative minimum assessment for privilege periods~~

~~a. For the purposes of this section:~~

~~“Affiliated group” means a group of corporations defined as an affiliated~~

~~group by section 1504 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504, or any successor federal law, that files a consolidated federal income tax return for the privilege period pursuant to sections 1501 through 1504 of the federal Internal Revenue Code of 1986, 26 U.S.C. ss.1501-1504 or any successor federal law:~~

~~“Cost of goods sold” means the cost of goods sold calculated pursuant to the same method used by the taxpayer for the purpose of computing its federal income tax, or other input or expenditure, as determined by the director, as may be necessary to equitably measure the business activity of the taxpayer, multiplied by the allocation factor computed as set forth in section 6 of P.Repealed by L.19452018, c. 162 (C.54:10A-6).~~

~~“Member of an affiliated group” means a taxpayer that is part of an affiliated group:~~

~~“New Jersey gross profits” means New Jersey gross receipts reduced by returns and allowances attributable to New Jersey gross receipts, less the cost of goods sold:~~

~~“New Jersey gross receipts” means the receipts of the taxpayer for the privilege period, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes arising during the privilege period from:~~

~~(1) sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,~~

~~(2) sales of tangible personal property located without the State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State,~~

~~(3) services performed within the State,~~

~~(4) rentals from property situated, and royalties from the use of patents or copyrights, within the State,~~

~~(5) all other business receipts earned within the State:~~

~~b. For privilege periods beginning on or after January 1, 2002, the alternative minimum assessment shall be equal to the amount computed under paragraph (1) or (2) of this subsection pursuant to the election made pursuant to subsection c. of this section:~~

(1) If New Jersey gross profits are:	the assessment is:
Not more than \$1,000,000	No amount is assessed
More than \$1,000,000 but not over \$10,000,000	.0025 times the gross receipts, plus \$1,000,000 multiplied by .0025
More than \$10,000,000 but not over \$15,000,000	.0035 times the gross receipts, plus \$10,000,000 multiplied by .0035
More than \$15,000,000 but not over \$25,000,000	.006 times the gross receipts, plus \$15,000,000 multiplied by .006
More than \$25,000,000 but not over \$37,500,000	.007 times the gross receipts, plus \$25,000,000 multiplied by .007
More than \$37,500,000	.008 times the gross receipts, plus \$37,500,000 multiplied by .008

(2) If New Jersey gross receipts are:	the assessment is:	(3) The sum of the amounts untaxed for all of the members of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, shall not exceed \$5,000,000 of gross profits, or shall not exceed \$10,000,000 of gross receipts, or, for a group whose members have not all elected the same computation method under this subsection, shall not exceed five times the applicable amounts not subject to assessment of the individual members.
Not more than \$2,000,000	No amount is assessed	e. A taxpayer shall, for the first privilege period for which it is required to compute the alternative minimum assessment pursuant to this section, elect to employ the computation method set forth in paragraph (1) or the computation method set forth in paragraph (2) of subsection b. of this section, which computation method shall be employed by the taxpayer for the computation of the alternative minimum assessment for that privilege period and for the next succeeding four privilege periods, pursuant to regulations and forms as the director may prescribe. The taxpayer may change its election at any time after the initial five-privilege periods; provided however, that any change in the method of computation of the alternative minimum assessment which the taxpayer elects shall be employed by the taxpayer for the privilege period for which the change is effective and for the next four succeeding privilege periods.
More than \$2,000,000 but not over \$20,000,000	.00125 times the gross receipts in excess of \$2,000,000 multiplied by 11111	d. (1) Notwithstanding the provisions of subsection b. of this section, the alternative minimum assessment for a taxpayer for a privilege period, shall not exceed \$5,000,000.
More than \$20,000,000 but not over \$30,000,000	.00175 times the gross receipts	(2) If five or more taxpayers are members of an affiliated group, the sum of the alternative minimum assessments of each of the members of the affiliated group for a privilege period shall not exceed \$20,000,000. If the sum of the alternative minimum assessment for all members of the affiliated group computed as set forth in subsection b. after application of the maximum set by paragraph (1) of this subsection would otherwise exceed \$ 20,000,000, the alternative minimum assessment for a member of the affiliated group shall equal the alternative minimum assessment for that member of the affiliated group computed as set forth in subsection b. after application of the maximum set by paragraph (1) of this subsection multiplied by a fraction, the numerator of which is \$20,000,000 and the denominator of which is the sum of the alternative minimum assessments for all members of the affiliated group computed as set forth in subsection b. after application of the maximum set by paragraph (1) of this subsection.
More than \$30,000,000 but not over \$50,000,000	.003 times the gross receipts	
More than \$50,000,000 but not over \$75,000,000	.0035 times the gross receipts	
More than \$75,000,000	.004 times the gross receipts	

~~(3) For the purpose of calculating the alternative minimum assessment, the amount of the sum of the alternative minimum assessments of the members of an affiliated group shall not, when added to the amounts of the members' tax computed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), exceed \$20,000,000.~~

~~e. The alternative minimum assessment computed pursuant to this section for privilege periods commencing after June 30, 2006 shall be \$0.00, except that for taxpayers exempt from corporation net income taxation pursuant to 15 U.S.C. s.381 et seq. (Pub.L.86-272), 73 Stat. 555, such assessment shall continue to be computed as otherwise provided herein; provided however, that for privilege periods commencing after December 31, 2006, a taxpayer exempt from corporation net income taxation pursuant to 15 U.S.C. s.381 et seq. that has filed a consent, in the form as shall be prescribed by the director, to the jurisdiction of this State to impose and the duty of the taxpayer to pay the tax imposed pursuant to section 5 of P.L.1945, c. 165 (C.54:10A-5) for the privilege period shall have an alternative minimum assessment for that period of \$0.00.~~

~~f. (1) If the alternative minimum assessment for a taxpayer computed pursuant to this section exceeds the tax computed pursuant to section 5 of P. L.1945, c. 165 (C.54:10A-5) for a privilege period, the taxpayer shall be allowed an amount of credit equal to the amount by which the alternative minimum assessment computed pursuant to this section for the privilege period exceeds the tax computed pursuant to section 5 of P.L.1945, c. 165 (C. 54:10A-5) for that privilege period; provided however, that a taxpayer shall not be allowed a credit for any amount of alternative minimum assessment for a privilege period for which a credit is allowed pursuant to section 29 of P.L.2002, c. 40 (C.54:10A-5b). The amount of credit may be carried forward for application in subsequent privilege periods subject to the limitations of paragraph (2) of this subsection.~~

~~(2) A taxpayer may apply all or a portion of the credits allowed by paragraph (1) of this subsection against the tax computed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), for a privilege period for which the tax pursuant to that section exceeds the alternative minimum assessment computed for the privilege period pursuant to this section; provided however, that the amount of credit applied shall not reduce the amount of tax otherwise due to less than the alternative minimum assessment as computed pursuant to this section for the privilege period, shall not reduce the amount of tax otherwise due by more than 50%, and~~

~~shall not reduce the amount of tax otherwise due below the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162 (C.54:10A-5).~~

~~Credits~~

~~L.2002, c. 40, § 7, eff. July 2, 2002~~48, § 32.

N. J. S. A. 54:10A-5a, NJ ST 54:10A-5a

#### **N.J.S.A. 54:10A-5b**

54:10A-5b. Air carrier contribution for capital improvement projects; credit against alternative minimum assessment for privilege period

An air carrier, within the meaning given that term pursuant to 49 U.S.C. s.40102, that contributes more than 25% of the total amortization for capital improvement projects at Newark International Airport paid by air carriers to the Port Authority of New York and New Jersey through rates and charges for a privilege period shall be allowed a credit against the alternative minimum assessment imposed pursuant to section 7 of P.L.2002, c. 40 (C.54:10A-5a) for the privilege period in an amount equal to 50% of the portion of the total amortization for capital improvement projects at Newark International Airport paid by the air carrier to the Port Authority of New York and New Jersey through rates and charges for the privilege period; provided however, that the amount of the credit applied under this section against the alternative minimum assessment for a privilege period shall not exceed 50% of the alternative minimum assessment otherwise due and shall not reduce the alternative minimum assessment to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162.

Credits

L.2002, c. 40, § 29, eff. July 2, 2002.

N. J. S. A. 54:10A-5b, NJ ST 54:10A-5b

#### **N.J.S.A. 54:10A-5.1**

54:10A-5.1, 54:10A-5.2. Expired

N. J. S. A. 54:10A-5.1, NJ ST 54:10A-5.1

**N.J.S.A. 54:10A-5.2**

54:10A-5.1, 54:10A-5.2. Expired

N. J. S. A. 54:10A-5.2, NJ ST 54:10A-5.2

**N.J.S.A. 54:10A-5.3**

54:10A-5.3. Expired

N. J. S. A. 54:10A-5.3, NJ ST 54:10A-5.3

**N.J.S.A. 54:10A-5.4**

54:10A-5.4. Short title; New Jobs Investment Tax Credit Act

This act shall be known and may be cited as the “New Jobs Investment Tax Credit Act.”

Credits

L.1993, c. 170, § 1.

N. J. S. A. 54:10A-5.4, NJ ST 54:10A-5.4

**N.J.S.A. 54:10A-5.5**

54:10A-5.5. Definitions

As used in this act:

“Business relocation or expansion or investment” means capital investment in a new or expanded business facility in this State.

“Business facility” means any factory, mill, plant, refinery, warehouse, building, complex of buildings or structural components of buildings, and all machinery, equipment and personal property located within this State, used in connection with the operation of the business of a corporation that is subject to the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), and all facility preparation and start-up costs of the taxpayer for the business facility which it capitalizes for federal income tax purposes.

“Compensation” means wages, salaries, commissions or any other form of remuneration paid to employees for personal services.

“Controlled group” means one or more chains of corporations connected

through stock ownership with a common parent corporation if stock possessing at least 50% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least 50% of the voting power of all classes of stock of at least one of the other corporations.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Expanded business facility” means any business facility, other than a new business facility, resulting from acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after the operative date of this act, but only to the extent of a taxpayer’s qualified investment in such improvements or additions.

“New business facility” means a business facility which:

a. is employed by a taxpayer in the conduct of a business which is or will be taxable under P.L.1945, c. 162 (C.54:10A-1 et seq.). Such facility shall not be considered a new business facility in the hands of a taxpayer if the taxpayer’s only activity with respect to such facility is to lease it to another person;

b. is purchased by a taxpayer and is placed in service or use on or after the operative date of this act;

c. was not purchased by a taxpayer from a related person. The director may waive this requirement if the facility was acquired from a related person for its fair market value and the acquisition was not tax motivated;

d. was not in service or use during the 90-day period immediately prior to transfer of the title to the facility, provided that this restriction for the 90-day period may be waived by the director if the director determines that individuals employed at the facility may be considered as “new employees” as defined in this section.

“New employee” means an individual residing and domiciled in this State, hired by a taxpayer to fill a position or a job in this State which previously did not exist in the taxpayer’s business enterprise in this State prior to the date on which the taxpayer’s qualified investment is placed in service or use in this State provided that:

a. the individual’s duties in connection with the operation of the business

facility are on a regular, full-time and permanent basis or regular part-time and permanent basis;

b. the individual is not a related individual as defined in subsection (i) of section 51 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.51, or does not own 10% or more of the business with such ownership interest to be determined under the rules set forth in section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267;

c. the individual is not an individual who worked for the taxpayer during the six-month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six-month period beginning on the date the taxpayer's qualified investment is placed in service or use in this State; and

d. the individual is not an employee for whom the taxpayer is allowed a credit pursuant to section 19 of P.L.1983, c. 303 (C.52:27H-78) or section 12 of P.L.1985, c. 227 (C.55:19-13).

As used in this definition: "full-time" means employment for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business and "permanent basis" does not include employment that is temporary or seasonal and therefore the compensation paid to temporary or seasonal employees will not be considered for purposes of sections 4 and 6 of this act;<sup>1</sup> and "part-time" means customarily performing such duties at least 20 hours per week for at least six months during the tax year. In no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed the total increase in the taxpayer's average employment in this State for the tax year over the average employment in this State for the previous tax year and in no event shall the number of new employees directly attributable to the qualified investment for the purpose of the credit allowed pursuant to this act exceed one-half of the average employment in this State for the tax year; and provided, that the director may require that the net increase in the taxpayer's employment in this State be determined and certified for the taxpayer's controlled group.

Provided further, however, that individuals filling jobs saved as a direct result of the taxpayer's qualified investment in property purchased for business relocation or expansion on or after the operative date of this act may be treated as new employees filling new jobs if the taxpayer certifies the material facts to the director and the director expressly finds that: but for the new employer purchasing the assets of a business in bankruptcy

under chapter 7 or 11 of the United States Bankruptcy Code and such new employer making qualified investment in property purchased for business relocation or expansion, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs so saved would have been lost; or but for the taxpayer's qualified investment in property purchased for business relocation or expansion in this State, the business facility in this State would have closed and the employees located at the facility would have lost their jobs; provided that the director shall not make this certification unless the director finds that the business is insolvent as defined in paragraph (32) of 11 U.S.C. s.101 or that the business facility was destroyed in whole or in significant part by fire, flood or act of God.

"New job" means a job which did not exist in the business of the taxpayer in this State prior to the taxpayer's qualified investment being made, and which is filled by a new employee.

"Partnership" means a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

"Property purchased for business relocation or expansion" means improvements to real property and tangible personal property, but only if that improvement or personal property was constructed or purchased and placed in service or use by the taxpayer, for use as a component part of a new or expanded business facility located in this State.

a. Property purchased for business relocation or expansion shall include only:

(1) improvements to real property placed in service or use on or after the operative date of this act by the taxpayer;

(2) tangible personal property placed in service or use by the taxpayer on or after the operative date of this act, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the corporation business tax liability of the taxpayer under P.L. 1945, c. 162, and which has a remaining recovery period of three or more years at the time the property is placed in service or use in this State; or

(3) tangible personal property owned and used by the taxpayer at a business location outside this State which is moved into this State on or after the operative date of this act, for use as a component part of a new



or expanded business facility located in this State; provided that the property is depreciable or amortizable personal property for income tax purposes, and has a remaining recovery period of three or more years at the time the property is placed in service or use in this State.

b. Property purchased for business relocation or expansion shall not include:

(1) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(2) Airplanes;

(3) Property which is primarily used outside this State with that use being determined based upon the amount of time the property is actually used both within and without this State;

(4) Property which is acquired incident to the purchase of the stock or assets of the seller unless for good cause shown, the director consents to waiving this disqualification; or

(5) Property purchased on or after the operative date of this act, unless pursuant to a written contract to purchase executed prior to the operative date of this act, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use; provided that if the contract of purchase specifies a minimum purchase price the amount thereof shall be used to determine the qualified investment in such property under section 5 of this act if the property otherwise qualifies as property purchased for business relocation or expansion.

c. Property shall be deemed to have been purchased prior to a specified date only if:

(1) the physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchase prior to the specified date; or

(2) the machinery or equipment was owned by the taxpayer prior to the specified date, or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date.

“Purchase” means any acquisition of property, including an acquisition pursuant to a lease, but only if:

a. the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;

b. the property is not acquired by one member of a controlled group from another member of the same controlled group. The director may waive this requirement if the property was acquired from a related party for its then fair market value; and

c. the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(1) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(2) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1014.

“Related person” means:

a. a corporation, partnership, association or trust controlled by the taxpayer;

b. an individual, corporation, partnership, association or trust that is in control of the taxpayer;

c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

d. a member of the same controlled group as the taxpayer.

As used in the definition of related person and as is applicable to the definitions of purchase and small or mid-size business taxpayer, “control,” with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; “control,” with respect to a trust, means ownership, directly or indirectly, of 50% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267, other than paragraph (3) of subsection (c) of that section.



“Small or mid-size business taxpayer” means a taxpayer that has an annual payroll, as calculated pursuant to section 6 of P.L.1945, c. 162 (C.54:10A-6), of \$5,000,000 or less and annual gross receipts, as calculated pursuant to section 6 of P.L.1945, c. 162 (C.54:10A-6), of not more than \$10,000,000 for the tax year in which property purchased for business relocation or expansion is placed in service or use by the taxpayer; provided that beginning with tax years commencing on and after January 1 next following the operative date of P.L.2002, c. 40 the director shall prescribe the amount of annual payroll and annual gross receipts which shall apply by increasing each such amount hereinabove by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of \$50. “Annual inflation adjustment factor” means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins. The annual payroll of a taxpayer shall include the employees of its domestic and foreign affiliates, whether employed on a full-time, part-time, temporary, or other basis, during the preceding 12 months. If a taxpayer has not been in existence for 12 months, the payroll of the taxpayer shall be divided by the number of weeks, including fractions of a week, that it has been in business, and the result multiplied by 52. That amount shall then be added to the 12-month payrolls of its domestic and foreign affiliates to determine the annual payroll of the taxpayer for purposes of this definition. The annual gross receipts of a taxpayer shall include the annual gross receipts of its foreign and domestic affiliates. The annual gross receipts of a taxpayer which has been in business for three or more complete tax years means the average of the annual gross receipts of the business for the last three tax years. For purposes of this definition, the gross receipts of the taxpayer includes receipts from sales of tangible personal property and services, interests, rents, royalties, fees, commissions and receipts from any other source, but less returns and allowances, sales of fixed assets, interaffiliated transactions between a business and its domestic and foreign affiliates, and taxes collected for remittance to a third party, as shown on its books for federal income tax purposes. The annual receipts of a taxpayer that has been in business for less than three complete tax years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. “Affiliates”

includes all concerns that are affiliates of each other when either directly or indirectly one concern controls the other or a third party or parties controls both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, the director shall consider all appropriate factors, including common ownership, common management and contractual relationships. “Concern” means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity), having a place of business located in this State, and which makes a contribution to the economy of this State through payment of taxes, or the sale or use in this State of tangible personal property, or the procurement or providing of services in this State, or the hiring of employees who work in this State. “Concern” includes but is not limited to any person as defined in R.S.1:1-2.

“Tax year” means the fiscal or calendar accounting year of a taxpayer.

#### Credits

L.1993, c. 170, § 2. Amended by L.2002, c. 40, § 18, eff. July 2, 2002.

#### Footnotes

<sup>1</sup>

N.J.S.A. §§ 54:10A-5.7 and 54:10A-5.9.

N. J. S. A. 54:10A-5.5, NJ ST 54:10A-5.5

#### **N.J.S.A. 54:10A-5.6**

54:10A-5.6. Determination of amount of credit allowed

a. A taxpayer shall be allowed a credit against the portion of the tax imposed in section 5 of P.L.1945, c. 162 (C.54:10A-5), that is attributable to and the direct consequence of the taxpayer’s qualified investment in a new or expanded business facility in this State which results in the creation of at least five new jobs in the case of a small or

mid-size business taxpayer, or at least 50 new jobs in the case of any other taxpayer, provided that the median compensation of all new jobs included in the taxpayer's determination of the new jobs factor shall not be less than \$27,000 per year, provided that beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall adjust the median annual compensation which shall apply as provided in subsection e. of this section. The amount of this credit shall be determined and applied as hereinafter provided.

b. The amount of the credit allowed shall be determined by multiplying the amount of the taxpayer's "qualified investment," determined under section 5<sup>1</sup> of this act, in "property purchased for business relocation or expansion" by the taxpayer's new jobs factor determined under section 6<sup>2</sup> of this act. The product of this calculation shall establish the maximum amount of credit allowed under this act due to the qualified investment.

c. The amount of credit allowed shall be taken over a five-year period, at the rate of one-fifth of the amount thereof per tax year, beginning with the tax year in which the taxpayer places the qualified investment in service or use in this State.

d. For purposes of the credit allowed by this section, property shall be considered placed in service or use in the earlier of the following tax years:

(1) The tax year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

e. Beginning with tax years commencing on and after January 1 next following the operative date of this act the director shall prescribe the annual median compensation of all new jobs included in the taxpayer's determination of new jobs factor by increasing the amount of median compensation set forth in subsection a. of this section by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of \$50. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins.

## Credits

L.1993, c. 170, § 3. Amended by L.2002, c. 40, § 19, eff. July 2, 2002.

## Footnotes

1

N.J.S.A. § 54:10A-5.8.

2

N.J.S.A. § 54:10A-5.9.

N. J. S. A. 54:10A-5.6, NJ ST 54:10A-5.6

## **N.J.S.A. 54:10A-5.7**

### 54:10A-5.7. Aggregate annual credit

a. The aggregate annual credit allowed for a tax year shall be an amount equal to the sum of:

(1) The one-fifth part allowed under section 3<sup>1</sup> for qualified investment placed into service or use during a prior tax year, plus

(2) The one-fifth part allowed under section 3 for qualified investment placed into service or use during the current tax year.

b. (1) The amount determined under subsection a. shall be allowed as a credit against that portion of the taxpayer's corporation business tax liability which is attributable to and the direct result of the taxpayer's qualified investment. The amount determined under subsection a. and allowed as a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162,<sup>2</sup> for a tax year shall not reduce that tax liability by more than 50% of that portion of the taxpayer's tax liability otherwise due for the tax year which is attributable to and the direct result of the taxpayer's

qualified investment and shall not reduce the tax liability for the tax year to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162.

(2) If any amount of credit determined under subsection a. remains after the amount allowed as a credit under the limitations of paragraph (1) of this subsection, that amount of credit remaining shall be refunded to the taxpayer. The amount refunded to the taxpayer shall not exceed 50% of the sum of the amount of property taxes timely paid in the taxable year pursuant to R.S. 54:4-1 et seq. and the amount of implicit property taxes paid through rent or lease payments in respect of property taxable pursuant to R.S. 54:4-1 et seq., and for which taxes another party that is not a related person is liable, which is attributable to and the direct result of the taxpayer's qualified investment.

c. (1) If the taxes due under section 5 of P.L.1945, c. 162 (determined before application of allowable credits against the tax), the sum of the amount of property taxes timely paid in the taxable year pursuant to R.S. 54:4-1 et seq. and the amount of implicit property taxes paid through rent or lease payments in respect of property taxable pursuant to R.S. 54:4-1 et seq., and for which taxes another party that is not a related person is liable, are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of those taxes which are so attributable shall be determined by multiplying the amount of taxes due under those acts for the tax year (determined before application of allowable credits against tax) by a fraction, the numerator of which is all compensation paid during the tax year to all employees of the taxpayer employed in this State whose positions are directly attributable to the qualified investment. The denominator of the fraction is the compensation paid during the taxable year to all employees of the taxpayer employed in this State.

(2) Any credits allowable under section 42 of P.L.1987, c. 102 (C. 54:10A-5.3), section 19 of P.L.1983, c. 303 (C. 52:27H-78), and section 12 of P.L.1985, c. 227 (C. 55:19-13), shall be applied against and reduce only the amount of corporation business tax not apportioned to the qualified investment under this act. Provided, that any excess of those credits may be applied against the amount of corporation business tax apportioned to the qualified investment under this act that is not offset by the amount of annual credit against the tax allowed under this act for the tax year, unless their application is otherwise prohibited by P.L.1987, c. 102, P.L.1983, c. 303, or P.L.1985, c. 227.

(3) If any credit for the tax year pursuant to this section remains after

application of the provisions of subsections a. and b. of this section, the amount thereof shall be forfeited. No carryover to a subsequent tax year or carryback to a prior tax year shall be allowed for the amount of any unused portion of any annual credit allowance.

d. For the purposes of this act, "implicit property taxes" means 15% of the amount of the rent or lease payments made by the taxpayer in respect of property taxable pursuant to R.S. 54:4-1 et seq., and for which taxes another party that is not a related person is liable.

#### Credits

L.1993, c. 170, § 4.

#### Footnotes

<sup>1</sup>

N.J.S.A. § 54:10A-5.6.

<sup>2</sup>

N.J.S.A. § 54:10A-5.

N. J. S. A. 54:10A-5.7, NJ ST 54:10A-5.7

#### **N.J.S.A. 54:10A-5.8**

54:10A-5.8. Determination of qualified investment in property purchased for business relocation or expansion

a. The qualified investment in property purchased for business relocation or expansion shall be the applicable percentage of the cost of each property purchased for business relocation or expansion which is placed in service or use in this State by the taxpayer during the tax year. Provided, that only the cost of property purchased for business relocation or expansion placed in service or use in this State during the tax year for

which the average value of the taxpayer's real and tangible personal property within the State as shall be determined pursuant to subsection (A) of section 6 of P.L.1945, c. 162 (C.54:10A-6), is greater than that average value for the previous tax year, shall be considered in determining qualified investment.

b. For the purpose of subsection a., the applicable percentage of any cost of property purchased for business relocation or expansion shall be determined under the following table:

If property has a:

three year recovery period

five year recovery period

seven year or more recovery period

The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the taxpayer, determined in accordance with section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168.

c. For purposes of subsection a., the cost of each property purchased for business relocation or expansion shall be determined under the following restrictions:

(1) cost shall not include the value of property given in trade or exchange for the property purchased for business relocation or expansion;

(2) if property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the cost of replacement property shall not include any insurance proceeds received in compensation for the loss;

(3) in the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law; and

(4) the cost of property used by the taxpayer out-of-State and then brought into this State shall be determined based on the remaining recovery period of the property at the time it is placed in service or use in this State, and the cost shall be the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this State.

(5) The cost of equipment acquired by written lease is the minimum amount required by the agreement, agreements, contract or contracts to be paid over the term of the lease, provided however, that the minimum amount shall not include any amount required to be paid, as determined by the director, after the expiration of the recovery period of the equipment.

d. No amount of cost for property the cost of which qualifies for the credit allowable under section 42 of P.L.1987, c. 102 (C. 54:10A-5.3), or for the credits allowed under the "Manufacturing Equipment and Employment Investment Tax Credit Act," P.L.1993, c. 171 (C. 54:10A-5.16 et al.) shall be allowed as qualified investment under this section.

Credits

L.1993, c.170, § 5.

N. J. S. A. 54:10A-5.8, NJ ST 54:10A-5.8

### **N.J.S.A. 54:10A-5.9**

54:10A-5.9. New jobs factor; employee positions attributable to the qualified investment; corporation business tax returns

a. The new jobs factor used to determine the amount of credit allowed under this act shall be based on the number of new jobs created in this State that are directly attributable to the qualified investment of the taxpayer.

b. (1) (a) For a taxpayer that is not a small or mid-size business taxpayer, if 50 new jobs are created and filled during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.005. For each 50 additional new

jobs over the initial 50, up to 1000 total new jobs, the applicable new jobs factor of 0.005 shall be increased by adding thereto 0.005, up to a maximum new jobs factor of 0.10.

(b) During each of the remaining four years of the five-year credit period, the taxpayer shall redetermine the new jobs factor for the tax year on the annual return based on the average number of new employees employed in new jobs during that tax year (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

(2) (a) For a taxpayer that is a small or mid-size business taxpayer, if five new jobs are created and filled during the tax year in which the qualified investment is placed in service or use in this State, the applicable new jobs factor shall be 0.01. For each five additional new jobs over the initial five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding thereto 0.01, up to a maximum new jobs factor of 0.20.

(b) During each of the remaining four years of the five-year credit period, the taxpayer shall redetermine the new jobs factor for the tax year on the annual return based on the average number of new employees employed in new jobs during that tax year (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

c. An employee's position shall be directly attributable to the qualified investment if:

(1) the employee's service is performed or the employee's base of operations is at the new or expanded business facility;

(2) the position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(3) but for the qualified investment, the position would not have existed.

d. With the annual corporation business tax return filed under P.L.1945, c. 162,<sup>1</sup> for each tax year during the five-year credit period for a qualified investment, the taxpayer shall certify:

(1) the new jobs factor for that tax year for the qualified investment;

(2) the amount of the credit allowed for that year for the qualified investment;

(3) that the qualified investment property continued to be used in the business, or if any of it was disposed of during the year, the date of

disposition, and that such property was not disposed of prior to expiration of its recovery period, as determined under section 5 of this act;<sup>2</sup> and

(4) that the new jobs are directly attributable to the qualified investment, are filled by individuals who meet the definition of new employee, and the median annual compensation of all new employees is equal to or greater than the minimum median annual compensation required by section 3 of this act.<sup>3</sup>

e. With the annual return for the corporation business tax imposed under P.L.1945, c. 162, filed for the tax year in which the qualified investment is first placed in service or use in this State, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this State within the period prescribed in subsection g. of this section, that are, or will be directly attributable to the qualified investment of the taxpayer.

f. The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of determining the new jobs factor pursuant to subsection b. of this section but shall not be so aggregated for the purposes of subsection c. of this section.

g. With the annual return for the tax imposed under P.L.1945, c. 162, filed for the third tax year in which the qualified investment is in service or use in this State, the taxpayer shall certify the actual number of new jobs created by it in this State, that are directly attributable to the qualified investment of the taxpayer.

(1) If the actual number of jobs created would result in a higher new jobs factor, the credit allowed under this act shall be redetermined and amended returns filed for the first and second tax years that the qualified investment was in service or use in this State.

(2) If the actual number of jobs created would result in a lower new jobs factor, the credit previously allowed under this act shall be redetermined and amended returns filed for the first and second tax years. Any additional taxes due under P.L.1945, c. 162, shall be remitted with the amended returns filed with the director, together with any penalty and interest, for failure to pay any such tax when due as provided in the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

#### Credits

L.1993, c. 170, § 6. Amended by L.2002, c. 40, § 20, eff. July 2, 2002.

Footnotes

1

N.J.S.A. § 54:10A-1 et seq.

2

N.J.S.A. § 54:10A-5.8.

3

N.J.S.A. § 54:10A-5.6.

N. J. S. A. 54:10A-5.9, NJ ST 54:10A-5.9

**N.J.S.A. 54:10A-5.10**

54:10A-5.10. Forfeiture of unused portion of tax credit; payment of any additional tax due

a. If during any tax year, property with respect to which a tax credit has been allowed under this act:

(1) is disposed of prior to the end of its recovery period, as determined under section 5 of this act;<sup>1</sup> or

(2) ceases to be used in a new or expanded business facility of the taxpayer in this State prior to the end of its recovery period, as determined under section 5 of this act, then the unused portion of the credit allowed for such property shall be forfeited for the tax year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed

under section 5 of this act, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this State in the new or expanded business facility of the taxpayer. The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs and pay any additional tax owed due to reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq.

b. If during any tax year the taxpayer ceases operation of a new or expanded business facility in this State for which a credit was allowed under this act, before expiration of the recovery period of the property with respect to which a tax credit has been allowed under this act, then the unused portion of the allowed credit shall be forfeited for the tax year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section 5 of this act, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this State in a new or expanded business facility of the taxpayer that is subject to tax under P.L.1945, c. 162.<sup>2</sup> The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

c. If during any tax year subsequent to the tax year in which the new jobs factor is redetermined as provided in section 6 of this act,<sup>3</sup> the average number of employees of the taxpayer, for the then current tax year, employed in positions created because of and directly attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit allowance is based, the taxpayer shall calculate what the taxpayer's annual credit allowance would have been had the taxpayer's new jobs factor been determined based upon the average number of employees, for the then current tax year, employed in positions created because of and directly attributable to the qualified investment. The difference between the result of this calculation and the taxpayer's annual credit allowance for the qualified investment as determined under section 3 of this act,<sup>4</sup> shall be forfeited for the then current tax year, and for each succeeding tax year unless for



a succeeding tax year the taxpayer's average employment in positions directly attributable to the qualified investment once again meets the level required to enable the taxpayer to utilize its full annual credit allowance for that tax year.

#### Credits

L.1993, c. 170, § 7.

#### Footnotes

1

N.J.S.A. § 54:10A-5.8.

2

N.J.S.A. § 54:10A-1 et seq.

3

N.J.S.A. § 54:10A-5.9.

4

N.J.S.A. § 54:10A-5.6.

N. J. S. A. 54:10A-5.10, NJ ST 54:10A-5.10

#### **N.J.S.A. 54:10A-5.11**

54:10A-5.11. Treatment of business property as disposed of; criteria for determination

a. (1) Property of a small or mid-size business taxpayer shall not be

treated as disposed of under section 7<sup>1</sup> of this act by reason of a mere change in the form of conducting the business as long as the property is retained in a business of a small or mid-size business taxpayer in this State, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the new or expanded business facility or facilities transferred, and the small or mid-size business taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier tax years.

(2) Property of a taxpayer that is not a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of a mere change in the form of conducting the business as long as the property is retained in a business of a taxpayer in this State, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the new or expanded business facility or facilities transferred, and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier tax years.

b. (1) Property of a small or mid-size business taxpayer shall be treated as disposed of under section 7 of this act by reason of a change in the form of conducting the business if the property is not retained in a business of a small or mid-size business taxpayer in this State in which the small or mid-size business taxpayer retains a controlling interest.

(2) Property of a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of any transfer or sale to a successor small or mid-size business taxpayer which continues to operate the new or expanded business facility in this State. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this act for each subsequent tax year and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier years.

(3) Property of a business that is not a small or mid-size business taxpayer shall not be treated as disposed of under section 7 of this act by reason of any transfer or sale to a successor taxpayer which continues to operate the new or expanded business facility in this State. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this act for each subsequent tax year and the taxpayer-transferor shall not be required to redetermine the amount of credit allowed in earlier years.

(4) Property of a small or mid-size business taxpayer shall be treated as disposed of under section 7 by reason of any transfer or sale to a successor that is not a small or mid-size business taxpayer, whether or not the successor continues to operate the business in this State. Upon such transfer or sale, the successor shall not acquire any amount of credit under this act and the taxpayer-transferor shall redetermine, as required by this act, the amount of credit allowed in earlier years.

#### Credits

L.1993, c. 170, § 8. Amended by L.2002, c. 40, § 21, eff. July 2, 2002.

#### Footnotes

1

N.J.S.A. § 54:10A-5.10.

N. J. S. A. 54:10A-5.11, NJ ST 54:10A-5.11

#### **N.J.S.A. 54:10A-5.12**

##### 54:10A-5.12. Recordkeeping requirements

a. A taxpayer that claims credit under this act shall maintain sufficient records to establish the following facts for each item of qualified property:

- (1) its identity;
- (2) its actual or reasonably determined cost;
- (3) its straight-line depreciation life;
- (4) the month and tax year in which it was placed in service;
- (5) the amount of credit taken; and
- (6) the date it was disposed of or otherwise ceased to be qualified property.

b. A taxpayer that does not keep records required for identification of investment credit property shall be treated as having disposed of, during the tax year, any investment credit property which the taxpayer cannot establish was still on hand in this State at the end of that year.

c. If a taxpayer cannot establish when investment credit property reported for purposes of claiming this credit during a tax year was placed in service, the taxpayer shall be treated as having placed it in service in the most recent prior year in which similar property was placed in service unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer shall be treated as having placed the property in service in the next most recent year.

#### Credits

L.1993, c. 170, § 9.

N. J. S. A. 54:10A-5.12, NJ ST 54:10A-5.12

#### **N.J.S.A. 54:10A-5.13**

54:10A-5.13. Burden of proof on taxpayer to establish entitlement to credit; timely application required; penalty

a. The burden of proof shall be on a taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the credit allowed pursuant to this act.

b. Notwithstanding any provision of this act to the contrary, no credit shall be allowed or applied under this act for any qualified investment property placed in service or use until the person asserting a claim for the allowance of credit under this act makes written application to the director for allowance of the credit as provided in this subsection and receives written acknowledgement of its receipt from the director. An application for credit is timely made if filed no later than the last day of the due date without extensions, for filing the tax return required under section 15 of P.L.1945, c. 162 (C. 54:10A-15), for the tax year in which the property to which the credit relates is placed in service or use and all information required by the director is provided as part of the application.

c. The failure to timely apply for the credit shall result in the forfeiture of



50% of the annual credit allowance otherwise allowable under this act. This penalty shall apply annually until such application is filed.

Credits

L.1993, c. 170, § 10.

N. J. S. A. 54:10A-5.13, NJ ST 54:10A-5.13

**N.J.S.A. 54:10A-5.14**

54:10A-5.14. Annual reports; contents

The Director of the Division of Taxation shall prepare and transmit to the Governor and the Legislature, on or before the second March 1 following the operative date of this section and annually thereafter, a report concerning the revenue cost and distributional impact of this act in such a manner as to facilitate an evaluation of its costs in State tax revenue forgone and its benefits in new job creation. To facilitate an understanding of the gross amount and percentage of credits claimed in relation to the size, number and income of corporations and the number of jobs created, the report shall include statistical analyses of the number and value of applications for credits, credits granted and anticipated to be granted, and the number of new jobs created and anticipated to be created. To facilitate an understanding of the distribution of the use of the credit, or any concentration of such use in a particular industry or by a particular taxpayer, and the creation of new jobs among corporations, the report shall include statistics of credit use and new jobs creation segregated by specific industry, displayed in a manner that facilitates an understanding of the relative distribution of credit claims and uses and the relative distribution of new jobs created. To facilitate an understanding of the distinction between the new jobs created as a result of the credit and the new jobs not resulting from the credit, the report shall include statistics concerning the mean cost in State tax revenue forgone of creating a new job in specific industries, the relative new job creation rates between corporations using the credit and those not using the credit, and increases in employment in the State and the region. The director shall include in the report such further observations and recommendations about the use or administration of the credit as the director deems appropriate.

Credits

L.1993, c. 170, § 11.

N. J. S. A. 54:10A-5.14, NJ ST 54:10A-5.14

**N.J.S.A. 54:10A-5.15**

54:10A-5.15. Quarterly reports; copies provided to division of taxation; use of reports limited to administration of credits allowed

Notwithstanding the provisions of subsection (g) of R.S.43:21-11 to the contrary, the Commissioner of the Department of Labor shall provide the Director of the Division of Taxation such copies of the quarterly reports filed by taxpayers with the Department of Labor pursuant to subparagraph (A) of paragraph (2) of subsection (a) of R.S.43:21-14 as the director may request to verify the qualifications of the taxpayers to the credits allowed under this act. The director shall not use the reports provided for any purpose other than the administration of the credits allowed under this act, and reports so provided shall be deemed files and records of the director pursuant to R.S.54:50-8.

Credits

L.1993, c. 170, § 12.

N. J. S. A. 54:10A-5.15, NJ ST 54:10A-5.15

**N.J.S.A. 54:10A-5.16**

54:10A-5.16. Short title; Manufacturing Equipment and Employment Investment Tax Credit Act

This act shall be known and may be cited as the “Manufacturing Equipment and Employment Investment Tax Credit Act.”

Credits

L.1993, c. 171, § 1.

N. J. S. A. 54:10A-5.16, NJ ST 54:10A-5.16

54:10A-5.17. Definitions

For the purposes of this act:

“Control,” with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50% or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; “control,” with respect to a trust, means ownership, directly or indirectly, of 50% or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267, other than paragraph (3) of subsection (c) of that section.

“Controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50% of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least 50% of the voting power of all classes of stock of at least one of the other corporations.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Full-time employee” means an employee working for the taxpayer for at least 140 hours per month at a wage not less than the State or federal minimum wage, if either minimum wage provision is applicable to the business, on a permanent basis, which does not include employment that is temporary or seasonal.

“Investment credit base” means the cost of qualified equipment. The cost of qualified equipment shall not include the value of equipment given in trade or exchange for the equipment purchased for business relocation or expansion. If equipment is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the cost of replacement equipment shall not include any insurance proceeds received in compensation for the loss. In the case of self-constructed equipment, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law. The cost of equipment acquired

by written lease is the minimum amount required by the agreement, agreements, contract or contracts to be paid over the term of the lease, provided however, that the minimum amount shall not include any amount required to be paid, as determined by the director, after the expiration of the useful life of the equipment.

“Number of new employees” means the increase in the average number of full-time employees and full-time employee equivalents residing and domiciled in this State employed at work locations in this State from the employment base year to the employment measurement year. The employment base year is the tax year immediately preceding the tax year for which the credit pursuant to section 3 of P.L.1993, c. 171 (C.54:10A-5.18), is allowed, provided that if the taxpayer was not subject to tax and did not have a tax year immediately precede the tax year for which a credit pursuant to section 3 of P.L.1993, c. 171 (C.54:10A-5.18), was allowed the employment base year is the tax year in which the credit pursuant to section 3 of P.L.1993, c. 171 (C.54:10A-5.18), was allowed. The measurement year is the tax year immediately following the tax year in which the credit pursuant to section 3 of P.L.1993, c. 171 (C.54:10A-5.18), was allowed. The hours of part-time employees shall be aggregated to determine the number of full-time employee equivalents.

“Part-time employee” means an employee working for the taxpayer for at least 20 hours per week for at least six months during the tax year.

“Purchase” means any acquisition of property, including an acquisition pursuant to a lease, but only if:

- a. the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or subsection (b) of section 707 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.267 or s.707;
- b. the property is not acquired by one member of a controlled group from another member of the same controlled group. The director may waive this requirement if the property was acquired from a related person for its then fair market value; and
- c. the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:
  - (1) in whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or
  - (2) under subsection (e) of section 1014 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1014.

“Qualified equipment” means machinery, apparatus or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling or refining, as defined pursuant to subsection a. of section 25 of P.L.1980, c. 105 (C.54:32B-8.13), having a useful life of four or more years, placed in service in this State and machinery, apparatus or equipment acquired by purchase for use or consumption directly and primarily in the generation of electricity as defined pursuant to subsection b. of section 25 of P.L.1980, c. 105 (C.54:32B-8.13) to the point of connection to the grid, or in the generation of thermal energy, having a useful life of four or more years, placed in service in this State. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use.

“Related person” means:

- a. a corporation, partnership, association or trust controlled by the taxpayer;
- b. an individual, corporation, partnership, association or trust that is in control of the taxpayer;
- c. a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or
- d. a member of the same controlled group as the taxpayer.

“Tax year” means the fiscal or calendar accounting year of a taxpayer.

#### Credits

L.1993, c. 171, § 2. Amended by L.2001, c. 399, § 1, eff. Jan. 8, 2002, retroactive to Jan. 1, 2002.

N. J. S. A. 54:10A-5.17, NJ ST 54:10A-5.17

#### **N.J.S.A. 54:10A-5.18**

54:10A-5.18. Tax credit; calculation of allowable credit; carry-over of allowable credits

- a. A taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), in an amount equal to 2%

of the investment credit base of qualified equipment placed in service in the tax year, up to a maximum allowed credit for the tax year of \$1,000,000; provided however, that if a taxpayer has 50 or fewer employees (an average number of full-time employees and full-time employee equivalents of 50 or less) and entire net income to be used as a measure of the tax determined pursuant to section 6 of P.L.1945, c. 162 (C.54:10A-6) of less than \$5,000,000 for the tax year, the taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), in an amount equal to 4% of the investment credit base of qualified equipment placed in service in the tax year, up to a maximum allowed credit for the tax year of \$1,000,000.

b. The tax imposed for the tax year pursuant to section 5 of P.L.1945, c. 162, shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c. 303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c. 227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c. 102 (C.54:10A-5.3), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the credits' tax years. The amount of the credits applied under this section and section 4 of P.L.1993, c. 171 (C.54:10A-5.19), against the tax imposed pursuant to section 5 of P.L.1945, c. 162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162.

c. The amount of tax year credit otherwise allowable under subsection a. of this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the seven tax years following a credit's tax year. Provided however, that a taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation; provided further, however, that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. “Acquiring person” means the constituent corporation the

stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

d. (1) With respect to equipment that is three-year property, as described in subsection (e) of section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168, which is disposed of or ceases to be qualified equipment prior to the end of the 36 month period following being placed in service in this State, the amount of credit allowed shall be that portion of the credit provided for in subsection a. of this section which represents the ratio which the months of qualified use bear to 36, and the difference between the credit taken and the credit allowed for actual use shall be forfeited. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed for the tax year of the credit by reducing the investment credit base by the cost of the amount of the disposed or disqualified equipment. If the redetermination of the credit results in an increase in final liability for any tax year in which the credit was applied, then, notwithstanding the four year limitation of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any, shall be considered a deficiency for the purposes of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to 36.

(2) With respect to property other than that described in subparagraph (1) of this subsection which is disposed of or ceases to be qualified equipment prior to the end of the 60-month period following being placed in service in this State, the amount of credit allowed shall be that portion of the credit provided for in subsection a. of this section which represents the ratio which the months of qualified use bear to 60, and the difference between the credit taken and the credit allowed for actual use shall be forfeited. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed for the tax year of the credit by reducing the investment credit base by the cost of the amount of the disposed or disqualified equipment. If the redetermination of the credit results in an increase in final liability for any tax year in which the credit was applied, then, notwithstanding the four year limitation of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any, shall be considered a deficiency for the purposes of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of credit allowed for actual use shall be determined by multiplying the

original credit by the ratio which the months of qualified use bear to 60.

#### Credits

L.1993, c. 171, § 3. Amended by L.2004, c. 65, § 25, eff. June 30, 2004.

N. J. S. A. 54:10A-5.18, NJ ST 54:10A-5.18

#### **N.J.S.A. 54:10A-5.19**

54:10A-5.19. Tax credit for increase in number of employees; calculation of allowable credit; carry-over of credit

a. A taxpayer allowed a credit under section 3 of P.L.1993, c. 171 (C.54:10A-5.18), with respect to the investment credit base, shall be allowed a credit for the increase in employment by the taxpayer determined by the number of new employees for each of the two tax years next succeeding the tax year for which the credit under section 3 of P.L.1993, c. 171 (C.54:10A-5.18), is allowed, in an amount equal to 3% of the investment credit base, not to exceed a maximum allowed amount for each of the two tax years of \$1,000 multiplied by the number of new employees.

b. The tax imposed for the tax year pursuant to section 5 of P.L.1945, c. 162,<sup>1</sup> shall first be reduced by the amount of any credit allowed pursuant to section 19 of P.L.1983, c. 303 (C.52:27H-78), then by any credit allowed pursuant to section 12 of P.L.1985, c. 227 (C.55:19-13), then by any credit allowed pursuant to section 42 of P.L.1987, c. 102 (C.54:10A-5.3), and then by any credit allowed pursuant to section 3 of P.L.1993, c. 171 (C. 54:10A-5.18), prior to applying any credits allowable pursuant to this section. Credits allowable pursuant to this section shall be applied in the order of the tax year of the credit allowed pursuant to section 3 of P.L.1993, c. 171 (C.54:10A-5.18), to which the credit under this section relates and then by the order of the credits' tax years. The amount of the credits applied under this section and section 3 of P.L.1993, c. 171 (C.54:10A-5.18), against the tax imposed pursuant to section 5 of P.L.1945, c. 162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162.

c. The amount of tax year credit otherwise allowable under subsection a. of this section which cannot be applied for the tax year due to the



limitations of subsection b. of this section may be carried over, if necessary, to the seven tax years following a credit's tax year. Provided however, that a taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the credit was allowed for a tax year prior to the year of acquisition, merger or consolidation; provided further, however, that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. "Acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

d. (1) With respect to equipment that is three-year property, as described in subsection (e) of section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168, which is disposed of or ceases to be qualified equipment prior to the end of the 36 month period following being placed in service in this State, the amount of credit allowed shall be that portion of the credit provided for in subsection a. of this section which represents the ratio which the months of qualified use bear to 36, and the difference between the credit taken and the credit allowed for actual use shall be forfeited. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed for the tax year of the credit by reducing the investment credit base by the cost of the amount of the disposed or disqualified equipment. If the redetermination of the credit results in an increase in final liability for any tax year in which the credit was applied, then, notwithstanding the four year limitation of subsection b. of R.S.54:49-6 to the contrary, the amount of unpaid liability, if any, shall be considered a deficiency for the purposes of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to 36.

(2) With respect to property other than that described in subparagraph (1) of this subsection which is disposed of or ceases to be qualified equipment prior to the end of the 60 month period following being

placed in service in this State, the amount of credit allowed shall be that portion of the credit provided for in subsection a. of this section which represents the ratio which the months of qualified use bear to 60, and the difference between the credit taken and the credit allowed for actual use shall be forfeited. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed for the tax year of the credit by reducing the investment credit base by the cost of the amount of the disposed or disqualified equipment. If the redetermination of the credit results in an increase in final liability for any tax year in which the credit was applied, then, notwithstanding the four year limitation of subsection b. of R.S. 54:49-6 to the contrary, the amount of unpaid liability, if any, shall be considered a deficiency for the purposes of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to 60.

#### Credits

L.1993, c. 171, § 4.

#### Footnotes

<sup>1</sup>

N.J.S.A. § 54:10A-5.

N. J. S. A. 54:10A-5.19, NJ ST 54:10A-5.19

#### **N.J.S.A. 54:10A-5.20**

54:10A-5.20. Recordkeeping requirements; burden of proof on taxpayer to establish eligibility for tax credit

a. A taxpayer that claims credit under this act shall maintain sufficient records to establish the following facts for each item of qualified equipment:

- (1) its identity;
- (2) its actual or reasonably determined cost;
- (3) its useful depreciation life;
- (4) the month and tax year in which it was placed in service;
- (5) the amount of credit taken; and
- (6) the date it was disposed of or otherwise ceased to be qualified equipment.

b. A taxpayer that does not keep records required for identification of qualified equipment shall be treated as having disposed of, during the tax year, any qualified equipment which the taxpayer cannot establish was still on hand in this State at the end of that year.

c. If a taxpayer cannot establish when qualified equipment reported for purposes of claiming this credit during a tax year was placed in service, the taxpayer shall be treated as having placed it in service in the most recent prior year in which similar property was placed in service unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer shall be treated as having placed the property in service in the next most recent year.

d. The burden of proof shall be on a taxpayer to establish by a preponderance of the evidence that the taxpayer is entitled to the credit allowed pursuant to this act.

#### Credits

L.1993, c. 171, § 5.

N. J. S. A. 54:10A-5.20, NJ ST 54:10A-5.20

#### **N.J.S.A. 54:10A-5.21**

##### 54:10A-5.21. Annual reports; contents

The Director of the Division of Taxation shall prepare and transmit to the Governor, the Legislature, and the State Revenue Forecasting Advisory Commission on or before the September 1 next following the January 1 next following enactment of this section and annually on or before each September 1 thereafter, a report concerning the revenue cost and distributional impact of this act in such a manner as to facilitate an

evaluation of its costs in State tax revenue forgone and its benefits in new job creation. To facilitate an understanding of the gross amount and percentage of credits claimed in relation to the size, number and income of corporations and the number of new employees, the report shall include statistical analyses of the number and value of credits granted and anticipated to be granted, and the number of new employees. To facilitate an understanding of the distinction between the number of new employees resulting from the availability of the credits and the number of new employees not resulting from availability of the credits, the report shall include statistics concerning the mean cost, in State tax revenue forgone, of providing the credits resulting in employment of a single full-time employee in specific industries, the relative rate of increase in the number of new employees between corporations using the credit and those not using the credit, and increases in employment in the State and the region. The director shall include in the report such further observations and recommendations about the use or administration of the credit as the director deems appropriate.

The State Revenue Forecasting Advisory Commission shall prepare and transmit to the Governor and Legislature, on or before the November 1 next following the January 1 next following the enactment of this section and biennially on or before each second November 1 thereafter, a report providing a cost-benefit analysis of the credits provided under this act and the retention and stimulation of employment in the manufacturing sector, together with its recommendations as to whether the credits provided under this act should remain permanent.

#### Credits

L.1993, c. 171, § 6.

N. J. S. A. 54:10A-5.21, NJ ST 54:10A-5.21

#### **N.J.S.A. 54:10A-5.22**

##### 54:10A-5.22. Election to become New Jersey S corporation; form of election; consent to jurisdictional requirements; revocation of election

a. A corporation may elect, in accordance with the provisions of this section, to be a New Jersey S corporation. In order for an election to be valid, the corporation and each of its shareholders on the day on which the election is made (hereinafter "initial shareholders") must consent to

such election and the jurisdictional requirements of becoming a New Jersey S corporation. The form of the election and consent to jurisdictional requirements and the place for filing shall be as prescribed by the Director of the Division of Taxation.

b. Each initial shareholder and the corporation shall consent to the following jurisdictional requirements:

(1) That this State shall have the right and jurisdiction to tax and collect the tax on each shareholder's S corporation income as defined pursuant to section 12 of P.L.1993, c. 173 (C. 54A:5-10) and, if applicable, the pass-through business alternative income tax pursuant to P.L.2019, c. 320 (C.54A:12-1 et al.);

(2) That New Jersey's right and jurisdiction to tax the income as set forth in paragraph (1) of this subsection shall not be affected by a change of a shareholder's residency, except as provided by the "New Jersey Gross Income Tax Act," N.J.S. 54A:1-1 et seq.; and

(3) If shareholders that are not initial shareholders of the corporation, while the corporation is a New Jersey S corporation, fail to consent to New Jersey's jurisdiction to tax S corporation income to such shareholders, this State shall have the right and jurisdiction to collect a payment of tax each year directly from the corporation equal to the S corporation income allocated to this State, as defined pursuant to section 12 of P.L.1993, c. 173 (C. 54A:5-10), of the nonconsenting shareholders for the accounting or privilege period multiplied by the maximum tax bracket rate provided under N.J.S. 54A:2-1 for the accounting or privilege period. In such case, the corporation shall have the right, but not the obligation, to recover payments made by the corporation pursuant to this paragraph from each nonconsenting shareholder.

c. A corporation may make an election to become a New Jersey S corporation with respect to an accounting or privilege period for which the corporation is or will be an S corporation. The election for an accounting or privilege period, along with the consents to jurisdictional requirements, shall be filed within one calendar month of the time at which a federal S corporation election would be required if such accounting or privilege period were a "taxable year" for which a federal S corporation election were to be made pursuant to section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1362. Such elections may only be revoked pursuant to subsection d. of this section. Such election shall terminate immediately upon the corporation's failure to satisfy the definition of a New Jersey S corporation pursuant to

paragraph (p) of section 4 of P.L.1945, c. 162 (C.54:10A-4).

d. A corporation may revoke an election pursuant to this section on or before the last day of the first accounting or privilege period to which the election would otherwise apply.

#### Credits

L.1993, c. 173, § 3. Amended by L.2019, c. 320, § 6, eff. Jan. 13, 2020.

N. J. S. A. 54:10A-5.22, NJ ST 54:10A-5.22

#### **N.J.S.A. 54:10A-5.23**

54:10A-5.23. New Jersey S corporations; requirements regarding non-initial shareholders

a. With respect to each of its shareholders that is not an initial shareholder, a New Jersey S corporation shall satisfy the requirements of either paragraph b. or c. of this section.

b. Deliver a consent to the jurisdictional requirements as set forth in subsection b. of section 3 of P.L.1993, c. 173 (C. 54:10A-5.22).

c. Make payments to the Director of the Division of Taxation on behalf of each nonconsenting shareholder in an amount equal to the shareholder's pro rata share of S corporation income allocated to this State, as defined pursuant to section 12 of P.L.1993, c. 173 (C. 54A:5-10), reflected on the corporation's return for the accounting or privilege period, multiplied by the maximum tax bracket rate provided under N.J.S. 54A:2-1 in effect at the end of the accounting or privilege period. The payments shall be made no later than the time for filing of the return for the accounting or privilege period. The director may, by regulation, require that amounts estimated to be equal to the liability expected to be due pursuant to this subsection be withheld from any distribution made to a nonconsenting shareholder.

d. If a shareholder that is not an initial shareholder of a New Jersey S corporation fails to deliver a consent to the jurisdictional requirements set forth in subsection b. of section 3 of P.L.1993, c. 173 (C. 54:10A-5.22), and objects to New Jersey's jurisdiction to withhold payments pursuant to subsection c. of this section, then this State shall have the right and jurisdiction to collect a tax each year directly from the corporation equal to the pro rata share of the S corporation income



allocated to this State, as defined pursuant to section 12 of P.L.1993, c. 173 (C. 54A:5-10), of the nonconsenting shareholder times the maximum tax bracket rate provided under N.J.S. 54A:2-1 for the appropriate accounting or privilege period. In such case, the corporation shall have the right, but not the obligation, to recover payments made by the corporation pursuant to this subsection from each nonconsenting shareholder. [The corporation shall not be liable for the pass-through business alternative income tax pursuant to P.L.2019, c. 320 \(C.54A:12-1 et al.\) relative to collections made in a taxable year for such nonconsenting members.](#)

#### Credits

L.1993, c. 173, § 4. [Amended by L.2019, c. 320, § 7, eff. Jan. 13, 2020.](#)

N. J. S. A. 54:10A-5.23, NJ ST 54:10A-5.23

#### **N.J.S.A. 54:10A-5.24**

54:10A-5.24. Tax credit for qualified research expenses; amount of allowable credit

a. A taxpayer shall be allowed a credit, subject to the provisions of subsection b. of this section, against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), in an amount equal to

(1) 10% of the excess of the qualified research expenses for the privilege period over the base amount; and

(2) 10% of the basic research payments for the privilege period determined<sup>+</sup> in accordance with section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41, ~~as in effect on June 30, 1992, and provided that subsection (h) of 26 U.S.C. s.41 relating to termination shall not apply.~~ Provided however, that the terms “qualified research expenses,” “base amount,” “qualified organization base amount period,” “basic research” and any other terms determined by the Director of the Division of Taxation to affect the calculation of the credit shall include only expenditures for research conducted in this State. [For privilege periods beginning on and after January 1, 2018, amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the privilege period, including as contributions, to an energy research consortium for energy research shall also qualify as a basic research payment for purposes of this subsection.](#)

b. No credit shall be allowed under section 42 of P.L.1987, c. 102 (C.54:10A-5.3), or under the “Manufacturing Equipment and Employment Investment Tax Credit Act,” P.L.1993, c. 171 (C.54:10A-5.16 et al.), or under P.L.1993, c. 170 (C.54:10A-5.4 et seq.), for property or expenditures for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be as prescribed by the director. Credits allowable pursuant to this section shall be applied in the order of the privilege periods for which the credits were allowed.

For privilege periods beginning before January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c. 162, for the privilege period shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162.

For privilege periods beginning on or after January 1, 2012, the amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c. 162, for the privilege period shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162.

[For privilege periods beginning on or after January 1, 2018, the credit taken under this section shall not be refundable.](#)

The amount of credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection may be carried over, if necessary, to the seven privilege periods following a credit’s privilege period.

[c. No provision terminating section 41 of the federal Internal Revenue Code, 26 U.S.C. s.41, shall apply.](#)

[d. For privilege periods beginning on and after January 1, 2020, the portion of qualified research expenses and qualified payments of a taxpayer that is a qualified small business within the meaning of section 41\(h\)\(3\) of the federal Internal Revenue Code \(26 U.S.C. s.41\) that were disallowed for the section 41\(h\) tax credit because the taxpayer made an election pursuant to sections 41\(h\) and 3111\(f\) of the federal Internal Revenue Code \(26 U.S.C. s.41 and s.3111\) to take the 3111\(f\) credit in lieu of the 41\(h\) credit, shall be allowed for the purposes of calculating the New Jersey credit provided for by this section.](#)

## Credits

L.1993, c. 175, § 1. Amended by L.2011, c. 83, § 1, eff. June 30, 2011;  
L.2018, c. 48, § 6, eff. July 1, 2018.

## Footnotes

4

~~So in original.~~

N. J. S. A. 54:10A-5.24, NJ ST 54:10A-5.24

### **N.J.S.A. 54:10A-5.24a**

54:10A-5.24a. Emerging or biotechnology companies; research and development tax credit carryovers

a. Notwithstanding the provisions of section 1 of P.L.1993, c. 175 (C.54:10A-5.24) to the contrary, a taxpayer that has acquired a corporation business tax benefit certificate pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a research and development tax credit carryover shall attach that certificate to any return the taxpayer is required to file under P.L.1945, c. 162 (C.54:10A-1 et seq.), and shall otherwise apply the credit carryover as evidenced by the certificate according to the provisions of section 1 of P.L.1993, c. 175 (C.54:10A-5.24) and any rules or regulations the director may adopt to carry out the provisions of this section.

b. A new or expanding emerging technology or biotechnology company that has surrendered an unused research and development tax credit carryover pursuant to the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), shall not be allowed a research and development tax credit carryover based upon the right to such a credit carryover as evidenced by the corporation business tax benefit certificate and shall attach a copy of the certificate to any return the taxpayer is required to file under P.L.1945, c. 162 (C.54:10A-1 et seq.).

## Credits

L.1997, c. 334, § 3, eff. Jan. 12, 1998.

N. J. S. A. 54:10A-5.24a, NJ ST 54:10A-5.24a

### **N.J.S.A. 54:10A-5.24b**

54:10A-5.24b. Carryforward of the research and development tax credit; extension

a. Notwithstanding the provisions of subsection b. of section 1 of P.L.1993, c. 175 (C.54:10A-5.24) to the contrary, a taxpayer that has been allowed a credit pursuant to that section for the fiscal or calendar accounting period (referred to hereafter as the “tax year”) in which the qualified research expenses have been incurred, and basic research payments have been made, for research conducted in this State in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology, shall be allowed to carry over the amount of the tax year credit which cannot be applied for the tax year to each of the 15 tax years following the credit’s tax year.

b. As used in this section:

“Advanced computing” means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment;

“Advanced materials” means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials;

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge;

“Electronic device technology” means a technology involving microelectronics, semiconductors, electronic equipment, and

instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices;

“Environmental technology” means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources; and

“Medical device technology” means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration.

#### Credits

L.1997, c. 351, § 1, eff. Jan. 15, 1998.

N. J. S. A. 54:10A-5.24b, NJ ST 54:10A-5.24b

#### **N.J.S.A. 54:10A-5.25**

54:10A-5.25. Corporation business taxes required from certain entities subject to public utility tax

a. Gas, electric, gas and electric and telecommunications public utilities that were subject to a public utility tax either pursuant to P.L.1940, c.4 (C.54:30A-16 et seq.) or P.L.1940, c.5 (C.54:30A-49 et seq.) as of December 31, 1996, shall be required to file and remit installment payments of estimated corporation business tax pursuant to the provisions of subsection (f) of section 15 of P.L.1945, c. 162 (C.54:10A-15) during the calendar year in which those taxpayers first become subject to the corporation business tax, provided however, that the provisions of subsection d. of section 5 of P.L.1981, c. 184 (C.54:10A-15.4) shall not apply to those taxpayers during that year.

b. A telecommunications public utility that makes an advance payment of its applicable gross receipts and franchise tax to the State in the final year of the existence of such tax and treated such advance payment as an asset on its books and records for that year shall be entitled to a credit against its corporation business tax liability equal to the amount of such advance payment. Any unused portion of the credit may be carried forward in full to future privilege periods, provided however, that in any one privilege period the total amount of such credit which the taxpayer

may utilize to pay its corporation business tax liability shall not exceed \$5,000,000. Any gas, electric, or gas and electric public utility taxpayer that has made any advance credit payment pursuant to P.L.1940, c. 5 (C.54:30A-49 et seq.), shall not be eligible for a credit for such amount or any part thereof to offset any liability under P.L.1945, c. 162. Under no circumstances may any portion of an unused \$5,000,000 per year credit be subject to refund.

c. All amounts remitted under P.L.1945, c. 162 by any gas, electric, gas and electric or telecommunication public utility shall be separately accounted for by the State Treasurer.

d. A public utility, with gas, electric or telecommunications operations or any of them shall file with the Board of Public Utilities amendments to its existing tariffs, contracts or schedules of service designating the appropriate apportionment of its corporation business tax liability in these tariffs, contracts or schedules so that rates will not be increased for any class of ratepayer as a result of the transition to this tax. The board may permit gas, electric, gas and electric or telecommunications public utilities to establish new tariffs, contracts or schedules, or to amend existing tariffs, contracts or schedules, as necessary to comply with the provisions of this act.

e. A qualified taxpayer may claim a corporation business tax credit in accordance with the provisions of section 53 of P.L.1997, c. 162 (C.54:30A-117) and for local energy utility franchise taxes paid and subject to the limitations of subparagraph (C) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c. 162 (C. 54:10A-4).

f. A municipal electric corporation or utility that is not exempt from the corporation business tax pursuant to subsection j. of section 3 of P.L.1945, c. 162 (C.54:10A-3), that is required to file a corporation business tax return but that is not required to file a federal corporation tax return, shall file with the director a pro-forma federal corporation tax return at the same time it files its corporation business tax return. The director may promulgate rules and regulations and issue guidance with respect to all issues related to the pro-forma federal corporation tax return.

#### Credits

L.1997, c. 162, § 3, eff. Jan. 1, 1997. Amended by L.1998, c. 114, § 3, eff. Oct. 28, 1998.

N. J. S. A. 54:10A-5.25, NJ ST 54:10A-5.25

**N.J.S.A. 54:10A-5.26**

54:10A-5.26. Amount of corporation business tax due

If, in the first full privilege period commencing after the assessment under the Transitional Energy Facility Assessment Act, established in sections 36 through 49 of P.L.1997, c. 162 (C.54:30A-100 through C.54:30A-113), has terminated, or in any subsequent privilege period thereafter, a taxpayer that was formerly subject to the Transitional Energy Facility Assessment Act and whose liability under the Corporation Business Tax Act (1945), P.L.1945, c. 162 (C.54:10A-1 et seq.), for such privilege period after the assessment under the Transitional Energy Facility Assessment Act has terminated, is less than the taxpayer's liability for the first full privilege period as a taxpayer under P.L.1945, c. 162, then that taxpayer or corporate or noncorporate legal successor or assignee whether through any reorganization, sale, bankruptcy, consolidation, merger, or other transaction or occurrence of any kind without limitation, shall pay as its liability under P.L.1945, c. 162 for any of those privilege periods after the assessment under the Transitional Energy Facility Assessment Act has terminated an amount equal to the higher of:

- a. The amount of its corporation business tax liability for that privilege period as would otherwise be computed under P.L.1945, c. 162; or
- b. The amount of corporation business tax it would be liable to pay for such privilege period if its gas or electric operations were accounted for on a separate basis, pursuant to regulations as may be promulgated by the director.

Credits

L.1997, c. 162, § 4, eff. Jan. 1, 1997.

N. J. S. A. 54:10A-5.26, NJ ST 54:10A-5.26

**N.J.S.A. 54:10A-5.27**

54:10A-5.27. Privilege periods; liability

Notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-1 et seq.)

or any other law to the contrary, for a privilege period of a taxpayer, other than a taxpayer that is a gas, electric, and gas and electric, or telecommunications public utility as defined pursuant to subsection (q) of section 4 of P.L.1945, c.162 (C.54:10A-4) pursuant to the amendment to that section 4 made in section 2 of P.L.1997, c.162, in which the taxpayer would otherwise have had a tax liability or minimum tax due under P.L.1945, c.162, during which privilege period the Director of the Division of Budget and Accounting in the Department of the Treasury makes a certification that the provisions of subsection a. of section 4. of P.L.1997, c.167 (C.52:27D-441) have not been met or have been violated by an amendment or supplement to the annual appropriations act, there shall be no liability pursuant to the provisions of P.L.1945, c.162 for any such taxpayer's current privilege period.

Credits

L.1997, c. 167, § 5, eff. July 22, 1997.

N. J. S. A. 54:10A-5.27, NJ ST 54:10A-5.27

**N.J.S.A. 54:10A-5.28**

54:10A-5.28. Short title; New Jersey Angel Investor Tax Credit Act

Sections 1 through 3 of P.L.1997, c. 349 (C.54:10A-5.28 through 54:10A-5.30) and section 4 of P.L.2013, c. 14 (C.54A:4-13) shall be known and may be cited as the "New Jersey Angel Investor Tax Credit Act."

Credits

L.1997, c. 349, § 1, eff. Jan. 15, 1998. Amended by L.2013, c. 14, § 1, eff. Jan. 25, 2013.

N. J. S. A. 54:10A-5.28, NJ ST 54:10A-5.28

**N.J.S.A. 54:10A-5.29**

54:10A-5.29. Definitions relating to New Jersey Angel Investor Tax Credit Act

As used in sections 1 through 3 of P.L.1997, c. 349 (C.54:10A-5.28

through C.54:10A-5.30):

“Advanced computing” means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

“Advanced materials” means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies, and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

“Carbon footprint reduction technology” means a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

“Control” with respect to a corporation means ownership, directly or indirectly, of stock possessing 80 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and “control” with respect to a trust means ownership, directly or indirectly, of 80 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of subsection (c) of that section.

“Controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80 percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least 80 percent of the voting power of all classes of stock of at least one of the other corporations.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Electronic device technology” means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

“Information technology” means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer related services, and computer training.

“Life sciences” means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products, or physical and biological research.

“Medical device technology” means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration.

“Mobile communications technology” means a technology involving the functionality and reliability of the transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but not be limited to, smartphones, electronic books and tablets, digital audio players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having connected to any physical or fixed link.

“New Jersey emerging technology business” means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: has qualified research expenses paid or incurred for research conducted in this State; conducts pilot scale manufacturing in this State; or conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

“New Jersey emerging technology business holding company” means any corporation, association, firm, partnership, trust, or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting securities of a corporation or other form of a New Jersey emerging technology business.

“Partnership” means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

“Pilot scale manufacturing” means the design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, and renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c. 162 (C.54:10A-6), from the sales of the product, service, or process do not exceed \$1,000,000.

“Qualified investment” means the non-refundable transfer of cash to a New Jersey emerging technology business or to a New Jersey emerging technology business holding company by a taxpayer that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, the transfer of which is in connection with either : a transaction between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options, or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein; or a purchase, production, or research agreement between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both.

“Qualified research expenses” means qualified research expenses, as defined in section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, carbon footprint

reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

“Related person” means:

a corporation, partnership, association or trust controlled by the taxpayer;

an individual, corporation, partnership, association or trust that is in the control of the taxpayer;

a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

a member of the same controlled group as the taxpayer.

“Renewable energy technology” means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

“Tax year” means the fiscal or calendar accounting period of a taxpayer.

“Verified transfer of funds” means a non-refundable transfer of funds equal to 100 percent of the taxpayer’s qualified investment in the New Jersey emerging technology business holding company to a New Jersey emerging technology business by the New Jersey emerging technology business holding company that is accompanied by documentation, as required by the New Jersey Economic Development Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same tax year.

#### Credits

L.1997, c. 349, § 2, eff. Jan. 15, 1998. Amended by L.2013, c. 14, § 2, eff. Jan. 25, 2013; L.2017, c. 40, § 1, eff. May 1, 2017.

N. J. S. A. 54:10A-5.29, NJ ST 54:10A-5.29



54:10A-5.30. Calculation of tax credit for qualified investments in emerging technology; restrictions upon carry over; rules and regulations; cap upon amount of credits allowed to taxpayers

a. (1) A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority and in consultation with the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), in an amount equal to ~~40~~20 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, or in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business; provided, however, a taxpayer may be allowed a tax credit in an amount equal to 25 percent of the qualified investment if the taxpayer satisfies one of the requirements set forth in paragraph (2) of this subsection. The value of tax credits allowed to a taxpayer pursuant to this section shall not exceed \$500,000 for the privilege period for each qualified investment made by the taxpayer.

(2) Subject to the limits established in paragraph (1) of this subsection, the New Jersey Economic Development Authority, in consultation with the director, shall increase the amount of a tax credit allowed pursuant to this section by five percent if the taxpayer makes a qualified investment in a New Jersey emerging technology business, or in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business, ~~up to a maximum allowed credit of \$500,000 for the tax year for each qualified investment made by the taxpayer~~ if the New Jersey emerging technology business is:

(a) located in a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1, or a low-income community as defined in subparagraph (e) of 26 U.S.C. s.45D; or

(b) certified by the State as a minority business or a women's business pursuant to P.L.1986, c. 195 (C.52:27H-21.17 et seq.).

b. A credit shall not be allowed pursuant to section 1 of P.L.1993, c. 175 (C.54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

Notwithstanding any other provision of law, the order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed by the director.

c. Except as provided in subsection d. of this section, the amount of ~~tax-year~~ credit otherwise allowable under this section which cannot be applied for the ~~tax-year~~privilege period against tax liability otherwise due for that ~~tax-year~~privilege period may either be carried over, if necessary, to the 15 ~~tax-years~~privilege periods following the ~~tax-year~~privilege period for which the credit was allowed or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of R.S.54:49-15, provided, however, that section 7 of P.L.1992, c. 175 (C.54:49-15.1) shall not apply.

d. A taxpayer may not carry over any amount of credit allowed under subsection a. of this section to a ~~tax-year~~privilege period during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent ~~tax-year~~ privilege period, if the credit was allowed for a ~~tax-year~~privilege period prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

e. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt , pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) , rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c. 349 (C.54:10A-5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c. 14 (C.54A:4-13), including, but not limited to: examples of and the determination of qualified investments of which applicants shall provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for a credit; and provisions for credit applicants to be charged an initial application fee and ongoing service fees to cover the administrative costs related to the credit.



The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority, and in consultation with the director, pursuant to subsection a. of this section and pursuant to section 4 of P.L.2013, c. 14 (C.54A:4-13), shall not exceed a cumulative total of \$25,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) and the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 4 of P.L.2013, c. 14 (C.54A:4-13) are not in excess of the amount of credits available.

#### Credits

L.1997, c. 349, § 3, eff. Jan. 15, 1998. Amended by L.2013, c. 14, § 3, eff. Jan. 25, 2013; L.2017, c. 40, § 2, eff. May 1, 2017; [L.2019, c. 145, § 2, eff. June 30, 2019](#).

N. J. S. A. 54:10A-5.30, NJ ST 54:10A-5.30

#### **N.J.S.A. 54:10A-5.31**

54:10A-5.31. Credit against tax for certain purchases in a privilege period

a. (1) A taxpayer who in a privilege period purchases treatment equipment or conveyance equipment for use exclusively within this State, shall be allowed a credit as provided herein against the tax imposed for that privilege period pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) in an amount equal to 50% of the cost of the treatment equipment or conveyance equipment less the amount of any loan received pursuant to section 5 of P.L.1981, c. 278 (C.13:1E-96) and excluding the amount of any sales and use tax paid pursuant to P.L.1966, c. 30 (C.54:32B-1 et seq.), provided that the Commissioner of the Department of Environmental Protection has issued a determination under subsection b. of this section that the operation of the system of equipment and the reuse of wastewater effluent that results therefrom are or will be beneficial to the environment. The amount of the credit

claimed for the privilege period in which the purchase of treatment equipment or conveyance equipment is made, and the amount of credit claimed therefor in each privilege period thereafter, shall not exceed 20% of the amount of the total credit allowable, shall not, together with any other credits allowed by law, exceed 50% of the tax liability which would be otherwise due, and shall not reduce the amount of tax liability to less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162 (C.54:10A-5). An unused credit amount may be carried forward, if necessary, for use in future privilege periods. Notwithstanding any other provision of law, the order of priority in which the credit allowed under this section and any other credits allowed by law may be taken shall be as prescribed by the director.

A taxpayer who, in a privilege period, purchased treatment equipment or conveyance equipment, but who did not receive approval of an application for determination pursuant to subsection b. of this section before filing a return for that privilege period, may, in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., and subject to the provisions of this section, file with the director a claim for the credit for that privilege period and any subsequent privilege period, as appropriate.

For the purposes of this section, “treatment equipment” means any equipment that is used exclusively to treat effluent from a primary wastewater treatment facility, which effluent would otherwise have been discharged into the waters of the State, for purposes of reuse in an industrial process thereafter, and “conveyance equipment” means any equipment that is used exclusively to transport that effluent to the facility in which the treatment equipment has been or is to be installed and to transport the product of that further treatment to the site of that reuse.

(2) If a person who purchases treatment equipment or conveyance equipment for which the Commissioner of the Department of Environmental Protection has issued a determination of environmentally beneficial operation pursuant to subsection b. of this section is a partnership, limited liability company, or other person classified as a partnership for federal tax purposes and not subject to the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), a portion of the amount of the credit otherwise allowed to the purchaser pursuant to paragraph (1) of this subsection shall be allowed to each owner of that purchaser that is subject to the tax in proportion to the owner’s share of the income of the purchaser. The purchaser shall be treated as the taxpayer for the purpose of administering the provisions of this section.

b. In order to qualify for the tax credit pursuant to subsection a. of this section, the taxpayer shall apply for a determination from the Commissioner of the Department of Environmental Protection that the equipment with respect to which the credit is sought (1) qualifies as treatment equipment or conveyance equipment as defined in subsection a. of this section, and (2) is or will be in its operation, considered in conjunction with the reuse of the further treated wastewater effluent that results from that operation, beneficial to the environment. The application shall be submitted in writing in a form as the commissioner shall prescribe and shall specifically include; the date or anticipated date of purchase of the equipment, a physical and functional description of the equipment, the cost, the name and address or location of each primary wastewater treatment facility from which effluent is or is to be received for further treatment, the name and address or location of each facility to which the effluent is or is to be conveyed after the further treatment for reuse, the nature of the reuse, the location of any site at which the wastewater that has been or is to be further treated is being or is to be discharged either prior to or after reuse, the volume of such wastewater that is or is to be reused, the portion of that volume that is or is to be consumed in that reuse and the portion thereof that is or is to be discharged thereafter, and the taxpayer's explanation of how the operation of the system and the reuse of the wastewater effluent that has been further treated are or will be beneficial to the environment. The application shall also include the taxpayer's affidavit that, to the best of the taxpayer's knowledge, the equipment has not previously qualified for a credit pursuant to this section either for the taxpayer or other owner or for a previous owner.

Upon approval of the application, the Commissioner of the Department of Environmental Protection shall submit a copy of the determination of equipment qualification and environmentally beneficial operation to the taxpayer and the Director of the Division of Taxation. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer shall include a copy of the determination and the taxpayer's affidavit that the treatment equipment or conveyance equipment is or will be used exclusively in New Jersey. Any credit shall be initially allowed for the privilege period in which the equipment is purchased, and any unused portion thereof may be carried forward into subsequent privilege periods as provided in subsection a. of this section.

The Commissioner of the Department of Environmental Protection, in consultation with the Director of the Division of Taxation, shall adopt rules and regulations establishing technical and administrative

requirements for the qualification of treatment equipment and conveyance equipment, and for the determination that the operation of a system of such equipment and the reuse of wastewater effluent that has been treated thereby are beneficial to the environment, for the purpose of establishing a taxpayer's eligibility for a credit pursuant to this section. In the development and adoption of the rules and regulations prescribed under this act and of any procedure for making application for a credit under subsection a. of this section, the commissioner, in consultation with the director, shall to the greatest extent possible ensure that they are consolidated or consistent with any corresponding rules, regulations, and procedures established under P.L. , c. (C. ) (now pending before the Legislature as Senate Bill No. 1210 (1R) and Assembly Bill No. 2695 of 2000)<sup>1</sup> and P.L.2001, c. 322.

c. No amount of cost included in calculation of the credit allowed under this section shall be included in the costs for calculation of any other credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5).

d. On or before January 31 of each year, the Commissioner of the Department of Environmental Protection shall submit a report to the Governor, the State Treasurer, and the Legislature setting forth the number of taxpayer applications under subsection b. of this section that were approved during the preceding calendar year and the cost of each type of equipment which has been determined to qualify for the credit.

#### Credits

L.2001, c. 321, § 1, eff. Jan. 4, 2002.

#### Footnotes

<sup>1</sup>

So in original; probably should read P.L.2001, c. 282 (C.34:8-75).

N. J. S. A. 54:10A-5.31, NJ ST 54:10A-5.31

**N.J.S.A. 54:10A-5.32**

54:10A-5.32. Temporary regulations

Notwithstanding the provisions of P.L.1968, c. 410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of the Department of Environmental Protection may, immediately upon filing with the Office of Administrative Law, adopt such temporary regulations as the commissioner deems necessary to implement the provisions of section 1 of P.L.2001, c. 321 (C.54:10A-5.31), which regulations shall be effective for a period not to exceed 270 days from the date of the filing, but in no case after one year from the effective date of that P.L.2001, c. 321. The regulations may thereafter be amended, adopted or readopted by the commissioner as the commissioner deems necessary in accordance with the requirements of P.L.1968, c. 410.

Credits

L.2001, c. 321, § 2, eff. Jan. 4, 2002.

N. J. S. A. 54:10A-5.32, NJ ST 54:10A-5.32

**N.J.S.A. 54:10A-5.33**

54:10A-5.33. Allowance of tax credit for remediation costs of contaminated sites

a. A taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), in an amount equal to 100% of the eligible costs of the remediation of a contaminated site as certified by the Department of Environmental Protection pursuant to section 2 of P.L.2003, c. 296 (C.54:10A-5.34) and the Director of the Division of Taxation in the Department of the Treasury pursuant to section 3 of P.L.2003, c. 296 (C.54:10A-5.35) performed during privilege periods beginning on or after January 1, 2004 and before January 1, 2007.

b. The priority for the application of credit allowed pursuant to this section against the tax imposed for a privilege period pursuant to section 5 of P.L.1945, c. 162, in relation to the application of any other credit allowed against the tax shall be prescribed by the Director of the Division of Taxation in the Department of the Treasury. Credits

allowable pursuant to this section shall be applied in the order of the credits' privilege periods. The amount of the credits applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c. 162, for a tax year shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162.

c. Except as provided in subsection d. of this section, the amount of tax year credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of subsection b. of this section may be carried over, if necessary, to the five privilege periods following a credit's privilege period.

d. A taxpayer may not carry over any amount of credit or credits allowed under subsection a. of this section to a privilege period during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred.

e. In no event shall the amount of the tax credit, when taken together with the property tax exemption received pursuant to the "Environmental Opportunity Zone Act," P.L.1995, c. 413 (C.54:4-3.151), less any in lieu of tax payments made pursuant to that act, or any other State, local, or federal tax incentive or grant to remediate a site, exceed 100% of the total cost of the remediation.

Credits

L.2003, c. 296, § 1, eff. Jan. 14, 2004.

N. J. S. A. 54:10A-5.33, NJ ST 54:10A-5.33

**N.J.S.A. 54:10A-5.34**

54:10A-5.34. Eligibility requirements for tax credits

To be eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L.2003, c. 296 (C.54:10A-5.33), a taxpayer shall submit an application, in writing, to the Department of Environmental Protection for review and certification of the eligible costs of the remediation for the remediation tax credit. The department shall review the request for certification upon receipt of an application therefor, and shall approve or deny the application for certification on a timely basis. The department shall certify the eligible costs of the remediation if the department finds

that:

(1) the taxpayer had entered into a memorandum of agreement with the Commissioner of Environmental Protection for the remediation of a contaminated site and the taxpayer is in compliance with the memorandum of agreement;

(2) the taxpayer is not liable, pursuant to paragraph (1) of subsection c. of section 8 of P.L.1976, c. 141 (C.58:10-23.11g) for the contamination at the site; and

(3) the costs of the remediation were actually and reasonably incurred.

When filing an application for certification of the eligible costs of a remediation pursuant to this section, the taxpayer shall submit to the department a certification of the total remediation costs incurred by the taxpayer for the remediation of the subject property, and such other information as the department deems necessary in order to make the certifications and findings pursuant to this section.

#### Credits

L.2003, c. 296, § 2, eff. Jan. 14, 2004.

N. J. S. A. 54:10A-5.34, NJ ST 54:10A-5.34

#### **N.J.S.A. 54:10A-5.35**

54:10A-5.35. Additional requirements for tax credit eligibility; certification as contaminated site

In addition to the requirements of section 2 of P.L.2003, c. 296 (C.54:10A-5.34), to be eligible for a tax credit for the costs of remediation pursuant to section 1 of P.L.2003, c. 296 (C.54:10A-5.33), the Director of the Division of Taxation in the Department of the Treasury shall certify that the remediation of the contaminated site has also satisfied the following:

a. the remediated site is located within an area designated as a Planning Area 1 (Metropolitan) or Planning Area 2 (Suburban) as designated pursuant to the “State Planning Act,” sections 1 through 12 of P.L.1985, c. 398 (C.52:18A-196 et seq.);

b. the subsequent business activity at the remediated site represents new corporation business tax, or sales and use tax or gross income tax

receipts;

c. there is a high probability that the estimated new tax receipts deriving from the business activity at the remediated site, within a three-year period from the inception of the business activity, will equal or exceed the value of tax credits issued; and

d. if the subsequent business activity at the remediated site is as a result of a relocation of an existing business from within the State of New Jersey, then the tax credit authorized pursuant to section 1 of P.L.2003, c. 296 (C.54:10A-5.33), shall be equal to the difference in aggregate value of tax receipts from the corporation business tax pursuant to P.L.1945, c. 162 (C.54:10A-1 et seq.), the sales and use tax pursuant to P.L.1966, c. 30 (C.54: 32B-1 et seq.) and the gross income tax pursuant to P.L.1976, c. 47 (C.54A: 1-1 et seq.) generated by the business activity in the privilege period immediately following the business relocation less the aggregate value of tax receipts generated in the privilege period immediately prior to relocation, up to 100% of the eligible costs, pursuant to section 1 of P.L.2003, c. 296 (C.54:10A-5.33 ). If the difference in aggregate value is zero or less, no tax credit shall be awarded.

#### Credits

L.2003, c. 296, § 3, eff. Jan. 14, 2004.

N. J. S. A. 54:10A-5.35, NJ ST 54:10A-5.35

#### **N.J.S.A. 54:10A-5.36**

54:10A-5.36. Corporation business tax benefit certificate transfer program; establishment

a. The Director of the Division of Taxation in the Department of the Treasury shall establish a corporation business tax benefit certificate transfer program to allow a person who performs a remediation in this State with remediation tax credits otherwise allowable, to surrender those tax benefits for use by other corporation business taxpayers in this State, provided that the taxpayer receiving the surrendered tax benefits is not affiliated with a corporation that is surrendering its tax benefits. For the purposes of this section, the test of affiliation is whether the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of all classes of stock of both the taxpayer

receiving the benefits and a corporation that is surrendering the benefits. The tax benefits may be used on the corporation business tax returns to be filed by those taxpayers.

b. The director shall be authorized to approve the transfer of no more than \$12,000,000 of tax benefits in each of the following State fiscal years: 2005, 2006, and 2007. The maximum value of surrendered tax benefits that a corporation shall be permitted to surrender over the three-year period pursuant to the program is \$4,000,000. Applications must be received on or before February 1, 2005 and each February 1 thereafter.

c. The Director of the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c. 162 (C.54:10A-1 et seq.), to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates. No taxpayer who is liable pursuant to paragraph (1) of subsection c. of P.L.1976, c. 141 (C.58:10-23.11) for contamination at any site in the State may acquire a surrendered tax benefit pursuant to this section. The applications shall be submitted and the division shall approve or disapprove the applications.

#### Credits

L.2003, c. 296, § 4, eff. Jan. 14, 2004.

N. J. S. A. 54:10A-5.36, NJ ST 54:10A-5.36

#### **N.J.S.A. 54:10A-5.37**

54:10A-5.37. Performance evaluation review committee; reporting requirements

On or before August 1, 2006, the State Treasurer shall form a performance evaluation review committee which shall consist of representatives of the Division of Taxation, the Commerce and Economic Growth Commission, and the New Jersey Economic Development Authority, and five members from the private sector, at least two of whom shall represent the real estate development industry. This performance evaluation review committee shall be charged with thoroughly analyzing and documenting in a report:

a. the fiscal and economic impact to the State of the tax credit for the

costs of remediation granted pursuant to section 1 of P.L.2003, c. 296 (C.54:10A-5.33);

b. the total number of properties redeveloped and their local economic and fiscal impact;

c. any recommendations for legislative or regulatory amendments that would enhance the effectiveness of the program; and

d. a recommendation whether the program should be continued.

The report required pursuant to this section shall be delivered to the Governor and the chairs of the Senate Budget and Appropriations Committee and the Assembly Appropriations Committee, or the chairs of the successor committees, on or before November 30, 2006.

#### Credits

L.2003, c. 296, § 5, eff. Jan. 14, 2004.

N. J. S. A. 54:10A-5.37, NJ ST 54:10A-5.37

#### **N.J.S.A. 54:10A-5.38**

54:10A-5.38. Tax credit for employment of certain persons with disabilities; definitions

a. A taxpayer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), in an amount equal to 20% of the salary and wages paid by the taxpayer during the privilege period for the employment of a qualified person, but not to exceed \$1,000 for each qualified person for the privilege period.

b. As used in this section:

“Qualified person” means an extended employee, within the meaning of that term as set forth in section 2 of P.L.1971, c. 272 (C.34:16-40), to whom the Commissioner of Labor and Workforce Development, under subsection (b) of section 18 of P.L.1966, c. 113 (C.34:11-56a17), shall have issued a special license authorizing employment at wages less than the minimum wage rate, and who, for at least 26 weeks during the privilege period, shall have performed at least 25 hours per week of work at or under the supervision of a sheltered workshop pursuant to a contract between the taxpayer and the sheltered workshop.



“Sheltered workshop” means an occupation-oriented facility operated by a nonprofit agency with which the Division of Vocational Rehabilitation Services in the Department of Labor and Workforce Development shall have entered into a contract under section 4 of P.L.1971, c. 272 (C.34:16-42) to furnish extended employment programs to eligible individuals.

c. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), for a privilege period, when taken together with any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c. 162, shall not exceed 50% of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162. The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be determined by the Director of the Division of Taxation. The amount of the credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c. 162 may be carried over, if necessary, to the seven privilege periods following the privilege period for which the credit was allowed.

Credits

L.2005, c. 318, § 1, eff. Jan. 12, 2006.

N. J. S. A. 54:10A-5.38, NJ ST 54:10A-5.38

#### **N.J.S.A. 54:10A-5.39**

54:10A-5.39. ~~Corporation-business~~ Repealed by L.2018, c. 56, § 5, eff. July 3, 2018

N. J. S. A. 54:10A-5.39, NJ ST 54:10A-5.39

#### **N.J.S.A. 54:10A-5.39a**

54:10A-5.39a. Repealed by L.2018, c. 56, § 5, eff. July 3, 2018

N. J. S. A. 54:10A-5.39a, NJ ST 54:10A-5.39a

#### **N.J.S.A. 54:10A-5.39b**

54:10A-5.39b. Franchise tax credit ~~for qualified film~~ against production expenses; ~~tax credit~~ qualifications; calculation; transfer ~~certificate~~; ~~definitions~~

a. (1) A taxpayer, upon approval of an application to the ~~Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development~~ authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), in an amount equal to ~~20~~30 percent of the qualified film production expenses of the taxpayer during a privilege period commencing on or after ~~the effective date of P.L.2005, c. 345,~~<sup>1</sup> July 1, 2018 but before July 1, 2028, provided that :

(~~1a~~) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer ~~will be~~ incurred for services performed, and goods ~~used or consumed~~ purchased through vendors authorized to do business, in New Jersey, ~~and or~~ the qualified film production expenses of the taxpayer during the privilege period exceed \$1,000,000 per production;

(~~2b~~) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days ~~after~~ from the date of approval of the application for the tax credit;

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a “Filmed in New Jersey” or “Produced in New Jersey” statement, or an approved logo approved by the commission, in the end credits of the film;

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(e) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of

this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) shall be in an amount equal to 35 percent of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

b. (1) A taxpayer, upon approval of an application to the ~~Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development~~ authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5); in an amount ~~up~~equal to 20 percent, ~~as determined by the authority~~ of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after ~~the effective date of P.L.2007, c. 257~~ July 1, 2018 but before July 1, 2028, provided that:

(a) at least \$2,000,000 of the total digital media content production expenses of the taxpayer ~~will be~~are incurred for services performed, and goods ~~used or consumed~~purchased through vendors authorized to do business, in New Jersey ~~and;~~

(b) at least ~~a significant percentage, as determined by the authority,~~50 percent of the qualified digital media content production expenses of the taxpayer ~~will include~~are for wages and salaries paid to ~~one~~full-time or ~~more new~~full-time equivalent employees in New Jersey. ~~For purposes of this subsection, "new full-time employee" means a person employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer that is an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and who is determined by the authority to work in a newly created permanent position according to criteria it develops. "New full-time employee" shall not include any person who works as an independent~~

~~contractor or on a consulting basis for the taxpayer. In determining the amount of any grant of tax credits made pursuant to this subsection, the authority shall consider the number of new full-time positions created by;~~

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(d) the taxpayer ~~as well as~~complies with the ~~quality of the full-time positions created, including but not limited to the salaries and benefits~~withholding requirements provided for payments to ~~new full-time employees. The authority, in consultation with the Division of Taxation, shall establish rules for~~loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of subsection b. of this section to the ~~recapture of all, or a portion of~~contrary, the ~~grant of tax credits~~tax credit allowed pursuant to this subsection ~~in the event~~against the ~~taxpayer fails to maintain the new full-time positions that were included in calculating~~tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) shall be in an amount equal to 25 percent of the qualified digital media content production expenses of the taxpayer-

e during a privilege period that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit authorized pursuant to this section is allowed. The order of priority in which the tax credit ~~allowed pursuant to this section and any other tax credits allowed by law may be taken shall be as~~prescribed by the director. The amount of the tax credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed ~~against the tax imposed pursuant to section 5 of P.L.1945, c. 162, shall not exceed 50 percent of the tax liability otherwise due and by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory~~



minimum provided in subsection (e) of section 5 of P.L.1945, c. 162 (C.54:10A-5). ~~The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be as determined by the Director of the Division of Taxation~~ 54:10A-5). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c. 162 (C.54:10A-1 et seq.) may be carried over forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

d. A taxpayer may, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the ~~director authority~~ and the ~~executive director of the authority~~ for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. ~~The director and the executive director of the authority may consult with the New Jersey Motion Picture and Television Development Commission in consideration of any application for approval of a tax credit or tax credit transfer certificate under this section.~~ The tax credit transfer certificate, upon receipt thereof by the taxpayer from the ~~director and the authority~~ and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the “Corporation Business Tax Act (1945),” P.L.1945, c. 162 ~~or~~ (C.54:10A-1 et seq.), or the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer’s right to claim that amount of the tax credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75% percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c. 162 (C.54:10A-1 et seq.) shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsection c. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection a. or subsection b. of this section may be applied against the purchaser’s or assignee’s tax liability under N.J.S.54A:1-1 et seq. and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsections c.

and d. of section 2 of P.L.20052018, c. 34556 (C.54A:4-12b).

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c. 56 (C.54A:4-12b) shall not exceed a cumulative total of \$100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2029 to apply against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) and the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2018, c. 56 (C.54A:4-12b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L.2018, c. 56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of paragraph (1) of this subsection to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer. The combined increase to the cumulative total permitted to be approved in a subsequent fiscal year pursuant to this paragraph shall not exceed \$50,000,000.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and

the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L.2018, c. 56 (C.54A:4-12b) shall not exceed a cumulative total of \$10,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2029 to apply against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) and the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c. 56 (C.54A:4-12b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L.2018, c. 56 (C.54A:4-12b) are not in excess of the amount of credits available.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer’s tax credit claim following the completion of the production. The report shall be prepared by the independent certified public accountant pursuant to agreed upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant’s report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company or to an independent contractor an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the

rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee’s payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

h. As used in this section:

“Authority” means the New Jersey Economic Development Authority.

“Business assistance or incentive” means “business assistance or incentive” as that term is defined pursuant to section 1 of P.L.2007, c. 101 (C.54:50-39).

“Commission” means the Motion Picture and Television Development Commission.

“Digital media content” means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. “Digital media content” ~~does~~shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer’s digital media content.

“Film” means a feature film, a television series, or a television show of ~~15~~22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to,

a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. “Film” shall not include a production featuring news, current events, weather, and market reports or public programming, talk show, ~~game show~~, or sports event, ~~award show or other gala event~~, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except if the production company of the reality show owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and invests no less than \$3,000,000 in such a facility within a designated enterprise zone established pursuant to the “New Jersey Urban Enterprise Zones Act,” P.L.1983, c. 303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c. 347 (C.52:27H-66.2). “Film” shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

“Full-time or full-time equivalent employee” means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. “Full-time or full-time equivalent employee” shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

“Highly compensated individual” means an individual who directly or indirectly receives compensation in excess of \$500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

“Independent contractor” means an individual treated as an independent

contractor for federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

“Loan out company” means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. “Loan out company” shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

“Partnership” means an entity classified as a partnership for federal income tax purposes.

“Post-production costs” means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

“Pre-production costs” means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated.

“Qualified digital media content production expenses” means an expense incurred in New Jersey for the production of digital media content.

“Qualified digital media content production expenses” shall include but ~~shall~~ not be limited to: wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be deemed a “qualified digital media content production expense” unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. “Qualified digital media content production expenses” shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or

incorporation into the taxpayer's digital media content shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but ~~shall~~ not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs ~~offor~~ tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, ~~operations, editing, photography, sound synchronization, lighting, wardrobe and accessories and the cost of rental of facilities and equipment~~ shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

~~"Post production costs" means the costs of the phase of production that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.~~

~~f. The Director of the Division of Taxation in the Department of the Treasury, in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic~~

~~Development Authority, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B~~

i. A business that is not a "taxpayer" as defined and used in the "Corporation Business Tax Act (1945)," P.L.1945, c. 162 (C.54:10A-1 et seq.); ~~as are necessary to implement this act including examples of qualified film production and digital media content production expenses and the procedures and forms to apply for a credit and for a tax credit transfer certificate necessary for a taxpayer to sell or assign an amount of tax credit under this section. The value of credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to~~ and therefore is not directly allowed a credit under this section, but is a business entity that is classified as a partnership for federal income tax purposes and is ultimately owned by a business entity that is a "corporation" as defined in subsection (c) of section 4 of P.L.1945, c. 162 (C.54:10A-4), or a limited liability company formed under the "Revised Uniform Limited Liability Company Act," P.L.2012, c. 50 (C.42:2C-1 et seq.), or qualified to do business in this State as a foreign limited liability company, with one member, and is wholly owned by the business entity that is a "corporation" as defined in subsection (c) of section ~~24~~ of P.L.~~2005~~1945, c. ~~345~~162 (C.~~54A:4-12~~); ~~shall not exceed a cumulative total of \$10,000,000 in any fiscal year~~54:10A-4), but otherwise meets all other requirements of this section, shall be considered an eligible applicant and "taxpayer" as that term is used in this section.

#### Credits

L.2018, c. 56, § 1, eff. July 3, 2018. Amended by L.2019, c. 506, § 1, eff. Jan. 21, 2020.

N. J. S. A. 54:10A-5.39b, NJ ST 54:10A-5.39b

#### **N.J.S.A. 54:10A-5.40**

#### 54:10A-5.40. Surcharge on franchise tax liability

In addition to the franchise tax paid by each taxpayer determined pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), for privilege periods ending on or after July 1, 2006 but before July 1, 2010, each taxpayer shall be assessed and shall pay a surtax equal to 4% of the



amount of the liability determined pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) remaining after application of any credits allowed against that liability other than credits for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods. The surtax imposed under this section shall be due and payable in accordance with section 15 of P.L.1945, c. 162 (C.54:10A-15), and the surtax shall be administered pursuant to the provisions of P.L.1945, c. 162 (C.54:10A-1 et seq.). Notwithstanding the provisions of any other law to the contrary, no credits shall be allowed against the surtax liability computed under this section except for credits for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods.

#### Credits

L.2006, c. 38, § 1, eff. July 8, 2006. Amended by L.2009, c. 72, § 1, eff. June 29, 2009.

N. J. S. A. 54:10A-5.40, NJ ST 54:10A-5.40

#### **N.J.S.A. 54:10A-5.41**

54:10A-5.41. Assessment; payment of surtax; calculation; administration

a. In addition to ~~apply against~~ the tax ~~imposed~~ paid by each taxpayer determined pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5), ~~and the~~ each taxpayer, except for a public utility, shall be assessed and shall pay a surtax as follows:

(1) For a taxpayer, except a public utility, that has allocated taxable net income in excess of \$1 million for the privilege periods, beginning on or after January 1, 2018 through December 31, 2023, the surtax imposed shall be 2.5%; provided, however, that if the federal corporate income tax rate imposed pursuant to section 11 of the ~~“New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. If the cumulative total amount of credits and tax credit transfer certificates allowed to taxpayers~~ federal Internal Revenue Code of 1986 (26 U.S.C. s.11) is increased to a rate of at least 35% of taxable income, the imposition of the surtax imposed pursuant to this section shall be suspended following the conclusion of a taxpayer’s privilege period corresponding with the increase to the federal corporate income tax rate.

(2) (Deleted by amendment, P.L.2020, c. 95)

b. For purposes of this section,

(1) “taxpayer” shall mean any business entity that is subject to tax as provided in the Corporation Business Tax (1945), P.L.1945, c. 162 (C.54:10A-1 et seq.).

(2) “allocated taxable net income” shall mean allocated entire net income for privilege periods ending before July 31, 2019, or taxable ~~years commencing during a single fiscal year under subsection a. of this section and~~ net income as defined in subsection (w) of section 4 of P.L.1945, c. 162 (C.54:10A-4) for privilege periods ending on and after July 31, 2019.

The surtax imposed under this section shall be imposed on allocated taxable net income, and shall be due and payable in accordance with section ~~215~~ of P.L.~~2005~~1945, c. ~~345~~162 (C.~~54A:4-12~~ ~~exceeds~~54:10A-15), and the ~~amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit or tax credit transfer~~ surtax shall be administered pursuant to the provisions of P.L.1945, c. 162 (C.54:10A-1 et seq.). Notwithstanding the provisions of any other law to the contrary, no credits shall be allowed against the surtax liability computed under this section except for credits for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods.

#### Credits

L.2018, c. 48, § 1, eff. Jan. 1, 2018. Amended by L.2018, c. 131, § 7, eff. Oct. 4, 2018, retroactive to Jan. 1, 2018; L.2020, c. 95, § 1, eff. Sept. 29, 2020.

N. J. S. A. 54:10A-5.41, NJ ST 54:10A-5.41

#### **N.J.S.A. 54:10A-5.42**

54:10A-5.42. Employer credit against corporation business tax; employment of persons with impairment; application and use

a. ~~The Director of the Division of Taxation in the Department of the Treasury~~ shall allow an employer a credit against the corporation business tax imposed pursuant to section 5 of P.L.1945, c. 162

(C.54:10A-5) in the amount certified by the Commissioner of Labor and Workforce Development as the taxpayer's tax credit amount pursuant to section 6 of P.L.2019, c. 32 (C.34:11-56a40). To claim the tax credit amount for a privilege period, the taxpayer shall submit to the director the certificate amount of credit issued for that ~~reason shall be allowed, in the order in which they have submitted an application,~~ privilege period by the commissioner pursuant to section 6 of P.L.2019, c. 32 (C.34:11-56a40).

b. An employer shall apply the credit awarded against the employer's liability under section 5 of P.L.1945, c. 162 (C.54:10A-5) for the privilege period during which the director allows the employer a tax credit pursuant to this section. An employer shall not carry forward an unused credit.

c. The director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under section 5 of P.L.1945, c. 162 (C.54:10A-5). The amount of ~~tax the credit or certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates~~ applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162 (C.54:10A-5).

#### Credits

L.2019, c. 32, § 8, eff. Feb. 4, 2019.

N. J. S. A. 54:10A-5.42, NJ ST 54:10A-5.42

#### **N.J.S.A. 54:10A-5.43**

54:10A-5.43. Allowable tax credits; pass-through entities owned by both corporate and non-corporate members; conditions

Where the pass-through entity, which pays the pass-through business alternative income tax, is owned by both corporate members and non-corporate members, the corporate member shall be allowed a tax credit against the surtax imposed pursuant to section 1 of P.L.2018, c. 48 (C.54:10A-5.41) or the tax imposed under paragraph (1) of subsection ~~ac. of this section and~~ 5 of P.L.1945, c. 162 (C.54:10A-5), if the corporate

member is a member of a pass-through entity that elects to owe and pay the pass-through business alternative income tax determined pursuant to section ~~23~~ of P.L.~~2005~~2019, c. ~~345~~320 (C.54A:~~4-12~~12-3) ~~are not in excess of~~ for the taxable year; provided, however, the credit shall not reduce the corporate member's tax liability below the statutory minimum imposed under subsection e. of section 5 of P.L. 1945, c. 162 (C.54:10A-5). Any excess credit shall be carried over for a period of up to 20 privilege periods.

a. For each pass-through entity of which the corporate member is a member, the amount of ~~credits available. the value of credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection b. of this section shall not exceed a total of \$5,000,000 in any fiscal year to~~ apply credit shall equal the member's share of the tax paid pursuant to section 3 of P.L.2019, c. 320 (C.54A:12-3), which credit shall be applied against the surtax or corporation business tax liability of the member during the member's privilege period.

b. The credit allowed by this section shall be taken as prescribed by the director. A taxpayer shall only claim a credit for payment of the pass-through business alternative income tax made by the entity that is applicable to the same tax year.

c. If the pass-through entity is unitary with both the corporate member and the member's combined group filing a New Jersey combined return for which the corporate member is included as a member, within the meaning of subsection (dd) of section 4 of P.L.1945, c. 162 (C.54:10A-4) and section 23 of P.L.2018, c. 48 (C.54:10A-4.11), the credit shall be shareable for the purposes of subsection i. of section 18 of P.L.2018, c. 48 (C.54:10A-4.6) and allowed to reduce the total surtax and total corporation business tax liability of the combined group but not the below the aggregate statutory minimum tax of the taxable members of the combined group.

d. If the pass-through entity is unitary with the corporate member, but not the member's combined group filing a New Jersey combined return for which the corporate member is included as a member, within the meaning of subsection (dd) of section 4 of P.L.1945, c. 162 (C.54:10A-4) and section 23 of P.L.2018, c. 48 (C.54:10A-4.11), the credit shall not be shareable for the purposes of subsection i. of section 18 of P.L.2018, c. 48 (C.54:10A-4.6) but shall be allowed to reduce the total surtax and total corporation business tax liability of the corporate member derived from the corporate member's activities that are independent of the

unitary business of the member's combined group.

e. An exempt corporate member that is a corporation exempt from tax pursuant to section 3 of P.L.1945, c. 162 (C.54:10A-3) shall be refunded the share of the tax paid by the pass-through entity on the exempt corporate member's distributive proceeds of the pass-through entity.

f. For the purposes of this section:

"Corporate member" means a member that is not an individual, an estate, or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a corporation exempt from the Corporation Business Tax Act pursuant to section 3 of P.L.1945, c. 162 (C.54:10A-3). A corporate member does not include another pass-through entity.

"Exempt corporate member" means a member that is not an individual, an estate, or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq. and that is a corporation exempt from the Corporation Business Tax Act pursuant to section 3 of P.L.1945, c. 162 (C.54:10A-3).

"Noncorporate member" means, an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.

"Pass-through entity member" means a member that itself is a pass-through entity.

Credits

L.2019, c. 320, § 11, eff. Jan. 13, 2020.

N. J. S. A. 54:10A-5.43, NJ ST 54:10A-5.43

#### **N.J.S.A. 54:10A-5.44**

54:10A-5.44. Allowable tax credits; qualified start-up costs associated with apprenticeship programs; limitations; annual report; definitions

a. A taxpayer, upon approval of an application to the department and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5). ~~If the total:~~ (1) in amount of ~~credits and tax credit transfer certificates allowed to taxpayers for~~ not to exceed \$5,000 of the qualified start-up costs incurred by the taxpayer

during a privilege period commencing on or after July 1, 2019, and associated with the initial year of participation in an apprenticeship program established by the taxpayer or group of taxpayers; or (2) in an amount not to exceed \$10,000 of the qualified start-up costs incurred by the taxpayer during a ~~privilege periods or taxable years~~ period commencing ~~during a single fiscal~~ on or after July 1, 2019, and associated with the initial year ~~under subsection b. of this section exceeds~~ of participation in an apprenticeship program established by the ~~amount of credits available in that year, then~~ taxpayer or group of taxpayers ~~who have first applied for and have not been allowed a credit or~~ that provides greater opportunities for workers in key industries.

b. No tax credit ~~transfer certificate amount for that reason~~ shall be allowed, ~~in the order in which they have submitted an application, the amount~~ pursuant to this section for any costs or expenses included in the calculation of any other tax credit or ~~certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section are not in excess of the amount of credits available~~ exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit pursuant to this section is allowed. The order of priority of the application of the tax credit allowed pursuant to this section, and any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) for a privilege period, shall be as prescribed by the ~~Executive~~ director. The amount of the ~~New Jersey Economic Development Authority, in conjunction with the Director of the Division of Taxation shall prepare and submit a report to the Governor and the Legislature on the effectiveness of the credit as an incentive for encouraging film productions and digital media content productions to locate in New Jersey which shall be completed before the third taxable year or privilege period in which a credit may be claimed~~ credit applied pursuant to this section against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) shall not reduce a taxpayer's tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162 (C.54:10A-5).

gc. ~~For The purpose of determining eligibility for or the amount of any grant~~ value of tax credits approved by the department and the director pursuant to subsection a. of this section, ~~the authority shall not include any job that is included in~~ and pursuant to subsection a. of section 2 of P.L.2019, c. 417 (C.54A:4-19) shall not exceed a cumulative total of



\$1,000,000 in fiscal year 2020, and in each fiscal year thereafter, to apply against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) and the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. If the cumulative total amount of tax credits allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2019, c. 417 (C.54A:4-19) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit on the first day of the next succeeding fiscal year in which tax credits allowed under subsection a. of this section and subsection a. of section 2 of P.L.2019, c. 417 (C.54A:4-19) are not in excess of the amount of credits available.

d. A taxpayer shall submit to the department and the director a report to verify the qualified start-up costs incurred by the taxpayer associated with the initial year of participation in an apprenticeship program. The report shall include such information as shall be determined necessary by the department and the director to substantiate the qualified start-up costs incurred by the taxpayer.

e. As used in this section:

“Apprenticeship program” means a registered program providing to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeship trade, and: (1) registered by the calculation Office of a business employment incentive grant Apprenticeship of the U.S. Department of Labor and meeting the standards established by that office; or (2) registered by a State apprenticeship agency recognized by the office.

“Department” means the Department of Labor and Workforce Development.

“Key industry” means an industry that makes or could make an important contribution to the economy of the State, which may include, but not be limited to, advanced manufacturing, construction, healthcare, logistics, pharmaceuticals, transportation, tourism, and renewable energy, as defined by the Department of Labor and Workforce Development in accordance with regulations adopted pursuant to the provisions of P.L.19962019, c. 26417 (C.34:1B-12454:10A-5.44 et al.)—or a business retention and relocation grant pursuant to P.L.1996, c. 25—

~~(C.34:1B-112 et seq.).~~

“Qualified start-up costs” means the ordinary and necessary costs to start an apprenticeship program in that industry and occupation, including the salary costs of employees working on the program and, if applicable, the non-recurring costs of fixed telecommunication furnishings and office equipment.

Credits

~~L.2005, c. 345~~

L.2019, c. 417, § 1, eff. Jan. 1221, 2006. Amended by L.2007, c. 257, § 1, eff. Jan. 11, 2008.

Footnotes

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~~L.2005, c. 345, eff. Jan. 12, 2006.~~

~~N.J.S.~~2020.

N. J. S. A. 54:10A-~~5.39a~~

5.44, NJ ST 54:10A-5.44

**N.J.S.A. 54:10A-5.45**

54:10A-5.45. Allowable tax credit for taxpayers that employ persons donating organs or bone marrow; application of credit; priority of credits

a. A taxpayer that employs a person who missed time from work because the person donated one or more of the provisions of any other law person’s human organs, rule, or regulation to the contrary, no credits, including tax credits a part thereof, or bone marrow to another human for

human organ transplantation, shall be allowed ~~through the granting of tax credit transfer certificates, approved by the director and the authority~~ against the tax imposed pursuant to ~~subsection a. of~~ section 15 of P.L.20051945, c. 345 and 162 (C.54:10A-5), in an amount equal to 25 percent of the person's salary during the time missed from work, for up to 30 days of missed work for each donation.

A taxpayer shall only be allowed this credit for the time that the taxpayer grants the person paid time off and only if such time is in addition to any other paid time off granted to the person.

b. A taxpayer shall apply the credit allowed pursuant to this section ~~2 of P.L.2005, c. 345 (C.54A:4-12) shall be allowed in State Fiscal Year 2011 to apply~~ to the privilege period during which the person missed time from work.

c. The director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed ~~pursuant to~~ section 5 of P.L.1945, c. 162 (C.54:10A-5) ~~and. The amount of the credit applied under this section against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and no credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection b. of~~ section 15 of P.L.20051945, c. 345 162 (C.54:10A-5.395) ~~shall be allowed in State Fiscal Year 2011 to apply against the tax imposed pursuant to~~ for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c. 162 (C.54:10A-5). Any remaining credit shall not be carried forward to another privilege period.

#### Credits

L.~~2010~~2019, c. ~~20444~~, § 26, eff. ~~June 29~~May 20, 2020.

N. J. S. A. 54:10A-5.45, ~~2010.~~

~~N. J. S. A. 54:10A-5.39a, NJ ST 54:1054:10A-5.39a~~5.45

#### **N.J.S.A. 54:10A-6**

54:10A-6. Taxpayer maintaining regular place of business outside State

The portion of a taxpayer's entire net worth to be used as a measure of the tax imposed by subsection (a) of section 5 of P.L.1945, c. 162 (C.54:10A-5), and the portion of its entire net income to be used as a measure of the tax imposed by subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5), shall be determined by multiplying such entire net worth and entire net income, respectively, by an allocation factor which is the property fraction, plus twice the sales fraction plus the payroll fraction and the denominator of which is four, and which, for privilege periods beginning on or after January 1, 2012, is the sum of the portions of the property fraction, the sales fraction, and the payroll fraction determined in accordance with the following schedule:

for privilege periods beginning on or after January 1, 2012 but before January 1, 2013, 15% of the property fraction plus 70% of the sales fraction plus 15% of the payroll fraction, for privilege periods beginning on or after January 1, 2013 but before January 1, 2014, 5% of the property fraction plus 90% of the sales fraction plus 5% of the payroll fraction, and for privilege periods beginning on or after January 1, 2014, 100% of the sales fraction, except as the director may determine pursuant to section 8 of P.L.1945, c. 162 (C.54:10A-8), that is:

(A) The property fraction is the average value of the taxpayer's real and tangible personal property within the State during the period covered by its report divided by the average value of all the taxpayer's real and tangible personal property wherever situated during such period; provided, however, that for the purpose of determining average value, the provisions with respect to depreciation as set forth in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c. 162 (C.54:10A-4) shall be taken into account for arriving at such value.

(B) The sales fraction is the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes, arising during such period from:

(1) sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,

(2) sales of tangible personal property located without the State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State,

(3) (Deleted by amendment.)

(4) (i) sales of services ~~performed within the State~~, if the benefit of the service is received at a location in this State. If the benefit of the service is received both at a location within and outside this State, the portion of the sale that is allocated to this State is based on the percentage of the total value of the benefit of the service received at a location in this State or a reasonable approximation to the total value of the benefit of the service received in all locations both within and outside this State; (ii) if the state or states of assignment of services under subparagraph (i) of this paragraph cannot be determined for a customer who is an individual that is not a sole proprietor, the benefit of the service is deemed to be received at the customer's billing address; (iii) if the state or states of assignment of services under subparagraph (i) cannot be determined for a customer, except for a customer under subparagraph (ii) of this paragraph, the benefit of the service is deemed to be received at the location from which the services were ordered in the customer's regular course of operations. If the location from which the services were ordered in the customer's regular course of operations cannot be determined, the benefit of the service is deemed to be received at the customer's billing address,

(5) rentals from property situated, and royalties from the use of patents or copyrights, within the State,

(6) all other business receipts (excluding dividends excluded from entire net income by paragraph (1) of subsection (k) of section 4 of P.L.1945, c. 162 (C.54:10A-4)) earned within the State, divided by the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business receipts, whether within or without the State.

(C) The payroll fraction is the total wages, salaries and other personal service compensation, similarly computed, during such period of officers and employees within the State divided by the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's officers and employees within and without the State.

In the case of a banking corporation which maintains a regular place of business outside this State other than a statutory office, and which elects to take the exclusion from net worth provided in subsection (d) of section 4 of P.L.1945, c. 162 (C.54:10A-4) or the deduction from entire net income provided in paragraph (4) of subsection (k) of section 4 of P.L.1945, c. 162 (C.54:10A-4), the allocation factor shall be computed and applied in accordance with section 6 of P.L.1945, c. 162 (C.54:10A-

6); provided, however, that the numerators and the denominators of the fractions described in (A), (B) or (C) above shall include all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in paragraph (4) of subsection (k) of section 4 of P.L.1945, c. 162 (C.54:10A-4), whether or not such amounts are otherwise attributable to this State.

(D)(1) For the purposes of paragraph (4) of subsection (B) of this section, services performed within the State shall be deemed to include, but shall not be limited to, investment management services performed by the taxpayer as a partner provided to a partnership, S corporation, or other entity.

(2) As used in this subsection:

"Investment management services" means providing a substantial quantity of any of the following services to a partnership, S corporation, or other entity as a partner thereto:

(a) advising as to the advisability of investing in, purchasing, or selling a specified asset;

(b) managing, acquiring, or disposing of a specified asset;

(c) arranging financing with respect to acquiring specified assets; or

(d) any activity in support of the services described in subparagraphs (a) through (c) of this paragraph.

A partner shall not be deemed to be providing investment management services under this subsection if the partnership interest is held directly or indirectly by a corporation, or any capital interest in the partnership, which provides the taxpayer with a right to share in partnership capital commensurate with the amount of capital contributed, determined at the time of receipt of such partnership interest, or the value of partnership interest subject to tax under section 83 of the Internal Revenue Code (26 U.S.C. s.83), upon the receipt or vesting of such interest.

"Specified asset" means certain securities, real estate held for rental or investment, interests in partnerships, commodities, or options or derivatives contracts, except if at least 80 percent of the average fair market value of the specified assets of the partnership, S corporation, or other entity during the taxable year consists of real estate.

(3) This subsection shall remain inoperative until enactment into law by the states of Connecticut, New York, and Massachusetts of legislation having an identical effect with this subsection, subsection d. of

N.J.S.54A:5-8, and sections 7 and 9 of P.L.2018, c. 45 (C.54A:5-16 and C.54:10A-6.4), as shall be determined by the Director of the Division of Taxation in the Department of the Treasury.

#### Credits

L.1945, c. 162, p. 567, § 6. Amended by L.1949, c. 236, p. 740, § 2; L.1958, c. 63, p. 191, § 3; L.1966, c. 134, § 2; L.1967, c. 51, § 1, eff. May 15, 1967; L.1968, c. 250, § 3, eff. Aug. 16, 1968; L.1982, c. 39, § 1, eff. June 16, 1982; L.1982, c. 50, § 2, eff. June 30, 1982; L.1983, c. 422, § 2, eff. Jan. 5, 1984; L.1995, c. 245, § 1; L.2002, c. 40, § 8, eff. July 2, 2002; L.2008, c. 120, § 2, eff. Dec. 19, 2008; L.2011, c. 59, § 1, eff. April 28, 2011; L.2018, c. 45, § 8, (contingent effective date); L.2018, c. 48, § 7, eff. July 1, 2018.

N. J. S. A. 54:10A-6, NJ ST 54:10A-6

#### **N.J.S.A. 54:10A-6.1**

##### 54:10A-6.1. Operational and nonoperational income

a. “Operational income” subject to allocation to New Jersey means income from tangible and intangible property if the acquisition, management, or disposition of the property constitutes an integral part of the taxpayer’s regular trade or business operations and includes investment income serving an operational function. Income that a taxpayer demonstrates with clear and convincing evidence is not operational income is classified as nonoperational income, and the nonoperational income of taxpayers is not subject to allocation but shall be specifically assigned; provided, that 100% of the nonoperational income of a taxpayer that has its principal place from which the trade or business of the taxpayer is directed or managed in this State shall be specifically assigned to this State to the extent permitted under the Constitution and statutes of the United States.

b. Corporate expenses related to nonoperational income are not deductible in determining entire net income. Notwithstanding the provisions of R.S.54:49-6 or any other law to the contrary:

(1) if in prior privilege periods property had been classified as operational property, and later is demonstrated to have been nonoperational property and is subsequently disposed of, all expenses, without limitation, deducted for prior privilege periods related to such

nonoperational property shall be added back and recaptured as income in the period of disposition of such property;

(2) if in prior privilege periods income had been classified as serving an operational function, and later is demonstrated not to have been serving an operational function, all expenses, without limitation, deducted in prior privilege periods related to such income not serving an operational function shall be added back and recaptured as income; and

(3) the denominators of the fractions used to determine the allocation factor pursuant to section 6 of P.L.1945, c. 162 (C.54:10A-6), for privilege periods for which redeterminations are required pursuant to paragraphs (1) and (2) of this subsection shall be redetermined to exclude the amounts, if any, relating to the nonoperational property or the nonoperational income.

c. The Director of the Division of Taxation shall prescribe such forms for administration and adopt such administrative rules as the director deems necessary for the implementation of this section.

#### Credits

L.1993, c. 173, § 5, eff. July 7, 1993. Amended by L.2002, c. 40, § 9, eff. July 2, 2002; L.2014, c. 13, § 1, eff. June 30, 2014.

N. J. S. A. 54:10A-6.1, NJ ST 54:10A-6.1

#### **N.J.S.A. 54:10A-6.2**

54:10A-6.2. Receipts from the services of a registered securities or commodities broker or dealer, and receipts from asset management services; services ~~performed~~ within the State

a. ~~(1) For the purposes of determining the receipts from services-performed within the State under paragraph (4) of subsection (B) of section 6 of P.L.1945, c. 162 (C.54:10A-6), and for the purposes of paragraph (3) of the definition of New Jersey gross receipts pursuant to section 7 of P.L.2002, c. 40 (C.54:10A-5a),~~ the receipts from the services of a registered securities or commodities broker or dealer and the receipts from asset management services shall be from services ~~performed~~ within the State if the customer is located within this State.

b. For purposes of this subsection:

“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;

“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. s.475;

“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. s.475; and

“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.

#### Credits

L.2002, c. 40, § 26, eff. July 2, 2002. Amended by L.2018, c. 48, § 8, eff. July 1, 2018.

N. J. S. A. 54:10A-6.2, NJ ST 54:10A-6.2

#### **N.J.S.A. 54:10A-6.3**

54:10A-6.3. Taxpayer that is an airline; determination of sales fraction for transportation revenues

Notwithstanding the provisions of section 6 of P.L.1945, c. 162 (C.54:10A-6), the sales fraction for the transportation revenues of a taxpayer that is an airline shall be determined as the ratio of revenue miles in this State divided by total revenue miles; provided however, that if a taxpayer that is an airline is engaged in the transportation of passengers, the transportation of freight, or the rental of aircraft, the ratio under this section shall be determined by means of an average of a passenger revenue mile fraction, freight revenue mile fraction, and rental revenue mile fraction weighted to reflect the taxpayer’s relative gross receipts from passenger transportation, freight transportation, and rentals.

#### Credits

L.2011, c. 59, § 2, eff. April 28, 2011.

N. J. S. A. 54:10A-6.3, NJ ST 54:10A-6.3

#### **N.J.S.A. 54:10A-6.4**

54:10A-6.4. Surtax on income from investment management services

a. As used in this section:

“Investment management services” means providing a substantial quantity of any of the following services to a partnership, S corporation, or other entity as a partner thereto:

- (1) advising as to the advisability of investing in, purchasing, or selling a specified asset;
- (2) managing, acquiring, or disposing of a specified asset;
- (3) arranging financing with respect to acquiring specified assets; or
- (4) any activity in support of the services described in paragraphs (1) through (3) of this subsection.

A partner shall not be deemed to be providing investment management services under this section if the partnership interest is held directly or indirectly by a corporation, or any capital interest in the partnership, which provides the taxpayer with a right to share in partnership capital commensurate with the amount of capital contributed, determined at the time of receipt of such partnership interest, or the value of partnership interest subject to tax under section 83 of the Internal Revenue Code (26 U.S.C. s.83), upon the receipt or vesting of such interest.

“Specified asset” means certain securities, real estate held for rental or investment, interests in partnerships, commodities, or options or derivatives contracts, except if at least 80 percent of the average fair market value of the specified assets of the partnership, S corporation, or other entity during the taxable year consists of real estate.

b. Notwithstanding the provisions of the “Corporation Business Tax Act (1945),” P.L.1945, c. 162 (C.54:10A-1 et seq.), to the contrary, in addition to the tax imposed on the entire net income of a taxpayer pursuant to the provisions of section 6 of P.L.1945, c. 162 (C.54:10A-6), there shall be imposed an additional surtax of 17 percent on income received from investment management services during the taxpayer’s accounting or privilege period.

c. This section shall remain inoperative until enactment into law by the



states of Connecticut, New York, and Massachusetts of legislation having an identical effect with this section, section 7 of P.L.2018, c. 45 (C.54A:5-16), subsection (D) of section 6 of P.L.1945, c. 162 (C.54:10A-6), and subsection d. of N.J.S.54A:5-8, as shall be determined by the Director of the Division of Taxation in the Department of the Treasury.

#### Credits

L.2018, c. 45, § 9, (contingent effective date).

N. J. S. A. 54:10A-6.4, NJ ST 54:10A-6.4

#### **N.J.S.A. 54:10A-6.5**

54:10A-6.5. Computation of entire net income; allowances

For privilege periods beginning on and after January 1, 2017, for the purposes of computing entire net income pursuant to section 4 of P.L.1945, c. 162 (C.54:10A-4), a taxpayer shall not be allowed the amount of any deduction, exemption, or credit allowed under the Internal Revenue Code for income reported pursuant to section 965 of the Internal Revenue Code (26 U.S.C. s.965).

#### Credits

L.2018, c. 48, § 2, eff. July 1, 2018, retroactive to Jan. 1, 2017.

N. J. S. A. 54:10A-6.5, NJ ST 54:10A-6.5

#### **N.J.S.A. 54:10A-7**

54:10A-7. “Compensation of officers and employees within this State” defined

As used in section six (C),<sup>1</sup> compensation of officers and employees within this State shall include the entire amount of wages, salaries and other personal service compensation for services performed within or both within and without this State if:

- (a) The service is performed entirely within this State; or
- (b) The service is performed both within and without this State, but the

service performed without this State is incidental to the individual’s service within the State, for example, is temporary or transitory in nature or consists of isolated transactions;

(c) The service is not performed entirely in any State but some of the service is performed in this State, and (1) the base of operation, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this State; or (2) the base of operations or place from which such service is directed or controlled is not in any State in which some part of the service is performed, but the individual’s residence is in this State;

(d) Contributions are not required and paid with respect to such services under an unemployment compensation law of any other State.

#### Credits

L.1945, c. 162, p. 568, § 7.

#### Footnotes

<sup>1</sup>

N.J.S.A. § 54:10A-6.

N. J. S. A. 54:10A-7, NJ ST 54:10A-7

#### **N.J.S.A. 54:10A-8**

54:10A-8. Adjustment of allocation factor

If it shall appear to the commissioner that an allocation factor determined pursuant to section 6<sup>1</sup> does not properly reflect the activity, business, receipts, capital, entire net worth or entire net income of a taxpayer reasonably attributable to the State, he may adjust it by:

- (a) excluding one or more of the factors therein;
- (b) including one or more other factors, such as expenses, purchases,

contract values (minus subcontract values);

(c) excluding one or more assets in computing entire net worth; or

(d) excluding one or more assets in computing an allocation percentage;  
or

(e) applying any other similar or different method calculated to effect a fair and proper allocation of the entire net income and the entire net worth reasonably attributable to the State.

#### Credits

L.1945, c. 162, p. 569, § 8. Amended by L.1949, c. 236, p. 742, § 3;  
L.1958, c. 63, p. 193, § 4; L.1968, c. 250, § 4, eff. Aug. 16, 1968.

#### Footnotes

1

N.J.S.A. § 54:10A-6.

N. J. S. A. 54:10A-8, NJ ST 54:10A-8

#### **N.J.S.A. 54:10A-9**

54:10A-9. Taxpayer holding stock of subsidiary; deductions from net worth; “subsidiary” defined

Any taxpayer which holds capital stock of a subsidiary during all or part of any year may, for the purposes of the tax imposed by this act, deduct from its net worth, the following amount:

(a) In the case of a subsidiary which is taxable under this act, such proportion of the average value of such holdings, less net liabilities (if any) to such subsidiary, as corresponds to 50% of the ratio of the subsidiary’s taxable net worth, for the same year under this act, to its entire net worth; or

(b) In the case of a subsidiary subject to a franchise tax measured by gross receipts under any other law of this State, such proportion of the average value of such holdings, less net liabilities (if any) to such subsidiary, as corresponds to 50% of the ratio of the subsidiary’s business within the State to its business everywhere during its next preceding taxable year under such law; or

(c) In the case of a subsidiary which is a bank as defined in R.S. 54:9-1,<sup>1</sup> 50% of the difference between the average value of such holdings for the same year and net liabilities (if any) to such subsidiary; or

(d) In the case of a subsidiary which is a financial business as defined in section 2 of P.L.1946, c. 174 (C. 54:10B-2(b)), such proportion of the average value of such holdings, less net liabilities (if any) to such subsidiary, as corresponds to 50% of the subsidiary’s allocation fraction for the same year determined under section 8 of P.L.1946, c. 174 (C. 54:10B-8); or

(e) In the case of a subsidiary which is a stock, mutual or assessment insurance company organized or existing under the laws of this State or under the laws of another state or foreign country, such proportion of the average value of such holdings, less net liabilities (if any) to such subsidiary, as corresponds to 50% of the ratio which the amount of taxable premiums, as defined in sections 4 and 5 of P.L.1945, c. 132 and section 1 of P.L.1950, c. 186 (C.54:18A-4, 54:18A-5, and 54:18A-5.1), collected by the subsidiary in the same year, bears to the total amount of all premiums collected by the subsidiary in the same year which would be taxable premiums if all such premiums were on account of business in this State; or

(f) In the case of a subsidiary which is a railroad as defined in section 2 of P.L.1941, c. 291 (C. 54:29A-2), such proportion of the average value of such holdings, less net liabilities (if any) to such subsidiary, as corresponds to 50% of the ratio which the number of miles of all track over which the subsidiary operates in this State in the same year bears to the total number of miles of all track over which the subsidiary operates everywhere in the same year.

For the purpose of this section, a subsidiary shall be deemed to be any corporation in which a taxpayer is the owner of at least 80% of the total combined voting power of all classes of stock entitled to vote and of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends.

#### Credits



L.1945, c. 162, p. 569, § 9. Amended by L.1954, c. 88, p. 540, § 2; L.1955, c. 35, p. 90, § 1; L.1968, c. 250, § 5, eff. Aug. 16, 1968; L.1970, c. 93, § 2; L.1976, c. 28, § 2, eff. June 2, 1976.

#### Footnotes

1

Repealed; see, now, N.J.S.A. § 54:10A-36.

N. J. S. A. 54:10A-9, NJ ST 54:10A-9

#### **N.J.S.A. 54:10A-10**

54:10A-10. Evasion of tax; adjustments and redeterminations; obtaining information

a. Whenever it shall appear to the director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in such manner as either directly or indirectly to distort its true entire net income or its true entire net worth under this act or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under this act, or whereby the activity, business, receipts, expenses, assets, liabilities, income or net worth of the taxpayer are improperly or inaccurately reflected, the director is authorized and empowered, in the director's discretion and in such manner as the director may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the State and the allocation of entire net income or entire net worth or to make any other adjustments in any tax report or tax returns as may be necessary to make a fair and reasonable determination of the amount of tax payable under this act.

b. Where (1) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (2) any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by or through another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the director may include in the entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction. The director may require any person or corporation to submit such information under oath or affirmation, or to permit such examination of its books, papers and documents, as may be necessary to enable the director to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not such person or corporation is subject to the tax imposed by this act.

~~c. The entire net income of a taxpayer exercising its franchise in this State that is a member of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, shall be determined by eliminating all payments to, or charges by, other members of the affiliated or controlled group in excess of fair compensation in all inter group transactions of any kind. Notwithstanding the elimination of all inter group transactions in excess of fair compensation, if the taxpayer cannot demonstrate by clear and convincing evidence that a report by a taxpayer discloses the true earnings of the taxpayer on its business carried on in this State, the director may, at the director's discretion, require the taxpayer to file a consolidated return of the entire operations of the affiliated group or controlled group, including its own operations and income to the extent permitted under the Constitution and statutes of the United States. The director shall determine the true amount of entire net income earned by the taxpayer in this State. The consolidated entire net income of the taxpayer and of the other members of its affiliated group or controlled group shall be allocated to this State by use of the applicable allocation formula that the director requires pursuant to~~

~~(Deleted by amendment, P.L.19452018, c. 162 (C.54A:10A-1 et seq.) be used by the taxpayer. The return shall include in the allocation formula-~~

~~the property, payrolls, and sales of all corporations for which the return is made. The director may require a consolidated return under this section without regard to whether the other members of the affiliated or controlled group, other than the taxpayer, are or are not exercising their franchises in this State.48)~~

~~A consolidated return required by this section shall be filed within 60 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.~~

~~The member of an affiliated group or a controlled group shall incorporate in its return required under this section information needed to determine under this section its taxable entire net income, and shall furnish any additional information the director requires, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. A taxpayer shall furnish any additional information requested within 30 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.~~

#### Credits

L.1945, c. 162, p. 57, § 10. Amended by L.1947, c. 50, p. 173, § 3; L.1958, c. 63, p. 193, § 5; L.2002, c. 40, § 10, eff. July 2, 2002; [L.2018, c. 48, § 9, eff. July 1, 2018.](#)

N. J. S. A. 54:10A-10, NJ ST 54:10A-10

#### **N.J.S.A. 54:10A-11**

54:10A-11. Receivers and others subject to tax

Any receiver, referee, trustee, assignee, or other fiduciary, or any officer or agent appointed by any court, to conduct the business or conserve the assets of any corporation shall be subject to the tax imposed by this act in the same manner and to the same extent as a corporation hereunder.

#### Credits

L.1945, c. 162, p. 570, § 11. Amended by L.1947, c. 50, p. 174, § 4.

N. J. S. A. 54:10A-11, NJ ST 54:10A-11

#### **N.J.S.A. 54:10A-12**

54:10A-12. Repealed by L.1973, c. 367, § 8, eff. Jan. 7, 1974

N. J. S. A. 54:10A-12, NJ ST 54:10A-12

#### **N.J.S.A. 54:10A-13**

54:10A-13. Change, correction or recomputation of amount of taxable income as returned to federal treasury department; amended returns; report; periods of limitation

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 where a renegotiation of a contract or subcontract with the United States results in a change in said taxable income, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, such taxpayer shall report such changed or corrected taxable income, or the results of such renegotiation, or such computation or recomputation, within 90 days after the final determination of such change or correction or renegotiation, or such computation or recomputation, or as required by the director, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within 90 days thereafter an amended report with the director. The periods of limitation to make deficiency assessments under R.S.54:49-6 and to file claims for refund under R.S.54:49-14 shall commence to run for additional four year periods from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue; provided, that the additional periods of limitation shall only be applicable to the increase or decrease in tax attributable to the adjustments in such changed or corrected taxable income.

#### Credits

L.1945, c. 162, p. 571, § 13. Amended by L.1947, c. 50, p. 174, § 5; L.1958, c. 63, p. 195, § 6; L.1992, c. 175, § 19, eff. July 1, 1993.

N. J. S. A. 54:10A-13, NJ ST 54:10A-13

**N.J.S.A. 54:10A-14**

54:10A-14. Copies of income or other tax returns or of statements or registration forms may be demanded; records to be kept; securing information

(a) The director ~~may by general rule or by special notice~~ shall require any taxpayer ~~or managerial member~~ to submit, as part of a full and complete New Jersey return, copies or pertinent extracts of its federal income tax returns, or of any other tax return ~~made to be filed with~~ any agency of the federal government, or of this or any other state, or of any statement or registration made pursuant to any state or federal law pertaining to securities or securities exchange regulation. The director shall issue regulations describing which federal extracts are required and which extracts are optional.

(b) The director may require all taxpayers to keep such records as the director may prescribe, and the director may require the production of books, papers, documents and other data, to provide or secure information pertinent to the determination of the tax hereunder and the enforcement and collection thereof. The director may, also, by general rule or by special notice require any taxpayer to make and file information returns, under oath, of facts pertinent to the determination of the tax or liability for tax hereunder, pursuant to such regulations, at such times and in such form and manner and to such extent as the director may prescribe pursuant to law.

(c) Each taxpayer filing a return that is a member of an affiliated group filing an elective New Jersey combined return or a ~~controlled combined~~ group ~~pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563~~ shall, upon the request of the director and 90 days' notice thereof, disclose ~~in its return for the privilege period~~ the amount of all inter-member costs or expenses reflected in the return for the privilege period, including but not limited to management fees, rents, and other services, for the privilege period. If the taxpayer acquires products or services from another member of its affiliated group or ~~controlled a combined~~ group, which it re-sells or otherwise uses to generate revenue, the taxpayer shall, upon the request of the director and 90 days' notice thereof, disclose the amount of revenue generated from those products or services. The director shall promulgate rules and procedures for the manner of disclosure. A failure

to file such a disclosure shall be deemed the filing of an incomplete tax return, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

(d) For privilege periods ending on and after July 31, 2021, the director shall create a simplified standardized return for combined groups, banking corporations, financial business corporations, and separate return filers, but shall maintain the New Jersey S Corporations returns for New Jersey S Corporations that file separate returns. The standardized return shall include the accompanying forms and schedules to administer and implement the various requirements of the Corporation Business Tax Act (1945), or such accompanying schedules shall be made inconspicuously and readily available on the Division of Taxation's website, and the instructions for the standardized return shall clearly indicate which schedules are required to be completed by combined groups, banking corporations, financial business corporations, and separate return filers respectively.

Credits

L.1945, c. 162, p. 571, § 14. Amended by L.1949, c. 236, p. 742, § 4; L.2002, c. 40, § 11, eff. July 2, 2002; L.2018, c. 48, § 10, eff. July 1, 2018.

N. J. S. A. 54:10A-14, NJ ST 54:10A-14

**N.J.S.A. 54:10A-14.1**

54:10A-14.1. Preservation of records; inspection; destruction

Every domestic or foreign corporation subject to the tax or to filing requirements imposed under the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), shall keep all records used to determine its tax liability and such other records as the Director of the Division of Taxation may by regulation require. The records shall be available for inspection and examination at any time upon demand by the director or his duly authorized agent or employee and shall be preserved for a period of five years, except that the director may consent to their destruction within that period or may require that they be kept longer.

Credits

L.1987, c. 76, § 49, eff. Dec. 9, 1987. Amended by L.2018, c. 48, § 11,

eff. July 1, 2018; L.2018, c. 48, § 31, eff. July 1, 2018.

N. J. S. A. 54:10A-14.1, NJ ST 54:10A-14.1

**N.J.S.A. 54:10A-15**

54:10A-15. Tax payable with respect to year 1959 and thereafter; manner of payment; partial payment of tax; same calendar or fiscal year used for federal income tax

The tax imposed by this act shall be due and payable annually hereafter, commencing with the calendar year 1959, in the manner provided under subsection (a), (b) or (c) of this section, whichever shall be applicable.

(a) Every taxpayer shall annually pay a franchise tax, with respect to all or any part of each of its fiscal or calendar accounting years beginning after January 1, 1959, to be computed as herein provided, for such fiscal or calendar accounting year or part thereof, on a report which shall be filed on or before April 15 next succeeding the close of each such accounting year, or, if any such fiscal year ends after the last day of December and prior to July 1, on or before the fifteenth day of the fourth month after the close of such fiscal year, and the full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the return.

(b) Every taxpayer shall pay a like franchise tax with respect to all or any part of the period beginning January 1, 1959 and extending through any subsequent part of its first fiscal or calendar accounting year ending after said date. Such tax shall be computed as herein provided, for each and every fiscal or calendar accounting year or part thereof begun not earlier than July 2, 1957 and ending not later than December 31, 1959 on the basis of which a franchise tax has not accrued under this act prior to January 1, 1959. The tax imposed pursuant to this subsection shall be deemed a single tax for such period but shall be computed separately with respect to each such fiscal or calendar accounting year or part thereof on the basis of which a franchise tax has not previously accrued as aforesaid, on a report which shall be filed on or before April 15, next succeeding the close of each such accounting year, or, if any such fiscal year ends after the last day of December and prior to July 1, on or before the fifteenth day of the fourth month after the close of such fiscal year, and the full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the report.

(c) With respect to all or any part of each of its privilege periods ending after June 30, 1967, every taxpayer shall annually pay a franchise tax on a report which shall be filed on or before the fifteenth day of the fourth month after the close of such privilege period, or part thereof, and the full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the return; provided, however, that for privilege periods ending on and after July 31, 2020, the due date of the New Jersey return shall be 30 days after the original due date for filing the taxpayer's federal corporate income tax return for such privilege period, or part thereof, and the full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the return.

(d) With respect to its fiscal or calendar accounting years ending after February 29, 1968 and prior to March 1, 1969, every taxpayer shall pay as a partial payment of franchise tax in addition to the tax payable under subsection (c) of this section, an amount equal to one-quarter of the tax payable under said subsection (c). With respect to each of its fiscal or calendar accounting years ending after February 28, 1969, every taxpayer shall annually pay as a partial payment of franchise tax in addition to the tax payable under subsection (c) of this section, an amount equal to one-half of the tax payable under said subsection (c). In the calculation of the tax pertaining to each succeeding accounting period, due in accordance with subsection (c) hereof, every taxpayer shall be entitled to a credit in the amount of the tax paid under this subsection (d) as a partial payment and shall be entitled to the return of any amount so paid which shall be found in excess of the total amount payable in accordance with said subsection (c) and this subsection (d).

(e) With respect to its fiscal or calendar accounting years ending on or after June 30, 1974, every taxpayer shall annually pay as a partial payment of franchise tax in addition to the tax payable under subsection (c) of this section, an amount equal to 60% of the tax payable under said subsection (c). In the calculation of the tax pertaining to each succeeding accounting period, due in accordance with subsection (c) hereof, every taxpayer shall be entitled to a credit in the amount of the tax paid under this subsection (e) as a partial payment and shall be entitled to the return of any amount so paid which shall be found to be in excess of the total amount payable in accordance with said subsection (c) and this subsection (e).

(f) With respect to its privilege periods ending on or after December 31, 1984, in addition to the tax payable under subsection (c) of this section,

every taxpayer, except a taxpayer with gross receipts of \$50,000,000 or more for the prior privilege period, which shall make installment payments pursuant to subsection (g) of this section, shall make installment payments of its franchise tax at the following times and in the following amounts of its estimated tax for its current fiscal or calendar accounting year:

(1) 25% thereof paid on or before the fifteenth day of the fourth month thereof;

(2) 25% thereof paid on or before the fifteenth day of the sixth month thereof;

(3) 25% thereof paid on or before the fifteenth day of the ninth month thereof; and

(4) the balance thereof paid on or before the fifteenth day of the twelfth month thereof.

(g) With respect to its privilege periods beginning on or after January 1, 2003, in addition to the tax payable under subsection (c) of this section, every taxpayer with gross receipts of \$50,000,000 or more for the prior privilege period shall make installment payments of its franchise tax at the following times and in the following amounts of its estimated tax for its current privilege period:

(1) 25% thereof paid on or before the fifteenth day of the fourth month thereof;

(2) 50% thereof paid on or before the fifteenth day of the sixth month thereof; and

(3) the balance thereof paid on or before the fifteenth day of the twelfth month thereof.

(h) In the calculation of the tax due in accordance with subsection (c) hereof, a taxpayer shall be entitled to a credit in the amount of the tax paid under subsection (f) or subsection (g) of this section as a partial payment and shall be entitled to the return of any amount so paid which is in excess of the total amount payable in accordance with subsection (c) and this subsection.

(i) For the purpose of this act, every taxpayer shall use the same calendar or fiscal year upon which it reports to the United States Treasury Department for Federal Income Tax purposes.

Credits

L.1945, c. 162, p. 571, § 15. Amended by L.1947, c. 50, p. 174, § 6; L.1958, c. 63, p. 195, § 7; L.1966, c. 134, § 3, eff. June 17, 1966; L.1968, c. 112, § 2, eff. June 25, 1968; L.1975, c. 21, § 1, eff. Feb. 28, 1975; L.1981, c. 184, § 1, eff. June 19, 1981; L.2002, c. 40, § 13, eff. July 2, 2002.

N. J. S. A. 54:10A-15, NJ ST 54:10A-15

### **N.J.S.A. 54:10A-15.1**

54:10A-15.1. Fiscal or calendar accounting years between December 31, 1980 and December 31, 1984; schedule of installment payments

With respect to its fiscal or calendar accounting years ending on or after December 31, 1980 and prior to December 31, 1984, every taxpayer shall make installment payments of its franchise tax in addition to the tax payable pursuant to subsection (c) of section 15 of P.L.1945, c. 162 (C. 54:10A-15) in accordance with the following schedule:

Where Accounting	The % Payment Due On Or Before Fifteenth of Month of Current Accounting Year Is			
Year Ended On or After	1st	4th	6th	9th
12/31/80	.....	60% PYT	.....	AET 8
12/31/81	15% ET	45% PYT	.....	AET 8
12/31/82	15% ET	45% PYT	.....	AET 8



For purposes of the above schedule:

“AET” means the amount of payment necessary to provide in the taxpayer’s current fiscal or calendar accounting year for cumulative payment of that percentage set forth in the schedule of the taxpayer’s estimated tax liability for that year.

“Accounting year” means the fiscal or calendar accounting year on which the tax is computed.

“Current accounting year” means the fiscal or calendar accounting year during which the estimated tax payments or prepayments are due.

“ET” means a taxpayer’s estimated tax liability for the taxpayer’s current fiscal or calendar accounting year pursuant to subsection (c) of section 15 of P.L.1945, c. 162 (C. 54:10A-15), and with respect to the payment due on or before the fifteenth day of the first month of the taxpayer’s current fiscal or calendar accounting year ending on or after December 31, 1981 and on or after December 31, 1982, the estimated tax payment shall not be less than the last installment for the previous fiscal or calendar accounting year, but need not be more than 25% of the taxpayer’s estimated tax liability for the previous fiscal or calendar accounting year.

“PYT” means a taxpayer’s tax for the prior fiscal or calendar accounting year pursuant to subsection (c) of section 15 of P.L.1945, c. 162 (C. 54:10A-15).

In the calculation of the tax due in accordance with subsection (c) of section 15 of P.L.1945, c. 162 (C. 54:10A-15), a taxpayer shall be entitled to a credit in the amount of the installment payments made under the above schedule and shall be entitled to the return of any amount so paid which is in excess of the total amount payable in accordance with subsection (c) and the above schedule.

Credits

L.1981, c. 184, § 2, eff. June 19, 1981.

N. J. S. A. 54:10A-15.1, NJ ST 54:10A-15.1

54:10A-15.2. Tax liability under \$500; installment payment

With respect to its fiscal or calendar accounting years ending on or after December 31, 1980 and thereafter, any taxpayer with a tax liability of less than \$500.00 under subsection (c) of section 15 of P.L.1945, c. 162 (C. 54:10A-15) shall not be required to make any installment payments other than an installment payment of 60%, and 50% with respect to accounting years ending on or after December 31, 1981, which is required to be paid at the time of the annual return.

Credits

L.1981, c. 184, § 3, eff. June 19, 1981.

N. J. S. A. 54:10A-15.2, NJ ST 54:10A-15.2

### **N.J.S.A. 54:10A-15.3**

54:10A-15.3. Taxpayer in bankruptcy or receivership, or with nonrecurring extraordinary gain or operating loss for year; estimate of income for installment payment

In the case of a taxpayer which is in bankruptcy, or receivership, or which has realized a nonrecurring extraordinary gain which would distort the amount of its installment payment, or which estimates that it will conduct its business at a loss in the current fiscal or calendar accounting year, the director, upon satisfactory proof, may require the taxpayer under oath, to submit details upon which it may estimate, subject to review by the director, its tax for the current fiscal or calendar accounting year, and make an installment payment in an amount based upon the percentage applicable to the installment payment.

Credits

L.1981, c. 184, § 4, eff. June 19, 1981.

N. J. S. A. 54:10A-15.3, NJ ST 54:10A-15.3

54:10A-15.4. Underpayment of installment; additional amount of tax; interest

a. In case of any underpayment of an installment payment by a taxpayer, there shall be added to the tax for the fiscal or calendar accounting year an amount determined by applying the rate established in this section to the amount of the underpayment for the period of the underpayment.

b. For purposes of subsection a., the amount of underpayment shall be the excess of:

(1) The lesser of the amount of the installment payment which would be required to be paid if all installment payments and all payments of tax made pursuant to subsection a. of section 12 of P.L.2002, c. 40 (C.54:10A-15.11) and credited to the taxpayer pursuant to subsection b. of section 12 of P.L.2002, c. 40 were equal to 90% of the tax shown on the return for the fiscal or calendar accounting year, or if no return was filed, 90% of the tax for that year, or 100% of the tax shown on the tax return of the taxpayer for the preceding taxable year over

(2) The amount, if any, of the installment payment paid on or before the last date prescribed for payment.

c. For purposes of subsection a., the period of the underpayment shall run from the date the installment payment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month after the close of the fiscal or calendar accounting year.

(2) With respect to any portion of the underpayment, the date on which that portion is paid.

For purposes of this subsection, a payment of any installment payment shall be considered a payment of any previous underpayment only to the extent that payment exceeds the amount of the installment payment determined under subsection b. (1) for that installment payment.

d. Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment payment shall not be imposed if the total amount of all installment payments made on or before the last date prescribed for the payment of that installment equals or exceeds the amount which would have been

required to be paid on or before that date if the total amount of all installment payments were the lesser of (1) or (2) as follows:

(1) An amount equal to the tax computed at the rates applicable to the current fiscal or calendar accounting year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year; or

(2) An amount equal to 90% of the tax for the current fiscal or calendar accounting year computed by placing on an annualized basis the taxable entire net income and entire net worth:

(a) For the first three months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the fourth month,

(b) For the first three months or for the first five months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the sixth month,

(c) For the first six months or for the first eight months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the ninth month,

(d) For the first nine months or for the first 11 months of the current fiscal or calendar accounting year, in the case of the installment payment required to be paid in the 12th month, and

(e) For the last three months of the preceding taxable year, in the case of the installment payment required to be paid in the first month of the current fiscal or calendar accounting year.

e. Any taxpayer who shall fail to pay, or shall underpay by more than 10% of the amount due, any installment payment required pursuant to this act, shall pay, in addition to the tax, interest on the amount of underpayment as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

#### Credits

L.1981, c. 184, § 5, eff. June 19, 1981. Amended by L.1981, c. 343, § 1; L.1987, c. 76, § 50, eff. Dec. 9, 1987; L.1998, c. 106, § 1, eff. Sept. 14, 1998; L.2005, c. 288, § 2, eff. Jan. 9, 2006.

N. J. S. A. 54:10A-15.4, NJ ST 54:10A-15.4



**N.J.S.A. 54:10A-15.5**

54:10A-15.5. Telecommunications carriers; installment payments of franchise tax

Telecommunications carriers other than local exchange telephone companies shall be required to file and remit installment payments of franchise tax pursuant to subsection (f) of section 15 of the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (C. 54:10A-15) during the calendar year in which this section takes effect and the provisions of subsection d. of section 5 of P.L. 1981, c. 184 (C. 54:10A-15.4) shall not apply to such taxpayers during that year.

Credits

L.1989, c. 2, § 8, eff. Jan. 1, 1990.

N. J. S. A. 54:10A-15.5, NJ ST 54:10A-15.5

**N.J.S.A. 54:10A-15.6**

54:10A-15.6. Limited liability companies classified as partnerships; jurisdictional requirements for collection of income tax in records; payment of nonconsenting members' share of tax

a. A limited liability company or foreign limited liability company that is classified as a partnership for federal income tax purposes may obtain and retain in its records for inspection by the director the consent of each of its members that are not corporations exempt from tax pursuant to section 3 of P.L.1945, c. 162 (C.54:10A-3), or individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional requirements in a form prescribed by the Director of the Division of Taxation: that this State shall have the right and jurisdiction to tax and collect the tax, hereby imposed, on the entire net income of the member (1) based upon combining the respective numerators and denominators of the allocation fractions of the member with the member's share of the numerators and denominators of the limited liability company or foreign limited liability company to determine an allocation factor to be applied to the member's entire net income, including the member's distributive share of the company income, to determine the portion of the member's entire net

income allocated to this State if the relationship between the member and limited liability company or foreign limited liability company is unitary, or (2) based upon separately using the allocation fractions of the limited liability company or foreign limited liability company to determine the allocation factor to be applied to the member's distributive share of the company income, using the allocation fractions of the member to determine the allocation factor to be applied to the member's entire net income excluding the member's distributive share of the income of the limited liability company or foreign limited liability company, and then combining those allocated amounts of net income to determine the portion of the member's entire net income allocated to this State if the relationship between the member and limited liability company or foreign limited liability company is not unitary.

b. A limited liability company or foreign limited liability company that is not a qualified investment partnership and that has not obtained and retained the written consent of one or more of its members that are not corporations exempt from tax pursuant to section 3 of P.L.1945, c. 162 (C.54:10A-3), or individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax equal to the nonconsenting members' share of the entire net income of the limited liability company or foreign limited liability company for that privilege period, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c. 162 (C.54:10A-6), based on the allocation fractions of the limited liability company or foreign limited liability company for that privilege period, and multiplied by the maximum rate set forth at paragraph (1) of subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5) for that privilege period. The limited liability company or foreign limited liability company shall have the right, but not the obligation, to recover from the nonconsenting members such payments made by the company.

c. An amount of tax paid by a limited liability company or foreign limited liability company pursuant to subsection b. of this section attributable to a nonconsenting member shall be credited to the member as of the date of its receipt by the director.

Credits

L.2001, c. 136, § 3, eff. June 29, 2001.

N. J. S. A. 54:10A-15.6, NJ ST 54:10A-15.6

**N.J.S.A. 54:10A-15.7**

54:10A-15.7. Limited liability partnerships; jurisdictional requirements for collection of income tax in records; payment of nonconsenting partners' share of tax

a. A limited partnership or foreign limited partnership that is classified as a partnership for federal income tax purposes may obtain and retain in its records for inspection by the director the consent of each of its partners that are not corporations exempt from tax pursuant to section 3 of P.L.1945, c. 162 (C.54:10A-3), or individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., to the following jurisdictional requirements in a form prescribed by the Director of the Division of Taxation: that this State shall have the right and jurisdiction to tax and collect the tax, hereby imposed, on the entire net income of the partner (1) based upon combining the respective numerators and denominators of the allocation fractions of the partner with the partner's share of the numerators and denominators of the limited partnership or foreign limited partnership to determine an allocation factor to be applied to the partner's entire net income, including the partner's distributive share of the partnership income, to determine the portion of the partner's entire net income allocated to this State if the relationship between the partner and limited partnership or foreign limited partnership is unitary, or (2) based upon separately using the allocation fractions of the limited partnership or foreign limited partnership to determine the allocation factor to be applied to the partner's distributive share of the partnership income, using the allocation fractions of the partner to determine the allocation factor to be applied to the partner's entire net income excluding the partner's distributive share of the income of the limited partnership or foreign limited partnership, and then combining those two allocated amounts of net income to determine the portion of the partner's entire net income allocated to this State if the relationship between the partner and the limited partnership or foreign limited partnership is not unitary.

b. A limited partnership or foreign limited partnership that is not a qualified investment partnership and that has not obtained and retained the written consent of one or more of its partners that are not corporations exempt from tax pursuant to section 3 of P.L.1945, c. 162 (C.54:10A-3), or individuals, trusts or estates subject to the "New Jersey Gross Income Tax Act", N.J.S.54A:1-1 et seq., shall, on or before the 15th day of the fourth month succeeding the close of each privilege

period, remit a payment of tax equal to the nonconsenting partners' share of the entire net income of the limited partnership or foreign limited partnership for that privilege period, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c. 162 (C.54:10A-6), based on the allocation fractions of the limited partnership or foreign limited partnership for that privilege period, and multiplied by the maximum rate set forth at paragraph (1) of subsection (c) of section 5 of P.L.1945, c. 162 (C.54:10A-5) for that privilege period. The limited partnership or foreign limited partnership shall have the right, but not the obligation, to recover from the nonconsenting partners such payments made by the partnership.

c. An amount of tax paid by a limited partnership or foreign limited partnership pursuant to subsection b. of this section attributable to a nonconsenting partner shall be credited to the partner as of the date of its receipt by the director.

Credits

L.2001, c. 136, § 4, eff. June 29, 2001.

N. J. S. A. 54:10A-15.7, NJ ST 54:10A-15.7

**N.J.S.A. 54:10A-15.8**

54:10A-15.8. Limited liability companies and limited partnerships; installment payments of tax; underpayments

a. Notwithstanding the provisions of subsection (f) of section 15 of P.L.1945, c. 162 (C.54:10A-15) to the contrary, a taxpayer that is a limited liability company or a foreign limited liability company subject to the provisions of subsection b. of section 3 of P.L.2001, c. 136 (C.54:10A-15.6) or that is a limited partnership or foreign limited partnership subject to the provisions of subsection b. of section 4 of P.L.2001, c. 136 (C.54:10A-15.7) shall, in addition to the tax payable pursuant to subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c. 136 (C.54:10A-15.6 or C.54:10A-15.7), make an installment payment of its tax for the privilege period on or before the 15th day of the fourth month of the privilege period equal to the tax payable pursuant to subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c. 136 (C.54:10A-15.6 or C.54:10A-15.7). Any amount of tax paid pursuant to this subsection shall be credited against the tax paid pursuant to

subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c. 136 (C.54:10A-15.6 or C.54:10A-15.7).

b. Notwithstanding the provisions of section 5 of P.L.1981, c. 184 (C.54:10A-15.4) to the contrary, the amount of underpayment of an installment payment pursuant to subsection a. of this section shall, for the purposes of subsection e. of section 5 of P.L.1981, c.184, be the excess of 100% of the tax liability determined pursuant to subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c. 136 (C.54:10A-15.6 or C.54:10A-15.7) at the rates and other facts in effect for the privilege period but on the basis of the entire net income for the prior privilege period over the amount paid pursuant to subsection a. of this section; provided however, that if the taxpayer did not have a prior privilege period consisting of a 12 month period, the amount of underpayment of an installment payment shall be the excess of 90% of the tax liability determined pursuant to subsection b. of section 3 or subsection b. of section 4 of P.L.2001, c. 136 (C.54:10A-15.6 or C.54:10A-15.7) for the current privilege period over the amount paid pursuant to subsection a. of this section.

#### Credits

L.2001, c. 136, § 5, eff. June 29, 2001.

N. J. S. A. 54:10A-15.8, NJ ST 54:10A-15.8

#### **N.J.S.A. 54:10A-15.9**

54:10A-15.9. Limited liability companies and limited partnerships; liability for privilege periods beginning in 2001; no estimated payments due

a. Notwithstanding the provisions of subsection b. of section 3 of P.L.2001, c. 136 (C.54:10A-15.6) and the provisions of subsection b. of section 4 of P.L.2001, c. 136 (C.54:10A-15.7), the liability of a taxpayer that is a limited liability company or a foreign limited liability company subject to the provisions of subsection b. of section 3 of P.L.2001, c. 136 (C.54:10A-15.6) or that is a limited partnership or foreign limited partnership subject to the provisions of subsection b. of section 4 of P.L.2001, c. 136 (C.54:10A-15.7) shall, for privilege periods beginning in calendar year 2001, be 45% of the amount otherwise due.

b. Notwithstanding the provisions of subsection a. of section 5 of

P.L.2001, c. 136 (C.54:10A-15.8), no estimated payment shall be due from a taxpayer that is a limited liability company or a foreign limited liability company subject to the provisions of subsection b. of section 3 of P.L.2001, c. 136 (C.54:10A-15.6) or that is a limited partnership or foreign limited partnership subject to the provisions of subsection b. of section 4 of P.L.2001, c. 136 (C.54:10A-15.7) for privilege periods beginning in calendar year 2001.

#### Credits

L.2001, c. 136, § 6, eff. June 29, 2001.

N. J. S. A. 54:10A-15.9, NJ ST 54:10A-15.9

#### **N.J.S.A. 54:10A-15.10**

54:10A-15.10. Regulations

a. The director shall adopt regulations in accordance with the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), and prescribe forms to administer the provisions of this act.

b. Notwithstanding the provisions of P.L.1968, c. 410 to the contrary, the director may adopt immediately upon filing with the Office of Administrative Law, such regulations as the director deems necessary to implement the provisions of this act, which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The regulations may thereafter be amended, adopted or readopted by the director as the director deems necessary in accordance with the requirements of P.L.1968, c. 410.

#### Credits

L.2001, c. 136, § 7, eff. June 29, 2001.

N. J. S. A. 54:10A-15.10, NJ ST 54:10A-15.10

#### **N.J.S.A. 54:10A-15.11**

54:10A-15.11. Tax payments or installment payments for unqualified investment partnerships; credit to nonresident partners; definitions

a. (1) A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall, on or before the 15th day of the fourth month succeeding the close of each privilege period, remit a payment of tax. The amount of tax shall be equal to the sum of: all of the share of the entire net income of the partnership for that privilege period of all nonresident noncorporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c. 162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .0637 plus all of the share of the entire net income of the partnership for that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c. 162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.

(2)(a) A partnership that is subject to the tax payment requirements of paragraph (1) of this subsection shall make installment payments of 25% of that tax on or before the 15th day of each of the fourth month, sixth month and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period.

(b) A partnership required to make an installment payment pursuant to subparagraph (a) of this paragraph shall be deemed to make an installment payment subject to the provisions of section 5 of P.L.1981, c. 184 (C.54:10A-15.4) and shall be liable for any additions to tax provided thereunder.

b. An amount of tax paid by a partnership pursuant to paragraph (1) of subsection a. of this section and an installment payment paid pursuant to subparagraph (a) of paragraph (2) of subsection a. of this section shall be credited to the partnership accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the multiplier rate for that partner class under subsection a. of this section, and each amount of tax so credited shall be deemed to have been paid by the respective partner in respect of the privilege period or taxable year of the partner. Provided, however, that only a nonresident partner who files a New Jersey tax return and reports income that is subject to tax in this State may apply the tax paid by the partnership and credited to the nonresident partner's partnership account against the partner's tax liability; and provided further that a partnership that pays tax pursuant to this section shall not be entitled to claim a refund of payments credited to any of its nonresident partners.

c. For the purposes of this section:

“Investment club” means an entity: that is classified as a partnership for federal income tax purposes; all of the owners of which are individuals; all of the assets of which are securities, cash, or cash equivalents; the market value of the total assets of which do not exceed, as measured on the last day of its privilege period, an amount equal to the lesser of \$250,000 or \$35,000 per owner of the entity; and which is not required to register itself or its membership interests with the federal Securities and Exchange Commission; provided that beginning with privilege periods commencing on or after January 1, 2003 the director shall prescribe the total asset value amounts which shall apply by increasing the \$250,000 total asset amount and the per owner \$35,000 amount hereinabove by an inflation adjustment factor, which amounts shall be rounded to the next highest multiple of \$100. The inflation adjustment factor shall be equal to the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the privilege period begins, by that index for September of 2001;

“Nonresident noncorporate partner” means, an individual, an estate or a trust subject to taxation pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that act;

“Nonresident corporate partner” means a partner that is not an individual, an estate or a trust subject to taxation pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., that is not a corporation exempt from tax pursuant to section 3 of P.L.1945, c. 162 (C.54:10A-3), and that does not maintain a regular place of business in this State other than a statutory office; and

“Partner” means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

#### Credits

L.2002, c. 40, § 12, eff. July 2, 2002. Amended by L.2003, c. 256, § 1, eff. Jan. 14, 2004; L.2005, c. 288, § 1, eff. Jan. 9, 2006; L.2014, c. 13, § 2, eff. June 30, 2014.

N. J. S. A. 54:10A-15.11, NJ ST 54:10A-15.11

## **N.J.S.A. 54:10A-16**

### 54:10A-16. Lien

The tax imposed by this act shall constitute a lien on all of the taxpayer's property and franchises on and after January 1 of the year next succeeding the year in which it is due and payable, and all interest, penalties and costs of collection which fall due or accrue shall be added to and become a part of such lien. Notwithstanding the provisions of any other law, all such taxes, interest, penalties and costs heretofore or hereafter imposed or incurred, whether levied or assessed or not, under this act shall, unless sooner paid, continue and remain a lien on all of the taxpayer's property and franchises until the expiration of 10 years after January 1 of the year in which they became or become due and payable.

#### Credits

L.1945, c. 162, p. 571, § 16. Amended by L.1946, c. 307, p. 1014, § 1; L.1947, c. 51, p. 180, § 2; L.1952, c. 170, p. 545, § 1; L.1958, c. 63, p. 197, § 8.

N. J. S. A. 54:10A-16, NJ ST 54:10A-16

## **N.J.S.A. 54:10A-17**

54:10A-17. Period other than covered by report to federal treasury department or less than 12 calendar months; failure to file or make payment

(a) If the period covered by the report under this act is other than the period covered by the report to the United States Treasury Department or is a period of less than 12 calendar months, the ~~commissioner~~director may, under regulations prescribed by him, determine the entire net worth and entire net income of the taxpayer in such manner as shall properly reflect its entire net worth and entire net income for the period covered by its report under this act.

(b) Any taxpayer which shall fail to file its return when due or to pay any tax when the same becomes due, as herein provided, shall be subject to such penalties and interest as provided in the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised Statutes.<sup>+</sup> The ~~commissioner~~director, if satisfied that the failure to comply with any

provision of this act was excusable, may abate or remit the whole or part of any penalty.

#### Credits

L.1945, c. 162, p. 572, § 17. Amended by L.1946, c. 307, p. 1014, § 2; L.1947, c. 50, p. 175, § 7; L.1958, c. 63, p. 197, § 9; L.1975, c. 177, § 9, eff. Aug. 4, 1975; L.2018, c. 48, § 12, eff. July 1, 2018.

#### Footnotes

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~~N.J.S.A. § 54:48-1 et seq.~~

N. J. S. A. 54:10A-17, NJ ST 54:10A-17

## **N.J.S.A. 54:10A-18**

### 54:10A-18. Forms

a. The director shall design a form of return and forms for such additional statements or schedules as the director may require to be filed therewith. Such forms shall provide for the setting forth of such facts as the director may deem necessary for the proper enforcement of this act. The director shall cause a supply thereof to be printed and shall furnish appropriate blank forms to each taxpayer upon application or otherwise as he may deem necessary. Failure to receive a form shall not relieve any taxpayer from the obligation to file a return under the provisions of this act. Each such return shall have annexed thereto a certification by the president, vice-president, comptroller, secretary, treasurer, assistant treasurer, accounting officer of the taxpayer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the report shall be prima facie evidence that such individual is authorized to sign and certify the report on behalf of the corporation. In the case of a corporation in liquidation or in the hands of



a receiver or trustee, certification shall be made by the person responsible for the conduct of the affairs of such corporation.

b. The return of an S corporation shall, in addition to any information set forth pursuant to subsection a. of this section, set forth with respect to each shareholder: the shareholder's name, address and federal taxpayer identification number (social security number or employer identification number); whether the shareholder is a resident of this State; whether the shareholder has filed a consent to jurisdictional requirements pursuant to section 3 or section 4 of P.L.1993, c. 173 (C.54:10A-5.22 or C.54:10A-5.23); the allocation factor determined pursuant to sections 6 through 10 of P.L.1945, c. 162 (C.54:10A-6 through 54:10A-10); the amount of any distribution made to the shareholder, including any amount paid on behalf of the shareholder pursuant to subsection c. or d. of section 4 of P.L.1993, c. 173 (C.54:10A-5.23); the balance of the accumulated earnings and profits account; the balance of the accumulated adjustments account described in section 16 of P.L.1993, c. 173 (C.54A:5-14), which account the corporation shall maintain; and such other information as the director may prescribe by regulation. The S corporation shall, on or before the day on which such return is required to be filed, furnish to each person who was a shareholder during the privilege period a copy of such information shown on the return as the director may by regulation prescribe.

c. (1) The return of a taxpayer that is a professional corporation organized pursuant to P.L.1969, c. 232 (C.14A:17-1 et seq.) or a similar corporation for profit organized for the purpose of rendering professional services under the laws of another state, shall in addition to any information set forth pursuant to subsection a. of this section, set forth the name, address and federal taxpayer identification number (social security number or employer identification number) of each licensed professional of the corporation.

(2) Each professional corporation organized pursuant to P.L.1969, c. 232 (C.14A:17-1 et seq.) or similar corporation for profit organized for the purpose of rendering professional services under the laws of another state that has more than two licensed professionals shall at the time such return is required to be filed make a payment of a filing fee of \$150 for each licensed professional of the corporation, up to a maximum of \$250,000.

(3) Each professional corporation or similar corporation for profit organized under the laws of another state required to make a payment pursuant to paragraph (2) of this subsection shall also make, at the same

time as making its payment pursuant to paragraph (2) of this subsection, an installment payment of its filing fee for the succeeding return period in an amount equal to 50% of the amount required to be paid pursuant to paragraph (2). The amount of the installment payment shall be credited against the amount of the filing fee due for the succeeding return period, or, if the amount of the installment payment exceeds the amount of the filing fee due for the succeeding return period, successive return periods.

(4) Notwithstanding the provisions of R.S.54:48-2 and R.S.54:48-4 to the contrary, the fee required pursuant to paragraph (2) of this subsection and the installment payment required pursuant to paragraph (3) of this subsection shall, for purposes of administration, be payments to which the provisions of the State Uniform Tax Procedure Law, R.S.54:28-1 et seq., shall be applicable and the collection thereof may be enforced by the director in the manner therein provided.

#### Credits

L.1945, c. 162, p. 572, § 18. Amended by L.1958, c. 63, p. 198, § 10; L.1993, c. 173, § 6; L.2002, c. 40, § 14, eff. July 2, 2002.

N. J. S. A. 54:10A-18, NJ ST 54:10A-18

#### **N.J.S.A. 54:10A-18.1**

54:10A-18.1. ~~Air carriers; election to file consolidated corporate income tax return~~

~~An air carrier, within the meaning given that term pursuant to 49 U.S.C. s.40102, may elect to file a consolidated return with respect to the corporate income tax imposed pursuant to section 5 of P. Repealed by L.19452018, c. 162 (C.54:10A-5) of the entire operation of the affiliated group, including its own operations and income. If such election is made, the group will be considered a single taxpayer and, for the purposes of section 5 of P.L.1945, c. 162 (C.54:10A-5), the amount of the taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, that the taxpayer is required to report or, if the taxpayer is classified as a partnership for federal tax purposes, would otherwise be required to report, to the United States Treasury Department for the purpose of computing its consolidated federal taxable income.~~

#### Credits



~~L.2002, c. 40, § 30, eff. July 2, 2002~~48, § 32.

N. J. S. A. 54:10A-18.1, NJ ST 54:10A-18.1

**N.J.S.A. 54:10A-19**

54:10A-19. Extension of time; interest; penalty

<For information relating to the possible suspension of provisions of this section due to the COVID-19 public health emergency see Murphy Executive Order No. 189 (2020), 52 N.J.R. 2031(a).>

The director may grant a reasonable extension of time for the filing of returns or the payment of tax or both, under such rules and regulations as he shall prescribe, which rules and regulations may require the filing of a tentative return and the payment of an estimated tax. If the time for filing the return shall be extended, the payment of the portion of the tax remaining to be paid, if any, shall be postponed to the date fixed by the extension of the time for the filing of the return, but in every such case the corporation shall pay, in addition to the unpaid portion of the tax, interest thereon at the rate as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., from the time when the return originally was required to be filed to the date of actual payment under the extension; provided, that if such unpaid portion of the tax is not paid within the time fixed under the extension, the interest on such unpaid portion shall be computed at the rate as provided in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., from the date the tax was originally due to the date of actual payment and if the amounts paid up to and including the time of the filing of the tentative return total less than the lesser of: 90% of the amount due; or for a taxpayer that had a preceding fiscal or calendar accounting year of 12 months and filed a return for that year showing a liability for tax, an amount equal to the tax computed at the rates applicable to the current fiscal or calendar accounting year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding fiscal or calendar accounting year, the taxpayer shall be liable for a penalty of 5% per month or fraction thereof on the amount of underpayment, not to exceed 25% of that underpayment, which shall be in addition to the interest charges provided above.

Credits

L.1945, c. 162, p. 572, § 19. Amended by L.1947, c. 50, p. 176, § 8; L.1958, c. 63, p. 199, § 11; L.1975, c. 177, § 10, eff. Aug. 4, 1975; L.1981, c. 184, § 6, eff. June 19, 1981; L.1987, c. 76, § 51, eff. Dec. 9, 1987; L.1992, c. 175, § 20; L.1998, c. 106, § 2, eff. Sept. 14, 1998.

N. J. S. A. 54:10A-19, NJ ST 54:10A-19

**N.J.S.A. 54:10A-19.1**

54:10A-19.1. State Uniform Tax Procedure Law applicable

(a) (Deleted by amendment, P.L.1992, c. 175).

(b) (Deleted by amendment, P.L.1992, c. 175).

(c) (Deleted by amendment, P.L.1992, c. 175).

(d) The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., except as otherwise provided.

(e) The filing of a complaint by a taxpayer in the tax court shall suspend the running of the statute of limitations for the contested issue or issues for all subsequent privilege periods.

Credits

L.1947, c. 50, p. 176, § 10. Amended by L.1949, c. 236, p. 743, § 5; L.1975, c. 177, § 11, eff. Aug. 4, 1975; L.1992, c. 175, § 21; L.2002, c. 40, § 15, eff. July 2, 2002.

N. J. S. A. 54:10A-19.1, NJ ST 54:10A-19.1

**N.J.S.A. 54:10A-19.2**

54:10A-19.2. Appeal to tax court

a. Any aggrieved taxpayer may, within 90 days after any action of the director made pursuant to the provisions of this act, appeal therefrom to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq.

b. Any aggrieved taxpayer that has neither protested or appealed from an

additional assessment of tax may, pursuant to subsection b. of R.S.54:49-14, file a claim for refund of the assessment paid.

#### Credits

L.1947, c. 50, p. 177, § 11. Amended by L.1953, c. 51, p. 914, § 115; L.1953, c. 428, p. 2155, § 6; L.1983, c. 36, § 23, eff. Jan. 26, 1983; L.1998, c. 106, § 3, eff. Sept. 14, 1998.

N. J. S. A. 54:10A-19.2, NJ ST 54:10A-19.2

### **N.J.S.A. 54:10A-19.3**

#### 54:10A-19.3. Effective date

This act shall take effect immediately, and shall apply to taxes due and payable in the year one thousand nine hundred and forty-seven and thereafter.

#### Credits

L.1947, c. 50, p. 178, § 12.

N. J. S. A. 54:10A-19.3, NJ ST 54:10A-19.3

### **N.J.S.A. 54:10A-20**

#### 54:10A-20. Injunctive relief as one of remedies for collection

In addition to other remedies for the collection of the tax imposed by this chapter, the Attorney-General may of his own motion or upon the request of the ~~commissioner~~director, whenever any tax due under this chapter shall have remained in arrears for a period of three months after the tax shall have become payable, bring an action in the Superior Court in the name of the State, against such corporation for injunctive relief to restrain it from the exercise of any franchise, or the transaction of any business within this State until the payment of such tax and penalties and interest due thereon, and the costs of such application, to be fixed by the court. The court may proceed in the action in a summary manner or otherwise and may grant the injunctive relief, if a proper case appear. Upon the granting and service of the order or judgment giving injunctive relief, it shall not be lawful for such company thereafter to exercise any

franchise or transact any business in this State until such injunction be dissolved.

#### Credits

L.1945, c. 162, p. 573, § 20. Amended by L.1953, c. 51, p. 914, § 116; [L.2018, c. 48, § 13, eff. July 1, 2018.](#)

N. J. S. A. 54:10A-20, NJ ST 54:10A-20

### **N.J.S.A. 54:10A-21**

#### 54:10A-21. Foreign corporations; revocation of certificate for failure to pay tax; other remedies unimpaired

In the event of failure or neglect of any taxpayer which is a foreign corporation to pay the tax imposed by this chapter, on or before the first day of December in each year, immediate notice thereof may be given by the ~~commissioner~~director to the Secretary of State who shall immediately revoke the certificate of authority of said corporation to do business in the State of New Jersey and notice of such revocation shall be given by the Secretary of State to the corporation affected and thereafter such corporation, so far as the further transaction of business in the State of New Jersey is concerned, shall be in the same condition as if no certificate of authority had ever been issued to it by the Secretary of State, but remedies provided by this chapter for the collection of the tax and interest and penalties shall remain unimpaired. After the revocation of any such certificate of authority, no new certificate shall be issued by the Secretary of State to such defaulting corporation until the payment of all assessments imposed hereunder and remaining unpaid with penalties and interest and any costs that may have accrued, such payment to be evidenced by a certificate of the ~~commissioner~~director.

#### Credits

L.1945, c. 162, p. 573, § 21. [Amended by L.2018, c. 48, § 14, eff. July 1, 2018.](#)

N. J. S. A. 54:10A-21, NJ ST 54:10A-21

**N.J.S.A. 54:10A-22**

54:10A-22. Forfeiture of charter for failure to pay tax

Any corporation of this State failing to pay the tax imposed by this act shall be subject to the forfeiture of its charter as provided by chapter eleven of Title 54 of the Revised Statutes.

Credits

L.1945, c. 162, p. 574, § 22.

N. J. S. A. 54:10A-22, NJ ST 54:10A-22

**N.J.S.A. 54:10A-23**

54:10A-23. State tax uniform procedure law governs

The administration, collection and enforcement of the tax imposed by this act shall be subject to the provisions of the State tax uniform procedure law as therein provided (chapters forty-eight through fifty-two of Title 54 of the Revised Statutes) to the extent that the provisions of such law are not inconsistent with any provision of this act.

Credits

L.1945, c. 162, p. 574, § 23. Amended by L.1947, c. 50, p. 176, § 9.

N. J. S. A. 54:10A-23, NJ ST 54:10A-23

**N.J.S.A. 54:10A-24**

54:10A-24. Annual appropriation for free public schools

Out of the proceeds of the taxes, interest and penalties collected pursuant to this act, there is hereby appropriated, for the purpose of maintaining free public schools, the sum of four million dollars (\$4,000,000.00) annually, which sum shall on or before December twentieth in each year be credited by the State Treasurer to the State public school account. Such appropriation shall be applied to the support of the free public schools, and shall be apportioned and distributed as provided by law.

Credits

L.1945, c. 162, p. 574, § 24. Amended by L.1946, c. 89, p. 309, § 1.

N. J. S. A. 54:10A-24, NJ ST 54:10A-24

**N.J.S.A. 54:10A-25**

54:10A-25. Partial invalidity

If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Credits

L.1945, c. 162, p. 574, § 25.

N. J. S. A. 54:10A-25, NJ ST 54:10A-25

**N.J.S.A. 54:10A-26**

54:10A-26. Repeal; existing obligations not affected

Sections 54:13-1 through 54:13-8 and chapter thirty-two-A of Title 54 of the Revised Statutes are repealed; provided, however, that this shall not affect the obligation of any corporation to pay accrued taxes or interest, penalties or costs with respect thereto, nor to invalidate any assessments or proceedings pending upon the effective date hereof, nor to affect the legal authority to assess and collect taxes which may have been due and payable prior to the effective date hereof together with such interest and penalties as would have accrued thereon, under any provisions of law herein repealed; nor shall such repeal affect the tenure or employment of any employees heretofore appointed pursuant to any such repealed provision or section.

Credits

L.1945, c. 162, p. 575, § 27.

N. J. S. A. 54:10A-26, NJ ST 54:10A-26

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

54:10A-27. Rules and regulations

The ~~commissioner~~director shall prescribe and issue such rules and regulations, not inconsistent herewith, for the interpretation and application of the provisions of this act, as he may deem necessary.

Credits

L.1945, c. 162, p. 575, § 28. Amended by L.2018, c. 48, § 15, eff. July 1, 2018.

N. J. S. A. 54:10A-27, NJ ST 54:10A-27

**N.J.S.A. 54:10A-28**

54:10A-28. Effective date

This act shall take effect January first, one thousand nine hundred and forty-six, except that the ~~commissioner~~director may prior thereto take such action as he may deem appropriate in anticipation of or in preparation for the operation of the provisions hereof, and except further that the appropriation contained herein for the reduction of the State school tax shall be first made for the fiscal year beginning July first, one thousand nine hundred and forty-six.

Credits

L.1945, c. 162, p. 575, § 29. Amended by L.2018, c. 48, § 16, eff. July 1, 2018.

N. J. S. A. 54:10A-28, NJ ST 54:10A-28

**N.J.S.A. 54:10A-29**

54:10A-29. Certificate as to liens for unpaid corporation franchise taxes due

(a) Upon the receipt of a written application accompanied by the fee provided for in subsection (b) of this section, the director shall issue to the applicant a certificate certifying with respect to the corporation or corporations listed for certification in the application either that there are no liens in favor of the State for corporation franchise taxes due pursuant to the provisions of this act or of chapter 13 of Title 54 of the Revised Statutes or that there are such liens as may be stated in such certificate or such other status as the director's records may disclose.

(b) The fee for a certificate issued pursuant to this section shall be \$25.00 for each corporation listed in the application for which a certificate is requested.

(c) The director may prescribe the form of the application and may require that it shall contain a concise and reasonably definite description of the property and of the type of transaction in connection with which the application is made as well as such other pertinent information as he may deem necessary.

(d) Any person who shall acquire for a valuable consideration an interest in lands, covered by such a certificate in reliance thereon, shall hold such interest free from any lien held by the State for unpaid corporation franchise taxes due pursuant to the provisions of this act or of chapter 13 of Title 54 of the Revised Statutes and not shown on such certificate.

Credits

L.1947, c. 51, p. 180, § 3. Amended by L.1971, c. 91, § 1, eff. April 8, 1971; L.1987, c. 76, § 52, eff. Dec. 9, 1987.

N. J. S. A. 54:10A-29, NJ ST 54:10A-29

**N.J.S.A. 54:10A-30**

54:10A-30. Release of property from lien for corporation franchise taxes

The ~~Commissioner~~director upon written application made to him and upon the payment of a fee of five dollars (\$5.00), may release any property from the lien of any tax, interest or penalty imposed upon any corporation in accordance with the provisions of this act or of chapters thirteen or thirty-two-A of Title 54 of the Revised Statutes, or of any certificate, judgment or levy procured by him; provided, payment be made to the ~~commissioner~~director of such sum as he shall deem adequate

consideration for such release or deposit be made of such security or such bond be filed as the ~~commissioner~~director shall deem proper to secure payment of any debt evidenced by any such tax, interest, penalty, certificate, judgment or levy, the lien of which is sought to be released, or provided the ~~commissioner~~director is satisfied that payment of the tax is otherwise provided for. The application for such release shall be in such form as shall be prescribed by the ~~commissioner~~director and shall contain an accurate description of the property to be released together with such other information as the ~~commissioner~~director may require. Such release shall be given under the seal of the ~~commissioner~~director, and may be recorded in any office in which conveyances of real estate may be recorded.

#### Credits

L.1947, c. 51, p. 181, § 4. Amended by L.2018, c. 48, § 17, eff. July 1, 2018.

N. J. S. A. 54:10A-30, NJ ST 54:10A-30

#### **N.J.S.A. 54:10A-31**

54:10A-31. Limitations; cancellation of taxes barred; rights not affected

When a corporation franchise tax return shall have been duly filed in accordance with the provisions of this act or of chapters thirteen or thirty-two-A of Title 54 of the Revised Statutes, no tax shall be assessable or payable after ten years from the date of such filing or after one year from the effective date hereof, whichever is later. The director is hereby authorized to cancel all assessments of taxes, interest and penalties, the collection of which is barred by the limitations herein provided and to destroy returns and records relating thereto which are rendered useless by the provisions of this act. Nothing herein contained, however, shall affect the rights of the State (a) under any certificate of debt, decree or judgment for taxes, interest and penalties duly recorded with the Clerk of the Superior Court, or with any county clerk; or (b) to assess and enforce collection of any tax, interest and penalties pursuant to the terms of any bond or other agreement securing the payment of such tax, interest and penalties.

#### Credits

L.1947, c. 51, p. 181, § 5. Amended by L.1953, c. 51, p. 915, § 117.

N. J. S. A. 54:10A-31, NJ ST 54:10A-31

#### **N.J.S.A. 54:10A-32**

54:10A-32. Effective date

The provisions of this act shall be effective with respect to the tax payable in the year 1959 and thereafter and, with respect to the tax payable in 1958 and prior years, shall not affect the provisions of, or any obligations heretofore incurred under, the Corporation Business Tax Act (1945).<sup>1</sup>

#### Credits

L.1958, c. 63, p. 199, § 12.

#### Footnotes

1

N.J.S.A. § 54:10A-1 et seq.

N. J. S. A. 54:10A-32, NJ ST 54:10A-32

#### **N.J.S.A. 54:10A-33**

54:10A-33. Banking corporations; collected business corporation and business personal property taxes; apportionment; certification; payment

The taxes collected from banking corporations pursuant to the Corporation Business Tax Act (P.L.1945, c. 162)<sup>1</sup> and the Business Personal Property Tax Act (P.L.1966, c. 136)<sup>2</sup> shall be apportioned one-half thereof to the State, one-quarter thereof to the several counties of the State, and one-quarter thereof to the several local taxing districts of the State in which one or more banking corporations have one or more

offices. Each county shall be paid by the State a sum equal to that proportion of one-quarter of the total tax collected by the State pursuant to this act from each banking corporation having one or more offices in such county, which the total deposit balances at all offices of such banking corporation in such county at the close of business on the day preceding the assessment date bear to the total deposit balances of such banking corporation in the State at the close of business on the day preceding the assessment date. Each local taxing district in which one or more banking corporations have one or more offices shall be paid by the State a sum equal to that proportion of one-quarter of the total tax collected by the State pursuant to this act from each such banking corporation, which the total deposit balances at all offices of such banking corporation in such district at the close of business on the day preceding the assessment date bear to the total deposit balances at all offices of such banking corporation in the county where such district is located, as such deposit balances stood at the close of business on the day preceding the assessment date. The amount due to each county and each local taxing district shall be annually certified by the Director, Division of Taxation on or before June 1, and shall be paid annually on or before July 10, by the State Treasurer to the counties and to the local taxing districts entitled thereto, setting forth in detail the amount of the tax received, the names of the banking corporations from which the tax was received, the aggregate amount thereof, and the basis of apportionment.

#### Credits

L.1975, c. 170, § 2, eff. Aug. 4, 1975. Amended by L.1977, c. 142, § 1, eff. June 30, 1977.

#### Footnotes

1

N.J.S.A. § 54:10A-1 et seq.

2

N.J.S.A. § 54:11A-1 et seq. (repealed by L.1993, c. 174, § 1).

N. J. S. A. 54:10A-33, NJ ST 54:10A-33

#### **N.J.S.A. 54:10A-34**

54:10A-34. Banking corporations; annual franchise tax; deductions for international banking facilities

Every banking corporation shall pay an annual franchise tax in the year 1976 and each year thereafter, as provided in the Corporation Business Tax Act, P.L.1945, c. 162 (C. 54:10A-1 et seq.) for the privilege of having or exercising its corporate franchise in this State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office in this State. For the purposes of this act, (1) the privilege period of each banking corporation shall be the calendar year, and the initial privilege period shall be the calendar year ending December 31, 1976; (2) January 1, 1976 and January 1, of each year thereafter shall be the assessment dates; (3) the tax on income shall be based upon the income of the calendar year preceding the assessment date; (4) net worth shall be determined as of the December 31 preceding the assessment date; and (5) income of a banking corporation in any privilege period shall include the income of any banking corporation merged into or consolidated with such banking corporation in such privilege period. From and after January 1, 1976, no banking corporation shall be subject to the provisions of R.S. 54:9-1 through 54:9-18 and section 13 of P.L.1970, c. 8 (C. 54:9-19)<sup>1</sup> but shall, to the extent and in the manner provided by this act, become and be subject to the provisions of the Corporation Business Tax Act and the Business Personal Property Tax Act, P.L.1966, c. 136 (C. 54:11A-1 et seq.). To effect the transition from taxation under R.S. 54:9-1 through 54:9-18 and section 13 of P.L.1970, c. 8, to taxation under the Corporation Business Tax Act, every banking corporation shall, within 90 days after the effective date of this act, but not later than December 1, 1975, pay to the State a sum equal to 60% of the amount of the tax that would have been due from such banking corporation had it been subject to taxation under the Corporation Business Tax Act during the calendar year ending December 31, 1974. Thereafter, as provided by the Corporation Business Tax Act, each banking corporation shall, on or before April 15 of each privilege period, commencing with the privilege period beginning January 1, 1976, file a tax return and pay the full amount of the tax determined to be due



for the then current privilege period, and shall, in addition, pay a sum equal to 60% of the full amount of the tax due for such privilege period as an advance partial payment against the tax determined to be due for the next succeeding privilege period. Each such banking corporation shall, in the final calculation of the tax determined to be due from it for the 1976 privilege period, receive a credit for the 60% payment made by it on or before December 1, 1975 pursuant to this section, and thereafter, each banking corporation shall, in the final calculation of the tax determined to be due from it for any subsequent privilege period, receive credit for the advance partial payment made by it in the next preceding privilege year. No banking corporation shall, in calculating its income for any of the purposes of taxation under the Corporation Business Tax Act deduct from its income the amount of any tax paid pursuant to R.S. 54:9-1 through 54:9-18 and section 13 of P.L.1970, c. 8 (C. 54:9-19). Any excess payment made in any privilege year shall be returned as provided in section 15 of the Corporation Business Tax Act (C. 54:10A-15).

Notwithstanding anything contained in this act to the contrary, during each of the privilege years 1976, 1977, 1978 and 1979, the amount to be paid by each banking corporation as taxes under this act shall be the greater of (1) the amount which such banking corporation paid in the calendar year 1975 as taxes pursuant to R.S. 54:9-1 through 54:9-18 and section 13 of P.L.1970, c. 8 or (2) a sum equal to the total of the taxes paid by such banking corporation pursuant to this section and section 5 of this act.<sup>2</sup> In any case where the corporate existence of a banking corporation transacting business on the effective date of this act terminates during a privilege period by voluntary or involuntary dissolution, or by merger or consolidation, or otherwise, such banking corporation shall be liable for the payment of taxes under this section for the full privilege period in which such termination takes place.

The effect of the amendments to this act relating to international banking facilities shall be phased in over a 5 year period. In order to implement the transition, each banking corporation which elects to utilize the deduction from entire net income for eligible net income from international banking facilities (provided in subsection (k)(4) of section 4 of P.L.1945, c. 162 (C. 54:10A-4) ) or the exclusion from net worth for international banking facilities (provided in subsection (d) of section 4 of P.L.1945, c. 162) shall, with its return for the first year in which it makes that election, file an information return for 1981 which shall report its income and net worth attributable to the activities referred to in subsection (k)(4) of section 4 of P.L.1945, c. 162 as if the taxpayer had an established international banking facility during the entire calendar

year 1981 and as if the amendments to this act relating to international banking facilities had been effective during that entire year. The difference between a taxpayer's corporate franchise tax liability for 1981 and the amount it would have been liable for if said amendments were in effect during 1981 shall be the taxpayer's base international banking facilities tax liability.

For each of the years 1982 through 1986 in which the taxpayer elects to utilize the deduction from entire net income for eligible net income from international banking facilities (provided in subsection (k)(4) of section 4 of P.L.1945, c. 162) or the exclusion from net worth for international banking facilities (provided in subsection (d) of section 4 of P.L.1945, c. 162), the taxpayer shall pay, in addition to the tax computed under section 5 of P.L.1945, c. 162 (C. 54:10-5)<sup>3</sup> the following percentage of its base international banking facilities tax liability:

1982	100%
1983	80%
1984	60%
1985	40%
1986	20%

#### Credits

L.1975, c. 170, § 4, eff. Aug. 4, 1975. Amended by L.1978, c. 40, § 1, eff. June 19, 1978; L.1983, c. 422, § 3, eff. Jan. 5, 1984.

#### Footnotes

1

All repealed; see, now, N.J.S.A. §§ 54:10A-34 to 54:10A-37, 54:11A-21.

2

N.J.S.A. § 54:11A-21; repealed, see, now, N.J.S.A. § 54:10A-5.16 et seq.

3

Probably should read “(C. 54:10A-5)”.

N. J. S. A. 54:10A-34, NJ ST 54:10A-34

**N.J.S.A. 54:10A-34.1**

54:10A-34.1 Filing of returns by certain banking corporations.

a. For a banking corporation that is a member of a combined group that has a fiscal group privilege period, before the banking corporation is included as a member of the New Jersey combined return, the banking corporation shall first file the applicable BFC-1 return reporting their calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) for the applicable privilege period which ended during the privilege period of the managerial member and then file a transitional short period return covering January 1st through the end of the month of the combined group's fiscal group privilege period during the current calendar year. Subsequently, the banking corporation shall file for the fiscal combined group's privilege period and report all of its income on a fiscal basis with the combined group. Thereafter, the banking corporation shall continue reporting on a fiscal basis for future privilege periods. If a banking corporation, that would otherwise be a member of a fiscal combined group but for the transitional provisions of this section, believes that application of the filing requirements set forth will result in an unfair or distorted reflection of income, the banking corporation may request relief from the director, which may be granted at the director's discretion.

b. For a banking corporation that is not a member of a combined group, which files a BFC-1 return reporting its calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34), but which files on a fiscal federal tax year basis, the banking corporation may elect to file separate returns in a manner similar to subsection a. of this section, file a transitional short period return, and subsequently file its New Jersey corporation business tax returns on a fiscal year basis. Otherwise, such banking corporations shall file transitional returns in order to subsequently file in the same manner as other corporation business taxpayers. If a banking corporation, that would otherwise continue to file the BFC-1 return reporting its calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) but for the transitional provisions provided for in this section, believes that application of the filing requirements set forth will result in an unfair or distorted reflection of income, the banking corporation may request relief from the director, which may be granted at the director's discretion.

c. For a banking corporation that is not a member of a combined group, which files a BFC-1 return reporting its calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34), and files on a calendar federal tax year basis, the banking corporation shall file transitional returns in order to subsequently file in the same manner as other corporation business taxpayers. If a banking corporation, that would otherwise continue to file the BFC-1 return reporting its calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) but for the transitional provisions provided for in this section, believes that application of the filing requirements set forth will result in an unfair or distorted reflection of income, the banking corporation may request relief from the director, which may be granted at the director's discretion.

d. No penalties or interest shall be assessed on any underpayment due to this section if the applicable returns are filed within six months of enactment of this section.

Credits

L. 2020, c. 118, § 16, effective Nov. 4, 2020.

**N.J.S.A. 54:10A-35**

54:10A-35. Banking corporation tax revenues; distribution to

municipalities under L.1966, c. 135; prohibition

No part of the taxes paid by banking corporations pursuant to the Corporation Business Tax Act (P.L.1945, c. 162)<sup>1</sup> or the Business Personal Property Tax Act (P.L.1966, c. 136)<sup>2</sup> shall be distributed pursuant to P.L.1966, c. 135.<sup>3</sup>

Credits

L.1975, c. 170, § 6, eff. Aug. 4, 1975.

Footnotes

1

N.J.S.A. § 54:10A-1 et seq.

2

N.J.S.A. § 54:11A-1 et seq. (repealed by L.1993, c. 174, § 1).

3

N.J.S.A. § 54:11D-1 et seq.

N. J. S. A. 54:10A-35, NJ ST 54:10A-35

**N.J.S.A. 54:10A-36**

54:10A-36. “Banking corporation” defined

As used in this act, “banking corporation” means a bank as defined in section 1 of The Banking Act of 1948, c. 67,<sup>1</sup> and also means a national bank.

Credits

L.1975, c. 170, § 8, eff. Aug. 4, 1975.

Footnotes

1

N.J.S.A. § 17:9A-1.

N. J. S. A. 54:10A-36, NJ ST 54:10A-36

**N.J.S.A. 54:10A-37**

54:10A-37. Banking corporations; nonqualification as investment company or regulated investment company

No banking corporation may qualify as an investment company or as a regulated investment company under paragraph (f) or paragraph (g) of section 4 of the Corporation Business Tax Act (C. 54:10A-4(f) or (g)).

Credits

L.1975, c. 170, § 9, eff. Aug. 4, 1975.

N. J. S. A. 54:10A-37, NJ ST 54:10A-37

**N.J.S.A. 54:10A-38**

54:10A-38. Financial business corporations; revenues from taxes, penalties and interest; apportionment to governmental units; certification; payment

The aggregate amount of tax, penalty and interest payable by financial business corporations pursuant to this act shall upon payment be distributable among the State, the various taxing districts and counties in which taxpayers hereunder have maintained places of business at any time during the tax year. On or before November 1 in each year the

director shall determine from receipts allocations contained in tax returns filed subsequent to June 30 of the previous calendar year and prior to July 1 of the current year the aggregate amount of tax, penalty and interest attributable to places of business located in each of the various taxing districts of this State during the tax year. The tax, penalty and interest collected by the director shall be apportioned one-half to the State, one-quarter to such county and one-quarter to the taxing districts in which the financial business corporation has an office or offices. Each county shall be entitled to receive out of the one-quarter allocated to the counties that proportion thereof which the receipts at all offices of such financial business corporations in such county during the taxpayers' fiscal or calendar year accounting period bear to the total receipts of all offices of such financial business corporations in this State during the taxpayers' fiscal or calendar year accounting period. Each taxing district is entitled to that proportion of one-quarter of the tax collected by the director as the receipts at all offices of such financial business corporations in such district during the taxpayers' fiscal or calendar year accounting period bear to the total receipts of all offices of such financial business corporations in such county during the taxpayers' fiscal or calendar year accounting period. The director shall forthwith certify such apportionment to the State Treasurer who shall upon proper audit transmit to each county treasurer a certificate showing the amounts allocated to the taxing district therein and shall on or before November 10 of the year in which the taxes are payable draw and transmit his warrant upon the State Treasurer in favor of the several county treasurers for the amounts allotted to their several counties. Each county treasurer shall forthwith and not later than December 15 pay to the collector or other proper officer of each taxing district the amount allotted thereto deducting, however, the amount due for county taxes from the taxing district. The amount thus paid to the county and taxing district shall be at the disposal of the proper authorities for public purposes.

#### Credits

L.1975, c. 171, § 8, eff. Aug. 4, 1975.

N. J. S. A. 54:10A-38, NJ ST 54:10A-38

#### **N.J.S.A. 54:10A-39**

54:10A-39. Financial business corporations; revenue from taxes;

distribution to municipalities; prohibition

None of the taxes, penalties and interest collected from financial business corporations pursuant to this act shall be distributable to municipalities pursuant to P.L.1966, c. 135 as amended and supplemented (C. 54:11D-1 et seq.).

#### Credits

L.1975, c. 171, § 9, eff. Aug. 4, 1975.

N. J. S. A. 54:10A-39, NJ ST 54:10A-39

#### **N.J.S.A. 54:10A-40**

54:10A-40. Financial business corporations; tax; payment

During each of the years 1976, 1977, 1978 and 1979, each financial business corporation shall pay as taxes under the provisions of the act to which this act is a supplement, the greater of a sum equal to the amount such financial business corporation paid pursuant to the "Financial Business Tax Law" P.L.1946, c. 174 (C. 54:10B-1, et seq.) in the calendar year 1975, or a sum equal to the total of the taxes payable by such financial business corporation pursuant to the "Corporation Business Tax Act," P.L.1945, c. 162 (C. 54:10A-1 et seq.).

#### Credits

L.1975, c. 171, § 10, eff. Aug. 4, 1975. Amended by L.1978, c. 40, § 2, eff. June 19, 1978.

N. J. S. A. 54:10A-40, NJ ST 54:10A-40

#### **N.J.S.A. 54:10A-41**

54:10A-41. Repealed by L.2010, c. 87, § 48, eff. Nov. 3, 2010

N. J. S. A. 54:10A-41, NJ ST 54:10A-41

## CHAPTER ~~48~~118 Effective Dates

An Act concerning ~~taxation, supplementing P.L.1945, c.162~~the corporation business tax, amending various parts of the statutory law ~~;~~and ~~repealing section 30~~supplementing P.L.1945, c.162.

### ~~Repealer:~~

~~32. Section 30 of P.L.2002, c.40 (C.54:10A-18.1) and section 7 of P.L.2002, c.40 (C.54:10A-5a) are repealed.~~

18. Following the enactment of P.L.2020, c.118 (C.54:10A-5.46 et al.), for the first privilege period of the taxpayer impacted by the enactment of P.L.2020, c.118 (C.54:10A-5.46 et al.) where such privilege period began before January 1, 2021, no penalties or interest shall accrue for underpayment of tax due to the provisions of P.L.2020, c.118 (C.54:10A-5.46 et al.) applying retroactively to privilege periods ending on or after July 31, 2020, that create an additional tax liability due to the provisions of P.L.2020, c.118 (C.54:10A-5.46 et al.); provided however, the additional estimated payments shall be made by the later of the second next estimated payment subsequent to the enactment of P.L.2020, c.118 (C.54:10A-5.46 et al.) or the second estimated payment due after January 1, 2021.

19. Notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the director may adopt, immediately, upon filing with the Office of Administrative Law, regulations that the director deems necessary to implement the provisions of P.L.2020, c.118, which regulations shall be effective for a period not to exceed 360 days from the date of the filing. The director may thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

~~33~~20. This act shall take effect immediately ~~but section 1 shall be effective for tax years beginning~~and, unless the context provides otherwise, shall apply retroactively to privilege periods ending on and after ~~January 1~~December 31, ~~2018~~2019, except that: sections ~~2~~11 and ~~3~~are retroactive to January 1, 2017, and ~~the remaining sections 16~~ shall apply retroactively to ~~tax years beginning on and after January 1, 2018,~~ provided however that the provisions of this act related to combined reporting and market based sourcing privilege periods ending on and after July 31, 2020; sections 6, 7, and 9, shall apply retroactively to ~~tax years beginning~~privilege periods ending on and after ~~January 1~~July 31, 2019; and section ~~35~~3 shall ~~be effective for tax years beginning on and after~~apply retroactively to privilege periods ending on and after July 31, 2019, but the amendment to subsubparagraph (ii) of subparagraph (A) of paragraph (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be retroactive to privilege periods beginning after December 31, 2016 and before January 1, 2019.

Approved ~~July 1~~November 4, ~~2018~~2020.

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ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 4202**

**STATE OF NEW JERSEY**

DATED: JUNE 18, 2018

The Assembly Budget Committee reports favorably Assembly Bill No. 4202.

This bill imposes a surtax on allocated entire net income for the privilege period ending in 2018 and the next following privilege period, decouples certain provisions of the corporation business tax from the Internal Revenue Code, and imposes a tax on certain dividends.

*Surtax on Business Income Exceeding \$1 Million*

This bill imposes a surtax of 2.5 percent against a taxpayer, which has entire net income in excess of \$1 million but less than \$25 million, and of four percent against a taxpayer, which has entire net income of \$25 million or more. The surtax applies to the privilege period ending after on or after January 1, 2018 and the next following privilege period.

This bill imposes the surtax on the allocated entire net income of a taxpayer. The bill disallows the application of the various business incentive credits against the surtax, but allows application of credits for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods. The surtax imposed by this bill does not apply to public utilities.

*Decoupling from Internal Revenue Code*

The federal Tax Cuts and Jobs Act (Pub.L.115-97), signed into law December 22, 2017, enacted a number of changes to the federal Internal Revenue Code. This bill disallows the deduction taken for federal purposes against income reported pursuant to federal Internal Revenue Code section 965. That section establishes the repatriation transition tax at a substantially lower rate for federal purposes. This bill further prescribes a method to apply the federal interest deduction limitation in section 163(j) of the federal Internal Revenue Code. Additionally, the bill decouples the corporation business tax and the gross income tax from section 199A of the federal Internal Revenue Code. Section 199A allows taxpayers other than corporations a

deduction of 20 percent of qualified business income earned in a qualified trade or business, subject to certain limitations.

#### *Taxation of Dividends*

The bill reduces the dividend exclusion amount for taxpayers receiving dividends from an 80 percent or greater owned subsidiary, from 100 percent to 95 percent.

Lastly, this bill imposes a special tax on dividends and deemed dividend distributions that either a corporation business tax filer or an insurance company licensed to insure risks in New Jersey receives from subsidiaries if the total aggregate amount of dividend and deemed dividend distributions received is greater than \$1,000,000 for tax years beginning on or after January 1, 2017 and ending before December 31, 2018. The dividends will be taxed at the rate of 9% and the tax must be paid on or before May 15, 2019.

#### FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot quantify certain provisions of this bill due to the absence of relevant data. However, the OLS projects that imposing a surtax of two-and-a-half percent against a taxpayer which has entire net income in excess of \$1 million but less than \$25 million, and of four percent against a taxpayer which has entire net income of \$25 million or more could generate revenues up to \$800 million in each of the two tax years in which the surtax will be in effect. The attainment of the estimated \$800 million maximum is predicated on the assumption that current overall economic conditions will largely continue and that higher taxpayer liabilities will not accelerate the application of unused taxpayer overpayments from prior tax years. Further, the OLS notes that actual revenues may be lower than predicted due to impacts related to taxpayer behavior, such as delaying the realization of income, intended to avoid the imposition of a higher tax rate during the two tax years for which the surtax is in effect.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 4495

# STATE OF NEW JERSEY

DATED: SEPTEMBER 24, 2018

The Assembly Budget Committee reports favorably Assembly Bill No. 4495.

Assembly Bill No. 4495 amends certain provisions regarding the tax base and operative dates under the corporation business tax (“CBT”), and in particular P.L.2018, c.48 (C.54:10A-5.41 et al.); provides a CBT deduction in the amount of a deduction claimed by a taxpayer pursuant to section 250 of the federal Internal Revenue Code; and clarifies the gross income tax treatment of certain tax credits approved by the New Jersey Economic Development Authority prior to July 1, 2018.

#### *CBT Tax Base, Rates, and Deductions*

Regarding the CBT surtax imposed under P.L.2018, c.48 (C.54:10A-5.41 et al.) (“chapter 48”), the bill: (1) updates the tax base, to provide that “allocated entire net income” means: entire net income for privilege periods ending before July 31, 2019, and taxable net income (as defined in N.J.S.A.54:10A-4(w)) for privilege periods ending on and after July 31, 2019; and (2) clarifies that the term “taxpayer” means a business entity that is subject to the CBT.

Likewise, the bill provides that, for privilege periods ending on or after July 31, 2019, the CBT rate per N.J.S.A.54:10A-5 applies to taxable net income.

Certain operative dates relative to chapter 48 are revised by the bill. For a taxpayer that owns 80 percent or more of a subsidiary, the dividend received deduction may be claimed at: 100 percent for privilege periods beginning on or before December 31, 2016; at 95 percent for privilege periods beginning January 1, 2017 until December 31, 2018, while giving a taxpayer allocation relief on the deemed dividends; and at 95 percent for privilege periods beginning on and after January 1, 2019. The rates of the deduction, however, are not affected by the bill. The bill also extends the operative dates for: (1) the net operating loss deduction; and (2) the prior net operating loss conversion carryover, to privilege periods ending prior to July 31, 2019 (in contrast to the effective date of chapter 48, July 1, 2018) under the CBT.

The bill provides that a “combinable captive insurance company,” meaning a captive insurer that is more than 50 percent owned (directly

or indirectly) by a single entity and with gross receipts of 50 percent or less from insurance premiums, is not exempt from the CBT.

For purposes of determining “net worth” under the CBT (per N.J.S.A.54:10A-4), the allowable reduction for investment in capital stock of one or more subsidiaries is reduced, to 50 percent (from 100 percent).

In the event that there is a change in 50 percent or more of the ownership of a corporation because of the redemption or sale of stock, and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. Nevertheless, if the Direction of the Division of Taxation determines that the acquisition was for the primary purpose of the use of taking advantage of the net operating loss carryover, the director may disallow the carryover. This provision does not apply between members of a combined group reported on a New Jersey combined return.

Additionally, the bill provides a CBT deduction to mirror the federal deduction allowed under the Internal Revenue Code relative to income derived from certain foreign assets, as adopted by 18 other states. The federal Tax Cuts and Jobs Act has implemented a tax on American shareholders’ income from controlled foreign corporations (“GILTI”), to the extent the income exceeds a 10 percent return on invested foreign assets. Moreover, foreign derived intangible income (“FDII”) is income derived from certain business assets, including intellectual property. Section 250 of the federal Internal Revenue Code (26 U.S.C. s.250) allows a taxpayer to claim a deduction relative to the GILTI and FDII of a business. This bill allows a taxpayer to claim a CBT deduction in the amount of the section 250 deduction claimed by the taxpayer in the tax year.

### *Combined Reporting*

The bill updates the effective dates of the combined reporting requirements of chapter 48, to commence for privilege periods ending on and after July 31, 2019.

For each member of a combined reporting group filing a mandatory or elective New Jersey combined return, the minimum tax under the CBT is set at \$2,000 for the group privilege period.

Under current law, entities regulated by the Federal Energy Regulatory Commission, the New Jersey Board of Public Utilities, or a similar regulatory body of another State, are exempted from certain combined reporting provisions with respect to rates charged to customers for electric or gas services, per N.J.S.A.54:10A-4.6. The bill extends this exemption to water and wastewater.

Regarding the add back provision of N.J.S.A.54:10A-4.4, the bill provides that the add back provision does not apply to transactions

between related members included in a combined group reported on a New Jersey combined return.

*Tax Treatment of Certain EDA Tax Credits*

The bill clarifies that “gross income” under the gross income tax does not include gains or income from the sale or assignment of a tax credit transfer certificate under the Grow New Jersey Assistance Program, N.J.S.A.34:1B-248 and N.J.S.A.34:1B-251, for any sale or assignment of a tax credit approved by the EDA on or prior to July 1, 2018, irrespective of the date the sale or assignment occurs.

It is noted that the director’s authority as it relates to allocation factor, more commonly known as ‘Section 8,’ allows the director discretion to afford relief to individual taxpayers as necessary.

FISCAL IMPACT:

The Office of Legislative Services (OLS) notes that the majority of changes in this bill are intended to correct technical issues related to the operative and effective dates of P.L.2018, c.48. Thus, the OLS does not expect this bill to alter the overall fiscal impact of P.L.2018, c.48. However, the bill does include language which conforms the corporation business tax (CBT) to section 250 of the federal Internal Revenue Code (IRC), which provides deductions for certain foreign derived income, reverses a change to the definition of “net worth” under the CBT from the enactment of P.L.2018, c.48, and includes gains from the sale of certain tax credits as part of income for S corporations under the gross income tax (GIT) after July 1, 2018. These changes will provide the greatest net impact to overall State revenues; however, the OLS does not have access to taxpayer data which would allow it to determine the direction and magnitude of the bill’s impact on State revenues.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 4809**

with committee amendments

**STATE OF NEW JERSEY**

DATED: OCTOBER 21, 2020

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 4809.

The bill makes numerous corrections and revisions to clarify and simplify various aspects of the changes that were enacted as part of P.L.2018, c.48 and P.L.2018, c.131. Those laws, among other things, mandated mandatory unitary combined returns on a water's-edge basis if no election for an affiliated group basis filing or world-wide group basis filing had been made. The laws also changed the application of the net operating losses from pre-allocation (called pre-apportionment in other states) to post-allocation (called post-apportionment in other states), updated the research and development credit, and amended the dividend received exclusion.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) revise the dates on which certain provisions of the bill will first apply;
- 2) correct typographical errors;
- 3) provide that no penalties or interest shall accrue for underpayment of tax due to the retroactivity of parts of the bill;
- 4) provide that certain transfers of real property are not subject to the realty transfer fee, which was neglected in the introduced version of the bill; and
- 5) eliminate a provision from a Corporation Business Tax section of law which as introduced stated that a combined group shall be treated as one taxpayer for intercompany transfers for purposes of the realty transfer fee, the controlling interest transfer tax, and the bulk sales notice requirements; for sake of clarity, the requirement to treat a combined group as one taxpayer for intercompany transfers is instead put directly in the provisions of law dealing with the realty transfer fee, the controlling interest transfer tax, and the bulk sales notice requirements.





# Tab 3



2020 NJ REG TEXT 549168 (NS)

52 N.J.R. 508(a)

New Jersey Regulation Text - Netscan  
N.J.A.C. 18:7-1.6; N.J.A.C. 18:7-8.10, 10A  
Rule Proposals  
March 16, 2020  
Department of Treasury-Taxation

## **Corporation Business Tax Act**

The Division of Taxation (Division) is proposing new N.J.A.C. 18:7-8.10A, Receipts from services in the State; allocation for certain special industries. The proposed new rule provides a method for the allocation of receipts from certain service transactions for privilege periods ending on and after July 31, 2019. Existing [N.J.A.C. 18:7-8.10](#), Receipts compensation for services; allocation for certain special industries, is proposed for amendment to provide that the existing rule applies to privilege periods ending prior to July 31, 2019.

### **TREASURY-TAXATION**

#### **DIVISION OF TAXATION**

#### **Corporation Business Tax Act**

**Proposed Amendments:** [N.J.A.C. 18:7-1.6](#) and [8.10](#)

**Proposed New Rule:** [N.J.A.C. 18:7-8.10A](#)

Authorized By: John J. Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27 and 54:50-1; and [P.L. 2018, c. 48](#), and [P.L. 2018, c. 131](#).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2020-026.

Submit written comments by May 15, 2020, to:

Elizabeth J. Lipari

Administrative Practice Officer

Division of Taxation

PO Box 269

50 Barrack Street

Trenton, NJ 08695-0269

Email: [Tax.RuleMakingComments@treas.nj.gov](mailto:Tax.RuleMakingComments@treas.nj.gov)

The agency proposal follows:

### Summary

The Division of Taxation (Division) is proposing new N.J.A.C. 18:7-8.10A, Receipts from services in the State; allocation for certain special industries. The proposed new rule provides a method for the allocation of receipts from certain service transactions for privilege periods ending on and after July 31, 2019. Existing [N.J.A.C. 18:7-8.10](#), Receipts compensation for services; allocation for certain special industries, is proposed for amendment to provide that the existing rule applies to privilege periods ending prior to July 31, 2019.

New Jersey determines the portion of the total income of a corporation subject to the corporation business tax by using formulas that measure specific activities of the corporation assigned to this State. The New Jersey corporation business tax employs a single-fraction formula that apportions a share of the corporation's income to the State, based on a corporation's sales in this State over the corporation's total sales.

[P.L. 2018, c. 48](#) amended the law for the sourcing of receipts stated at N.J.S.A. 54:10A-6(B)(4) and 54:10A-6.2 to provide for market sourcing based on where the benefit of the service is received by the customer. [P.L. 2018, c. 131](#) fixed the effective date of the revised market sourcing requirements to privilege periods ending on and after July 31, 2019.

New N.J.A.C. 18:7-8.10A is proposed in order to provide sourcing rules for privilege periods ending on and after July 31, 2019, in accordance with these changes to the law. Proposed new paragraph (a)1 requires that the numerator of the sales fraction calculated in accordance with this section include receipts from sales of services not otherwise apportioned if the benefit of the service is received by customers within this State. This new paragraph differs from [N.J.A.C. 18:7-8.10](#) by no longer requiring that the numerator of the sales fraction include 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, if the service is performed both within and outside this State.

Proposed new paragraph (a)2 requires that, in determining whether the service is sourced to the State, a taxpayer shall include in the numerator of the receipts fraction, those receipts where customers derive the benefit of the service within this State. Proposed new paragraph (a)3 requires that, in the event services are provided to a recipient engaged in a trade or business in this State and another state(s), a taxpayer shall include in the numerator of the receipts fraction those receipts attributable to the customer's operations within the State. Examples are provided to illustrate how to deal with real estate surveying services, engineering services, computer software services, advertising services, prescription services, market analysis services, GPS services, legal information services, and payroll processing services.

Proposed new paragraph (a)4 provides that 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.

Proposed new paragraph (a)5 provides that, for allocation purposes, it is immaterial where the amounts were payable or where they actually were received.

Proposed new paragraph (a)6 provides a method for allocating certain lump sum payments and includes a method for allocating airline revenues.

Proposed new paragraph (a)7 details sourcing of certain lump sum payments in general for privilege periods ending on and after July 31, 2019.

Proposed new paragraph (a)8 details the sourcing of rules for asset management services for privilege periods ending on and after July 31, 2019.

Proposed new paragraph (a)9 details the sourcing rules for services of a registered securities or commodities broker or dealer for privilege periods ending on and after July 31, 2019.

Proposed new paragraph (a)10 deals with sourcing of receipts (licensing fees) of a broadcaster from broadcast customers, such as a platform distribution company that in turn shows/airs the film programming to the ultimate customers/viewing audience.

In sum, proposed new N.J.A.C. 18:7-8.10A deals with the identification of receipts from services within the State for purposes of calculating the sales fraction. The enactment of [P.L. 2018, c. 48](#) established New Jersey's current allocation methodology to require market-based sourcing. Consequently, for purposes of calculating the sales fraction, the proposed new rules and amendments reflect this statutory change to assign and allocate to New Jersey income earned by a taxpayer based upon where receipts are earned or sales are undertaken, and not where performance of the service(s) is undertaken or how much time and/or resources is spent performing said service(s).

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments and new rule will have a positive social impact by clearly setting forth the manner in which receipts from certain service transactions shall be allocated to New Jersey for privilege periods ending on and after July 31, 2019.

Adoption of the proposed amendments and new rule will benefit the public by providing clarification as to the calculation of the sales fraction in the case of affected taxpayers. In particular, the proposed amendments and new rule will benefit the public by replacing the percentage formula at existing N.J.A.C. 18:7-8.10(c) with a flexible market-based allocation method.

The Division believes that the proposed amendments and new rule are consistent with [P.L. 2018, c. 48](#), and [P.L. 2018, c. 131](#), which established the method for calculating the sales fraction to include the market-based sourcing method when determining a multi-state corporation's taxable income under the Corporation Business Tax Act. The new apportionment formula is fully effective for privilege periods ending on and after July 31, 2019. The proposed new rule is consistent with the statutory changes to N.J.S.A. 54:10A-6(B)(4).

### **Economic Impact**

The proposed amendments and new rule eliminate possible confusion for a class of taxpayers and their advisors over the manner in which receipts from sales of certain services are allocated to New Jersey. The effect on State revenues is indeterminate. The proposed amendments and new rule apply the objective statutory standard for allocating income of a multi-state corporation to New Jersey.

The enactment of [P.L. 2018, c. 48](#), established market sourcing as the method for identifying receipts from services used to determine a corporation's taxable income under the Corporation Business Tax Act for privilege periods ending on and after July 31, 2019, and was intended to have a positive effect on the business climate in New Jersey. The proposed amendments and new rule are designed to reflect the statutory changes and to have a positive effect on business climate.



**Federal Standards Statement**

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the proposed amendments and new rule.

**Jobs Impact**

The proposed amendments and new rule are not expected to result in the creation or loss of jobs in New Jersey.

**Agriculture Industry Impact**

The proposed amendments and new rule will have no impact on the agriculture industry.

**Regulatory Flexibility Analysis**

The proposed amendments and new rule apply to any company, including those which may be considered a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rule are not expected to impose any changes in reporting, recordkeeping, or other compliance requirements unique to small businesses, but the requirements will be the same on businesses of any size, as discussed in the summary above. To the contrary, the proposed amendments and new rule may reduce recordkeeping and compliance requirements by allowing for reasonable approximations in determining where to allocate receipts from services. The proposed amendments and new rule identify how and when to allocate receipts from certain sales to New Jersey and provide a standard allocation method. Small businesses may wish to consult with accountants or legal professionals in order to review the proposed amendments and new rule to determine the potential applicability of the changes to their own tax situations.

The mission of the Division of Taxation is to administer the State's tax laws uniformly, equitably, and efficiently to maximize State revenues to support public services and to ensure that voluntary compliance within the taxing statutes is achieved without being an impediment to economic growth. Consistent with its mission, the Division of Taxation reviews its rule proposals with a view of minimizing the impact of its rules on small businesses to the extent possible.

**Housing Affordability Impact Analysis**

The proposed amendments and new rule will not result in a change in the average cost associated with housing or on the affordability of housing in the State. The proposed amendments and new rule would have no impact on any aspect of housing because the proposed amendments and new rule identify how and when to allocate receipts from certain sales to New Jersey and provide a standard allocation method.

**Smart Growth Development Impact Analysis**

The proposed amendments and new rule will not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments and new rule identify how and when to allocate receipts from certain sales to New Jersey and provide a standard allocation method.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Division of Taxation has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State because the proposed amendments and new rule deal with implementing amendments to the Corporation Business Tax Act.

## [52 N.J.R. 1677\(c\)](#)

VOLUME 52, ISSUE 17, SEPTEMBER 8, 2020

### RULE ADOPTIONS

#### Reporter

52 N.J.R. 1677(c)

***NJ - New Jersey Register > 2020 > SEPTEMBER > SEPTEMBER 8, 2020 > RULE ADOPTIONS  
> TREASURY--TAXATION -- DIVISION OF TAXATION***

## Agency

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TREASURY--TAXATION > DIVISION OF TAXATION

## Administrative Code Citation

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Adopted Amendments: [N.J.A.C. 18:7-1.6](#) and [8.10](#)

Adopted New Rule: [N.J.A.C. 18:7-8.10A](#)

## Text

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### Corporation Business Tax Act

Proposed: March 16, 2020, at 52 N.J.R. 508(a).

Adopted: August 10, 2020, by John J. Ficara, Acting Director, Division of Taxation.

Filed: August 10, 2020, as R.2020 d.082, **with non-substantial changes** not requiring additional public notice and comment (see [N.J.A.C. 1:30-6.3](#)).

Authority: [N.J.S.A. 54:10A-27](#) and [54:50-1](#); and P.L. 2018, c. 48, and P.L. 2018, c. 131.

Effective Date: September 8, 2020.

Expiration Date: May 18, 2024.

### Summary of Public Comments and Agency Responses:

The Division of Taxation (Division) received written comments on the notice of proposal from the following persons (each commenter is identified at the end of their comment by the number below):

1. Craig Peterson, State Income Tax Manager, United Parcel Service Inc. (UPS); and

2. Angela Miele, Vice President, State Government Affairs & State Tax Policy, Motion Picture Association of America (MPAA).

1. COMMENT: The commenter believes that the proposed notice of proposal is inconsistent with [N.J.S.A. 54:10A-4.7](#). The commenter suggests that changes to the amendments and new rule are needed to include all aspects of the combined reporting statutes, with regard to [page=1678] combined groups engaged in the transportation of freight. The commenter suggests a reference to [N.J.S.A. 54:10A-4.7](#) should be added to paragraph 3 of the "Summary" section that describes the statutes that assign the sourcing of receipts. To remove ambiguity, the commenter suggests that the Division could add a sentence within the "Summary" expressly stating that "taxpayer groups that file under the apportionment methodology of [N.J.S.A. 54:10A-4.7](#) are not subject to [N.J.A.C. 18:7-8.10A](#)." The commenter also suggests that at the beginning of [N.J.A.C. 18:7-8.10A\(a\)](#), a sentence be added as follows: "For service company taxpayers that are part of a combined group engaged in the transportation of freight by air or ground that do not meet requirements of [N.J.S.A. 54:10A-4.7](#), the following rules shall apply."

In addition, the commenter requests the paragraph starting "6. Lump sum payments for services where the benefit is received ..." be clarified to include the following clause at the beginning of the section: "For taxpayers that are part of a combined group engaged in the transportation of freight by air or ground that do not meet requirements of [N.J.S.A. 54:10A-4.7](#), the following rules shall apply." (1)

RESPONSE: The Division agrees that the rulemaking does not address the various details of combined reporting and the special allocation rule for certain freight transportation combined groups at [N.J.S.A. 54:10A-4.7\(b\)](#). The intent of this rulemaking is to address market sourcing rules in general. However, the Division intends to address various aspects of [N.J.S.A. 54:10A-4.7](#) in a subsequent rulemaking that will address freight transportation companies and combined reporting.

2. COMMENT: The commenter suggests the Division delete the last sentence of [N.J.A.C. 18:7-8.10A\(a\)](#)<sup>10</sup> because the commenter believes that this sentence is irrelevant and runs counter to the intent of the other provisions in the proposed rule. Additionally, the commenter believes that there would never be a situation in which the taxpayer would not have access to the population of a jurisdiction, which is established in that subsection as the default measure, and that once the population standard is obtained, the taxpayer would not have to demonstrate any additional evidence regarding the broadcaster's customer. (2)

RESPONSE: The Division disagrees with the suggestion that the last sentence is irrelevant and counter to the intent of the proposed rule. The rule is intended to cover market-based sourcing based on where the benefits of the service are received. [N.J.A.C. 18:7-8.10A\(a\)](#)<sup>10</sup> provides a general rule for a broadcaster to source the service receipts from a broadcast customer based on the viewing office, or if that information isn't readily available, then on population data. However, there could be situations where there is not a viewing audience in New Jersey and a broadcaster has the necessary documentation and evidence that a broadcast customer did not have a viewing audience in New Jersey, and, thus, the benefit of the service was not received in New Jersey. This last sentence was intended to be an exception to the general rule for such a situation. To reduce confusion and to highlight that this last sentence is an exception to the general rule, the Division will add the word "However."

3. COMMENT: The commenter suggests several additional changes for clarity. Specifically, at [N.J.A.C. 18:7-8.10A\(a\)](#)<sup>10</sup>, in the first sentence, the commenter requests the Division delete the phrase "in all states" and replace it with "everywhere (domestic and/or if applicable international)." In the second sentence of this paragraph, the commenter asks to have language added to state "including lack of any information that is a reasonable approximation"; and the word "states" be replaced with the phrase "jurisdictions (domestic and if applicable, international)." In addition, in the Example to paragraph (a)<sup>10</sup>, it is requested that a sentence be added at the end of the example to read, "If Network Corp is unable to source such receipts based on broadcast customer's viewing audience in New Jersey in proportion to the viewing audience everywhere (domestic and if applicable, international) and they have no other information that is a reasonable approximation, then." (2)

RESPONSE: The Division agrees in principle that the suggested technical changes help to add clarity; however, the changes appear to be unintentionally inconsistent and may add confusion. Thus, while the Division agrees with the intent of the request, the Division disagrees with the exact wording of the changes. For clarity and consistency, however, the Division will make several technical changes, consistent with the principles the commenter suggested. The Division will use the phrase "in all jurisdictions in which the broadcast customer has a viewing audience" and other "jurisdictions" since both changes add clarity and are consistent with the intention of the rules. The Division agrees to add "including lack of any information that is a reasonable approximation," as it also adds clarity and is consistent with the intention of the rules. In the Example to paragraph (a)10, the Division agrees to add "If Network Corp. is unable to source such receipts based on broadcast customer's viewing audience and it has no other information that is a reasonable approximation, then" because it is consistent with the intent of the example contained in the rule.

### Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the adopted amendments and new rule.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

#### SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

##### 18:7-1.6 Subjectivity to tax; how created

(a) (No change.)

(b) A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Example 1: An entity regularly providing asset management services as defined at [N.J.A.C. 18:7-8.10\(a\)](#)<sup>5</sup> from a location outside New Jersey to customers within New Jersey is subject to tax in New Jersey.

Example 2: (No change.)

#### SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

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

(a) For privilege periods ending before July 31, 2019, receipts from service transactions shall be allocated to New Jersey in accordance with this section.

Recodify existing (a)-(d) as 1.-4. (No change in text.)

5. Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the following procedures:

Recodify existing 1.-3. as i.-iii. (No change in text.)

iv. As used in (a)5i through iii above, the following words and terms shall have the following meanings:

Recodify existing i.-iv. as (1)-(4) (No change in text.)

(5) "Domicile" shall have the meaning ascribed to it under [N.J.S.A. 54A:1-2.m](#) in the case of an individual, and under [N.J.S.A. 54A:1-2.o](#) 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 this 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 (a)5iii 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.

Recodify existing vi.-viii. as (6)-(8) (No change in text.)

v. (No change in text.)

6. (No change in text.)

#### 18:7-8.10A Receipts from services in the State; allocation for certain special industries

(a) For privilege periods ending on and after July 31, 2019, receipts from service transactions shall be allocated to New Jersey in accordance with this section.

1. The numerator of the sales fraction developed in accordance with this section includes receipts from services not otherwise apportioned, if the benefit of the service is received by the customer at a location within this State.

[page=1679] 2. In determining whether the benefit of the services is received within this State, a taxpayer shall include in the numerator of the sales fraction receipts derived from customers within this State as provided in this paragraph.

i. For purposes of this paragraph, a customer within this State is either a recipient that is:

(1) Engaged in a trade or business and maintains a regular place of business in this State; or

(2) Is an individual that is not a sole proprietor, who is located in this State. If the location of the individual cannot be determined, the benefit of the services will be deemed to be received at the individual's billing address.

ii. A regular place of business in this State is not limited to the principal place of business of the customer and includes any office, factory, warehouse, or other business location in this State where the customer conducts business in a regular and systematic manner or maintains property or employees.

iii. A billing address is the location indicated in the pertinent customer order or records of the taxpayer as the address of record where notices, statements, or bills relating to the customer's account are mailed, or the location where services are provided to the customer.

3. In the event that services are provided to a recipient engaged in a trade or business for use in that trade or business located in this State and another state(s), a taxpayer shall include in the numerator of the sales fraction receipts based on the percentage of the total value of the benefit of the services received in all locations both within and outside of this State, as determined in this paragraph, or a reasonable approximation as defined at (a)3iv(1) below.

i. For purposes of this paragraph, receipts are attributable to this State if the recipient of the service(s) receives all of the benefit of the service(s) in this State.

ii. If the recipient of the service(s) receives some of the benefit of the service(s) in this State, receipts arising from the service(s) shall be attributable to this State in proportion to the extent to which the recipient receives the benefit of the service(s) in this State.

iii. In determining the "proportion to the extent to which the recipient receives the benefit of the service(s) in this State," a taxpayer may use the terms of a contract, the taxpayer's books and records kept in the normal course of business, or the nature of the taxpayer's or recipient's business and/or the service(s) at issue, to determine how much of the benefit of the service(s) is received in this State.

iv. In determining the "proportion to the extent to which the recipient receives the benefit of the service(s) in this State," a taxpayer may use a reasonable approximation to attribute the location of receipts if none of the items

listed at (a)3iii above provide the information necessary to determine how much of the benefit of the service(s) is received in this State.

(1) A "reasonable approximation" for attributing receipts under this subparagraph means that, considering all sources of information other than the terms of a contract, the taxpayer's books and records kept in the normal course of business, or the nature of the taxpayer's or recipient's business and/or the service(s) at issue, the location where the benefit of the service(s) is received is determined in a manner that is consistent with the activities of the recipient to the extent such information is available to the taxpayer. "Reasonable approximation" shall be limited to the jurisdictions or geographic areas where the recipient, at the time of purchase, will receive the benefit of the service(s), to the extent such information is available to the taxpayer. If population is a reasonable approximation, the population used shall be the U.S. population as determined by the most recent U.S. census data. If it can be shown by the taxpayer that the benefit of the service(s) is being substantially received outside the U.S., then the populations of the countries where the benefit of the service(s) is being substantially received shall be added to the U.S. population for purposes of determining a reasonable approximation of the total value of the benefit of the services received in all locations. Information that is verifiable and specific in nature is preferred over unverifiable information that is general in nature. If the information is not readily verifiable or not readily available to the taxpayer, the taxpayer may request to use certain industry standard approximations.

Example 1: A taxpayer is in the business of providing real estate surveying services to developers and potential borrowers. A real estate development firm from another state is developing a tract of land in New Jersey. The real estate development firm from another state utilizes the services of the taxpayer to survey the land in New Jersey. The survey work is completed and the plans are drawn in New Jersey. All of the taxpayer's receipts from this survey work are attributable to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 2: A taxpayer is in the business of providing engineering services and is headquartered in another state. A corporation headquartered in another state is building an office complex in New Jersey. The corporation contracts with the taxpayer to oversee construction of the buildings on the site. The taxpayer performs some of its service in New Jersey at the building site and additional service in its home state. All of the receipts from the taxpayer's engineering service are attributable to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 3: A taxpayer headquartered outside this State enters into an agreement with a corporation from another state to develop and provide customized computer software for the corporation's business office that is located in New Jersey. The software will only be used by the business office in New Jersey. The software development occurs in another state. All of the taxpayer's receipts from the software services are attributable to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 4: A taxpayer headquartered outside this State enters into an agreement with a corporation from another state to develop and provide customized computer software for the corporation's business offices that are located in New Jersey and several other states. The software development occurs in another state. The taxpayer's receipts from the software services that are attributable to New Jersey and included in the numerator of the taxpayer's sales fraction shall be equal to the proportion of the software used in New Jersey to the software used everywhere (domestic and/or international).

Example 5: A taxpayer derives advertising revenues in the course of providing or distributing content (for example, broadcasting television or radio programs or any other content over the air, satellite, cable system, or Internet). It sets its advertising rates based upon the audience it reaches or has the potential to reach. The portion of the taxpayer's advertising revenues or receipts that is attributable to New Jersey and included in the numerator of the taxpayer's sales fraction shall be equal to the proportion of the taxpayer's audience in New Jersey to the audience everywhere (domestic and/or international).



Example 6: A taxpayer performs prescription fulfillment service. The company is headquartered in State X and manages a prescription plan on behalf of a client that is headquartered in State Y with offices in 50 states. The client's employees are located in all 50 states, including New Jersey, but frequently travel and may fill prescriptions from their home pharmacy or pharmacies on the road. For lump sum payments from the client to the fulfillment service, the sourcing may be based on the percentage of the client's employees working in New Jersey. Alternatively, for pay as you go services where there is adequate documentation of where the prescription is filled, the percentage of prescriptions filled in New Jersey would be acceptable to verify receipts to be sourced to this State. If the company is unable to track the percentage of the client's employees working in New Jersey or the percentage of prescriptions filled in New Jersey, a reasonable approximation considering all sources of information, or a population-based methodology would be acceptable.

Example 7: The taxpayer is a company that performs marketing analysis services in California and New York for a client that is headquartered in New Jersey. The project was requested from and directed by the client's advertising division leader who is located in the client's Florida office. The deliverable is a memo detailing the results of the marketing analysis, which will be sent to the division leader in Florida. The information contained in the deliverable will ultimately be incorporated into an advertising strategy used companywide, nationwide. The bill was sent to the client's accounts payable function in Illinois. This [page=1680] taxpayer's service would not be sourced to New Jersey since the benefit of the service is not utilized in New Jersey, nor is the benefit of the service received in New Jersey.

Example 8: A person purchases an in-dashboard GPS system that includes a periodic update service when the person brings the car to the dealership for periodic car maintenance. The update service ends after one year with an option for the car owner to renew the service directly with the GPS company, such that upon renewal, payments to the company are paid by the car's owner. In the first instance, where the periodic update service and GPS are bundled together the sale would be sourced to the location of the dealership. When the owner of the car renews the update service, the company's receipts from the service will be sourced to the customer's billing address.

Example 9: Taxpayer, a legal information company, provides a periodic legal research materials service. The service consists of periodic shipments of the latest statutes, regulations, and court cases based on the terms of contracts negotiated with each customer. The updates shipped to the customers consist of pocket parts for bound books or loose leaf binder inserts. A customer, with offices in New Jersey and three other states, contracts with the legal information company to receive weekly updates of the materials that are shipped to each office. The receipts included in the taxpayer's sales fraction will be sourced based on the percentage of updates that are received in the client's New Jersey office.

Example 10: Taxpayer, a payroll processing corporation, provides a payroll processing and remittance service to clients for a fee. The payroll processing corporation receives the data from clients and impounds funds from its clients for disbursing payroll checks and remitting tax monies to government agencies. The payroll processing corporation transmits the processed data back to its client that has offices and employees in New Jersey, Pennsylvania, South Carolina, California, and Ohio. The client hires the payroll processing corporation to process its payroll. The taxpayer's receipts from the payroll services will be sourced to New Jersey based on the number of the client's employees located in New Jersey since the monies for those employees are remitted to New Jersey.

4. All receipts obtained by the taxpayer in payment for services provided in the regular course of business 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 taxpayer reports the receipt as an item of income or a reduction in expense.

5. It is immaterial where the receipts from the sales of services were payable or where they were actually received.

6. Lump sum payments for services where the benefit is received both inside and outside of New Jersey must be apportioned in the manner described in (a)6i and ii below in order to result in a fair and reasonable receipts fraction.

i. Transportation revenues of an airline are from services in New Jersey based on the ratio of an airline's revenue miles in New Jersey divided by an airline's total revenue miles. Where an airline is engaged in the transportation of

passengers, the transportation of freight, or the rental of aircraft, the ratio shall be determined by an average of a passenger revenue mile fraction, freight revenue mile fraction, and rental revenue mile fraction weighted to reflect the taxpayer's relative gross receipts from passenger transportation, freight transportation, and rentals.

(1) "Revenue miles" means passenger revenue miles for passenger transportation, freight revenue miles for freight, or transportation rental revenue miles for aircraft rentals.

(2) The passenger revenue mile fraction is determined by multiplying the number of revenue-paying passengers aboard the aircraft by the distance traveled in New Jersey divided by the number of revenue-paying passengers aboard the aircraft multiplied by the distance traveled everywhere.

(3) The freight revenue mile fraction is determined by dividing the freight ton revenue miles in New Jersey by the freight revenue miles everywhere. A freight revenue ton mile is equal to one ton carried one mile.

(4) The rental revenue mile fraction is determined by dividing the number of rental miles flown in New Jersey by total rental miles flown.

ii. Trucking companies deriving revenues from transporting freight will calculate their receipts fraction using mileage as follows: The taxpayer's 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 [N.J.A.C. 13:18-3.12](#) shall make calculations using such records.

(1) With regard to the property fraction, movable property, such as tractors and trailers, shall be allocated to this State using the mileage fraction set forth in this subparagraph. 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 this subparagraph. 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 taxpayer's overall payroll fraction.

7. If a taxpayer receives a lump sum in payment for services and for materials or other property, the sum received must be apportioned on a reasonable basis by providing:

- i. The part apportioned to services is includible in receipts from services;
- ii. The part apportioned to materials or other property is includible in receipts from sales; and
- iii. Full details must be submitted with the taxpayer's return.

8. Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the procedures described in this paragraph.

i. 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.

ii. 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 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.

(1) 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 payroll apportionment factor or the sponsor's ratio of New Jersey employees to total employees.

iii. 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:

(1) The portion of receipts deemed to arise from services 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 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.

iv. As used in this paragraph, the following words and terms shall have the following meanings:

(1) "Asset management services" means the rendering of investment advice, making determinations as to when sales and purchases are to be [page=1681] made, or the selling or purchasing of assets and related activities. As used in this sub-subparagraph, "related activities" means administration services, distribution services, management services, and other related services;

(2) "Administration services" means and includes clerical, accounting, bookkeeping, data processing, internal auditing, legal, and tax services, but does not include trust services;

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

(4) "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;

(5) "Domicile" shall have the meaning ascribed to it at [N.J.S.A. 54A:1-2.m](#) in the case of an individual and under [N.J.S.A. 54A:1-2.o](#) 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 this 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 (a)8iii 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;

(6) 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;

(7) "Regulated investment company" means a regulated investment company as defined at [N.J.S.A. 54:10A-4\(g\)](#) and meets the requirements of [Section 851 of the Federal Internal Revenue Code](#); and

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

v. See [N.J.A.C. 18:7-1.6](#) regarding foreign advisors having customers in New Jersey.

9. 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 this State.

i. For purposes of this paragraph, the following words or terms shall have the following meanings:

(1) "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;

(2) "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

(3) "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.

10. Receipts from a broadcaster's licensing of film programming to a broadcast customer shall be sourced to New Jersey based on the broadcast customer's viewing audience in New Jersey in proportion to the viewing audience in all \* [states] \* **jurisdictions in which the broadcast customer has viewers**\*. If the information is indeterminable, **\*including lack of any information that is a reasonable approximation,\*** a broadcast customer shall be deemed to receive the benefit of such license in New Jersey and the receipts from the licensing of the film programming shall be sourced based on the ratio of the population of New Jersey over the population of the other \* [states] \* **jurisdictions**\* in which the broadcast customer has viewers. \* [If] \* **However, if** a broadcaster can prove to the Director of the Division of Taxation by cogent evidence that is definite, positive, and certain in quantity and quality that the broadcast customer does not have any viewers in New Jersey, the receipts from licensing of film programming to the broadcast customer shall be sourced to the commercial domicile of the broadcast customer.

i. For purposes of this paragraph, the following words or terms shall have the following meanings:

(1) "Broadcast customer" means a person, corporation, partnership, limited liability company, or other entity, such as a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by the broadcaster. The term "broadcast customer" includes, but is not limited to, a licensee of film programming (for example, a platform distribution company paying a licensing fee to the broadcaster to air the broadcaster's film programming);

(2) "Broadcaster" means a taxpayer that is engaged in the business of broadcasting, and includes a television broadcast network, a cable program network, or a television distribution company. The term "broadcaster" does not include a platform distribution company;

(3) "Broadcasting" means the transmission of film programming by an electronic or other signal conducted by microwaves, wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions, or through any other means of communication directly or indirectly to viewers and listeners;

(4) "Commercial domicile" means, in the case of a business entity, the principal place where the actual seat of management or control is located;

(5) "Film programming" means one or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, including, but not limited to, news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works; and

(6) "Platform distribution company" means a cable service provider, a direct broadcast satellite system, an Internet content distributor (domestic and/or international), or any other distributor that directly charges viewers for access to any film programming.

Example: Taxpayer Network Corp. is a broadcaster that licenses rights to its film programming to platform distribution companies (broadcast customers). Broadcast Customer A pays licensing fees to Network Corp. for the

rights to distribute Network Corp.'s film programming to Broadcast Customer A's customers who are located inside and outside of New Jersey. Broadcast Customer A broadcasts to viewers in New Jersey, Pennsylvania, New York, and Maine. \* **If Network Corp. is unable to source such receipts based on the broadcast customer's viewing audience and it has no other information that is a reasonable approximation, then**\* Network Corp.'s receipts from Broadcast Customer A will be sourced to New Jersey based on a ratio of the New Jersey population over the population of New Jersey, Pennsylvania, New York, and Maine.

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**SPECIAL ADOPTION**

**TREASURY-TAXATION**

**DIVISION OF TAXATION**

**Corporation Business Tax Act**

**Specially Adopted Amendment: N.J.A.C. 18:7-5.18**

**Specially Adopted New Rules: N.J.A.C. 18:7-3.25, 5.19, and 5.20**

Special Amendments and New Rules Adopted: April 8, 2020, by John J. Ficara, Acting Director,  
Division of Taxation.

Filed: April 8, 2020, as R.2020 d.057.

Authority: N.J.S.A. 54:10A-27, 54:10A-4.14, 54:50-1, and P.L. 2018, c. 48 and c.131.

Effective Date: April 8, 2020.

Expiration Date: October 5, 2020.

**Take notice** that, in accordance with P.L. 2018, c. 48, and c.131, the Division of Taxation (Division) has adopted amendments to N.J.A.C. 18:7-5.18 and new rules at N.J.A.C. 18:7-3.25, 5.19, and 5.20 to implement the statutory requirements of the law. These amendments and new rules became effective on April 8, 2020, upon acceptance for filing by the Office of Administrative Law. The specially adopted amendments and new rules will be effective for a period not to exceed 180 days from the date of acceptance for filing, that is, until October 5, 2020.

The Division will propose to readopt these rules pursuant to the rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., on or prior to October 5, 2020.

**Full text** of the special adoption follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 3. COMPUTATION OF TAX

#### **18:7-3.25 Computation of the tax on dividends included in entire net income for privilege periods beginning on and after January 1, 2017, but beginning before January 1, 2019**

**(a) For privilege periods beginning on and after January 1, 2017, but beginning before January 1, 2019, the tax liability owed for the five percent of dividends paid or deemed paid by an 80 percent or more owned subsidiary included in the taxpayer's entire net income must be based on either the three-year average allocation factor for the taxpayer's 2014 through 2016 privilege periods reported on the taxpayer's tax returns, or 3.5 percent, whichever is lower.**

**(b) Notwithstanding the allocation factor in (a) above, pursuant to N.J.S.A. 54:10A-8, the Director of the Division of Taxation may adjust the taxpayer's allocation factor, as prescribed pursuant to (a) above, if the allocation factor does not properly reflect the activity, business, receipts, capital, entire net worth, or entire net income of a taxpayer reasonably attributed to New Jersey.**

**(c) In privilege periods beginning on and after January 1, 2019, a taxpayer is not allowed to use the statutory formula provided at (a) above. Dividends included in the entire net income in privilege periods on and after January 1, 2019, must follow the standard allocation formula set forth at N.J.A.C. 18:7-8.7 and 8.12.**

SUBCHAPTER 5. ENTIRE NET INCOME; DEFINITION, COMPONENTS, AND RULES  
FOR COMPUTING

18:7-5.18 Related party transactions

(a) Interest paid, accrued, or incurred to a related member shall not be deducted in calculating entire net income, except that a deduction [shall] **may** be permitted:

1. (No change.)

2. If the taxpayer establishes, **to the satisfaction of the Director of the Division of Taxation**, that the disallowance of a deduction is unreasonable by [showing the extent the related party pays tax in New Jersey on the income stream, or the taxpayer and the Director agree in writing to the application or use of an alternative method of apportionment; or] **clear and convincing evidence, and any one of the following circumstances applies:**

**i. Unfair duplicate taxation;**

**ii. A technical failure to qualify the transactions under the statutory exceptions;**

**iii. An inability or impediment to meet the requirements due to legal or financial constraints;**

**iv. An unconstitutional result; or**

**v. The transaction is equivalent to an unrelated loan transaction; or**

**3. If the taxpayer and the Director agree in writing to the application or use of an alternative method of apportionment; or**

[3.] **4. To the extent that the taxpayer establishes that the interest is directly or indirectly paid, accrued, or incurred to:**

i. A related member in a foreign nation [which] **that** has in force a comprehensive income tax treaty with the United States[, provided, however, that] **and, for tax years beginning on or after January 1, 2018, the taxpayer also establishes that:**

**(1) The related member was subject to tax in the foreign nation on a tax base that included the amount paid, accrued, or incurred; and**

**(2) The related member's income received from the transaction was taxed at an effective tax rate equal to or greater than a rate of three percentage points less than the rate of tax applied to taxable interest by the State of New Jersey. In claiming this exception, the taxpayer shall disclose on its return for the privilege period:**

Recodify existing (1)-(4) as **(A)-(D)** (No change in text.)

ii. (No change.)

[4.] **5.** For purposes of this subsection:

i.-v. (No change.)

vi. "Related entity" means [a]:

**(1) A** stockholder who is an individual, or a member of the stockholder's family enumerated in I.R.C. § 318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; [a]

**(2) A** stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own, directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or [a]

(3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of I.R.C. § 318, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of I.R.C. § 318, [shall] apply for purposes of determining whether the ownership requirements of this definition have been met;

vii. The disclosure requirement for interest paid to a related member [shall be] **is** deemed to be satisfied if the taxpayer provides a schedule of:

(1)-(4) (No change.)

viii. (No change.)

[5.] **6. Examples:**

Example 1: Royal Palm, Ltd., a foreign parent corporation, owns directly or indirectly 100 percent of the outstanding shares of a U.S. domestic subsidiary, Red Oak, Inc. and 100 percent of the outstanding shares **of** Little Palm, Ltd., a foreign subsidiary, a corporation. Royal Palm, Ltd. and Little Palm, Ltd. are domiciled in jurisdictions subject to a comprehensive income tax treaty with the United States of America. Red Oak, Inc. is in need of short term and/or long term funding. Little Palm, Ltd. is established by Royal Palm, Ltd. to represent the worldwide affiliated group and issue commercial paper, or enter into financing arrangements with lending institutions, or borrow funds from unrelated parties on behalf of the affiliated group. The proceeds of these transactions are then used to fund the operating or capital investment activities of one or more of the members of the worldwide affiliated group. Interest expense attributable to amounts lent by Little Palm, Ltd., the foreign subsidiary, to Red Oak, Inc., the U.S. domestic subsidiary, and any costs associated with the origination of the lending which are assessed to Red

Oak, Inc. as expense recovery of the lending originations, would not be added back to Red Oak's Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 2-4 (No change.)

Example 5: Mr. Jones, a New Jersey resident, owns 100 percent of the shares of Zippy Corp., a corporation properly capitalized and organized and doing business in New Jersey. Zippy Corp. has not made a New Jersey [S election] **S-election**. Mr. Jones loans Zippy Corp. money at an arm's length rate under an arm's length contract. Zippy Corp. may take an interest deduction, provided that one of the exceptions applies: for example, if Mr. Jones pays New Jersey [Gross Income Tax] **gross income tax** at a rate within three percent of nine percent, then Zippy Corp. may take the deduction. If Zippy Corp. does not get a deduction, Mr. Jones may not exclude the interest income from his gross income tax taxable income.

Example 6: Mr. Smith, a New Jersey resident, owns 100 percent of the shares of Pin Corp., a corporation organized and doing business in New Jersey. Pin Corp. has not made a New Jersey [S election] **S-election**. Mr. Smith lends Pin Corp. \$ 5,000 at an arm's length rate under an arm's length contract. When Pin Corp. files its Form CBT-100, the Stockholder's Equity reflected on its Balance Sheet, Schedule B, is \$ 200.00. Mr. Smith paid gross income tax on the payments received from Pin Corp. However, Pin Corp. may not claim an interest deduction for interest paid to Mr. Smith. The "loan" is actually a contribution to capital, since the corporation is undercapitalized.

(b) Interest expenses and costs [and], **as well as**, intangible expenses and costs directly or indirectly paid, accrued, or incurred in connection with a transaction with one or more related



members shall not be deducted in calculating entire net income, except that a deduction [shall] **may** be permitted:

1. If the interest expenses and costs [and], **as well as**, intangible expenses and costs are directly or indirectly paid, accrued, or incurred to a related member in a foreign nation [which] **that** has in force a comprehensive income tax treaty with the United States[.] **and, for tax years beginning on or after January 1, 2018, the taxpayer establishes that:**

i. **The related member was subject to tax in the foreign nation on a tax base that included the amount paid, accrued, or incurred;**

ii. **The related member's income received from the transaction was taxed at an effective tax rate equal to or greater than a rate of three percentage points less than the rate of tax applied to taxable interest by the State of New Jersey; and**

iii. In claiming this exception, the taxpayer shall disclose on its return:

Recodify existing i.-iv. as **(1)-(4)** (No change in text.)

2. If the interest expenses and costs [and], **as well as**, the intangible expenses and costs that the taxpayer establishes meet both of the following:

i. (No change.)

ii. The transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the taxpayer and the related member did not have as a principal purpose the avoidance of any portion of [the] tax;

3. If the taxpayer establishes, **to the satisfaction of the Director**, that the adjustments are unreasonable by [showing the extent that the payee pays tax to New Jersey on the income stream; or] **clear and convincing evidence, and any one of the following circumstances applies:**

- i. Unfair duplicate taxation;**
- ii. A technical failure to qualify the transactions under the statutory exceptions;**
- iii. An inability or impediment to meet the requirements due to legal or financial constraints;**
- iv. An unconstitutional result; or**
- v. The transaction is equivalent to an unrelated loan transaction; or**

4. If the taxpayer and the [director] **Director** agree in writing to the application or use of an alternative method of apportionment[;].

[5.] (c) For purposes of [this subsection] **(b) above**:

Recodify existing i.-v. as **1.-5.** (No change in text.)

[vi.] **6.** "Intangible expenses and costs" means and includes:

Recodify existing (1)-(2) as **i.-ii.** (No change in text.)

[(3)] **iii.** Royalty, patent, technical, and copyright fees;

Recodify existing (4)-(5) as **iv.-v.** (No change in text.)

Recodify existing vii.-viii. as **7.-8.** (No change in text.)

[ix.] **9.** "Related entity" means [a]:

**i. A** stockholder who is an individual, or a member of the stockholder's family enumerated in I.R.C. § 318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; [a]

**ii. A** stockholder[,], or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability

companies, estates, trusts, and corporations own, directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or [a]

**iii.** A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of I.R.C. § 318, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of I.R.C. § 318, [shall] apply for purposes of determining whether the ownership requirements of this definition have been met;

[x.] **10.** (No change in text.)

[6.] **(d) Examples applicable to (b) above are as follows:**

Example 1: Large Co. A.G., a foreign corporation, domiciled in a jurisdiction that has entered into a comprehensive tax treaty with the United States of America, owns directly or indirectly 100 percent of the outstanding shares of three U.S. domestic subsidiaries (Red Corp., White Corp., and Blue Corp.) and 100 percent of the outstanding shares of Funding, N.V., a foreign subsidiary. Red Corp. and White Corp. utilize certain technology developed by Large Co. A.G. in their daily operations of manufacturing products for resale. Blue Corp. was formed to hold, and does hold, the U.S. rights to certain technologies developed by Large Co. A.G.[,] Red Corp. and White Corp. pay a royalty to Blue Corp. for the ability to use the technology developed by Large Co. A.G. in its daily operations. Blue Corp. pays an annual royalty to Large Co. A.G. based on the amount of royalties it receives from Red Corp. and White Corp. Amounts paid to Blue Corp. by Red Corp. and White Corp. would not be subject to disallowance. Also the amounts paid by Blue Corp. to Large Co. A.G. would not be subject to disallowance.

Example 2: Same facts as Example 1, except that, Large Co. A.G. has entered into an agreement to securitize certain financial assets. Red Corp. sells its receivables to White Corp., a bankruptcy remote, special purpose company, at a discount. White Corp. pledges the receivables to a lending institution that issues commercial paper backed by those receivables. Large Co. A.G. and Red Corp. have guaranteed that 100 percent of any receivable pledged is collectible. The discount on the sale of the receivables by Red Corp. to White Corp. is not subject to disallowance.

Example 3: A limited partner receives guaranteed payments for its investment in a limited partnership. The payment is similar to a payment on preferred stock. The related member rules apply if the guaranteed payment is above market/arm's length values.

**(e) Subsections (a), (b), (c), and (d) above do not apply to transactions between related members included in a combined group reported on the New Jersey combined return. Subsections (a), (b), (c), and (d) above only apply to transactions between members of a combined group reported on the New Jersey combined return and related members not included in the combined group reported on the New Jersey combined return.**

**Example: Companies A and B are members of a combined group (Combined Group E) that files a mandatory New Jersey combined return. Related member Companies C and D are not part of the combined group filing the New Jersey combined return. Subsections (a), (b), (c), and (d) above apply to transactions between Combined Group E and Companies C and D, but do not apply to Companies A and B because those companies are in Combined Group E.**

**(f) A taxpayer may claim an unreasonable exception, if that taxpayer includes Global Intangible Low Taxed Income (GILTI) in its entire net income from a related party and**

the expenses from the same related party would otherwise be required to be added back.  
See N.J.A.C. 18:7-5.19.

**18:7-5.19 Global Intangible Low Taxed Income (GILTI) and Foreign-Derived Intangible Income (FDII) for corporation business tax purposes**

(a) For New Jersey corporation business tax purposes, the amount of income reported for Federal income tax purposes pursuant to I.R.C. § 951A (GILTI) and § 250(b) (FDII) must be included in New Jersey entire net income in the same manner as for Federal tax purposes, and neither amounts are considered to be a dividend or a deemed dividend.

GILTI and FDII do not qualify for the dividend exclusion of N.J.S.A. 54:10A-4(k)(5).

(b) In computing the allowable I.R.C. § 250(a) deduction pursuant to N.J.S.A. 54:10A-4.15, in order to arrive at the taxable amount of GILTI and FDII included in the tax base for New Jersey corporation business tax purposes, a deduction will be disallowed if the amounts of income included for Federal tax purposes under I.R.C. §§ 951A and 250 are exempt or excluded from entire net income under the provisions of the Corporation Business Tax Act.

(c) The same limitations for claiming the deduction for GILTI and FDII under I.R.C. § 250 for Federal tax purposes shall also apply for New Jersey tax purposes.

(d) If a taxpayer includes GILTI income from a related member in its entire net income, the taxpayer may claim an exception to the requirement to add back related member expenses under N.J.S.A. 54:10A-4.4 upon filing with the Director of the Division of Taxation adequate documentation to demonstrate that related member GILTI income is included in the taxpayer's entire net income.

**(e) To the extent a combined group can demonstrate that the members included in the combined group on the same New Jersey combined return are controlled foreign corporations that generate the GILTI income, and the income of that controlled foreign corporation is already included in the entire net income of the combined group, the GILTI income may be excluded on Schedule A-8. The combined group must provide to the Director sufficient documentation to prove, by clear and convincing evidence, that income was already included. The portion of the I.R.C. § 250(a) deduction allowed under N.J.S.A. 54:10A-4.15, where attributable to the GILTI and FDII income, shall be allowed, regardless of the intercompany eliminations, deferrals, or exclusions on Schedule A-8 for combined returns.**

**(f) For privilege periods beginning on and after January 1, 2018, a taxpayer filing a separate return must include the GILTI, and the receipts attributable to the FDII, after adjustment for the I.R.C. § 250(a) deductions, in the denominator of the allocation factor. The net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) are only included in the numerator of the allocation factor if, based on N.J.S.A. 54:10A-6 and 54:10A-6.1 and N.J.A.C. 18:7-8.1 through 8.17, such amounts would be considered to be a New Jersey receipt; otherwise net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) are only included in the denominator of the allocation factor.**

**1. The taxpayer may petition for relief pursuant to N.J.S.A. 54:10A-8 and N.J.A.C. 18:7-10.1.**



## **2. Separate Return Example:**

**B forms Shell and Bell as conduits to shift income from high tax nations to lower tax nations in order to lower B's overall tax burden. Shell and Bell are controlled foreign corporations located in a low tax nation. B owns 100 percent of Shell and Bell. B files a separate New Jersey return. Although Shell does not have income effectively connected to a business in the U.S. within the meaning of the Internal Revenue Code, through a series of transactions Shell derives receipts from U.S. sources, including New Jersey sources. Shell also derives income from other countries. Bell does not have any U.S. source income and only has income from Europe. Both Shell and Bell are integrated in B's worldwide business. For Federal purposes, B is required to include in its entire net income the GILTI that was generated from both Shell and Bell. B also sells goods directly to customers in foreign nations for use outside of the U.S. Some of B's export contracts stipulate that the customer will take possession of the goods in B's New Jersey warehouse before the goods are exported.**

**The portion of the net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) attributable to New Jersey from receipts derived from non-effectively connected U.S. source income would be included in B's numerator. The portion of the net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) attributable to New Jersey receipts would be in B's numerator. The net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) are included in the denominator of the allocation factor.**

**(g) Pursuant to N.J.S.A. 54:10A-4.7, the combined group's sales fraction denominator includes the receipts of the business entities that are included as members of the combined group on the same New Jersey combined return.**

**1. For combined groups where the controlled foreign corporation is not included as a member of the combined group on the same New Jersey combined return, the net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction), will be in the denominator of the combined group allocation factor, and will be included in the member's numerator where appropriate, as applicable. The combined group denominator factor shall not include the controlled foreign corporation's receipts.**

**2. For combined groups where the controlled foreign corporation is included as a member of the combined group on the same New Jersey combined return, and the GILTI is excluded under (e) above because the controlled foreign corporation's entire net income is included in the combined group entire net income, the GILTI must be excluded from the combined group allocation factor. The controlled foreign corporation's receipts, net of the I.R.C. § 250(a) deduction that was attributable to GILTI income, will be included in the denominator of the combined group allocation factor. The controlled foreign corporation member's receipts, net of (that is, reduced by) the I.R.C. § 250(a) GILTI deduction that was attributable to GILTI income, will be included in that member's numerator where appropriate, as applicable. The net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) will be included in the denominator of the combined group allocation factor, and will be included in the appropriate member's numerator, as applicable.**

### **3. Combined Return Example:**

Combined group A includes T, X, Y, Z, Q, and P as members on the same New Jersey combined return. T is the controlled foreign corporation that generated GILTI. In addition to the GILTI generating activities, T also has effectively connected income, some of which is from New Jersey sources. Z is a controlled foreign corporation that generated GILTI income, but had a net tested loss. T's effectively connected income did not generate GILTI. Z has U.S. source income that is not effectively connected income, some of which is New Jersey source income. Q is the member that is required to include the GILTI income for Federal tax purposes because Q is a shareholder of T and Z. X and Y have FDII attributable receipts from sales to non-U.S. customers. Based on the terms of the export contracts and for insurance purposes, the customers take possession at X's and Y's joint New Jersey warehouse before the goods are exported to the customers' respective home countries. P does not have receipts from customers located outside of the U.S. P only has U.S. source income, and does not have FDII or GILTI.

The combined group denominator would not include the GILTI income that Q was required to include in income for Federal purposes, and Q's GILTI income amount would be excluded out of the combined group entire net income because both T's and Z's income/loss is included in the combined group entire net income already, as T and Z are included as members of the combined group on the same New Jersey combined return as Q. T's and Z's receipts that generated the GILTI should be reported net of the I.R.C. § 250(a) GILTI deduction in the group denominator. T's effectively connected income did not generate the GILTI, thus T's New Jersey receipts would not be net of (that is, not reduced by) the I.R.C. § 250(a) GILTI deduction. If Z's U.S. source income generated the

**GILTI, and that income was from New Jersey sources, then Z's numerator should include GILTI net of (that is, reduced by) the I.R.C. § 250(a) GILTI deduction. X's and Y's receipts attributable to the FDII income should be included net of (that is, reduced by) the I.R.C. § 250(a) FDII deduction in the combined group denominator. X's and Y's New Jersey receipts attributable to the FDII income should be included net of (that is, reduced by) the I.R.C. § 250(a) FDII deduction in their respective numerators. P's receipts will be in the combined group denominator and P's New Jersey receipts will be in P's numerator. The full I.R.C. § 250(a) deductions will be allowed to be taken in computing the combined group entire net income.**

**(h) GILTI and FDII Derived from a Combined Group Member's Independent Business Operations. There are instances where a portion of a member's business operations can be independent of the unitary business activity of the combined group. Such member of a combined group must complete Schedule X and report the separate portion of its business operations (and those operations that are not part of another combined group that files a New Jersey combined return). If the income from those operations is GILTI income or FDII income, that income must be reported on Schedule X.**

#### **18:7-5.20 Previously taxed subsidiary dividends received by a taxpayer**

**(a) A taxpayer may exclude previously taxed subsidiary dividends from entire net income in a tax year that:**

**1. The taxpayer receives and includes in entire net income, in the current tax year, dividends from the same subsidiary for which the taxpayer had included, as paid or deemed paid dividends, in entire net income in a previous tax year; and**

**2. The taxpayer filed, and paid, an amount greater than the minimum tax to New Jersey in that previous tax year.**

**(b) A taxpayer must be allowed to exclude from entire net income previously taxed subsidiary dividends upon completing and submitting Schedule PT along with their CBT-100 or BFC-1, as applicable, and providing the Director of the Division of Taxation with adequate documentation of the previously taxed dividend income.**

# Tab 4





# Redline of Division's June 26, 2020 Proposal to October 7, 2021 Proposal

Legend:	
Insertion	
<del>Deletion</del>	
<del>Moved from</del>	
Moved to	
Style change	
Format change	
<del>Moved deletion</del>	

**TREASURY-TAXATION  
DIVISION OF TAXATION**

**Corporation Business Tax Act - Combined Reporting, Net Operating Losses, Tax Returns, and Other Matters**

**Proposed Amendments:** N.J.A.C. ~~18:7-1.17; 18:7-2.1; 18:7-3.6; 18:7-3.23; 18:7-5.2; 18:7-5.11; 18:7-5.12; 18:7-5.13; 18:7-5.15; 18:7-7.6; 18:7-8.3; 18:7-8.7; 18:7-8.8; 18:7-8.12; 18:7-10.1; 18:7-11.12; 18:7-11.15~~  
18:7-1.3, 1.14, 1.16, 1.17, 2.1, 3.4, 3.6, 3.10, 3.13, 3.15, 3.16, 3.23, 5.2, 5.11, 5.12, 5.13, 5.14, 5.15, 7.6, 8.3, 8.7, 8.8, 8.10A, 8.12, 10.1, 11.6, 11.7, 11.8, 11.12, 11.15, 11.17, 11.18, 12.1, 12.2, 12.3, 13.8

**Proposed New Rules:** N.J.A.C. 18:7-1.24; ~~18:7-1.25; 18:7-3.23~~, 1.25, 3.23A; 18:7-3.26; ~~18:7-3.27; 18:7-5.21; 18:7-5.22; 18:7-5.23; 18:7-5.25~~; 3.27, 3.28, 3.29, 5.21, 5.22, 5.23, 11.17A, Subchapter 18:7-21

**Proposed Repeal:** N.J.A.C. 18:7-5.16

Authorized By: John J. Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27 and ~~N.J.S.A.~~ 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN ~~2020~~2021- .

Submit written comments by XX, ~~2020~~2021, to:  
Elizabeth J. Lipari  
Administrative Practice Officer  
Division of Taxation  
~~50 Barraek Street~~  
3 John Fitch Way  
PO Box 269  
Trenton, NJ 08695-0269  
E-mail: [Tax.RuleMakingComments@treas.nj.gov](mailto:Tax.RuleMakingComments@treas.nj.gov)

The agency proposal follows:

## Summary

Pursuant to P.L. 2018, c. 48~~;~~ c. 131; and P.L. ~~2018, c. 131~~2020, c. 118 the Division is proposing amendments and new rules to implement the statutory requirements of the law ~~changes~~. The proposed rules provide new and amended rules for net operating loss deductions and filing combined returns. The proposed rules also make amendments to existing rules ~~related to the federal~~address Federal tax reform measures applicable ~~to~~for tax years beginning on and after January 1, 2017, ~~for~~and to address a reduced dividend exclusion, and provisions of the Internal Revenue Code from which New Jersey has decoupled.

P.L. 2018, c. 48, as amended, clarified, and supplemented by P.L. 2018, c. 131, and P.L. 2020, c. 118, revised the ~~statutory~~law ~~modifying~~regarding the applicability of net operating losses and net operating loss carryovers ~~to occur~~so that the net operating losses and net operating loss carryovers must be taken on a post-allocation basis (~~called post-apportionment net operating losses in other states~~) for privilege periods ending on and after July 31, 2019, (i.e., privilege periods beginning on and after August 1, 2018, for a full-year fiscal taxpayer). The law converts pre-allocation net operating loss carryovers from privilege periods ending before July 31, 2019. P.L. 2020, c. 118 also made further amendments and clarifications that impact net operating losses.

P.L. 2018, c. 48, as amended, clarified, and supplemented by P.L. 2018, c. 131, and P.L. 2020, c. 118, changed the ~~statutory~~ law to require unitary businesses to file a mandatory combined return. The ~~statues~~statutes provide that the water's-edge basis is the default filing method unless the managerial member of the combined group elects one of the other two combined return filing methods. P.L. 2018, c. 48 defined the meaning of a

unitary business in the context of a combined group. P.L. 2020, c. 118 further amended, clarified, corrected, supplemented, and simplified the combined reporting statutes. The unitary business principle and combined reporting both predate the New Jersey Corporation Business Tax Act<sup>5</sup>; however, New Jersey only recently enacted mandatory unitary combined reporting. Combined reporting has been upheld by the Supreme Court of the United States as constitutional in *Barclays Bank PLC v. Franchise Tax Board of California*, 114 S.Ct. 2268 (1994); and *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159 (1983).

P.L. 2018, c. 48, as amended~~, clarified, and supplemented~~ by P.L. 2018, c. 131, ~~also~~ and P.L. 2020, c. 118 permits a unitary business group to elect to include all of their worldwide combined group members. The second elective method, the affiliated group election, permits a combined group to include all ~~of its~~ U.S. domestic affiliates (as defined by statute), rather than having to determine unity for the convenience of the taxpayers.

P.L. 2018, c. 48, decoupled from ~~IRC~~ I.R.C. § 199A for New Jersey purposes and ~~required~~ requires the ~~deductions~~ deduction to be added back in computing entire net income if the deduction was applicable federally.

P.L. 2018, c. 48, decoupled from the deduction and exemption provisions of ~~IRC~~ I.R.C. § 965, disallowing the ~~deductions~~ deduction for New Jersey purposes ~~and requiring them, which requires the deduction~~ to be added back when computing entire net income pursuant to N.J.S.A. 54:10A-6.5. Additionally, P.L. 2018, c. 48<sup>6</sup>, and ~~P.L. 2018~~, c. 131, amended N.J.S.A. 54:10A-4(k)(5) to include the 965(a) deemed paid repatriation dividends as an eligible component of the dividend received exclusion. N.J.S.A. 54:10A-4(k)(5) was also amended to reduce the dividend received exclusion from one

hundred percent (100%) to ninety-five percent (95%) for qualified subsidiaries; to provide for the application of a special allocation formula on the five percent (5%) reduction of the dividend received exclusion for tax years beginning on and after January 1, 2017; through tax years beginning before January 1, 2019; and to provide an additional tiered subsidiary exclusion. Pursuant to 26 C.F.R.P.L. 2020, c. 118 made numerous corrections and simplified N.J.S.A. 54:10A-4(k)(5). P.L. 2020, c. 118 also simplified, phased-out, and subsequently replaced the tiered subsidiary exclusion with a tiered subsidiary dividend tax credit.

P.L. 2020, c. ~~1-965-9(a)-relevant~~ 118 phased-out N.J.S.A. 54:10A-34 so that all banking corporations will file New Jersey corporation business tax returns in the same manner as other corporations, reporting the income from the same year for the privilege period that the taxpayer filed for Federal purposes.

P.L. 2020, c. 118 mandated that taxpayers include their Federal returns and accompanying schedules filed with their Federal returns that the Director determines are necessary, as part of a full and complete New Jersey corporation business tax return.

P.L. 2020, c. 118 amended the due date of the New Jersey corporation business tax return to 30 days after the ~~alignment of privilege periods and combined reporting,~~ ~~although rare, there may be some instances where the deemed repatriation dividends are eligible for the 100% intercompany dividend elimination~~ taxpayer's original due date of the Federal tax return.

P.L. 2021, c. 90 made clear that for New Jersey Corporation Business Tax purposes, New Jersey follows the Federal tax treatment of Federal Paycheck Protection Program loans and the treatment of ordinary business expenses related to the proceeds

thereto.18:7-1.3 is proposed for amendment to make clear that a combined group is a taxpayer for the purpose of the Corporation Business Tax and to cross reference new Subchapter 21 which discusses combined groups and combined reporting in further detail.

18:7-1.14 is proposed for amendment to provide clarity based on the changes phasing out the legacy income reporting methods for banking corporations and the BFC-1 returns pursuant to N.J.S.A. 54:10A-34.1. Additionally, the proposed amendments provide examples of how to report the income in years subsequent to the transition period, and cross references new Subchapter 21 for banking corporations that are members of a combined group.

18:7-1.16 is proposed for amendment to provide clarity for the changes to the standardized return and to cross-reference new Subchapter 21 for financial business corporations that are members of a combined group.

N.J.A.C. 18:7-1.17 is ~~amended~~proposed for amendment to reflect the changes to the corporation business tax, to provide the proper terminology for combined returns and cross ~~reference~~references new Subchapter 21 in relation to casino licensees.

New N.J.A.C. 18:7-1.24 ~~clarifies~~is proposed to clarify that combinable captive insurance companies are not subject to the insurance premiums tax imposed on regular ~~non-combinable~~ captive insurance companies, but are instead subject to the corporation business tax.

New N.J.A.C. 18:7-1.25 is proposed to clarify nexus and P.L. 86-272 in the context of combined reporting and provides several examples.



N.J.A.C. 18:7-2.1 is ~~amended~~proposed for amendment to ~~make clear~~clarify that a combined group is immediately subject to tax if one of the members of the combined group has taxable status (i.e., nexus) in New Jersey.

N.J.A.C. 18:7-3.4 is proposed for amendment to clarify the minimum tax for separate filers and refers taxpayers over to Subchapter 21 for the statutory minimum tax with regards to members of a combined group filing combined returns.

N.J.A.C. 18:7-3.6 is ~~amended~~proposed for amendment to clarify the change to N.J.S.A. 54:10A-5, pursuant to P.L. 2018, c. 48~~;~~ and c. 131 and P.L. ~~2018~~2020, c. ~~131~~118, that for privilege periods ending on and after July 31, 2019 (privilege periods beginning on and after August 1, 2018, for a full-year fiscal taxpayer), the tax rate will be applied to the tax base ~~due to~~resulting from the change from pre-apportionment net operating losses to post apportionment, for both separate and combined returns filers ~~for privilege periods ending on and after July 31, 2019.~~

N.J.A.C. 18:7-3.10 is proposed for amendment to clarify the current return filing requirements.

N.J.A.C. 18:7-3.13 is proposed for amendment for clarity because there are multiple New Jersey corporation business tax returns with a variety of names and identifications depending on the privilege period. Additionally the proposed amendments make clear that a combined group is a taxpayer and provides a cross reference to Subchapter 21 for additional information on combined groups filing New Jersey combined returns.

N.J.A.C. 18:7-3.15 is proposed for amendment for clarity that the regulation applies to all corporation business tax returns, not only the CBT-100.

N.J.A.C. 18:7-3.16 is proposed for amendment for clarity and to provide the proper cross references for both banking corporations and financial business corporations. Additionally the proposed amendments provide a cross reference to Subchapter 21 for banking corporations and financial business corporations in the context of combined reporting.

N.J.A.C. 18:7-3.23 is proposed for amendment to make it clear the rule applies for privilege periods beginning before January 1, 2018, for the New Jersey research and development credit. Furthermore, the proposed amendments ~~make clear~~clarify that the credit was never refundable. Lastly, the proposed amendments make clear that the carryover is fifteen years for specific taxpayers which meet the qualifications of N.J.S.A. 54:10A-5.24b.

New N.J.A.C. 18:7-3.23A is proposed to provide rules governing the New Jersey research and development credit for privilege periods beginning on and after January 1, 2018 and January 1, 2020 respectively. Pursuant to P.L. 2018, c. 48, and P.L. 2020, c. 118, N.J.S.A. 54:10A-5.24 was amended to conform the New Jersey research and development credit to the current ~~federal~~Federal corporate income tax research and development credit. ~~However, the law change did not conform the corporation business tax to~~P.L. 2020, c. 118 added N.J.S.A. 54:10A-5.24(d), which allows the expenses used for the ~~federal~~Federal payroll credit ~~for~~to be used in the calculation of the New Jersey research and development credit. The proposed rule ~~makes clear~~clarifies that the expenses used for the ~~federal~~Federal payroll credit are ~~not~~ permitted for the New Jersey credit. The proposed new rule provides examples for separate return filers and combined

return filers. Lastly, the proposed amendments make clear that the carryover is fifteen years for specific taxpayers which meet the qualifications of N.J.S.A. 54:10A-5.24b.

New N.J.A.C. 18:7-3.26 is proposed to clarify the penalty relief provisions of section 24 of P.L. 2018, c. 48 and section 18 of P.L. 2020, c. 118.

New N.J.A.C. 18:7-3.27 is proposed to clarify that for privilege periods ending on and after July 31, 2019, ~~that~~ which tax rate applies to the current tax base pursuant to amendments to N.J.S.A. 54:10A-5(c) by P.L. 2018, c. 48, P.L. 2019, c. 131, and P.L. 2020, c. 118.

New N.J.A.C. 18:7-3.28 is proposed to codify and provide detail on the tiered subsidiary dividend tax credit of N.J.S.A. 54:10A-5.46. The tax credit is intended to prevent double taxation where a middle-tier subsidiary that files separately from the taxpayer and pays the corporation business tax to New Jersey on dividends from a lower-tier subsidiary, and the middle-tier subsidiary distributes the same dividends up to the taxpayer. The tax credit is a non-refundable tax credit that can reduce a taxpayer's tax liabilities, excluding the surtax, to zero but the unused amounts cannot be carried forward. For the purposes of the credit, the taxpayer can be either a separate return filer or a combined group.

New N.J.S.A. 18:7-3.29 is proposed to clarify aspects of the surtax imposed by N.J.S.A. 54:10A-5.41. Further, the proposed rule details the surtax's application to combined groups for privilege periods ending before July 31, 2020 and on and after July 31, 2020. Pursuant to N.J.S.A. 54:10A-4(z) as amended by P.L. 2020, c. 118, a combined group is treated as one taxpayer for the purposes of the surtax for privilege periods ending on and after July 31, 2020. Thus for periods ending before July 31, 2020, for a

combined group the surtax is applied on an entity-by-entity basis. Lastly, the proposed rules address the exclusion of income derived from N.J.S.A. 54:10A-4(q) utilities that were not exempted from combined reporting by N.J.S.A. 54:10A-4.6(k)(2) for the purposes of the surtax.

N.J.A.C. 18:7-5.2 is proposed for amendment to incorporate the statutory changes pursuant to P.L. 2018, c. 48~~and~~, P.L. 2018, c. 131, and P.L. 2020, c. 118. The proposed amendments also make clarifying changes throughout. Subsection (a)(1)i is ~~amended~~proposed for amendment to delete the word “specific” pursuant to the amendment to N.J.S.A. 54:10A-4(k)(2)(A), which deleted the word “specific” as part of P.L. 2018, c. 48. The result is that taxpayers now must include all income that is exempt for ~~federal~~Federal purposes under any provision of the ~~federal~~ Internal Revenue Code, unless there is an exemption or exclusion elsewhere in the Corporation Business Tax Act pertaining to an item of income. Subsection (a)(1)i is also ~~amended~~proposed for amendment to clarify the treatment of worldwide income pursuant to P.L. 2018, c. 131. Additionally, subsection (a)(1)i is amended to provide clarity on certain tax treaties, and also provides guidance on PPP Loans. Subsection (a)(1)viii is ~~amended~~proposed for amendment to clarify the change from pre-allocation net operating losses to post-allocation net operating losses and to cross reference new section N.J.A.C. 18:7-5.21, which goes into further detail on the new net operating loss calculation. Subsection (a)(1)xx is ~~amended~~proposed for amendment to conform to the ~~federal~~Federal repeal of ~~IRC~~I.R.C. § 199. Thus, in privilege periods beginning on or after January 1, 2018, there is no I.R.C. § 199 deduction to add back or deduct. ~~Subsection~~New subsection (a)(1) xxiii is ~~new-and-codifies~~proposed to codify the disallowance of any

deduction, exemption, or credit allowed under the Internal Revenue Code § 965 pursuant to section 2 of P.L. 2018, c. 48, retroactive to privilege periods beginning on and after January 1, 2017. ~~Subsection~~New subsection (a)(1)xxiv is ~~new and codifies~~proposed to codify the disallowance of the amounts taken as a deduction under § 199A of the Internal Revenue Code (26 U.S.C. §199A) pursuant to N.J.S.A. 54:10A-4(k)(2)(J)(ii).

~~Subsection~~New subsection (a)1 xxv is ~~new and codifies~~proposed to codify N.J.S.A. 54:10A-4(k)(2)(K) while providing a cross reference to a new subsection where the provisions of N.J.S.A. 54:10A-4(k)(2)(K) will be illustrated in further detail. Subsection (a)(2)i is ~~amended~~proposed for amendment to provide for the statutory changes to N.J.S.A. 54:10A-4(k)(5), which reduced the dividend exclusion to **ninety-five percent (95%)** for dividends received from **eighty percent (80%)** or more owned subsidiaries retroactively for privilege periods beginning on and after January 1, 2017, and for all subsequent privilege periods. ~~Subsection~~Additionally, subsection (a)(2)i is ~~additionally-amended~~proposed for amendment to codify the additional exclusion of dividends that a subsidiary received from a lower tier subsidiary pursuant to N.J.S.A. 54:10A-4(k)(5)(C), which allows for the exclusion of the dividends by a taxpayer where the subsidiary included those dividends in its allocated entire net income and paid tax to New Jersey on those dividends **for the applicable periods**. P.L. 2020, c. 118 phased out this tiered subsidiary exclusion and replaced the exclusion with a tax credit. The amendments also **refer taxpayers to rules on the tax credit**. Subsection (a)(2)vii is proposed **for amendment** to add a cross reference to the appropriate section in new ~~subchapter~~Subchapter 21 for combined groups that have an international banking facility. ~~Subsection~~New subsection

(a)(2)ix is ~~new and~~ proposed to clarify the deduction under N.J.S.A. 54:10A-4.15 and cross ~~reference~~references N.J.A.C. 18:7-5.19.

N.J.A.C. 18:7-5.11 is ~~amended~~proposed for amendment to clarify that the provisions of this rule apply to pre-combined reporting years and provides a cross reference to new ~~subchapter~~Subchapter 21, for the privilege periods covered by the combined reporting statutes.

N.J.A.C. 18:7-5.12, ~~N.J.A.C. 18:7-5.13~~5.13, 5.14, and ~~N.J.A.C. 18:7-5.15~~5.15 are ~~amended~~proposed for amendment to reference the transition time from pre-allocation to post-allocation net operating loss application, privilege periods ending prior to July 31, 2019, and privilege periods ending on and after July 31, 2019, pursuant to P.L. 2018, c. 48 and ~~P.L. 2018~~, c. 131, which made the change effective for privilege periods ending on and after July 31, 2019. Further, the ~~proposed~~ amendments add a cross reference to N.J.A.C. 18:7-5.21, which is the new subsection detailing the change to post-apportionment net operating losses. N.J.A.C. 18:7-5.14 is proposed for amendment to make clear the survivability of PNOLs and NOLs in the context of statutory conversions. Furthermore, N.J.A.C. 18:7-5.14 is proposed for amendment to cross reference Subchapter 21 and the treatment of PNOLs and NOLs in the context of combined reporting. Lastly, N.J.A.C. 18:7-5.12, 5.13, 5.14, and 5.15 are proposed for amendment for clarity.

N.J.A.C. 18:7-5.16 is proposed for repeal because it was invalidated by R.O.P. Aviation, Inc. v. Director Division of Taxation, No. 001323-2018, 2021 N.J. Tax LEXIS 8 (N.J. Tax Ct. May 27, 2021).

New N.J.A.C. 18:7-5.21 is proposed to codify the statutory changes implementing the change from pre-allocation net operating losses (and carryovers) for privilege periods ending prior to July 31, 2019, to post-allocation net operating losses (and carryovers) for privilege periods ending on and after July 31, 2019, in conjunction with the changes to N.J.S.A. 54:10A-4(u) through (w) and ~~N.J.S.A.~~ 54:10A-5 that resulted from P.L. 2018, c. 48, c. 131, and P.L. ~~2018~~2020, c. ~~131~~118. The proposed rule also cross references Subchapter 21 to direct taxpayers to additional information on PNOLs and NOLs in a combined reporting context.

New N.J.A.C.18:7-5.22 ~~is proposed to clarify the order of the application for the statutory reduction of New Jersey net operating losses by certain types of discharge of indebtedness income that was excluded from federal taxable income in post-allocation periods.~~

~~————New N.J.A.C.18:7-5.23~~ is proposed to clarify the statutory amendments, which added N.J.S.A. 54:10A-4(k)(2)(K) dealing with the application of Internal Revenue Code § 163(j). The proposed rule also discusses Internal Revenue Code § 163(j) in relation to N.J.S.A. 54:10A-4.6(n).

New N.J.A.C. ~~18:7-5.24~~18:7-5.23 is proposed to clarify that New Jersey generally follows the ~~federal~~Federal stock ownership attribution rules.

N.J.A.C. 18:7-7.6 is proposed for amendment to reference new ~~subchapter~~Subchapter 21 where appropriate.

N.J.A.C. 18:7-8.3 is proposed for amendment to clarify that the rule applies to combined groups that file New Jersey combined returns.



N.J.A.C. 18:7-8.7 is proposed for amendment to reiterate that New Jersey receipts are included in the numerator.

N.J.A.C. 18:7-8.8 is proposed for amendment so that the rule conforms to the ~~law~~ changes in the law that were part of P.L. 2018, c. 48 and P.L. 2018, c. 131, ~~amending~~ which amended N.J.S.A. 54:10A-6 to enact market-based sourcing for New Jersey service receipts.

N.J.A.C. 18:7-8.10A is proposed for amendment to clarify the definition of a place of business for the purposes of market-based sourcing. Additionally, the proposed amendments provide a cross reference to Subchapter 21 and make clear that for transportation companies that meet the qualifications of N.J.S.A. 54:10A-4.7(b) the rules for sourcing for those companies are found in Subchapter 21. Lastly, the proposed amendments clarify that, for trucking companies, the property and payroll portions of the rules are to only be used as guidance for the purposes of determining whether an entity is included in a water's-edge combined return should look to Subchapter 21, as the relevant property and payroll provisions applicable to trucking companies are being re-codified in that Subchapter 21.

N.J.A.C. 18:7-8.12 is proposed for amendment to cross reference N.J.A.C. 18:7-5.19 sourcing rules for ~~IRCL~~R.C. §§ 951A and 250 for GILTI and FDII income.

N.J.A.C. 18:7-10.1 is proposed for amendment to provide rules ~~in relation to~~ for combined groups filing New Jersey combined returns that are similar to the rules for separate return filers, and requires that the requests must be made by the managerial member.

N.J.A.C. 18:7-11.6 is proposed for amendment to provide clarity since there are numerous New Jersey corporation business tax returns with different names and indications for different periods. N.J.A.C. 18:7-11.7 is proposed for amendment to set forth the new due date of the New Jersey corporation business tax returns. Additionally, the amendments add a convenience rule in situations where the original month that the Federal return was due was a 31 day month. Lastly the proposed amendments provide that the corporation business tax returns are due in August for taxpayers with an original June Federal return due date, so that such taxpayers are afforded the same duration of time to file their new Jersey corporation business tax returns as other taxpayers.

N.J.A.C. 18:7-11.8 is proposed for amendment to provide clarity since there are numerous New Jersey corporation business tax returns with different names and identifications. Additionally the proposed amendments provide the updated procedure for filing amended returns since returns are now amended electronically.

N.J.A.C. 18:7-11.12 is proposed for amendment to make the extension periods for New Jersey corporation business tax returns uniform ~~and match the extension period permitted pursuant to 26 U.S.C. §6081 of the Federal Internal Revenue Code~~. The proposed amendments also delete provisions on the accrual of interest that were effective from December 9, 1987, until July 1, 1993, as these ~~remote-year~~ provisions are no longer necessary. The amendments also make several clarifying changes, updates for current procedures, changes in the return names and formats, and corrects the name of the Federal extension form.

N.J.A.C. 18:7-11.15 is proposed for amendment to ~~make clear~~clarify that consolidated returns are not permitted for privilege periods ending before July 31, 2019,

except as otherwise provided for those periods. Additionally, the proposed amendments add a reference to new ~~subchapter~~Subchapter 21 for combined returns.

N.J.A.C. 18:7-11.17 is proposed for amendment to make clear that for privilege periods ending on and after July 31, 2020 the Federal return requirement mandate to include the Federal returns as part of the New Jersey corporation business tax return filing is in N.J.A.C. 18:7-11.17A.

New N.J.A.C. 18:7-11.17A sets forth which Federal returns, forms, extracts and schedules are required to be included as part of a full and complete New Jersey corporation business tax return. Furthermore, the rules set forth that Federal forms, extracts, and schedules, which are not otherwise required, may optionally be included instead of completing CBT schedules that ask for the identical information. Furthermore, the rules provide that the optional Federal forms and schedules that were not included with the return must be provided upon request. Pursuant to N.J.S.A. 54:10A-14(a) as amended by P.L. 2020, c. 118 the Federal return is required as part of a full and complete New Jersey corporation business tax return.

N.J.A.C. 18:7-11.18 is proposed for amendment to provide clarity as to the returns, since there are a variety of New Jersey corporation business tax returns.

N.J.A.C. 18:7-12.1 is proposed for amendment to clarify its applicability to combined returns. Furthermore, the proposed amendments clarify when a short period return is required to be filed by a combined group and/or the members of the combined group.

N.J.A.C. 18:7-12.2 is proposed for amendment to clarify its applicability to combined returns.

N.J.A.C. 18:7-12.3 is proposed for amendment to clarify its applicability to combined returns.

N.J.A.C. 18:7-13.8 is proposed for amendment to provide clarity that it is all New Jersey corporation business tax returns since there are multiple corporation business tax returns in different periods. Additionally the proposed amendments provide clarity as to the current procedures for filing an amended return, since generally amended returns are filed electronically and are no longer filed by mail.

New N.J.A.C. 18:7-21.1 ~~sets~~is proposed to set forth the definitions as defined in N.J.S.A. 54:10A-4 and are as follows: “affiliated group,” ~~“affiliated group election,”~~ “combinable captive insurance company,” “combined group,” “common ownership,” “commonly owned,” “group privilege period,” “managerial member,” “member,” “nontaxable member,” “taxable member,” and “unitary business,” ~~and “worldwide group election”.~~ Additionally, the proposed new rule clarifies different aspects of those definitions and adds examples where relevant.

New N.J.A.C. 18:7-21.2 is proposed to further ~~explains~~explain the concept of unitary business, what factors the ~~Divisions~~Division considers to create a unitary relationship between entities, which tests for unity the Division intends to use, and various other aspects of the unitary business principle. The proposed new rule also sets forth examples.

New N.J.A.C. 18:7-21.3 ~~sets~~is proposed to set forth which business entities are included and which entities are excluded as a member of the New Jersey combined return.

New N.J.A.C. 18:7-21.4 ~~sets~~is proposed to set forth the filing requirements for mandatory combined returns.

New N.J.A.C. 18:7-21.5 ~~sets~~is proposed to set forth the rules for determining the managerial member of the combined group pursuant to N.J.S.A. 54:10A-4.10.

New N.J.A.C. 18:7-21.6 ~~sets~~is proposed to set forth the methods of payment, refunds, filing, and assessments for combined groups filing a combined return.

New N.J.A.C. 18:7-21.7 ~~sets~~is proposed to set forth the determination of the entire net income of the combined group pursuant to N.J.S.A. 54:10A-4.6. Furthermore, the proposed new rule also includes appropriate cross references to other sections. Additionally the proposed rules set forth that the International Financial Reporting Standards (IFRS), which are issued by the International Accounting Standards Board (IASB), qualify as an acceptable method that “reasonably approximates income” if that is the only method of accounting the specific entity used.

New N.J.A.C. 18:7-21.8 ~~sets~~is proposed to set forth the reporting requirements for non-U.S. corporations that are members of a combined group where the non-U.S. corporation did not file a return for ~~federal~~Federal tax purposes. Additionally the proposed rules set forth that the International Financial Reporting Standards (IFRS), which are issued by the International Accounting Standards Board (IASB), qualify as an acceptable method that “reasonably approximates income” if that is the only method of accounting the specific entity used.

New N.J.A.C. 18:7-21.9 ~~sets~~is proposed to set forth other areas where ~~the~~ combined reporting affects other filing requirements.

New N.J.A.C. 18:7-21.10 ~~sets~~is proposed to set forth the ordering of certain provisions of the statutes affecting the computation of taxable net income for members of a combined group.

New N.J.A.C. 18:7-21.11 is proposed to codify the statutory requirements for sharing of net operating losses between taxable members of a combined group filing a combined return.

New N.J.A.C. 18:7-21.12 is proposed to codify the statutory requirements for sharing of tax credits among taxable members of a combined group filing a combined return.

~~Proposed new~~New N.J.A.C. 18:7-21.13 ~~sets~~is proposed to set forth the methods for computing the allocation of receipts of combined members in the combined group pursuant to N.J.S.A. 54:10A-4(h), N.J.S.A. 54:10A-4(z), N.J.S.A. 54:10A-4.7, and ~~N.J.S.A. 54:10A-4.11~~, set forth in P.L. 2018, c. 48, as amended by P.L. 2018, c. 131 and P.L. 2020, c. 118. The proposed new rules mandate the use of the *Joyce Method* for combined groups filing a default water's-edge method or worldwide combined return, and the use of the *Finnigan Method* for affiliated group combined returns. The proposed new rules mandate that combined groups making an affiliate group election shall include the receipts of all of the members in both the numerator and denominator of the receipts factor, regardless of whether the members are subject to tax, if doing business in this state. See N.J.S.A. 54:10A-4.11(c). For combined groups filing a default water's-edge or worldwide combined return, the taxable member shall use the combined group's denominator, and include in its numerator its receipts assignable to New Jersey that have

nexus with the State and lack the protections of P.L. 86-272, and as otherwise set forth in new Subchapter 21 for combined returns.

~~Proposed new~~New N.J.A.C. 18:7-21.14 ~~codifies~~is proposed to codify the statutory requirements of section 21 of P.L. 2018, c. 48 as amended by P.L. 2020, c. 118, converting the outstanding unexpired alternative minimum assessment tax credits of taxpayers that are in a combined group reporting on a New Jersey combined return.

~~Proposed new~~New N.J.A.C. 18:7-21.15 ~~sets~~is proposed to set forth which members are required to be included in the water's-edge combined group default return for filing mandatory combined returns pursuant to N.J.S.A. 54:10A-4.11. Additionally, the proposed rule sets forth the references to ~~more detailed~~sections ~~for that~~ provide greater detail on making the worldwide group election and affiliated group election. Lastly, proposed subsection f recodifies the concept from what was N.J.A.C. 18:7-8.10A(a)3iv(6)ii(1) & (2), using mileage for the purposes of movable property and payroll but for the purposes of whether a business is includable as a member on a water's-edge basis and not for the purposes of sourcing.

~~Proposed new~~New N.J.A.C. 18:7-21.16 ~~sets~~is proposed to set forth the requirements for making a worldwide group combined return election.

~~Proposed new~~New N.J.A.C. 18:7-21.17 ~~sets~~is proposed to set forth the requirements for making an affiliated group combined return election.

~~Proposed new~~New N.J.A.C. 18:7-21.18 ~~codifies~~is proposed to codify the statutory requirements of N.J.S.A. 54:10A-4(k)(16), which allows for a deduction by publicly traded companies and their subsidiaries for the offset of their net deferred tax liability changes due to conforming to the combined reporting requirements.



~~Proposed new~~New N.J.A.C. 18:7-21.19 ~~sets~~is proposed to set forth the minimum tax for each member of a combined group as well as providing that the aggregate sum of the minimum tax of all of the members of the combined group must be reported on the combined return pursuant to P.L. 2018, c. 131 and P.L. 2020, c. 118.

~~Proposed new~~New N.J.A.C. 18:7-21.20 ~~sets~~is proposed to set forth the requirements for the accounting and income reporting methods used when filing combined returns.

~~Proposed new~~New N.J.A.C. 18:7-21.21 ~~sets~~is proposed to set forth the manner in which a New Jersey S corporation may elect to be included in the combined group filing a New Jersey combined return. The proposed new rule also sets forth how a New Jersey S corporation that has elected to be included in a combined return can elect out of the combined return. For New Jersey corporation business tax purposes, a ~~federal~~Federal S corporation that has not elected to be a New Jersey S corporation is still a C corporation for New Jersey purposes and must be included in the combined return.

New N.J.A.C. 18:7-21.22 is proposed to ~~make clear~~clarify that all of the other rules in Chapter ~~18:77~~ will be applicable to the extent that they are not inconsistent with the intent of P.L. 2018, c. 48 and c. 131 and P.L. ~~2018~~2020, c. ~~131~~118.

New N.J.A.C. 18:7-21.23 is proposed to ~~make clear and~~reiterate the Director's ~~power~~authority to include certain taxpayers in a combined return that were not included in the combined group reported on the combined return.

New N.J.A.C. 18:7-21.24 ~~sets~~is proposed to set forth conditions upon which the Director may ~~de-combine, i.e. remove,~~ an entity from a combined group.

New N.J.A.C. 18:7-21.25 is proposed to clarify the combined reporting requirements for banking corporations. Additionally, the proposed new rule sets forth a method by which certain banking corporations can transition to a fiscal reporting basis.

New N.J.A.C. 18:7-21.26 ~~sets~~is proposed to set forth various conditions and scenarios where the Director will designate a managerial member of the combined group.

New N.J.A.C. 18:7-21.27 is proposed to clarify that the ~~federal~~Federal consolidated return rules apply to New Jersey combined returns to the extent that the rules are consistent with the Corporation Business Tax Act. Furthermore, the proposed rules detail the Federal rules in relation to various provisions of the Corporation Business Tax Act, including but not limited to: N.J.S.A. 54:10A-4(u), N.J.S.A. 54:10A-4(v), N.J.S.A. 54:10A-4.6(g), N.J.S.A. 54:10A-4.6(h); N.J.S.A. 54:10A-4.6(m), N.J.S.A. 54:10A-4.6(n), N.J.S.A. 54:10A-4.5(c), N.J.S.A. 54:10A-4(k)(5), N.J.S.A. 54:10A-5, N.J.S.A. 54:10A-4.15.

New N.J.A.C. 18:7-21.28 is proposed to clarify the rules pertaining to combined groups that have receipts derived from the transportation of freight by air or land. N.J.S.A. 54:10A-4.7(b) provides a~~specific~~ sourcing rule for certain specific combined groups, which dictates the use of ton miles if 50 percent (50%) or more of the combined group's entire net income is derived from transportation of freight by air or ground. The proposed new rule provides clarity for combined groups that meet the qualifications of N.J.S.A. 54:10A-4.7(b) and the combined groups that do not meet those qualifications. The proposed new rule further details the interaction of N.J.S.A. 54:10A-4(k)(9) and N.J.S.A. 54:10A-4.7(b) for the purposes of determining whether N.J.S.A. 54:10A-4.7(b) applies. The proposed new rule additionally sets forth its applicability to combined

returns filed on a water's-edge group basis, worldwide group basis, and an affiliated group basis.

New N.J.A.C. 18:7-21.29 is proposed to codify the statutory requirements of N.J.S.A. 54:10A-4.10(h) that requires members of a combined group to notify the Director in writing of a change in the combined group if there is a change in group composition no later than the due date, or, if an extension of time to file has been requested and granted, not later than the extended due date of the combined return for the privilege period in which a change in the combined group occurs. Rather than duplicate this provision in multiple sections. The proposed rule sets forth its applicability to all combined filing methods.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments and new rules will have a positive social impact by clearly setting forth the provisions of P.L. 2018, c. 48, and c. 131 and P.L. 2018-2020, c. 131c. 118.

~~Adoption of the~~The proposed amendments and new rules will benefit the public by ~~providing clarification as to~~clarifying the calculation of entire net income, the calculation of net operating losses, and filing combined returns. In particular, the proposed amendments and new rules will benefit the public by providing guidance ~~on the~~to corporate taxpayers with respect to the new combined return filing and reporting requirements.

## **Economic Impact**

The enactment of P.L. 2018, c. 48 and [c. 131](#) and P.L. ~~2018~~2020, c. ~~131~~118, significantly changed the Corporation Business Tax Act-making. The changes will have a positive impact on the business climate and have a positive net impact on state revenues. The proposed amendments and new rules are designed to reflect the statutory changes and clarify the statutory law. The proposed amendments and new rules eliminate possible confusion for taxpayers and their advisors over their tax obligations and tax filing requirements with New Jersey. The proposed amendments and new rules are intended to offer objective but flexible standards for taxpayers' tax and filing obligations.-  
~~Less confusion and flexible standards generally reflect positively on State revenues~~

## **Federal Standards Statement**

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the proposed amendments and new ~~rule~~rules.

## **Jobs Impact**

The proposed amendments and new rules will have no impact on jobs in New Jersey. The Division does not anticipate an increase or decrease in jobs as a result of the proposed amendments and new ~~rule~~rules.

## **Agriculture Industry Impact**

The proposed amendments and new rules will not have an impact on the agriculture industry.

## **Regulatory Flexibility Analysis**

The proposed amendments and new rules apply to any company, including those which may be considered a small business as defined by the Regulatory Flexibility Act,

N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rules are not expected to impose any changes in reporting, recordkeeping, or other compliance requirements on small businesses outside of what is mandated by the statutory changes. The proposed amendments and new rules are intended to provide clarification as to the tax and reporting obligations of taxpayers in a unitary business group, which generally does not include small businesses. Small businesses may wish to consult with accountants or legal professionals in order to review the proposed amendments and new rules to determine the potential applicability of the changes to their own tax situations.

The mission of the Division of Taxation is to administer the State's tax laws uniformly, equitably, and efficiently to maximize State revenues to support public services and to ensure that voluntary compliance within the taxing statutes is achieved without being an impediment to economic growth. Consistent with its mission, the Division ~~of Taxation~~ reviews its rule proposals with a view of minimizing the impact of its rules on small businesses to the extent possible.

### **Smart Growth Impact**

~~The proposed amendments and new rules would not result in a change in the average cost associated with housing. The proposed amendments and new rules would have no impact on any aspect of housing because the proposed amendments and new rules deal with the corporation business tax.~~

### **Housing Affordability Impact**

The proposed amendments and new rules would not result in a change in the average cost associated with housing. The proposed amendments and new rules would

have no impact on any aspect of housing because the proposed amendments and new rules deal with the corporation business tax.

### **Smart Growth Development Impact**

The proposed amendments and new rules would not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. This is because the proposed amendments and new rules have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposed amendments and new rules deal with the corporation business tax.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Division~~-of Taxation~~ has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the rule proposal is as follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## **SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT**

### **18:7-1.3. Definition of taxpayer**

(a) The term "taxpayer" shall mean any corporation required to report or to pay taxes, interest on penalties under this Act.

(b) Any receiver, referee, trustee, assignee or other fiduciary, or any officer or agent appointed by any court to conduct the business or conserve the assets of any

corporation shall be subject to the tax imposed in the same manner and to the same extent as a corporation.

(c) The term "taxpayer" shall also mean any partnership required or consenting to report or to pay taxes, interest or penalties under this Act, provided that the term does not include a partnership that is listed on a United States national stock exchange.

**(d) The term "taxpayer" shall also mean any combined group filing a New Jersey combined return. See N.J.S.A. 54:10A-4(h); N.J.S.A. 54:10A-4(z); and Subchapter 21 for more information.**

#### 18:7-1.14 Subjectivity of foreign banks and foreign national banks

(a) The following terms, as used in this section, shall have the following meanings:

1. through 3. (No change to text.)

(b) through (c) (No change to text.)

(d) Foreign banks subject to the corporation business tax shall file [Form CBT-100] **the applicable corporation business tax return for the respective privilege period** and pay the applicable tax thereon to the Director of the Division of Taxation.

(e) Foreign national banks subject to the corporation business tax shall file [Form BFC-1] **the applicable corporation business tax return for the respective privilege period** and pay the applicable tax thereon to the Director of the Division of Taxation. **See: N.J.S.A. 54:10A-34.1 and N.J.A.C. 18:7-21.25 for information on**



**transitioning accounting periods and normalizing reporting of income of a banking corporation.**

(f) Examples of bank activity **and income reporting methods (prior to periods completion of filing transitional short period returns required by N.J.S.A. 54:10A-34.1 or N.J.A.C. 18:7-21.25)** in New Jersey include the following:

1. A Pennsylvania state chartered bank reports on the calendar year basis. It began doing business in Pennsylvania in a prior year and it begins doing business in New Jersey on July 1 of Year 1. It is required to file on April 15 of Year 2, its first annual corporation business tax return (CBT-100) and to pay the Year 1 corporation business tax for the short period July 1 of Year 1 to December 31 of Year 1.

Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

2. A national bank that will report on the calendar year basis has its principal office in New Jersey. It begins doing business on July 1 of Year 1. Pursuant to N.J.S.A. 54:10A-34, it is required to file its first annual corporation business tax return (BFC-1) for the Year 2 privilege period with an assessment date of January 1 of Year 2 and to pay a Year 2 corporation business tax on April 15 of Year 2 based on income from July 1 of Year 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

3. A national bank reports on the calendar year basis and has its principal office in Philadelphia. Prior to July 1 of Year 1, it was not doing business anywhere. On that date it began doing business in both Pennsylvania and New Jersey. Pursuant to N.J.S.A. 54:10A-34, it is required to file its first annual corporation business tax

return (BFC-1) for the Year 2 privilege period with an assessment date of January 1 of Year 2 and to pay a Year 2 corporation business tax on April 15 of Year 2, based on income from July 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

4. A national bank that reports on the calendar year basis and has its principal office in Philadelphia began doing business prior to January 1 of Year 1. It begins doing business in New Jersey on July 1 of Year 1. Pursuant to N.J.S.A. 54:10A-34, it is required to file its first annual corporation business tax return (BFC-1) on April 15 of Year 2 for the Year 2 privilege period with an assessment date of January 1 of Year 2, based on its income from July 1 to December 31 of Year 1.

5. A calendar year New Jersey State chartered bank begins doing business on July 1 of Year 1. Pursuant to N.J.S.A. 54:10A-34, it is required to file its first annual corporation business tax return (BFC-1) for the Year 2 privilege period with an assessment date of January 1 of Year 2 and to pay a Year 2 corporation business tax on April 15 of Year 2, based on income from July 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

6. On June 30 of Year 1, a New Jersey State chartered bank merges into another New Jersey State chartered bank. Under N.J.S.A. 54:10A-34(5), the surviving bank's return (BFC-1) for the Year 2 privilege period will be based on its income from January 1 to December 31 of Year 1 and the income of the bank that merged into it from January 1 to June 30 of Year 1.

7. On July 31 of Year 1, a Pennsylvania state chartered bank merges into a New Jersey chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis using a CBT-100 return. The New Jersey State chartered bank will file on April 15 of Year 2, under N.J.S.A. 54:10A-34, a BFC-1 return for the Year 2 privilege period that will be based on its income from January 1 to December 31 of Year 1. In addition, the Pennsylvania state chartered bank will file on November 15 of Year 1, a CBT-100 return for the pre-merger short period covering January 1 to July 31 of Year 1 under N.J.S.A. 54:10A-2, which will be based on its pre-merger Year 1 income.

8. On July 31 of Year 1, a New Jersey State chartered bank merges into a Pennsylvania state chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis. The Pennsylvania state chartered bank's Year 1 CBT-100 return filed April 15 of Year 2 for the Year 1 calendar year will be based on its income from January 1 to December 31 of Year 1. In addition, the New Jersey State chartered bank will file on November 15 of Year 1 under N.J.S.A. 54:10A-2, a Year 1 CBT-100 return reporting its pre-merger Year 1 income. This return will be in addition to the BFC-1 return required to be filed, under N.J.S.A. 54:10A-34, by April 15 of Year 1 by the New Jersey State chartered bank for the Year 1 privilege period that is based on its income from the prior year.

9. On July 1 of Year 1, a national bank headquartered in New Jersey merges into a national bank headquartered in Pennsylvania. Prior to the merger, the New Jersey national bank was only doing business in New Jersey and the Pennsylvania

national bank was only doing business outside of New Jersey. The Pennsylvania national bank reports for Federal tax purposes on the calendar year basis. The Pennsylvania national bank is required to file its first annual corporation business tax return (BFC-1) on April 15 of Year 2 for the Year 2 privilege period with an assessment date of January 1 of Year 2 based on its income from July 1 through December 31 of Year 1 and the income of the New Jersey national bank that merged into it from the short period covering January 1 to June 30 of Year 1.

**g. Examples of bank activity and income reporting methods for period after the completion of filing transitional short period returns required by N.J.S.A. 54:10A-34.1 or N.J.A.C. 18:7-21.25 (for taxpayers that were already filing New Jersey returns) and for taxpayers which subsequently are required to file returns in New Jersey include the following:**

**1. A Pennsylvania state chartered bank reports on the calendar year basis. It began doing business in Pennsylvania in a prior year and it begins doing business in New Jersey on July 1 of Year 1. It is required to file on May 15 (30 days after the April 15<sup>th</sup> federal due date) of Year 2, its first annual corporation business tax return and to pay the Year 1 corporation business tax for the short period July 1 of Year 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.**

**2. A national bank that will report on the calendar year basis has its principal office in New Jersey. It begins doing business on July 1 of Year 1. The national bank is required to file its first annual corporation business tax return for the Year 1 privilege period with an assessment date of January 1 of Year 1**

and to pay a Year 1 corporation business tax on May 15 (30 days after the April 15<sup>th</sup> federal due date) of Year 2 based on income from July 1 of Year 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

3. A national bank reports on the calendar year basis and has its principal office in Philadelphia. Prior to July 1 of Year 1, it was not doing business anywhere. On July 1 of Year 1, it began doing business in both Pennsylvania and New Jersey. The national bank is required to file its first annual corporation business tax return for the Year 1 privilege period and to pay a Year 1 corporation business tax on May 15<sup>th</sup> (30 days after the federal due date of April 15) of Year 2, based on income from July 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

4. A national bank that reports on the fiscal year basis for Federal purposes (ending July 31) and has its principal office in Philadelphia began doing business prior to July 31. It begins doing business in New Jersey on August 1 of Fiscal Year 1. It is required to file its first annual corporation business tax return on December 15 of Year 2 for the Fiscal Year 1 privilege period. Thereafter, it would continue to file returns for a 12-month fiscal year period and pay the annual tax due.

5. A calendar year New Jersey State chartered bank begins doing business on July 1 of Year 1. It is required to file its first annual corporation business tax return for the Year 1 privilege period and to pay a Year 1 corporation business

tax on May 30 (30 days after the federal due date of April 15) of Year 2, based on income from July 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

6. On June 30 of Year 1, a New Jersey State chartered bank merges into another New Jersey State chartered bank. The surviving bank's corporation business tax return for the Year 1 privilege period will be based on its income from January 1 to December 31 of Year 1 and the income of the bank that merged into it from January 1 to June 30 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

7. On July 31 of Year 1, a Pennsylvania state chartered bank merges into a New Jersey chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis. The New Jersey State chartered bank will file on May 15 of Year 2, under for the Year 1 privilege period that will be based on its income from January 1 to December 31 of Year 1. In addition, the Pennsylvania state chartered bank will file a corporation business tax return for the pre-merger short period covering January 1 to July 31 of Year 1 under N.J.S.A. 54:10A-2, which will be based on its pre-merger months of Year 1 reporting the income and tax liabilities for those months.

8. On July 31 of Year 1, a New Jersey State chartered bank merges into a Pennsylvania state chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis. The Pennsylvania state chartered bank's Year 1 corporation business

tax return filed May 15 of Year 2 for the Year 1 calendar year will be based on its income from January 1 to December 31 of Year 1. In addition, the New Jersey State chartered bank will file on November 15 of Year 1 under N.J.S.A. 54:10A-2, a Year 1 corporation business tax return reporting its pre-merger Year 1 income. This return will be in addition to the corporation business tax return required to be filed by May 15 of Year 1 by the New Jersey State chartered bank for its prior annual privilege period.

**h. For banks that are members of a combined group see Subchapter 21 for more information on combined groups and combined reporting.**

#### 18:7-1.16 Financial business corporation; definition

(a) "Financial business corporation" means a corporation that is, in fact, in substantial competition with the business of national banks, and which also employs moneyed capital with the object of making profit by its use as money through any of the following:

1. through 7. (No change to text.)

(b) through (f) (No change to text.)

(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] **the applicable New Jersey corporation business tax return for the respective privilege period** and complete Schedule L apportioning the financial business conducted in New Jersey consistent with N.J.S.A. 54:10A-38.



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) (No change in text.)

(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 and all other entities 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 or entity subject to common effective control 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. (No change in text.)

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. See also (c)4 below.] ~~For mandatory combined returns see~~ See Subchapter 21 for more information on combined groups and combined reporting.. Casino licensees shall file a combined return in order to satisfy the requirements of both the Corporation Business Tax Act and Casino Control Act and shall be taxable members along with their unitary affiliates that are not casino licensees.

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. See also (c)4 below.] Corporations that are not casino licensees, but are under common ownership together with casino licensees are required to be included as members of the mandatory combined return if the non-casino licensee corporations are unitary with the casino licensees. See N.J.A.C. 18:7-21.3.

4. (No change in text.)

(d) through (f) (No change in text.)

#### **18:7-1.24 Certain Insurance Companies Subject to the Corporation Business Tax**

a. Combinable captive insurance companies, as defined in N.J.S.A. 54:10A-4(y), are subject to the corporation business tax. A combinable captive insurance company is exempt from the tax imposed under N.J.S.A. 17:47B-12 and any other insurance premiums taxes imposed under any other laws of the

State of New Jersey. A combinable captive insurance company that has nexus with New Jersey, but is not included as a member of a New Jersey combined return, must file a separate return.

b. Captive insurance companies that do not meet the definition of a combinable captive insurance company are exempt from the corporation business tax and are excluded from the combined group reported on the combined return. Such captive insurance companies are subject to the insurance premiums tax at N.J.S.A. 17:47B-12.

c. For the purposes of determining whether a captive insurance company is a combinable captive insurance company, the entity must use the same method of accounting used for Federal purposes.

#### 18:7-1.25 Nexus, Combined groups, and P.L. 86-272

a. For the purposes of the Corporation Business Tax Act the combined group and the members of the combined group are both taxpayers pursuant to N.J.S.A. 54:10A-4(h) and the combined group is taxed as one taxpayer. A taxpayer that is a member of a combined group can ~~either~~ have nexus with New Jersey by deriving ~~receipts from~~ New Jersey receipts from the unitary business, have nexus pursuant to the other factors giving rise to nexus with New Jersey pursuant to N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.14 as part of a combined group, or have nexus independent of a combined group. Such member will be considered to be a taxable member of the combined group.

b. If, as part of the unitary business of the combined group, one **taxable** member of the combined group either exceeds the protections of P.L. 86-272 or otherwise does not have P.L. 86-272 protection, this one member of the combined group exceeds the protections of P.L. 86-272 on behalf of all of the other members of the combined group, and no member may claim P.L. 86-272 protection. **If the sole activities (which exceed P.L. 86-272 protection) of a taxable member are activities that are independent of the unitary business of the combined group, and none of the unitary business activities of the combined group exceed the protections of P.L. 82-272, that taxable member of the combined group will be taxed based on income (if the tax on income exceeds the taxable member's statutory minimum tax) and the combined group will only owe the aggregate amount of the statutory minimum tax of other the taxable members in addition to that taxable member's amount of tax owed for its income derived from activities independent of the unitary business of the combined group.**

**c. Examples:**

**Example 1: Unitary Combined Group Members with Activities Exceeding P.L. 86-272**

**Companies A and B are unitary combined group members for New Jersey corporation business tax purposes. Company A is physically present in New Jersey and derives service receipts from New Jersey customers as part of the unitary business of the combined group. Company B is not physically present in New Jersey, but derives receipts from the sale of tangible personal property to**

New Jersey customers as part of the unitary business of the combined group. Both companies have New Jersey nexus and are subject to the greater of either the tax on their income or the \$2,000 minimum tax. Company A ~~is~~ does not have P.L. 86-272 ~~immune~~ protection because it has a physical presence in New Jersey and derives service receipts from customers in New Jersey. ~~Therefore,~~ Company A has sufficient nexus to be taxed based on income ~~and~~. Company B cannot claim P.L. 86-272 protection because it is a member of the same combined group as Company A.

#### Example 2: Combined Group Members Selling Goods on Behalf of the Unitary Combined Group

Companies C and D are unitary combined group members for New Jersey corporation business tax purposes. Company C is a ~~New Jersey domestic~~ corporation domiciled in New Jersey. Company D ~~is not physically present~~ has no physical presence in New Jersey but derives New Jersey receipts from the sale of tangible property. Company D sells merchandise to Company C for resale. The merchandise is delivered to Company C and is stored in a warehouse in New Jersey. Company C sells the merchandise as part of the unitary business of the combined group. Both companies have New Jersey nexus, ~~even though Company D's receipts derived from Company C are eliminated in combination.~~

Accordingly, both companies are subject to the greater of either the tax on their income or the \$2,000 minimum tax. Company C is a domestic corporation domiciled in New Jersey, therefore it will be taxed based on income.

Furthermore, Company D cannot claim P.L. 86-272 protection because the

unitary business activities of Company C exceed the protections of P.L. 86-272.

Company D will also be subject to the greater of either the tax on their income or the \$2,000 minimum tax.

~~Example 3: Unitary Combined Group with Service and Other Business Receipts that are not P.L. 86-272 Immune~~

~~Companies L, M, N, O, P, and Q are unitary~~

d. A combined group ~~members for New Jersey corporation business-~~ ~~tax~~ shall be treated, for privilege periods ending on and after July 31, 2020, as one taxpayer for purposes. ~~As part of the unitary business all of the companies are involved in some aspect of the real estate business in New Jersey, except Company P. Company P is a foreign banking corporation that lends to New Jersey customers and the other companies in the unitary combined group for properties located both inside and outside New Jersey. Company P provides discounted mortgages and credit facilities to its unitary combined group members in order to take advantage of economies of scale in acquiring loans from large banks and the Federal Reserve. Company P also provides discounted mortgage rates to third-party customers who use the mortgages to buy a real estate unit from one of the other unitary combined group members. Company M owns malls in New Jersey. Company N charges fees to Company M for management services that it provides for their malls and charges fees for management services to unrelated third-party owned malls. Company L leases office buildings to commercial tenants, some of which are in New Jersey. Company O owns apartment buildings, condominiums, housing developments,~~

~~and mixed-use properties, some of which are located in New Jersey. Company Q provides management services to Company L and Company O~~ paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for a fee. All of the companies in this scenario are subject to the greater of either the tax on their income ~~derived from the \$2,000 minimum tax because all of the members have nexus with New Jersey and do not have P.L. 86-272 immune activities.~~

#### ~~Example 4: Unitary Combined Group Technology Company with Various New Jersey Activities~~

~~Companies R, S, T, U, V, and X are unitary combined group members for New Jersey corporation business tax purposes. As part of the unitary business, all the companies are in the technology business. Company R is domiciled in Massachusetts and charges a fee for research and development it provides for other members of the unitary combined group and for third parties (some of which are located in New Jersey). Company S is domiciled in New Jersey and also performs research and development for the businesses in the unitary combined group. Company T is domiciled in California and derives service receipts from customers in New Jersey. Company T pays Company S and Company R fees for performing research and development. Company U has warehouses in New Jersey and other states, and handles; provided however, with regard to the surtax imposed pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) and for that purpose only, the storage and shipping of tangible personal property that Company V sells to customers in New Jersey. Company V is domiciled in~~

~~Connecticut. In addition to selling to New Jersey customers, Company V makes payments for research and development to Company S and Company R. Company X is domiciled in New Jersey and performs management functions for the unitary combined group. Company X also owns the servers for the entire unitary combined group that reside in buildings located in New Jersey. All of the companies in this scenario are subject to the greater of either the tax on their income or the \$2,000 minimum tax because they have nexus with New Jersey as part of the unitary business of the combined group.~~ portion of income that is attributable to a member which is a public utility exempt from the surtax shall not be included when computing the surtax due by the combined group.

e. For more information on combined groups and combined reporting see Subchapter 21.

## 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 and as also 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.

(c) A combined group shall immediately be subject to the tax if one member of the group is either incorporated in New Jersey or acquires taxable status in New Jersey.

For the purposes of the Corporation Business Tax Act, a combined group is a



**taxpayer pursuant to N.J.S.A. 54:10A-4(h). For more information on combined groups and combined reporting see Subchapter 21.**

### SUBCHAPTER 3. COMPUTATION OF TAX

#### 18:7-3.4 Minimum tax **of separate return filers**

(a) The tax paid in the case of an investment company, a regulated investment company, or real estate investment trust shall not be less than \$ 250.00, provided, however, for calendar year 2002 and thereafter, the minimum tax shall be \$ 500.00, unless the taxpayer is a member of an affiliated group or a controlled group pursuant to I.R.C. § 1504 or 1563, and whose group has total payroll of \$ 5,000,000 or more for the privilege period, the minimum tax shall be \$ 2,000. The minimum tax for other corporations **(filing separate returns)** is set forth in (b) through (d) below.

(b) through (d) (No change in text)

**(f) For information with regards to the statutory minimum tax of taxable members of a combined group filing a New Jersey combined return see Subchapter 21.**

#### 18:7-3.6— Tax rates--corporations, S corporations

(a) Tax rates for C corporations are as follows:

1. Except as may be provided in (a)3 and 4 below, for all fiscal periods beginning on or after January 1, 1980, the net income tax rate is nine percent **(9%)**, for a corporation that is not a New Jersey S corporation.

2. through 4. (No change in text.)

**5. For privilege periods ending on and after July 31, 2019, the tax rates in paragraphs 1 through 4 shall be applied to taxable net income as defined in N.J.S.A. 54:10A-4(w) and the nonoperational income that is specifically assigned to New Jersey.**

**(b) through (c) (No change in text.)**

**d. For privilege periods ending on and after July 31, 2019, for the members of a combined group filing a New Jersey combined return, a tax rate shall be applied to taxable net income as defined in N.J.S.A. 54:10A-4(w) and the nonoperational income that is specifically assigned to New Jersey. The rates shall be based on the taxable net income of the taxpayer according to the following schedule:**

**1) If the taxable net income is more than \$100,000 in a twelve month period, the rate is nine percent (9%);**

**2) If the taxable net income is \$100,000 or less in a twelve month period, the rate is seven and a half percent (7.5%); and**

**3) If the taxable net income is \$50,000 or less in a twelve month period, the rate is six and a half percent (6.5%).**

**See Subchapter 21 for more information on combined groups and combined returns.**

**e. See N.J.A.C. 18:7-3.29 for information on the surtax.**

**f. For privilege periods ending on and after July 31, 2020, a combined group shall be treated as one taxpayer for purposes of subsection (d) for the income derived from the unitary business.**

#### 8:7-3.10 Regulated investment company; tax payable

(a) For the privilege periods beginning before January 1, 2002, the tax payable by a regulated investment company, entitled and electing to report as such, is \$ 250.00.

(b) (No change to text.)

(c) A regulated investment company, as defined in N.J.S.A. 54:10A-4(g), which also qualifies as an investment company, as defined in N.J.S.A. 54:10A-4(f), is not subject to the AMA. Such a company shall annually file [form CBT-100, completing page 1 and Schedule M for regulated investment companies] **the applicable New Jersey corporation business tax return for the respective privilege period**. In addition, a statement should be attached to the taxpayer's return indicating that the regulated investment company qualifies as an investment company.

(d) through (e) (No change to text.)

#### 18:7-3.13 Estimated tax

(a) For any privilege periods beginning on or after January 1, 1985, each taxpayer shall pay its estimated tax in four installments as follows:

1. through 4. (No change in text.)

(b) through (e) (No change in text.)

(f) Any amount overpaid and appearing on the face of the [return CBT-100] **respective New Jersey corporation business tax return** for the immediate preceding year may be applied in lieu of any payment of estimated tax otherwise due under this section where the taxpayer indicates on the face of such return that it elects to have such overpayment so applied. Such amount will be considered to be a payment of the first

installment of the estimated tax for the next succeeding year unless the taxpayer designates otherwise on the face of the return for the year in which the overpayment was made.

(g) The term "taxpayer" as used in this section is defined at N.J.A.C. 18:7-1.3 and includes corporations as defined in N.J.S.A. 54:10A-4(c), **a combined group as defined in N.J.S.A. 54:10A-4(z)**, investment companies, regulated investment companies, real estate investment trusts, financial business corporations, banking corporations and savings institutions. **For more information on combined groups and combined reporting see Subchapter 21.**

(h) (No change to text.)

#### 18:7-3.15 Interest on underpayment of installment payments

(a) N.J.S.A. 54:10A-15.4 imposes an addition to the tax on the amount of the underpayment of any installment of estimated tax by a corporation (with certain exceptions). This addition to the tax is imposed irrespective of any reason for the underpayment. The amount of the underpayment for any installment date is the excess of:

1. The amount of the installment payment which would be required to be paid if all installment payments were equal to 90 percent of the tax shown on the return for the accounting year or, if no return was filed, 90 percent of the tax for that year, over
2. The amount, if any, of the installment paid on or before the last day prescribed for such payment.

(b) (No change to text.)

(c) The rate to be used in (b) above is an annual rate of five percent above the prime rate, compounded daily from the date the tax was originally due and payable until the date of payment. On and after July 1, 1993, the rate is three percent above the prime rate compounded annually. Each such underpayment shall bear interest at the rate prescribed above. The following is an example of underpayment interest computation:

1. Assume the average predominant prime rate for the calendar year is six percent. Therefore, the applicable interest on underpayment pursuant to this subsection is six percent plus three percent or nine percent on the amount of any underpayment of estimated tax due on or after April 1 but before July 1 of the calendar year. The method prescribed for computing the addition to the tax may be illustrated by the following example:

i. A corporation reporting on a calendar year basis estimated on its Statement of Estimated Tax for the calendar year, estimated tax in the amount of \$ 50,000. It made payments of \$ 12,500 each on April 15, June 15, September 15, and December 15 of the calendar year. On April 15 of the following year, it filed its **New Jersey corporation business** tax return, [CBT-100,] showing a total tax of \$ 200,000. Since the amount of each of the four installments paid by the last date prescribed for payment thereof was less than 90 percent of the tax shown on the return, the addition to the tax under this rule is applicable and is computed as follows, assuming that no exception applies:

Item (1)	Tax on return for the current year	\$ 200,000
Item (2)	Ninety percent of item (1)	180,000
Item (3)	Amount of estimated tax required to be paid on each installment date (25 percent of \$ 180,000)	45,000

Item (4)	Deduct amount paid on each installment date	12,500
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Item (5)	Amount of underpayment for each installment	\$ 32,500
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date (item (3) minus item (4))

Item (6)	Interest shall be charged on each underpayment
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at the rate as prescribed in this subsection

First installment: Interest period April 15 of the current year to April 15 of the following year

Second installment: Interest period June 15 of the current year to April 15 of the following year

Third installment: Interest period September 15 of the current year to April 15 of the following year

Fourth installment: Interest period December 15 of the current year to April 15 of the following year

(d) If there has been an underpayment of estimated tax as of the installment date prescribed for its payment and the taxpayer believes that one or more of the exceptions described in (e) below precludes the imposition of the addition to the tax, it should attach to its **New Jersey corporation business** tax return, [CBT-100,] for the taxable year a Form CBT-160 showing the applicability of any exception upon which the taxpayer relied.

(e) (No change to text.)

18:7-3.16 Banking corporations and financial business corporations

N.J.A.C. 18:7-3.13, 3.15, 11.12, and 13.6 apply to banking corporations and financial business corporations. See N.J.S.A. 54:10A-34 [et seq.] **through N.J.S.A. 54:10A-40** (regarding banking corporation **and financial business corporation** [general] **taxability under the Corporation Business Tax Act[.] in general) and Subchapter 21 (for banking corporations and financial business corporations in the context of combined reporting).**

18:7-3.23 Research credit **for privilege periods beginning before January 1, 2018**

(a) [A] **For privilege periods beginning before January 1, 2018**, a taxpayer [shall] **may** be allowed a credit against its corporation business tax liability in an amount equal to 10 percent (10%) of the excess of the qualified research expenses for the fiscal or calendar accounting year over the base amount, and 10 percent (10%) of the basic research payments determined in accordance with I.R.C. § 41 [as] in effect on June 30, 1992, provided that I.R.C. § 41(h) relating to termination of the availability of the credit in 1995 [shall] ~~must~~**does** not apply.

(b) through (x) (No change in text.)

(y) The amount of the tax year credit allowable which cannot be applied for the tax year due to certain limitations may be carried over, if necessary, to the seven accounting years following a credit's tax year[.], **except as provided in N.J.S.A. 54:10A-5.24(b) and N.J.S.A. 54:10A-5.24b (which allows the carryover to be fifteen privilege periods for certain qualifying technology companies (advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology) as defined in N.J.S.A. 54:10A-5.24b(b)).**

(z) (No change in text.)

(aa) N.J.A.C. 18:7-3.23 applies only for privilege periods prior to January 1, 2018. For privilege periods beginning on and after January 1, 2018, the New Jersey research credit must be calculated under N.J.A.C. 18:7-3.23A.

(bb) The New Jersey research credit for privilege periods prior to January 1, 2018 is not refundable because the credit allowed pursuant to I.R.C. § 41, in effect on June 30, 1992, was not refundable.

**18:7-3.23 A New Jersey research credit for privilege periods beginning on and after January 1, 2018**

(a) A taxpayer may be allowed a credit against its corporation business tax liability in an amount equal to ten percent (10%) of the excess of the qualified research expenses for the privilege period over the base amount, and ten percent (10%) of the basic research payments for the privilege period determined in accordance with [Internal Revenue Code \(I.R.C.\) § 41](#). All of the terms, definitions, rules, methods for calculating the credit, and restrictions are the same as the terms, definitions, rules, methods for calculating the credit, and restrictions in I.R.C. § 41 and the applicable regulations promulgated by the U.S. Treasury Department, except as otherwise noted below. ~~Section references are to the Internal Revenue Code (I.R.C.), unless otherwise noted.~~ Amounts paid, incurred, or accrued by the taxpayer for energy research in New Jersey may also qualify as research payments for the New Jersey research credit if the payment qualifies for the Federal corporate income tax credit under I.R.C. § 41.



**(b) Consistent treatment of expenses is required. Notwithstanding whether the period for filing a claim for credit or refund has expired for any tax year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage must be determined on a basis consistent with the determination of qualified research expenses for the credit year.**

**(c) The New Jersey research credit that is available on and after January 1, 2018 is not refundable.**

**(d) Notwithstanding any provision in this section to the contrary, other than calculations made pursuant to (j) below, a credit can be claimed for only those research activities that are performed in New Jersey.**

**(e) The filing of a consolidated tax return by a controlled group of corporations is not permitted for privilege periods ending before July 31, 2019. In calculating the New Jersey research credit, a combined group filing either a mandatory or elective New Jersey combined return, must use the Federal rules for calculating the credit pursuant to I.R.C. § 41(f)(1) and [N.J.S.A. 54:10A-4.6\(n\)](#), provided however, the credit will be calculated based on expenditures in New Jersey by the combined group filing a New Jersey combined return.**

**(f) Any Act of Congress terminating I.R.C. § 41 will not terminate the research credit available for New Jersey corporation business tax purposes.**

**(g) The research credit is allowed for qualified research in New Jersey. The research expenditures must meet the qualifications of both I.R.C. §§ 174 and 41,**

subject to applicable restrictions in the Internal Revenue Code and the New Jersey Corporation Business Tax Act.

(See I.R.C. §§ 41 and 174, and regulations thereunder for other definitions and special rules.)

(h) In calculating the New Jersey **research** credit, a taxpayer is bound by the method for calculating the credit that the taxpayer uses for Federal purposes as reported on their Federal return when taking the credit for Federal tax purposes. If a taxpayer files an amended Federal return changing the method used or to adjust the amount of credit claimed for Federal purposes, the taxpayer must file an amended New Jersey corporation business tax return reflecting such change in method for calculating the credit or the adjustment for the amount of the credit claimed. If the Internal Revenue Service makes adjustments to the amount of qualifying expenses, the taxpayer must also file an amended New Jersey corporation business tax return. Adjustments made for qualifying expenses for the Federal credit will not increase or decrease the New Jersey credit if the expenses are not for research conducted in New Jersey.

(i) Credit for increased research activities must take priority as specified by N.J.S.A. 54:10A-5.24(b). If any amount of property or expenditures is included in the calculation of the research credit, then no such amounts are allowable for the credit as specified by N.J.S.A. 54:10A-5.24(b).

(j) If taxpayer has research **conducted** within and outside New Jersey and cannot determine the amount of New Jersey qualified research expenses for periods beginning on or after January 1, 2018, the taxpayer may calculate the amount of the

New Jersey qualified research expenses to be used for the credit by multiplying the qualified research expenditures everywhere by a three-factor fraction consisting of New Jersey property, payroll, and receipts in the numerator over property, payroll, and receipts everywhere in the denominator.

(1) For a combined group filing either a mandatory or elective New Jersey combined return, where the combined group has research within and outside New Jersey, and cannot determine the amount of New Jersey qualified research expenses for the period, the taxable members of the combined group may calculate the amount of the New Jersey qualified research expenses to be used for the credit by multiplying the qualified research expenditures everywhere by a three-factor fraction consisting of New Jersey property, payroll, and receipts in the numerator over property, payroll, and receipts everywhere in the denominator.

(k) Any Federal deduction under I.R.C. § 174 is the same for New Jersey purposes since there is no New Jersey provision for a separate modified State tax credit amount under such circumstances.

(l) The credit allowable in any given privilege period cannot reduce the tax liability to any amount less than the statutory minimum provided in N.J.S.A.

54:10A-5(e). In the case of a New Jersey combined group, the credit which was shared and used by a member shall be subject to the same limitation.

(m) The amount of the tax year credit allowable that cannot be applied for the tax year due to certain limitations may be carried over, if necessary, to the seven consecutive privilege periods following a credit's tax year, except as provided in N.J.S.A. ~~54:10A-5.24~~**54:10A-5.24(b)** and N.J.S.A. 54:10A-5.24b (which allows the

carryover to be fifteen privilege periods for businesses performing certain types of qualifying research (advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology) as defined in N.J.S.A. 54:10A-5.24b(b)).

(n) Credits allowable must be applied in the order of the tax years in which the credits were earned.

(o) No provision under the Internal Revenue Code making the Federal research and development credit refundable for any Federal tax shall apply for New Jersey corporation business tax purposes.

(p) The provisions under I.R.C. §§ 41(f)(2) and 41(g), and applicable Federal regulations allowing for the flow-through of the credit from a pass-through entity also apply to the New Jersey research credit to the extent that such regulations are consistent with the New Jersey Corporation Business Tax Act.

~~(q) All applicable Federal case law on both I.R.C. §§ 41 and 174 must apply to the extent such case law is consistent with the New Jersey Corporation Business Tax Act.~~

(~~r~~) The Director of the Division of Taxation reserves the right to make adjustments to the New Jersey credit pursuant to N.J.S.A. 54:10A-4(k)(3) and 54:10A-10.

(~~s~~<sup>r</sup>) For purposes of the New Jersey credit, gross receipts for any tax year must be reduced by returns and allowances made during the tax year to the extent such returns and allowances would reduce the gross receipts for purposes of the Federal credit. In the case of a foreign corporation, only gross receipts that are

effectively connected with the conduct of a trade or business within the United States are taken into account.

~~(ts)~~ ~~A taxpayer making~~ For privilege periods beginning on and after January 1, 2020, the portion of qualified research expenses and qualified payments of a taxpayer that is a qualified small business within the meaning of § 41(h)(3) of the Internal Revenue Code (26 U.S.C. s.41) that was disallowed for the § 41(h) tax credit because the taxpayer made an election ~~under I.R.C. §~~ pursuant to §§ 41(h) and 3111(f) of the Internal Revenue Code (26 U.S.C. s.41 and s.3111) to ~~claim~~ take the ~~separate Federal payroll tax~~ 3111(f) credit in ~~I.R.C. § 3111(f) is not~~ lieu of the 41(h) credit, shall be allowed ~~to use~~ for the ~~expenses used to claim the separate Federal payroll tax credit when claiming~~ purposes of calculating the New Jersey research credit, ~~since the expenses used for computing the Federal payroll tax credit are not used for computing the Federal corporate income tax research credit under I.R.C. § 41(a) and applicable regulations~~ provided for by this section.

~~(ut)~~ Examples:

Example 1: A taxpayer performs fifty percent (50%) of their research in New Jersey and fifty percent (50%) in Pennsylvania. Of the expenses that qualify for Federal purposes, only fifty percent (50%) are attributable to research performed in New Jersey and may be used for the purposes of the New Jersey research credit.

Example 2: Companies A, B, C, D, E, and F are members of a combined group. Company A performs research in New Jersey and receives qualified research payments within the meaning of I.R.C. § 41 to conduct research on behalf of the

other combined group members that qualify for the Federal corporate income tax research credit under I.R.C. § 41(a). Company E is located in Maine and also receives qualified research payments from the other members of the combined group that qualify for the Federal corporate income tax research credit under I.R.C. § 41(a). Although the research payments made to both Company A and E qualify for Federal purposes, only the research payments to Company A qualify for the New Jersey research credit. The members of the combined group will be able to share their New Jersey research credit pursuant to N.J.S.A. 54:10A-4.6.

Example 3: Company T is a qualified small business and a start-up company which performs research in New Jersey. For Federal purposes, Company T made an election under I.R.C. § 41(h) for the Federal payroll tax credit in I.R.C. § 3111(f) to use twenty-five percent (25%) of its qualified research expenditures for the Federal payroll credit instead of the Federal corporate income tax research credit. Only seventy-five percent (75%) of the qualified research expenditures may be used for calculating the New Jersey research credit. The other twenty-five ~~(25%)~~ percent (25%) of the qualified research expenditures may be used by Company T for other New Jersey credits (such as the Manufacturing Equipment and Investment Tax Credit, the Angel Investor Credit, the New Jobs Investment Credit, etc.), if applicable, and if Company T otherwise qualifies for the other New Jersey credits.

18:7-3.26 Additional Estimated Payments ~~resulting from~~ Resulting From P.L. 2018, c. 48 and P.L. 2020, c. 118

a. If the retroactive provisions of P.L. 2018, c. 48 result in an additional tax liability for privilege periods beginning on or after January 1, 2017, no penalties or interest shall accrue for underpayment of tax, provided however, the additional payments must be made by either the second next estimated payment subsequent to the enactment of P.L. 2018, c. 48, by December 31, 2018, for privilege periods beginning on or after January 1, 2017, or by the first estimated payment due after January 1, 2019, for privilege periods beginning on or after January 1, 2018.

b. In the first privilege period that a mandatory combined return is due, no penalties or interest shall accrue due to underpayment that may result from the ~~switch~~change from separate returns to mandatory combined returns. Any overpayment by a member of the combined group from the prior privilege period will be credited as an overpayment of the tax owed by the combined group, credited toward future estimated payments by the combined group.

c. For the first privilege period of the taxpayer impacted by the enactment of P.L. 2020, c. 118, where such privilege period began before January 1, 2021, no penalties or interest shall accrue for underpayment of tax due to the provisions of P.L. 2020, c. 118, applying retroactively to privilege periods ending on or after July 31, 2020, that create an additional tax liability due to the provisions of P.L. 2020, c. 118; provided however, the additional estimated payments shall be made by the later of the second next estimated payment subsequent to the enactment of P.L. 2020, c. 118, or the second estimated payment due after January 1, 2021.

**18:7-3.27 Tax Rate for Privilege Periods Ending On and After July 31, 2019**

**a. In computing the tax liability owed pursuant to N.J.S.A. 54:10A-5 for privilege periods ending on and after July 31, 2019, (beginning on and after August 1, 2018, if a full tax year) the tax rate shall be applied against the taxable net income as defined by N.J.S.A 54:10A-4(w) in addition to the non-operational income specifically assigned to New Jersey, and the rates shall be based on the taxable net income of the taxpayer according to the following schedule:**

**1) If the taxable net income is more than \$100,000 in a twelve month period, the rate is nine percent (9%);**

**2) If the taxable net income is \$100,000 or less in a twelve month period, the rate is seven and a half percent (7.5%); and**

**3) If the taxable net income is \$50,000 or less in a twelve month period, the rate is six and a half percent (6.5%).**

**b. A New Jersey S corporation that did not elect to be included as a member of a combined group will compute its tax liability based on a tax rate applied to its taxable net income as defined by N.J.S.A 54:10A-4(w).**

**c. A taxpayer that is a real estate investment trust shall compute its tax liability at a rate applied to four percent (4%) of the taxpayer's taxable net income as defined by N.J.S.A 54:10A-4(w) in addition to the non-operational income specifically assigned to New Jersey.**

**d. A taxpayer that is an investment company shall compute its tax liability at a rate applied to forty percent (40%) of the taxpayer's taxable net income as defined by N.J.S.A 54:10A-4(w) in addition to the non-operational income specifically assigned to New Jersey.**



e. No alternative minimum assessment is owed for privilege periods ending on and after July 31, 2019, (beginning on and after August 1, 2018 if a full tax year).

f. Minimum tax is owed at the applicable minimum tax rates. See N.J.S.A. 54:10A-5(e).

g. ~~AH~~For privilege periods ending on and after July 31, 2019 but ending before July 31, 2020 all members of a combined group filing either a mandatory or elective New Jersey combined return shall ~~pay~~calculate the tax based on the ~~rate~~rates imposed under N.J.S.A. 54:10A-5(c)(1) on an entity-by-entity basis and any New Jersey S corporation electing to be included as a member of the combined group shall be taxed at the same rate as the other members of the combined group. For privilege periods ending on and after July 31, 2020, the combined group as a taxpayer (at the group level) filing either a mandatory or elective return shall calculate the tax based on the rates imposed under N.J.S.A. 54:10A-5(c)(1).

h. ~~AH~~The statutory minimum tax of each taxable ~~members~~member of a combined group filing either a mandatory or elective New Jersey combined return shall ~~each owe a~~be \$2,000 ~~minimum tax~~for the group privilege period. For privilege periods ending on and after July 31, 2020, if the total tax on income of the combined group exceeds the aggregate value of the statutory minimum tax of the taxable members, only the surtax (if any) and the tax on income will be owed by the combined group.

#### 18:7-3.28 Tiered Subsidiary Dividend Pyramid Tax Credit

a. For privilege periods ending on and after July 31, 2020, a taxpayer shall be allowed a credit against the tax imposed by subsection c. of section 5 of P.L.1945, c.162 (C.54:10A-5) to the extent a subsidiary of the taxpayer received dividends and deemed dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends and deemed dividends to the State on a timely filed New Jersey corporation business tax return; provided, however, the taxpayer received those same dividends and deemed dividends from the subsidiary that paid tax to the State.

b. For purposes of this section, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer.

c. For purposes of this section, “paid tax” means the amount that the subsidiary paid to the State or would have paid but for the use of other tax credits, or but for subsections (u) and (v) of section 4 of P.L.1945, c.162 (C.54:10A-4), or, for a combined group filing a combined return, but for subsections g. and h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

d. In order for a taxpayer to qualify for the Tiered Subsidiary Dividend Pyramid Tax Credit the taxpayer must have received the same dividends and deemed dividends from a subsidiary that paid tax to the State. Such subsidiary must have received the same dividends and deemed dividends from other subsidiaries and included those dividends and deemed dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162

(C.54:10A-5) and paid tax on those dividends and deemed dividends to the State on a timely filed New Jersey corporation business tax return.

e. The Tiered Subsidiary Dividend Pyramid Tax Credit is a credit for: 1) dividends and deemed dividends from non-combined group subsidiaries that file separate New Jersey returns and paid the corporation business tax on dividends and deemed dividends from other subsidiaries; and 2) for dividends and deemed dividends from a separate lower-tier combined group that files a New Jersey combined return separate and apart from another combined group and which paid Corporation Business Tax on dividends and deemed dividends from other subsidiaries.

f. A member of a combined group cannot receive a Tiered Subsidiary Dividend Pyramid Tax Credit for taxes paid by another member because the members of a combined group are one taxpayer. However, intercompany dividends and deemed dividends are 100% eliminated between combined group members filing a New Jersey combined return together. For the purposes of the Tiered Subsidiary Dividend Pyramid Tax Credit, a combined group is entitled to the credit from the non-combined group member subsidiaries that filed New Jersey corporation business tax returns and paid the tax on the dividends and deemed dividends regardless of whether it was a separate return subsidiary or another subsidiary combined group (filing a separate New Jersey combined return) so long as those separate subsidiaries received the dividends and deemed dividends from other subsidiaries and included those dividends and deemed dividends in entire net income.

**g. The Tiered Subsidiary Dividend Pyramid Tax Credit can only reduce the regular tax liability of the taxpayer. However, the Tiered Subsidiary Dividend Pyramid Tax Credit cannot exceed the regular tax liability and is not refundable. The Tiered Subsidiary Dividend Pyramid Tax Credit does not contain a provision permitting the credit to be carried forward.**

**(1) The tax credit cannot be used against the surtax.**

**h. The credit allowed by this section shall be claimed on Form 332 on a timely filed New Jersey corporation business tax return.**

**N.J.A.C. 18:7-3.29 The Surtax Imposed Pursuant to N.J.S.A. 54:10A-5.41 for Privilege Periods Beginning on or after January 1, 2018**

**a. In addition to the tax paid by each taxpayer determined pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), each taxpayer shall pay a surtax as follows:**

**(1) For a taxpayer, except as provided in subsection d, that has allocated taxable net income in excess of \$1 million for the privilege periods, beginning on or after January 1, 2018 through December 31, 2023, the surtax imposed shall be 2.5%;**

**b. For purposes of this section,**

**(1) "taxpayer" shall mean any business entity that is subject to tax as provided in the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).**

**(2) "allocated taxable net income" shall mean allocated entire net income for privilege periods ending before July 31, 2019, or taxable net income as defined in**

subsection (w) of section 4 of P.L.1945, c.162 (C.54:10A-4) for privilege periods ending on and after July 31, 2019.

c. The surtax imposed under this section shall be imposed on allocated taxable net income, and shall be due and payable in accordance with section 15 of P.L.1945, c.162 (C.54:10A-15), and the surtax shall be administered pursuant to the provisions of P.L.1945, c.162 (C.54:10A-1 et seq.). Notwithstanding the provisions of any other law to the contrary, no credits shall be allowed against the surtax liability computed under this section except for credits for installment payments, estimated payments made with a request for an extension of time for filing a return, overpayments from prior privilege periods, or the tax credit allowed pursuant to N.J.S.A. 54:10A-5.43.

d. New Jersey S corporations and public utility companies are not subject to the surtax.

e. For the purposes of the surtax only, **deemed repatriation dividends** included in entire net income pursuant to § 965 of the Internal Revenue Code (26 U.S.C. §965) are to be excluded from the allocated taxable net income computation.

f. The surtax does not apply to nonoperational income and non-unitary partnership income.

g. (1) For privilege periods ending on and after July 31, 2019 and ending before July 31, 2020, only the taxable members of the combined group are subject to the surtax. In computing the surtax, the taxable members shall take into account their proportionate share of allocated taxable net income of the combined group

and their allocated taxable net income derived from their activities independent of the combined group.

(2) For privilege periods ending on and after July 31, 2020, a combined group shall be treated as one taxpayer for purposes of subsection (d) of section 5 of P.L.1945, c.162 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for the income derived from the unitary business; provided however, with regard to the surtax imposed pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) and for that purpose only, the portion of income that is attributable to a member which is a public utility exempt from the surtax shall not be included when computing the surtax due.

(3) The combined group must keep accurate books and records in order to do a proper accounting of the income for purposes of the surtax in order to exclude the portion of the income derived from includable public utilities.

h. For all separate return taxpayers that are subject to the surtax when computing the surtax, the taxpayer shall take into account their allocated taxable net income.

## SUBCHAPTER 5. ENTIRE NET INCOME; DEFINITION, COMPONENTS, AND RULES FOR COMPUTING

### 18:7-5.2 Entire net income; how computed

(a) "Taxable income before net operating loss deduction and special deductions," hereinafter referred to as "Federal taxable income", is the starting point in the computation of the entire net income. After determining Federal taxable income, it must be adjusted as follows:

1. Add to Federal taxable income:

i. The amount of any [specific] exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations, where such [specific] exemption or credit has been deducted in computing Federal taxable income.

**a. All income that is exempt under any provision of the ~~federal~~Federal law must be included in the entire net income for New Jersey corporation business tax purposes, unless there is a provision of the Corporation Business Tax Act that exempts or excludes such item of income;**

**b. New Jersey will follow the Federal government's treatment of the related expenses paid with Paycheck Protection Program (PPP) loans and the forgiven loans will be excluded from entire net income.**

**c. While all income tax treaties between the U.S. and foreign nations vary treaty by treaty, the Division of Taxation has reviewed and determined that the following list (although the list is not intended to be all inclusive) of countries with tax treaties do not have a restriction limiting the tax treaty to Federal income tax**

**only and thus the income items excluded under those treaties would not have to be added back: Japan, the United Kingdom, India, Canada, Germany, Belgium, and Mexico;**

ii. All interest income from sources within the United States which has not been included in computing Federal taxable income, including interest on State and Municipal bonds and certain obligations of the United States and its instrumentalities, less interest expense incurred to carry such investments, to the extent such interest expense has not been deducted in computing Federal taxable income;

iii. All dividend income from sources within the United States which has not been included in computing Federal taxable income;

iv. All Federal taxes on or measured by income or profits which were deducted in computing Federal taxable income;

v. All New Jersey franchise taxes paid or accrued under the Corporation Business Tax Act, whether measured by net worth, net income or otherwise, to the extent such taxes were deducted in computing Federal taxable income; and, with respect to accounting years beginning after July 7, 1993, taxes paid or accrued to a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity including, without limitation, the Michigan Single Business Tax and taxes measured in whole or in part by "net taxable capital" to the extent such taxes were deducted in computing Federal taxable income;

vi. All taxes paid or accrued to any foreign country, state, province, territory or subdivision, on or measured by profit or income or business presence or business



activity, to the extent such taxes were deducted in computing Federal taxable income with respect to accounting **years** beginning on or after January 1, 2002;

vii. Taxes paid or accrued with respect to subsidiary dividends should be added back to the extent dividends are excluded from entire net income and such taxes were deducted in computing Federal taxable income;

viii. Net operating losses sustained during any year or period other than that covered by the return, which were deducted in computing Federal taxable income, but a net operating loss deduction shall be allowed to the extent provided by N.J.A.C.

**18:7-5.12 through 5.17 for privilege periods ending before July 31, 2019. For privilege periods ending on and after July 31, 2019, net operating losses are calculated on a post-allocation basis, rather than pre-allocation basis, and are not included in the computation of entire net income. See N.J.A.C. 18:7-5.21.**

ix. For accounting or privilege periods ending on or before January 10, 1996, the amount deducted, in computing Federal taxable income, for interest on indebtedness whether or not evidenced by a written statement. To be added back, such interest must be owed directly or indirectly either to an individual stockholder or members of his or her immediate family who, in the aggregate, own beneficially 10 percent **(10%)** or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder that owns 10 percent **(10%)** or more of the taxpayer's outstanding shares of capital stock. The amount deducted shall be reduced by 10 percent **(10%)** of the amount so deducted or \$ 1,000, whichever is larger. Thus, if the amount of such interest is \$ 1,000 or less, then none of said amount need be added back. However, there shall be allowed as a deduction:

(1) Any part of a deduction for interest on written evidence of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization to persons who prior to such reorganization were bona fide creditors of the taxpayer or any predecessor corporation, but were not stockholders thereof; and

(2) Any part of a deduction for interest that relates to financing of motor vehicle inventory held for sale to customers, provided that the underlying indebtedness is owing to a taxpayer customarily and routinely providing this type of financing. The portion of such interest which may be deducted is limited to interest on indebtedness relating to floor-planning of motor vehicles evidenced by a trust receipt or similar document and is also limited to interest on unsold inventory items. The interest must be paid or accrued directly to a creditor which is a taxpayer under the act and not indirectly to any related entity. That taxpayer, or a corporation which is a parent or subsidiary of that taxpayer must be the manufacturer or the motor vehicles financed; and

(3) Any deduction for interest that relates to debt of a "financial business corporation" owed to an affiliate corporation but only where the interest rate does not exceed two percentage points over a prime rate to be determined by the Commissioner of Banking. Interest paid or accrued to such an affiliate is an unrestricted deduction only when a corporation is a financial business corporation as determined at N.J.A.C.

18:7-1.16. A debt is owed to an "affiliate" corporation when it is [owing] **owed** directly or indirectly to holders of ten percent **(10%)** or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes. The deduction may not be claimed on the Corporation Business Tax Return, Form CBT-100. Any corporation that is a financial business corporation must file the 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; and

(4) Any part of a deduction for interest that related to debt of a banking corporation owing directly to a bank holding company as defined in 12 U.S.C. § 1841 of which the banking corporation is a subsidiary. The allowable deduction for interest is limited to interest paid or accrued directly by the subsidiary to its bank holding company parent notwithstanding that related indebtedness may be excluded from net worth where it is indirectly owing to such bank holding company.

x. Recoveries with respect to war losses, regardless of whether such war losses were deducted in any return previously made for the purpose of computing the New Jersey Corporation Business Tax;

xi. All income from sources outside the United States which has not been included in computing Federal taxable income less all allowable deductions to the extent that such allowable deductions were not taken into account in computing Federal taxable income;

xii. In any year or short period which ends after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any depreciation or cost recovery (ACRS or MACRS) which was deducted in arriving at Federal taxable income and which was determined in accordance with I.R.C. § 168 in effect after December 31, 1980. See (a)2iv below for depreciation allowable in computing entire net income.

xiii. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar

accounting years beginning on or after July 7, 1993, any interest, amortization or transactional costs, rent, or any other deduction which was claimed in arriving at Federal taxable income as a result of a "safe harbor leasing" election made under I.R.C. § 168(f)8; provided, however, that for a fiscal year or short period which begins in 1981 and ends in 1982, any such amount which relates to property placed in service during that part of the return year that occurs in 1981 shall be allowed as a deduction in arriving at entire income for that year only; and provided further that any such amount with respect to a qualified mass commuting vehicle pursuant to I.R.C. § 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be allowed in any event.

(1) Where the "user/lessee" of qualified lease property which is precluded from claiming a deduction for rent under this rule would have been entitled to cost recovery on property which is subject to such "safe harbor lease" election in the absence of that election, it may claim depreciation on that property under the provisions of (a)2iv and v below. See (a)2vi below for the treatment to be accorded related income on such "safe harbor lease" transactions.

xiv. All income, from whatever sources derived not included in computing Federal taxable income and not otherwise required to be added back under (a)1i through ix above, less all allowable deductions attributable thereto, to the extent that those allowable deductions were not taken into account in computing Federal taxable income.

xv. The amount deducted from Federal taxable income for any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for violation of a State or Federal environmental law, an administrative consent order, or an environmental ordinance or

resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this subsection shall not apply to a penalty or fine assessed or collected for a violation of a State or Federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

xvi. The amount deducted from Federal taxable income of treble damages paid to the Department of Environmental Protection and Energy (Department) pursuant to subsection a of section 7 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11f) for costs incurred by the Department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the Department to remove, or arrange for the removal of, the discharge.

xvii. Any deduction for research and experimental expenditures to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to N.J.S.A. 54:10A-5.24 unless those research and experimental expenditures are also used to compute a Federal credit claimed pursuant to I.R.C. § 41;

xviii. Interest paid, accrued, or incurred to a related member except as may be permitted pursuant to N.J.A.C. 18:7-5.18;

xix. Interest expenses and costs and intangible expenses and costs directly or indirectly paid accrued or incurred in connection with a transaction with one or more related members, except as may be permitted pursuant to N.J.A.C. 18:7-5.18;

xx. For privilege periods beginning after December 31, 2004, **but before January 1, 2018**, amounts deducted for Federal tax purposes pursuant to I.R.C. § 199, except that this provision shall not apply to amounts deducted pursuant to that section that are exclusively based upon domestic production gross receipts of the taxpayer which are derived only from any lease, rental, license, sale, exchange, or other disposition of qualifying production property which the taxpayer demonstrates to the satisfaction of the Director was manufactured or produced by the taxpayer in whole or in significant part within the United States but not qualified production property that was grown or extracted by the taxpayer. "Manufactured or produced," as used in this paragraph, shall be limited to performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition, or character different from that in which they were acquired. The change in form, composition, or character shall be a substantial change, and result in a transformation of property into a different or substantially more usable product. For example, expenses to be added back include, but are not limited to, expenses that are applicable to or pertain to production property grown or extracted; from food processing (but not retail food sales); from software development; from filmmaking and sound recordings; from the production of electricity, natural gas, and potable water; from construction activities; and from engineering or architectural services;

xxi. For property placed in service on or after January 1, 2004, the amounts claimed as cost expense pursuant to I.R.C. § 179 that are in excess of \$ 25,000; [and]

xxii. For privilege periods beginning after December 31, 2008, and before January 1, 2011, the amount of discharge of indebtedness income excluded for Federal income tax purposes pursuant to I.R.C. § 108(i); [and]

**xxiii. For privilege periods beginning on and after January 1, 2017, any deduction, exemption, or credit allowed under the Internal Revenue Code for income reported pursuant to § 965 of the Internal Revenue Code (26 U.S.C. §965);**

**xxiv. For privilege periods beginning after December 31, 2017, the amounts taken as a deduction pursuant to § 199A of the Internal Revenue Code (26 U.S.C. §199A); and**

**xxv. For privilege periods beginning after December 31, 2017, see N.J.A.C. ~~18:7-5.23~~18:7-5.22 for more information on the interest deduction limitation in subsection (j) of § 163 of the Internal Revenue Code (26 U.S.C. §163); and.**

2. Deduct from Federal taxable income:

i. **For privilege periods ending on or before December 31, 2016,** 100 percent **(100%)** of all dividends or [amounts] deemed dividends for Federal purposes included in Federal taxable income which were received from subsidiaries meeting the definition of a subsidiary [under] **having the requisite degree of ownership of investment as described in** N.J.S.A. 54:10A-4(d) and 100 percent **(100%)** of all dividends from those subsidiaries which were added to Federal taxable income in accordance with (a)1 above.  
**For privilege periods beginning on or after January 1, 2017, ninety-five percent (95%) of all dividends or deemed dividends for Federal purposes included in**

**Federal taxable income which were received from subsidiaries meeting the definition of a subsidiary underin N.J.S.A. 54:10A-4(d) and ninety-five percent (95%) of all dividends from those subsidiaries which were added to Federal taxable income in accordance with (a)1 above;**

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under I.R.C. § 856, and N.J.S.A. 54:10A-4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2i above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

(2) For privilege periods beginning on or after January 1, 2017, dividends received from a subsidiary, to the extent to which the subsidiary had received the same dividends from other subsidiaries, and the subsidiary included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and paid tax to New Jersey on those dividends. The taxpayer shall exclude from entire net income those dividends received from the subsidiary which the subsidiary paid tax on, to New Jersey, based on the subsidiary's allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). This subparagraph shall not apply to privilege periods ending on and after July 31, 2019.

(3) For privilege periods ending on and after July 31, 2019 but before July 31, 2020, to the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on



those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income.

(4) For privilege periods ending on and after July 31, 2020, for the treatment of tiered subsidiary dividends received from subsidiaries that file a return separate and apart from the taxpayer. See: N.J.A.C. 18:7-3.28.

(5) For privilege periods ending on and after July 31, 2020, for purposes of N.J.S.A. 54:10A-4(k)(5), the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group pursuant to N.J.S.A. 54:10A-4(k)(5)(E).

ii. Fifty percent (**50%**) of all dividends or amounts deemed dividends for Federal purposes included in Federal taxable income or added to Federal taxable income in accordance with (a) above if received from 50 to less than 80 percent (**80%**) owned subsidiaries. Dividends received from a regulated investment company that are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for [Internal Revenue] **Federal** purposes are not eligible for deduction or exclusion from entire net income under this subsection.

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under I.R.C. § 856, and N.J.S.A. 54:10-A4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2ii above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

(2) For privilege periods beginning on or after January 1, 2017, dividends received from a subsidiary to the extent which the subsidiary had received the same dividends from other subsidiaries, the subsidiary included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and paid tax on those dividends. The taxpayer shall exclude from entire net income those dividends received from the subsidiary that the subsidiary paid tax on, to New Jersey, based on the subsidiary's allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). This subparagraph shall not apply to privilege periods ending on and after July 31, 2019.

(3) For privilege periods ending on and after July 31, 2019 but before July 31, 2020, to the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income.

(4) For privilege periods ending on and after July 31, 2020, for the treatment of tiered subsidiary dividends received from subsidiaries that file a return separate and apart from the taxpayer. See: N.J.A.C. 18:7-3.28.

(5) For privilege periods ending on and after July 31, 2020, for purposes of N.J.S.A. 54:10A-4(k)(5), the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer with regard to dividends and

**deemed dividends that were received as part of the unitary business of the combined group.**

iii. Depreciation on property placed in service after 1980 but prior to taxpayer fiscal or calendar accounting years beginning on and after July 7, 1993, on which ACRS or MACRS has been disallowed under (a)1xii above using any method, life and salvage value which would have been allowable under the Internal Revenue Code at December 31, 1980. A method, once adopted, must be used for all succeeding years for purposes of computing depreciation on that particular recovery property, except only that a taxpayer may make a change in method which would not have required the consent of the Commissioner of Internal Revenue. Personal property placed in service during any year after 1980 must be treated using the half year convention by claiming a half year of depreciation in the year that property is placed in service. No depreciation is allowable in the year of disposal. Aggregate depreciation claimed under this paragraph for all years is limited to the basis for depreciation under the Internal Revenue Code at the date the property is placed in service less whatever salvage value would have been required to be considered under the Internal Revenue Code at December 31, 1980;

iv. In any privilege period or taxable year beginning on or after January 1, 2002, with respect to property acquired on or after September 10, 2001, any depreciation that was deducted in arriving at Federal taxable income and that was determined in accordance with I.R.C. §§ 168(k) and 1400L. Assets acquired before September 10, 2001, for which such depreciation was taken will continue for the entire life of the asset to follow Federal depreciation. Assets acquired in periods beginning before September

10, 2001, will continue to follow Federal depreciation even if the asset itself was acquired after September 10, 2001, but during such fiscal year. Upon early retirement a basis adjustment will be required to equalize Federal and State basis.

Example: Federal bonus depreciation with respect to an asset acquired February 1, 2002, by a corporation that is a calendar year corporation will be disallowed for the corporation when filing its Form CBT-100 for 2002.

v. Gain or loss on property sold or exchanged is to be determined with reference to the amount properly to be recognized in determination of Federal taxable income. However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the Internal Revenue Code, the transferor of the property shall take as a deduction any excess or shall restore as an item of income any deficiency of depreciation disallowed under (a)1xii above over related depreciation claimed on that property under (a)2iv above. A statutory merger or consolidation shall not constitute a disposal of recovery property.

vi. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any item of income included in arriving at Federal taxable income solely as a result of a "safe harbor leasing" election made under I.R.C. § 168(f)(8); provided, however, that for the accounting period which begins in 1981 and ends in 1982, such income which relates to property placed in service during 1981 is not to be excluded; and provided, further, that any such income which relates to a qualified mass commuting vehicle pursuant to I.R.C. § 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be included in entire net income in any event.

(1) Where income relating to such safe harbor leasing election would have been included in Federal taxable income whether or not the election is made, no exclusion is permitted.

Example: A corporation which finances the acquisition of machinery and equipment is not permitted to exclude interest income merely because it is one of the parties to a "safe harbor lease" whereby it agreed that all parties to the transaction characterize it as a lease for Federal income tax purposes.

(2) For treatment of deductions relating to such "safe harbor lease" transactions, see (a)1xi above.

vii. Any banking corporation which is operating an international banking facility (IBF) as part of its business may exclude the eligible net income of the IBF, as herein described, from its entire net income, as follows:

(1) Any deductions under this subsection can only be claimed to the extent that they are not deductible in determining Federal taxable income, or not deductible under N.J.S.A. 54:10A-4(k)(1) through (3).

(2) The eligible net income of an IBF is the amount of income remaining after subtracting the applicable expenses, as defined by (a)2vii(4) below.

(3) Eligible gross income is the gross income derived from an IBF. This will include gross income derived from the following:

(A) Making, arranging for, placing or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled, by one or more domestic

corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States;

(B) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities; or

(C) Entering into foreign exchange or hedging transactions relating to any transactions under (a)2vii(3)(A) and (B) above or (D) below.

(D) Any other activities which an IBF may be, at any time, authorized to engage in by Federal or state law, the Board of Governors of the Federal Reserve, the Comptroller of the Currency, the New Jersey Banking Commission, or any other authority.

(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.

**(5) For the international banking facility and combined groups, see N.J.A.C. 18:7-21.25.**

viii. For privilege periods beginning on or after January 1, 2014, and before January 1, 2019, the amount of discharge of indebtedness income included for Federal income tax purposes, pursuant to I.R.C. § 108(i)).

**ix. For privilege periods beginning on and after January 1, 2018, a taxpayer is allowed as a deduction the amount of the full value of the deduction that the taxpayer was allowed for Federal income tax purposes and for which the taxpayer had taken for Federal income tax purposes pursuant to § 250 of the ~~federal~~ Internal**

**Revenue Code (26 U.S.C. §250). See N.J.S.A. 54:10A-4.15 and N.J.A.C. 18:7-5.19 for more information.**

18:7-5.11 Right of Director to require consolidated/**combined** filing, and certain disclosures

(a) The entire net income of a taxpayer exercising its franchise in this State that is a member of an affiliated group or a controlled group pursuant to I.R.C. § 1504 or 1563 shall be determined by eliminating all payments to, or charges by other members of the affiliated or controlled group in excess of fair compensation in all inter-group transactions of any kind.

(b) Notwithstanding the elimination of all inter-group transactions in excess of fair compensation, if the taxpayer cannot demonstrate by clear and convincing evidence that a report by a taxpayer discloses the true earnings of the taxpayer on its business carried on in this State, the Director may, at the Director's discretion, require the taxpayer to file a consolidated return of the entire operations of the affiliated group or controlled group, including its own operations or income to the extent permitted under the Constitution and statutes of the United States. The Director shall determine the true amount of entire net income earned by the taxpayer in this State.

(c) The consolidated entire net income of the taxpayer and of the other members of its affiliated group or controlled group shall be allocated to this State by use of the applicable allocation formula that the Director requires pursuant to N.J.S.A. 54:10A-1 et seq. to be used by the taxpayer. The return shall include in the allocation formula the property, payrolls, and sales of all corporations for which the return is made. The

Director may require a consolidated return without regard to whether the other members of the affiliated or controlled group, other than the taxpayer, are or are not exercising their franchises in this State.

(d) A consolidated return required by this rule shall be filed within 60 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq.

(e) The member of an affiliated group or controlled group shall incorporate in its return required under this rule information needed to determine its taxable entire net income, and shall furnish any additional information the Director requires within 30 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq.

(f) Each taxpayer that files a return and is a member of an affiliated or a consolidated group pursuant to I.R.C. § 1504 or 1563, shall within 90 days of notice of a request of the Director disclose in its return for the privilege period the amount of all inter-member costs or expenses, including, but not limited to, management fees, rents, and other services, for the privilege period.

(g) If the taxpayer acquires products or services from another member of its affiliated or controlled group, which it resells or otherwise uses to generate revenue or expense, the taxpayer shall within 90 days of a request from the Director, disclose by computerized spread sheet or other form as specified by the Director the amount of revenue or expense generated from those products or services including, but not limited to, management fees, rents, and other services. A failure to file such disclosure constitutes the filing an incomplete tax return, subject to the penalties of the State



Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., including, without limitation, N.J.S.A. 54:49-4 and 54:52-8.

**(h) Subsections (a) through (g) shall not apply to members of a combined group reported on the same New Jersey combined return. See Subchapter 21 for more information on combined groups and combined reporting.**

**(i) For privilege periods ending on and after July 31, 2019, ~~the~~ subsections (a) through (g) shall apply to taxpayers that are not included together as members of a combined group reported on the same New Jersey combined return; ~~provided, however, instead of a consolidated return, the taxpayers shall file a~~. See Subchapter 21 for more information on combined ~~return~~ groups and combined reporting.**

#### 18:7-5.12 Net Operating loss deduction

**[A] For privilege periods ending before July 31, 2019, a taxpayer may deduct a New Jersey net operating loss carryover as defined in N.J.A.C. 18:7-5.13 in computing its entire net income before exclusions and before the net operating loss deduction. For privilege periods ending on and after July 31, 2019, net operating loss deductions will be determined pursuant to N.J.A.C. 18:7-5.21.**

#### 18:7-5.13 New Jersey net operating loss carryover

**(a) [A] For privilege periods ending before July 31, 2019, a New Jersey net operating loss as defined in N.J.A.C. 18:7-5.15 for any [taxable year] **privilege period** ending after June 30, 1984, becomes a net operating loss carryover. The net operating loss carryover is carried to each of the succeeding [taxable years] **privilege periods** and**

is reduced in each such succeeding [year] **privilege period** by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven ~~years~~ [year] **privilege periods** following the [year] **privilege period** of the loss, taking into account the normal or extended due date for filing the return for the seventh [year] **privilege period** succeeding the [year] **privilege period** of the loss. The net operating loss carryover may not be carried back to any [year] **privilege period** preceding the [year] **privilege period** of the loss. For this purpose, [taxable year] **privilege period** shall mean the accounting period covered by the taxpayer's return. In no event may a net operating loss carryover be used for a net operating loss deduction on the eighth return succeeding the loss [year] **privilege period**. Notwithstanding the foregoing, a net operating loss for any privilege period ending after June 30, 2009, shall be permitted as a net operating loss carryover to each of the 20-privilege periods following the privilege period of the loss.

(b) ~~Through~~ through (d) (No change in text.)

(e) For privilege periods ending on and after July 31, 2019, see N.J.A.C.

#### **18:7-5.21.**

#### **18:7-5.14 Limitations to the right of a net operating loss carryover**

(a) The net operating loss carryover automatically becomes zero when the cumulative effect of all [its] **the corporation's** capital stock redemptions and sales after June 30, 1984, is a 50 percentage point change in the ownership of its voting stock and the corporation changes from the business giving rise to the loss. For this purpose, the exchange of stock is a sale. Further, solely for this purpose and no other purpose in the

Act, a business is defined in terms of the economic factors of production. The sequence in change of ownership and change in the business and the taxability of an exchange for Federal income tax purposes are irrelevant. The economic substance of the transaction is, however, paramount and may indicate forfeiture of a net operating loss carryover.

(b) though (c) (No change in text.)

**(d) Subsections a through c do not apply to combined returns and combined groups. See N.J.S.A. 54:10A-4.5 and Subchapter 21 for more information on PNOLs and NOLs in the context of combined reporting and combined groups.**

**(f) Subsections a through c do not apply to statutory conversions where under the business formation laws of the state the business entity was formed in, the business entity merely changes form while remaining the same entity taxed as a corporation for Federal and New Jersey corporation business tax purposes. For example: where a C corporation merely changes form to a limited liability company via statutory conversion pursuant to the laws of this State or another state, and remains taxed as a C corporation, the PNOLS and NOLs will survive since the business entity is the same business entity which originally generated the PNOLS and NOLS.**

#### 18:7-5.15 Net operating loss

(a) A net operating loss is the excess of allowable deductions over gross income used in computing entire net income. **For privilege periods ending on and after July 31, 2019, see N.J.A.C. 18:7-5.21.**

(b) Neither a net operating loss deduction nor any [exclusions] **exclusion** from entire net income are **an** allowable [deductions] **deduction** in computing a net operating loss.

(c) There is no net operating loss for any year that a [Corporation Business Tax Return (CBT-100)] **New Jersey corporation business tax return** is not filed or if filed does not report entire net income as a negative amount.

#### 18:7-5.16.[Effect of audit adjustments

An audit adjustment to entire net income shall serve to revise the amount of any net operating loss for the year of the change and the net operating loss carryover to which it relates.]

#### 18:7-5.21 Net Operating Losses for privilege periods ending on and after July 31, 2019

a. For privilege periods ending on and after July 31, 2019, unused unexpired net operating losses incurred in a privilege period ending prior to July 31, 2019, are converted to a post-allocation basis (prior net operating loss conversion carryovers) pursuant to N.J.S.A. 54:10A-4(u). Net operating losses incurred in a privilege period ending prior to July 31, 2019 are converted from ~~a~~ pre-allocation net operating losses to prior net operating loss conversion carryovers as follows:

(1) Terms used in calculating the prior net operating loss conversion carryover:

"Base year" means the last privilege period ending prior to July 31, 2019.

"Base year BAF" means the taxpayer's business allocation factor as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period ending prior to July 31, 2019.

i. ~~This~~ **The Base year BAF** is the allocation factor reported on the taxpayer's Schedule J of their ~~CBT-100, BFC-1, or CBT-100S, respectively~~ **respective New Jersey corporation business tax return.**

"UNOL" means the unabsorbed portion of net operating loss as calculated under N.J.S.A. 54:10A-4(k)(6) as was in effect for the last privilege period ending prior to July 31, 2019, that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year subject to the limitations for deduction under ~~such~~ **this** subsection, including any net operating loss sustained by the taxpayer during the base year.

iii. ~~This~~ **The UNOL** is the amount reported on Form 500.

(2) The prior net operating loss conversion carryover shall be calculated as follows:

(A) The taxpayer shall first calculate the tax value of its UNOL for the base year and for each preceding privilege period for which there is a UNOL. The value of the UNOL for each privilege period is equal to the product of (1) the amount of the taxpayer's UNOL for a privilege period, and (2) the taxpayer's base year BAF. This result shall equal the taxpayer's prior net operating loss conversion carryover.

**(B) The taxpayer shall continue to carry over its prior net operating loss conversion carryover to offset its allocated entire net income as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on and after July 31, 2019. Such carryover periods shall not exceed the twenty privilege periods following the privilege period of the initial loss. The entire amount of the prior net operating loss conversion carryover for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the prior net operating loss conversion carryover which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the prior net operating loss conversion carryover over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of N.J.S.A. 54:10A-4(k) allocated to this State.**

**(C) The prior net operating loss conversion carryover computed under this subsection shall be applied against the entire net income allocated to this State before the net operating loss carryover computed under ~~subsection (v) of~~ N.J.S.A. 54:10A-4(v).**

**(3) In calculating the prior net operating loss conversion carryovers, taxpayers must complete Worksheet 500-P (Form 500U-P in the case of combined group members). Taxpayers must retain a copy of Worksheet 500-P (Form 500U-P) in their books and records for inspection.**

**(4) The limitations provided for in N.J.S.A. 54:10A-4(k)(6)(D) and N.J.S.A. 54:10A-4(k)(6) (F) shall apply to the prior net operating loss conversion carryovers.**

(5) Extension of net operating loss carryovers generated pursuant to N.J.S.A. 54:10A-4.3. All unused unexpired net operating loss carryovers that were unexpired after July 31, 2019, and that were converted to prior net operating loss conversion carryovers have an additional ~~5-years-year~~ carryover period, in addition to the original 15-year carryover period under N.J.S.A. 54:10A-4.3.

b. For the purposes of the net operating loss deduction calculation under N.J.S.A. 54:10A-4(v), a net operating loss deduction is the amount allowed as a deduction for the net operating loss carryover to the privilege period, and is calculated as follows:

(1) Net operating loss carryover. A net operating loss for any privilege period ending on or after July 31, 2019, shall be a net operating loss carryover to each of the 20 privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of N.J.S.A. 54:10A-4(k) allocated to this State.

(2) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income, without ~~regard to any~~ net operating loss ~~carryover~~ deduction provided for in N.J.S.A. 54:10A-4(k)(6)(A), and computed without the exclusions in paragraphs (4) and (5) of N.J.S.A. 54:10A-4(k), allocated

to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

(3) Reduction for discharge of indebtedness. A net operating loss for any privilege period ending on or after July 31, 2019, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from Federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of § 108 of the Federal I. R. C., 26 U.S.C. §108, for the privilege period of the discharge of indebtedness.

(4) A net operating loss carryover shall not include any prior net operating loss conversion carryovers.

(5) Change in ownership. Where there is a change in **fifty percent (50%)** or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition, where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the Director may disallow the carryover; provided, however, this paragraph shall not apply between members of a combined group reported on a New Jersey combined return.

c. For ~~application of net operating losses for~~ **privilege periods beginning on and after January 1, 2020, the provisions of the Internal Revenue Code (dealing with separate returns and consolidated returns), and the related Federal rules and regulations, limitations, and restrictions governing Federal net operating losses and**



Federal net operating loss carryovers with regard but not limited to: mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business, or any other provision that limits or reduces Federal net operating losses and Federal net operating loss carryovers, shall apply to New Jersey net operating loss carryovers under subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

The Federal rules and regulations governing Federal consolidated return net operating losses and net operating loss carryovers shall apply to New Jersey net operating loss carryover provisions of subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes to the extent consistent with the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).

d. For more information on PNOLs and NOLs in relation to combined groups and combined reporting, see Subchapter 21.

#### ~~18:7-5.22 Discharge of Indebtedness Income and New Jersey Net Operating Losses~~

~~a. In a period where the taxpayer has an amount excluded from Federal taxable income due to a discharge of indebtedness, the taxpayer shall reduce its net operating losses and net operating loss carryovers as follows:~~

~~1. If the taxpayer has an allocated entire net loss for the current period, the current period loss must be reduced by the allocated discharge of indebtedness~~

~~income. In the event the allocated discharge of indebtedness exceeds the current period allocated entire net loss, the taxpayer must then reduce its prior net operating loss conversion carryovers by the balance of the allocated discharge of indebtedness income. If the remaining balance of the allocated discharge of indebtedness income also exceeds the prior net operating loss conversion carryovers or if the taxpayer did not have prior net operating loss conversion carryovers, the taxpayer must reduce its post-allocation net operating loss carryovers by the allocated discharge of indebtedness income.~~

~~2. If the taxpayer has allocated entire net income (i.e., income positive) for the current period, the taxpayer must then reduce its prior net operating loss conversion carryovers by the allocated discharge of indebtedness income. If the allocated discharge of indebtedness income exceeds the prior net operating loss conversion carryovers or if the taxpayer does not have prior net operating loss conversion carryovers, the taxpayer must reduce its post-allocation net operating loss carryovers by the balance of the allocated discharge of indebtedness income. If the taxpayer has allocated entire net income for the current period and the taxpayer has a post-allocation net operating loss carryover only, the taxpayer must reduce its post-allocation net operating loss carryovers by the amount of the allocated discharge of indebtedness income.~~

~~b. For application to members of a combined group see Subchapter 21.~~

#### ~~18:7-5.23~~ Application of Internal Revenue Code Section 163(j)

a. For privilege periods beginning after December 31, 2017, the interest deduction limitation in subsection (j) of §163 of the Internal Revenue Code (26

**U.S.C. §163) shall apply on a pro-rata basis to interest paid to both related and unrelated parties, regardless of whether the related parties are subject to N.J.A.C. 18:7-5.18.**

**b. The limitation will be applied based on the Federal rules and guidance for 26 U.S.C. §163 (j).**

**c. The 163(j) limitation is applied first before applying the related party add backs in N.J.A.C. 18:7-5.18.**

**d. Members of a Federal consolidated group that did not file one Federal consolidated return together, which also file separate New Jersey tax returns, must follow the Federal rules for 26 U.S.C. §163 (j), applying the limitation to those members as each separate taxpayers, and then apply the limitations of N.J.A.C. 18:7-5.18.**

**e. If members of a Federal consolidated group file a Federal consolidated return, the Federal rules treating the taxpayers as one entity for the purposes of applying the limitation in 26 U.S.C. §163 (j) shall apply when determining the limitation, even though the taxpayers file a separate New Jersey return. The Federal regulations, as amended for the changes to the Internal Revenue Code, governing the application of the limitation in 26 U.S.C. §163 (j) to Federal consolidated returns shall apply. However, such members are still subject to the limitations set forth in N.J.A.C. 18:7-5.18, if otherwise applicable.**

**f. For members of a combined group filing a New Jersey combined return, the members included on the combined return shall be treated as one single taxpayer for the purposes of applying the limitation in 26 U.S.C. §163 (j) as though**

the members of a combined group were members of a Federal consolidated group that filed a consolidated return, regardless of whether such members had filed a Federal consolidated return. [For more information on combined groups and combined reporting, see Subchapter 21.](#)

g. If members of a combined group filing a New Jersey combined return are part of a Federal consolidated group with taxpayers that are not included on a New Jersey combined return and the Federal consolidated group files one Federal consolidated return, for the purposes of applying the limitation in 26 U.S.C. §163 (j), all of the members of the Federal consolidated group filing a single Federal consolidated return will be treated as one taxpayer, even though some of the taxpayers were not included in the New Jersey combined return and filed separate New Jersey returns. [For more information on combined groups and combined reporting, see Subchapter 21.](#)

~~18:7-5.24~~

h. [For corporation business tax purposes, New Jersey conforms to the CARES Act amendments and any other subsequent amendments to 26 U.S.C. §163 \(j\).](#)

#### [18:7-5.23](#) Application of Federal stock ownership attribution rules

Except as otherwise ~~noted~~[provided](#) either in this Chapter or for specific purposes in certain sections of the Corporation Business Tax Act, the Federal stock ownership attribution rules ~~generally~~ apply for New Jersey corporation business tax

purposes **except as outlined below**. However, if a provision of the ~~Federal~~**Internal Revenue Code (I. R. C.)** regarding stock ownership attribution rules or subsequent amendments to any provision of the ~~Federal~~**I. R. C.** result in less favorable treatment of a non-U.S. business entity than a U.S. domestic business entity, such provision shall not apply, and the same rules that otherwise would apply to a U.S. domestic business entity shall apply to that non-U.S. business entity for New Jersey corporation business tax purposes. **For more information on combined groups and combined reporting, see Subchapter 21.**

## SUBCHAPTER 7. Allocation

### 18:7-7.6 Corporate partners and partnerships

(a) A foreign corporation that is a general partner in a general or limited partnership or is deemed to be a general partner in a limited partnership doing business in New Jersey satisfies the subjectivity requirements set forth in N.J.S.A. 54:10A-2. A foreign corporation that is a general partner of a general or limited partnership doing business in New Jersey is subject to filing a corporation business tax return in New Jersey and paying the applicable tax under the terms of the Corporation Business Tax Act to New Jersey. Such a corporation is also deemed to be employing, or owning capital or property in New Jersey, or maintaining an office in New Jersey, if the partnership does so.

(b) through (f) (No change in text.)

(g) For purposes of apportionment (allocation) of corporate income, where the subject corporation and the partnership are not part of a single unitary business, including

a business carried on directly by the foreign corporate partner, separate accounting apportionment should be used to arrive at corporate income. If the New Jersey business of the partnership is part of a single unitary business including a business carried on directly by the foreign corporate partner, flow through accounting apportionment should be used with respect to the incomes of the two entities.

1. Separate accounting apportionment, for purposes of this subsection only, means use of the following method: The corporation's distributive share of the partnership's business income would be apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A-6 apportionment factor for that business by only taking into account the corporate partner's share of the receipts[, payroll, and property] of the business that the partnership carries on directly. Second, the corporation's entire net income, excluding its distributive share of the partnership's income is apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A-6 apportionment factor for that business by only taking into account the receipts (excluding receipts from the partnership namely, receipts from intercompany transactions)[, payroll, and property] of the business that the corporation carries on directly. Third, these two amounts would be added together to arrive at the corporation's entire net income apportioned to New Jersey.

2. "Flow through accounting apportionment," for [purposes] **the purpose** of this section only, means use of the following method: Taxpayer shall separately compute the [property, payroll, and] receipts fractions attributable to the partnership activity. The taxpayer next computes the [property, payroll, and] receipts fractions attributable to the corporate activity. An allocation factor combining the factors of the corporation and the

partnership is then applied to the corporation's entire net income including its distributive share of the partnership's income.

3. Facts that either singly or in combination may suggest that the corporation and partnership are part of a unitary business and hence that a flow through approach may be appropriate include, without limitation thereto:

- i. Substantial intercompany-partnership transactions;
- ii. The partnership interest is the only or the most substantial asset of the corporation;
- iii. The partnership interest produces all or most of the income of the corporation;
- iv. The corporation and the partnership are in the same line of business;
- v. There is substantial overlapping of employees and offices; and/or
- vi. There is sharing of operational facilities, technology, and/or know-how.

**For further information about combined returns and unitary businesses, see Subchapter 21.**

4. For purposes of determining the application of the small corporation tax rate, the entire net income of a general partner (actual or deemed) should include the partner's proportionate share of the unapportioned net income of the partnership and the entire net income of a limited partner should include the partner's proportionate share of the unapportioned net income of the partnership.

(h) The accounting methods described in (g) above are also applied to domestic corporate partners. If a domestic corporation is a partner in a foreign partnership that does not conduct business in New Jersey, and the corporation's own business and that of the partnership are not unitary, then the corporation's income from the partnership shall

not be included in the corporation's tax base, and the partnership's receipts, payroll, and property shall not be considered in determining the apportionment factor to apply to the corporation's income from its own business. If, however, the two businesses are unitary, then the flow through method should be used in apportioning the corporation's income.

**For further information about combined returns and unitary businesses, see Subchapter 21.**

1. (No change in text.)
  - (i) through (k) (No change in text.)

## SUBCHAPTER 8 BUSINESS ALLOCATION FACTOR

### 18:7-8.3 Right of Director to independently compute allocation factor

(a) If it appears that the business allocation factor computed on the basis of all or any of the property-receipts-payroll fractions does not properly reflect the activity, business, receipts, capital, entire net worth, or entire net income of the taxpayer in New Jersey, the Director may adjust or the taxpayer may request an adjustment of the business allocation factor.

(b) (No change in text.)

(c) **For privilege periods ending on and after July 31, 2019, if it appears that the ~~business~~ allocation factor(s) computed on the basis of the receipts fraction does not properly reflect the activity, business, receipts, capital, entire net worth, or entire net income of the combined group (as a whole or the members thereof) in New Jersey, the Director may adjust or the managerial member of a combined group filing a New Jersey combined return may request an adjustment, of the-**



**~~business~~ allocation factor(s), of either the managerial member or the other members of the combined group included on the same New Jersey combined return in accordance with N.J.S.A. 54:10A-4.8 and N.J.S.A. 54:10A-4.10.**

18:7-8.7 Business allocation factor; determination of receipts fraction

(a) The percentage of the taxpayer's receipts within New Jersey is determined by ascertaining the taxpayer's receipts allocable to New Jersey during the period covered by the return and dividing the sum of the receipts by the taxpayer's total receipts within and outside New Jersey during such period.

(b) (No change in text.)

(c) Entire net income shall be included or excluded as follows:

1. All income which is included in entire net income enters into the numerator and denominator of the receipts fraction.

2. Any income which is excluded from entire net income is also excluded from the numerator (**New Jersey receipts**) and denominator of the receipts fraction, except for banking corporations with international banking facilities as provided in P.L.1983, c.422. See N.J.S.A. 54:10A-6.

Example:

Dividends recognized as income for purposes of determining Federal income tax but which are excluded from entire net income under N.J.S.A. 54:10A-4(k)(1) must also be excluded in computing the receipts fraction.

(d) through (g) (No change in text.)

## 18:7-8.8 Scope of allocable receipts

(a) Unless otherwise noted herein, receipts from the following are allocable to New Jersey:

1. Sales of tangible personal property where shipments are made to points in New Jersey. Delivery of goods to a purchaser in this State is a shipment made to a point in New Jersey regardless of the F.O.B. point or the fact that the goods may subsequently be resold and trans-shipped to a point outside this State.

i. The sale of goods shipped to a New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

### Example:

Taxpayer, a manufacturer located outside of New Jersey, transports goods directly to a customer's location in New Jersey. Since possession of the goods is transferred in New Jersey, shipment is deemed to be in this State resulting in receipts allocable to this State.

ii. The sale of goods shipped to a non-New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

### Example:

Taxpayer, a manufacturer located outside of New Jersey, transports goods into New Jersey where such goods are picked up by a non-New Jersey customer or a customer's representative in New Jersey for further transportation outside of this State. Since possession of the goods passed between the taxpayer and its customer in New Jersey, the sale results in receipts allocable to New Jersey.

iii. The sale of goods shipped by a taxpayer from outside New Jersey to a New Jersey customer by a common carrier results in a receipt allocable to New Jersey. The common carrier is deemed an agent of the seller regardless of the F.O.B. point.

**Example:**

Taxpayer, a manufacturer located outside New Jersey, transports goods by a common carrier to a New Jersey facility where the customer takes possession of the goods. Since the common carrier is deemed to be an agent of the taxpayer, the common carrier's transportation of the goods into the possession of the customer in New Jersey results in receipts allocable to New Jersey.

iv. The sale of goods shipped from outside New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside New Jersey results in receipts that are not allocable to New Jersey.

**Example:**

Taxpayer, a non-New Jersey manufacturer, transports goods from outside New Jersey to a New Jersey location by either a common carrier or a private transporter. The goods are picked up in New Jersey by a common carrier and transported further to a customer outside New Jersey. Since the common carrier is deemed an agent of the seller regardless of the F.O.B. point, the shipment by the common carrier from a point in New Jersey to a point outside New Jersey results in receipts not allocable to New Jersey.

2. Services [performed] **if the benefit of the service is received** in New Jersey;
3. Rentals from property situated in New Jersey;
4. Royalties from the use in New Jersey of patents or copyrights; and

5. All other business receipts earned in New Jersey. See example in N.J.A.C.

18:7-8.7(c).

18:7-8.10A Receipts from services in the State; allocation for certain special industries

(a) For privilege periods ending on and after July 31, 2019, receipts from service transactions shall be allocated to New Jersey in accordance with this section. **See Subchapter 21 for additional information on combined groups filing New Jersey combined returns.**

1. The numerator of the sales fraction developed in accordance with this section includes receipts from services not otherwise apportioned, if the benefit of the service is received by the customer at a location within this State.

2. In determining whether the benefit of the services is received within this State, a taxpayer shall include in the numerator of the sales fraction receipts derived from customers within this State as provided in this paragraph.

i. [For purposes of this paragraph, a customer within this State is either a recipient that is] **For purposes of this paragraph, a customer is considered located within this State if a recipient is either:**

(1) Engaged in a trade or business and maintains a [regular] place of business in this State; or

(2) Is an individual that is not a sole proprietor, who is located in this State. If the location of the individual cannot be determined, the benefit of the services will be deemed to be received at the individual's billing address.

ii. A [regular] place of business in this State is not limited to the principal place of business of the customer and includes any office, factory, warehouse, or other business location in this State where the customer conducts business in a regular and systematic manner or maintains property or employees.

iii. (no change to text.)

3. In the event that services are provided to a recipient engaged in a trade or business for use in that trade or business located in this State and another state(s), a taxpayer shall include in the numerator of the sales fraction receipts based on the percentage of the total value of the benefit of the services received in all locations both within and outside of this State, as determined in this paragraph, or a reasonable approximation as defined at (a)3iv(1) below.

i. through iii. (no change in text.)

iv. In determining the “proportion to the extent to which the recipient receives the benefit of the service(s) in this State,” a taxpayer may use a reasonable approximation to attribute the location of receipts if none of the items listed at (a)3iii above provide the information necessary to determine how much of the benefit of the service(s) is received in this State.

1. through 5. ( no change in text.)

6. Lump sum payments for services where the benefit is received both inside and outside of New Jersey must be apportioned in the manner described in (a)6i and ii below in order to result in a fair and reasonable receipts fraction. **For transportation companies that meet the qualifications of N.J.S.A. 54:10A-4.7(b), see Subchapter 21**

**for additional information and applicable rules for transportation combined groups filing New Jersey combined returns.**

i. Transportation revenues of an airline are from services in New Jersey based on the ratio of an airline's revenue miles in New Jersey divided by an airline's total revenue miles. Where an airline is engaged in the transportation of passengers, the transportation of freight, or the rental of aircraft, the ratio shall be determined by an average of a passenger revenue mile fraction, freight revenue mile fraction, and rental revenue mile fraction weighted to reflect the taxpayer's relative gross receipts from passenger transportation, freight transportation, and rentals.

(1) "Revenue miles" means passenger revenue miles for passenger transportation, freight revenue miles for freight, or transportation rental revenue miles for aircraft rentals.

(2) The passenger revenue mile fraction is determined by multiplying the number of revenue-paying passengers aboard the aircraft by the distance traveled in New Jersey divided by the number of revenue-paying passengers aboard the aircraft multiplied by the distance traveled everywhere.

(3) The freight revenue mile fraction is determined by dividing the freight ton revenue miles in New Jersey by the freight revenue miles everywhere. A freight revenue ton mile is equal to one ton carried one mile.

(4) The rental revenue mile fraction is determined by dividing the number of rental miles flown in New Jersey by total rental miles flown.

ii. Trucking companies deriving revenues from transporting freight will calculate their receipts fraction using mileage as follows: The taxpayer's 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 N.J.A.C. 13:18-3.12 shall make calculations using such records. **For transportation companies that meet the qualifications of N.J.S.A. 54:10A-4.7(b), see Subchapter 21 for additional information and applicable rules for transportation combined groups filing New Jersey combined returns.**

[(1) With regard to the property fraction, movable property, such as tractors and trailers, shall be allocated to this State using the mileage fraction set forth in this subparagraph. 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 this subparagraph. 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 taxpayer's overall payroll fraction.]

7. If a taxpayer receives a lump sum in payment for services and for materials or other property, the sum received must be apportioned on a reasonable basis by providing:

- i. The part apportioned to services is includible in receipts from services;

ii. The part apportioned to materials or other property is includible in receipts from sales; and

iii. Full details must be submitted with the taxpayer's return.

8. through 10. (no change in text.)

#### 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) through (f) (No change in text.)

**(g) For sourcing of ~~IRCL.R.C.~~ § 951A income, ~~IRCL.R.C.~~ § 250(b) income, and the related ~~IRCL.R.C.~~ §250(a) deduction, see N.J.A.C. 18:7-5.19.**

#### SUBCHAPTER 10 SECTION 8 ADJUSTMENTS

##### 18:7-10.1 Discretionary adjustments of business allocation factor by Director

(a) Generally, the allocation formula described in this chapter will result in a fair apportionment of the taxpayer's net worth and net income within and outside New Jersey. However, experience in this and other states that impose similar franchise taxes has shown that due to the nature of certain businesses the formula may work hardships in some cases, and not do justice either to the taxpayer or the State. Accordingly, provision



is made in such cases for the Director to use some other formula that will more accurately reflect the business activity within New Jersey.

(b) Section 8 of the Act provides that where it shall appear to the Director that the business allocation factor, determined pursuant to N.J.S.A. 54:10A-6, does not properly reflect the activity, business, receipts, capital, entire net worth, or entire net income of a taxpayer reasonably attributable to New Jersey, he or she may in his or her discretion adjust the business allocation factor by:

1. Excluding one or more of the fractions therein;
2. Including one or more other elements, such as expenses, purchases, and contract values (minus subcontract values);
3. Excluding one or more assets in computing entire net worth;
4. Excluding one or more assets in computing an allocation factor; or
5. Applying any other similar or different method calculated to effect a fair and proper allocation of the entire net income and the entire net worth reasonably attributable to this State.

(c) Adjustment of the business allocation factor may be made by the Director upon his or her own initiative or upon request of a taxpayer.

1. No taxpayer may vary the regular statutory formula without the prior consent of the Director.
2. A taxpayer making application for an adjustment of its business allocation factor must file its return and compute and pay its tax in accordance with the regular statutory formula.

3. The taxpayer [must also attach a rider to the return with a Form A-3730 setting forth in full the data on which its application is based, together with a computation of the amount of tax which would be due under the proposed method.] **must attach a rider and documentation setting forth, in full, the data on which its application is based, together with a computation of the amount of tax which would be due under the proposed method with the submission of Form A-3730 when making such request.**

(d) For privilege periods ending on and after July 31, 2019, the Director may adjust the business allocation factor, or the managerial member of a combined group filing a New Jersey combined return may request an adjustment of the business allocation factor, of either the managerial member or the other members of the combined group included on the same New Jersey combined return in accordance with N.J.S.A. 54:10A-4.8 and N.J.S.A. 54:10A-4.10. **For more information on combined groups and combined reporting, see Subchapter 21.**

1. A combined group may not ~~vary~~**change** the allocation factor formula under N.J.S.A. 54:10A-4.7 without the prior consent of the Director.

2. A combined group making an application for an adjustment of its business allocation factor must file the New Jersey combined return and compute and pay its tax in accordance with the allocation factor formula under N.J.S.A. 54:10A-4.7. The ~~request~~**member submitting such application on behalf of the combining group** must be ~~made by~~ the managerial member of the combined group.

3. The **managerial member (on behalf of the combined group)** must attach a rider and documentation setting forth, in full, the data ~~on~~**upon** which ~~its~~**the** application is based, together with a computation of the amount of tax which would

be due under the proposed method with the submission of Form A-3730 when making ~~such a~~ request for an adjustment of the business allocation factor.

## SUBCHAPTER 11 RETURNS

### 18:7-11.6 Forms of returns

(a) Returns are required to be made on forms prescribed by the Director.

1. In the case of all taxpayers, annual returns are required to be filed on [Form CBT-100 or CBT-100S. As used in these rules, references to Form CBT-100 may be interpreted to include Form CBT-100S, as the context may require. ] **the applicable New Jersey corporation business tax return published by the Division of Taxation for the respective privilege period for the taxpayer.**

2. In the case of all taxpayers entitled and electing to allocate entire net income, the supplemental sheet, to be used in conjunction with [Form CBT-100] **the return** and containing the allocation schedules, must be completed and [annexed] **attached** to [Form CBT-100] **the New Jersey corporation business tax return.**

(b) through (c) (No change in text.)(d) **The return names for the applicable periods are as follows:**

1. For privilege periods ending prior to July 31, 2019, the New Jersey corporation business tax returns for the respective taxpayers are **the CBT-100, BFC-1, and CBT-100S;**

2. For privilege periods ending on and after July 31, 2019 but before July 31, 2022, the New Jersey corporations business tax returns for the respective taxpayers are **the CBT-100, the BFC-1, the CBT-100S, and the CBT-100U; and**

**3. For privilege periods ending on and after July 31, 2022, the New Jersey corporation business tax returns for the respective taxpayers are the CBT-1 (for separate return filers, combined group filers, banking corporations, and financial business corporations) and the CBT-100S (for New Jersey S-corporations filing separate returns or with their New Jersey Qualified Subchapter S Subsidiaries).**

18:7-11.7 Time for filing returns

(a) [The] **For privilege periods ending before July 31, 2020, the** appropriate annual corporation business tax return together with payment of the tax, including the required prepayment, must be filed with the Division of Taxation on or before the 15th day of the fourth month after the close of each fiscal or calendar accounting period. **For privilege periods beginning on and after July 31, 2020, in general, the due date of the New Jersey corporation business tax return shall be 30 days after the original due date for filing the taxpayer's Federal corporate income tax return for such privilege period, or part thereof, and the full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the return.**

(b) [A return] **For a return which is permitted to be mailed instead of being filed according to the electronic filing mandate, such return** is timely filed and deemed delivered on the date of the United States Postal Service postmark stamped on the envelope. See N.J.S.A. 54:49-3.1.

(c) A return is timely filed when it is [mailed] **submitted** to the Division of Taxation on the next business day, if the due date falls on a Saturday, Sunday, or State holiday.

(d) For privilege periods beginning on and after July 31, 2020, if the 30<sup>th</sup> day after the original due date for filing the taxpayer's Federal corporate income tax return is a business day on the 14<sup>th</sup> of the month and the 15<sup>th</sup> of said month is also a business day, then the 15<sup>th</sup> of the month shall be deemed the due date of the New Jersey corporation business tax return.

(f) For privilege periods beginning on and after July 31, 2020, if original due date of the taxpayer's Federal corporate income tax return is June, the taxpayer's New Jersey corporation business tax return shall be due on August 15<sup>th</sup>.

#### 18:7-11.8 Time to report change or correction in Federal net income

(a) The report of change or correction in Federal taxable income as the result of an Internal Revenue Service audit must be reported to the Division of Taxation within 90 days of issuance of the Federal report by filing an amended [Form CBT-100 or amended Form CBT-100S] **New Jersey corporation business tax** return. To amend [Form CBT-100 or Form CBT-100S] **New Jersey corporation business tax** returns, [use Form CBT-100 or Form CBT-100S for the appropriate tax year and write "AMENDED RETURN" clearly on the front page of that form] **file the amended return electronically (except the BFC-1 which may be mailed) selecting the "AMENDED RETURN" option and writing the appropriate privilege period.**

(b) (No change to text.)

(c) After the filing of a report of change or correction on an amended [Form CBT-100 or amended Form CBT-100S] **New Jersey corporation business tax** return, the Director may, within the time prescribed by law, audit the return and compute and

assess the tax based upon the issue or issues set forth in the Federal revenue

[agent] **agent's** report.

(d) (No change to text.)

18:7-11.12 Extension of time to file return; interest and penalty

(a) No extension will be granted unless request is made on Tentative Return Form [CBT-200T] and is actually received by the Division of Taxation [or postmarked] on or before the due date of the return. The Tentative Return must:

1. Show the information required, including the exact name, address, New Jersey [serial] **corporation** number, the Federal employer identification number, if any, and the amount of the estimated tax liability;

2. Be accompanied by a remittance to cover the unpaid balance of the estimated tax due for the accounting year for which an extension of time to file the return is requested; and

3. Be accompanied by the payment on account of its tentative tax which is due on or before the original due date for filing of the return for which an extension is requested.

(b) Taxpayers using the New Jersey [Corporation Business Tax Return Form CBT-100] **corporation business tax return** may request an extension for a period not exceeding [six months ] ~~the period granted by the Internal Revenue Service for the filing of the taxpayer's Federal corporate income tax return~~ and will **generally** receive [automatic] approval, provided that the taxpayer has complied with the instructions set forth on the Tentative Return [Form CBT-200T] **on the electronic portal application**, and has paid any unpaid balance of its estimated tax **and the**

taxpayer has subsequently timely filed their return no later than the extension period due date.

1. ~~In general, extension requests shall not be granted for any period exceeding [six months from the original due date] the extension period granted by the Internal Revenue Service~~( No change in text.)

2. [Initial extensions will be confirmed in writing by the Division [of Taxation]]  
**Requests are to be submitted electronically.**

3. If the final return is not submitted within the extended period, penalties for delinquent filing will be applied as if no extension has been granted.

(c) Banking and financial corporations may request an extension of time to file **their respective New Jersey corporation business tax** return ~~Form BFC-1~~ subject to the following conditions:

1. No extension will be granted unless request is actually received by the Division [of Taxation] or postmarked on or before the due date of the return;

2. The extension shall be made on a copy of page 1 of [Form BFC-1] **their respective New Jersey corporation business tax return**, including the exact name, address, New Jersey [Serial] **corporation** number, if applicable, the Federal employer identification number, if any, and the amount of tentative tax liability;

3. **The request shall be** accompanied by a remittance to cover the unpaid balance of the tentative tax due for the accounting year for which an extension of time to file the return is requested;

4. **The request shall be** accompanied by a completed copy of Schedule L from [Form BFC-1] **their respective New Jersey corporation business tax return**, and a copy of the taxpayer's Federal extension request; **and**

5. **The extension request may be for a period not exceeding** ~~the extension period granted by the Internal Revenue Service~~ **six months.**

(d) In general, extension requests shall not be granted for any period exceeding [five] **six months** from the original due date.

(e) Where the taxpayer has requested a Federal extension, the Division [of Taxation] shall grant the taxpayer an extension for a period not exceeding [five month] ~~the same period~~ **six months**. In cases where the taxpayer has failed to obtain a Federal extension, the taxpayer, upon request, may be granted a [two month] **two-month** extension for filing the return **from the original due date of the return** if sufficient cause is [submitted] **established and the request is submitted in writing**. Sufficient cause should be interpreted so that it is impossible or wholly impracticable to file a return within [two months] **two-months** from the original due date of the return.

(f) Extensions ~~{may}~~ **will** be confirmed in writing by the Division [of Taxation], if necessary.

(g) If the original return is not submitted within the extended period, penalty for delinquent filing will be applied as if no extension has been granted.

(h) Interest and penalty are chargeable as follows:

1. The total amount of the tax due must be paid on or before the original due date for filing the return.



2. Any unpaid portion of the tax on the final return that is in excess of the amount paid shall bear interest at the rate of one and one-half percent per month, or fraction thereof from the original due date of the return to the date of actual payment [or December 8, 1987]. [On and after December 9, 1987, the unpaid portion of the tax shall bear interest at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due or December 9, 1987, whichever is later, to the date of actual payment. On and after July 1, 1993, the] **The** unpaid portion of the tax shall bear interest 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.

3. In addition, if the amounts paid up to and including the time for filing of the tentative return total less than the lesser of 90 percent **(90%)** of the amount of tax due, or for a taxpayer that had a preceding fiscal or calendar accounting year of 12 months and filed a return for that year showing a tax liability equal to the tax computed at the rates applicable to the current accounting year applied to the facts shown on the return for and the law applicable to the preceding accounting year, the taxpayer shall be liable for a penalty of five percent **(5%)** per month, or fraction thereof, on the amount of underpayment. In this context, "filing of the return" means filing of the tentative return incident to a request for extension; "the time for filing" means the original due date for filing the return; and "amount of underpayment" means the difference between 100 percent **(100%)** of the tax shown on the final return and the total of all installments of estimated tax paid on or before the original due date for filing the return, as well as any amount paid with the tentative return.

(i) Where a taxpayer makes an election on Federal Form [8023] **7004**, it will be granted an extension of time to file a corporation business tax return until the Federal election is filed, provided that [a Form CBT-200T] **the New Jersey extension** has been properly filed in accordance with these rules.

(j) [Warning:]

[1.] No request for extension will be considered unless taxpayer has complied with all the filing requirements for extensions set forth in this rule.

(k) **The managerial member of a combined group filing ~~CBT-100U~~a New Jersey combined return for the group privilege period may request an extension of time to file on behalf of the combined group under subsection b of ~~the~~this section as though the combined group were one taxpayer and shall include the unitary I.D. number for the combined group.**

#### 18:7-11.15. Consolidated returns

(a) [~~Corporations are not permitted to file consolidated returns for privilege periods ending before July 31, 2019~~] **For privilege periods ending before July 31, 2019, corporations are not permitted to file consolidated returns.** Provided, however **for those privilege periods:**

1. Any business conducted by an individual, partnership, or corporation or any other entity, or any combination thereof holding a license pursuant to the Casino Control Act shall file a consolidated corporation business tax return as described at N.J.A.C.

18:7-1.17;

2. An air carrier, within the meaning of the term pursuant to 49 U.S.C. § 40102 may elect to file a consolidated return pursuant to N.J.S.A. 54:10A-18.1; and

3. The Director may require consolidated filing pursuant to N.J.S.A. 54:10A-10 and N.J.A.C. 18:7-5.11.

(b) Except as provided in (a) above, where a taxpayer has filed a consolidated return with the Internal Revenue Service for Federal income tax purposes, it must complete its return under the act and must reflect its entire net income and entire net worth as if it had filed its Federal return on its own separate basis.

(c) A taxpayer under (b) above shall also file a copy of the Affiliations Schedule Form 851, which is filed with Form 1120 for Federal income tax purposes.

**(d) For mandatory unitary combined returns and elective combined returns in privilege periods ending on and after July 31, 2019, see Subchapter 21.**

#### 18:7-11.17 Copies of tax returns or other information required

(a) [The] **For privilege periods ending prior to July 31, 2020, the** Director may by general rule or by special notice require any taxpayer to submit copies or pertinent extracts of its Federal income tax returns, or of any other tax return made to any agency of the Federal [Government] **government**, or of this or any other state, or of any statement or registration made pursuant to any state or Federal law pertaining to securities or securities exchange [regulation] **regulations. For privilege periods ending on and after July 31, 2020, taxpayers are required to submit their Federal return**

**and applicable schedules as part of a full and complete New Jersey corporation business tax return pursuant N.J.S.A. 54:10A-14(a) as amended by P.L. 2020, c. 118.**

**See 18:7-11.17A for more information on the Federal return mandate.**

(b) The Director may require all taxpayers to keep records [he or she] **that the Director** may prescribe, and the Director may require the production of books, papers, documents, and other data, to provide or secure information pertinent to the determination of the tax and its enforcement and collection.

(c) The Director may, also by general rule or special notice, require any taxpayer to make and file information returns, under oath, of facts pertinent to the determination of the tax or liability for tax pursuant to such regulations, at the times and in the form or manner and to the extent [he or she] **the Director** may prescribe under law.

(d) Certain corporations that are member 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.

**18:7-11.17A Federal returns, forms, schedules, and extracts mandatory to include as part of a full and complete New Jersey corporation business tax return**

**(a) For privilege periods ending on and after July 31, 2020 as part of a full and complete New Jersey corporation business tax return a taxpayer or managerial member of a combined group must submit copies or pertinent extracts of its Federal income tax returns, or of any other tax return filed with any agency of the Federal government, or of this or any other state, or of any statement or registration made pursuant to any state or Federal law pertaining to securities or Securities Exchange**

**Commission regulations. The following Federal returns, forms, schedules, and extracts are necessary to include:**

- 1. A copy of the Federal return (or returns of each member in the case of a combined group) that was filed with the Internal Revenue Service for the privilege period (i.e. forms 1120, 1120-F, 1120-S, etc. as applicable)**
- 2. Form 8993**
- 3. Form 8992**
- 4. Form 8990**
- 5. Form 5471**
- 6. Form 1125-A**
- 7. Form 851**
- 8. Form 1125-E**
- 9. Form 8858**
- 10. Form 4562**
- 11. Form 5472**
- 12. Form 1118**
- 13. Schedule M-3**
- 14. Schedule D**
- 15. Form 4797**
- 16. Schedule UTP**

**(b) Failure to include a copy of the Federal return and the above forms or schedules (if the taxpayer attached said forms or schedules as part of their original or amended Federal return) filed with the Internal Revenue Service, shall result in**

an incomplete New Jersey corporation business tax return and the taxpayer may be assessed penalties and interest for noncompliance.

(c) In lieu of completing certain riders for certain parts of the New Jersey corporation business tax return or certain schedules of the New Jersey corporation business tax return, where the taxpayer completed and filed certain forms or schedules for Federal purposes, other than the forms and schedules required to be included as prescribed in subsection a, that contain identical or substantially similar information, the taxpayer may include such Federal forms or schedules.

(d) If the taxpayer was not required to complete a form or schedule listed in subsection a above as part of their full and complete Federal tax return filed with the Internal Revenue Services, then the taxpayer is not required to attach said form or schedule with their New Jersey corporation business tax return.

(e) All other Federal forms and schedules not listed above must be made available to the Division of Taxation upon request.

#### 18:7-11.18 Reproduction of **return** forms

(a) Subject to the conditions and requirements of this section, the Director will accept for filing purposes reproductions of the New Jersey [Corporation Business Tax Return Forms CBT-100 and CBT-200T] **corporation business tax return** in lieu of the official forms printed and furnished by the Director. Anyone contemplating the use of reproduced forms is cautioned to observe that the conditions herein stated may vary from the Federal regulations relating to reproduction of Federal tax forms.

(b) In order to be acceptable for filing purposes, reproduction of [Forms CBT-100 and CBT-200T] **the New Jersey corporation business tax returns** must meet the following conditions and requirements:

1. through 11. (No change to text.)

#### SUBCHAPTER 12 Short Period Return

##### 18:7-12.1 Short period returns; when required

(a) In general, every corporation must file a return for each fiscal or calendar accounting period or part thereof during which it has or had a taxable status in New Jersey. In certain cases, the taxpayer will be required to file a return covering an accounting period of less than 12 months. This may necessitate an adjustment of entire net income.

(b) Some of the circumstances that require the filing of short period returns are:

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

2. A foreign corporation that 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 for Federal income tax purposes;

3. Corporations that dissolve, merge, consolidate, withdraw, surrender or otherwise cease to have a taxable status in New Jersey prior to the close of a full 12 months accounting period;

4. A corporation that changes its accounting period.

(c) ( no change to text.)

(d) In the case of a combined group filing a New Jersey combined return, in addition to (b)(4) where the managerial member is changing its accounting period, a short period return is required under (b)(3) if the corporation is the managerial member of the combined group, or in the case of (b)(2) when the combined group first gains taxable status with New Jersey. A short period return would only be required under subsection (b)(1) if the new corporation is designated the managerial member by the combined group; in which case the previous managerial member of the combined group would file a short period return for the applicable period and then the new corporation that is designated the managerial member will file a short period return beginning the month that the new corporation was formed.

1. For a combined group that files combined returns in New Jersey, where the managerial member remains part of the combined group, the accounting period of the managerial member remains the same, and the managerial member is not required to file a short period return for Federal purposes, the combined group does not need to file a short period combined return.

2. A taxpayer that was a member of a combined group filing a New Jersey combined return for part of the group privilege period and subsequently departs the combined group to file on a separate entity basis must report the income for months subsequent to departing the combined group on a short period separate return, unless the member joined a second combined group that files a New Jersey combined return. The taxpayer filing a separate return would not report the income on said return for the months the member was part of the combined group.



Likewise, a taxpayer that joined a second combined group that files a New Jersey combined return would only report on the second group's return the income for the months the member was part of the second combined group. To determine what amount of income is attributable to the portions of the 12-month period are for the periods before and after departing a combined group, the taxpayer must prorate their income/losses and receipts.

i. In a group privilege period where all of the members depart from the combined group (resulting in the combined group no longer existing for the remaining portion of the period), the managerial member shall file a short period New Jersey combined return for the portion of the group privilege period where the combined group existed, and all of the taxpayers (former members of the group) shall file short period separate returns (if the taxpayer is a separate filer) for the remaining portion of the period. Where a taxpayer (former member of the group) or a taxpayer that has joined a second combined group that files a New Jersey combined return, such taxpayer would only report on the second group's return the income for the months the member was part of the second combined group. After separating from a combined group, a taxpayer must prorate its income, losses and receipts between the return of its former combined group and its new combined group return, separate entity return, or other appropriate return.<sup>3</sup> For a taxpayer that is a member of a combined group filing a New Jersey combined return, and that member properly dissolved and received tax clearance during the group privilege period, the income and tax liabilities of that member for the part of the group privilege period the member existed prior to dissolution must be reported on

the combined return and no short period combined return is required unless the member had been the managerial member of the combined group. If the taxpayer was the managerial member, a short period combined return must be filed for the short period and the combined group will designate a new managerial member and the new managerial member shall file a short period combined return for the combined group for the months in the twelve-month period after the previous managerial member departed the group.

**f. For transitional short period returns for banks switching accounting periods see N.J.S.A. 54:10A-34.1 for more information.**

#### 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. through 4. (no change to text.)

**(b) Subsection (a) shall generally apply to a combined group when a short period return is required to be filed for the combined group, however for combined reporting, see Subchapter 21 for more information.**

#### 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 the case described in (a) above, 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) Subsections (a) and (b) generally apply to combined groups required to file a short period combined return, however see Subchapter 21 for more information on combined reporting.**

## SUBCHAPTER 13 ASSESSMENT, PAYMENTS, REFUNDS, LIEN

### 18:7-13.8 Claims for refund; when allowed

(a) The four-year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. For purposes of this section, the term "due date" means the original due date of the return. The term does not mean or include any extended due date.

(b) The four-year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment.

(c) For purposes of the application of this rule only:

1. A Tentative Return and Application for Extension of Time to File a New Jersey [Corporation Business Tax Return (Form CBT-200T)] **corporation business tax return** and an installment voucher are not returns;

2. [A Corporation Business Tax Return (Form CBT-100) is a return] **The taxpayer shall file the applicable New Jersey corporation business tax for the respective period; and**

3. A Report of Changes in Corporate Taxable Net Income by the Internal Revenue Service (IRA-100) or a [Form CBT-100 or CBT-100S] **New Jersey corporation business tax return** for the appropriate tax year, with the words "AMENDED RETURN" clearly [written]**indicated** on the front page of the form, is an amended return.

(d) When a taxpayer files a Report of Changes in Corporate Taxable Net Income by the Internal Revenue Service pursuant to N.J.A.C. 18:7-11.8(a) that results in a diminution of entire net income for any year, the four-year period for filing a claim for refund based on that diminution for the return year at issue begins on the date that taxable income is finally changed or corrected by the Internal Revenue Service. Such claims for refund must be filed with the Division of Taxation on Form A-3730. The Division may require additional information in order to properly determine the operative date of the Internal Revenue Service change or correction.

(e) When a taxpayer files an amended return with the Internal Revenue Service (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7-11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within four years of the later of filing or payment of the original return self-assessment [(Form CBT-100)].

(f) though (h) (No change to text.)

(i) To claim a refund and amend [Form CBT-100 or CBT-100S] **the applicable New Jersey corporation business tax** returns, the [Form CBT-100 (or the Form CBT-100S for New Jersey S corporations)] **applicable return** for the appropriate tax year shall be used. The words "AMENDED RETURN" shall be clearly [written] **indicated** on the front page of the [form] **New Jersey corporation business tax return**, and it shall be **submitted electronically except in the case of the BFC-1 (which is** mailed to:

Corporation Business Tax Refund Section

[50 Barrack Street] **3 John Fitch Way**

PO Box 259

Trenton, NJ 08695-0259).

The following examples apply to claims accruing on and after July 1, 1993:

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within four years of the filing of the delinquent [Form CBT-100] **corporation business tax return**. A penalty for late filing of the [Form CBT-100]**corporation business tax return** may be imposed under N.J.S.A. 54:49-4.

Example 2: One year after filing a [Form CBT-100]**corporation business tax return** and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer

files an amended tax return claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. Any taxpayer filing an amended return with the Internal Revenue Service must file an amended return with New Jersey within 90 days, see N.J.S.A. 54:10A-13. The periods of limitation to make deficiency assessments under N.J.S.A. 54:49-6 and to file claims for refund under N.J.S.A. 54:49-14 shall commence to run for additional four-year periods from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue; provided, that the additional periods of limitation shall only be applicable to the increase or decrease in tax attributable to the adjustments in such changed or corrected taxable income.

Example 3: Taxpayer receives an additional tax assessment with which it disagrees. Taxpayer does not contest the assessment with the Division or in the Tax Court within 90 days. Taxpayer pays the assessment within one year after the end of the 90-day protest period and 90-day appeal period and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. Taxpayer files a claim for refund within four years of having made its payment of the assessment but beyond 450 days after the 90-day protest period expires. Since the taxpayer did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:49-14a or follow the refund procedure established by N.J.S.A. 54:49-14b and N.J.A.C. 18:2-5.5(c)1, the claim must be rejected.

Example 4: Taxpayer did not contest an estimated tax assessment (N.J.S.A. 54:49-5). More than four years after having paid it, the taxpayer concludes that it was erroneous. Subsequently, the taxpayer files a Report of Changes in Corporate Taxable Net Income by the Internal Revenue Service (IRA-100) or a [Form

CBT-100] **corporation business tax return** marked "AMENDED RETURN" relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

## SUBCHAPTER 21 COMBINED RETURNS

### 18:7-21.1 Definitions Relevant To Combined Returns

"Affiliated group" means: for purposes of section 23 of P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in §section 1504 of the ~~Federal~~ Internal Revenue Code, 26 U.S.C. §s.1504, except such affiliated group shall include all U.S. domestic corporations that are commonly owned, directly or indirectly, by any member of such affiliated group, without regard to whether the affiliated group includes:~~a.~~ (1) corporations included in more than one Federal consolidated return; (2) ~~b.~~ corporations engaged in one or more unitary businesses; or (3) corporations that are not engaged in a unitary business with any other member of the affiliated group.

~~c. corporations that are not engaged in a unitary business with any other member of the affiliated group.~~

For purposes of this subsection:

"U.S. domestic corporations" means: (1) business entities wherever incorporated or formed that are U.S. domestic corporations, are deemed to be, or are treated as U.S. domestic corporations under the provisions of the Internal Revenue Code; or (2) any entities incorporated or formed under the laws of a foreign nation that are required to file Federal tax returns if such entities have effectively connected income within the meaning of the Internal Revenue Code; and

"Commonly owned" means that more than 50 percent of the voting control of each member of an affiliated group is directly or indirectly owned by a



common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the affiliated group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the Internal Revenue Code (26 U.S.C. s.318).

In cases where the ~~common~~“commonly owned” ownership standard is met, a New Jersey affiliated group shall include:

(1) ~~each member~~business entities wherever incorporated ~~in the United States,~~or formed that are U.S. domestic corporations, that are deemed to be, or are treated as U.S. domestic corporations under the ~~laws~~provisions of the ~~United States,~~ any state, the District of Columbia, or any territory or possession of the United StatesInternal Revenue Code; and/or

(2) any ~~member wherever~~entities incorporated or formed ~~that is treated as a domestic corporation~~under the ~~provisions~~laws of ~~the Federal~~a foreign nation that are required to file Federal tax returns if such entities have effectively connected income within the meaning of the Internal Revenue Code.

~~“Commonly owned” shall mean more than 50 percent of the voting control of such member is directly or indirectly owned by a common owner or owners, either corporate or non-corporate.~~

~~“Affiliated group election” or “Commonly owned group election”, means an election by a taxable member on behalf of itself and its affiliates to treat as its combined group all business entities that are members of its New Jersey affiliated group, on such terms and in keeping with such requirements as are further explained in N.J.A.C. 18:7-21.14.~~

**"Combinable captive insurance company" means: an entity that is treated as an association taxable as a corporation under the Federal I. R. C.:**

**(1) more than ~~fifty percent~~ (50%) of the voting stock of which is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the Federal I. R. C., and not exempt from Federal income tax;**

**(2) that is licensed as a captive insurance company under the laws of this State or another jurisdiction;**

**(3) whose business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent, members of its affiliated group, or both; and**

**(4) ~~Fifty percent~~ (50%) or less of whose gross receipts for the privilege period consist of premiums from arrangements that constitute insurance for Federal income tax purposes.**

**For purposes of this definition:**

**"Affiliated group" shall have the same meaning as that term is given by § 1504 of the Federal I. R. C., 26 U.S.C. §1504, except that the term "common parent corporation" as used in § 1504 of the Federal I. R. C., 26 U.S.C. §1504, shall mean any person, as defined in § 7701 of the Federal I. R. C., 26 U.S.C. §7701, and references to "at least ~~80 percent~~ (80%)" in § 1504 of the Federal I. R. C., 26 U.S.C. §1504, shall be read as "~~fifty percent~~ (50%) or more." Section 1504 of the**

**Federal I. R. C., 26 U.S.C. §1504, shall be read without regard to the exclusions provided for in subsection (b) of that section. The affiliated group is also otherwise known as the commonly owned group.**

**"Gross receipts" includes the amounts included in gross receipts for purposes of paragraph (15) of subsection (c) of § 501 of the Federal I. R. C., 26 U.S.C. §501(c)(15), except that those amounts also include all premiums.**

**"Premiums" includes consideration for annuity contracts and excludes any part of the consideration for insurance, reinsurance, or annuity contracts that do not provide bona fide insurance, reinsurance, or annuity benefits.**

**A combinable captive insurance company shall not be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive insurance company that does not meet the definition of combinable captive insurance company will be excluded as provided in subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and is exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).**

**"Combined group" means: the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax under this chapter, and shall include all business entities except as otherwise provided for under any section of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).**

**A combined group shall be treated, for privilege periods ending on and after July 31, 2020, as one taxpayer for purposes of paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for the income derived from the unitary business; provided however, with regard to the**

surtax imposed pursuant to section 1 of P.L.2018, c. 48 (C.54:10A-5.41) and for that purpose only, the portion of income that is attributable to a member which is a public utility exempt from the surtax shall not be included when computing the surtax due.

(1) The combined group shall consist of one or more taxable members of the group, irrespective of their place of incorporation or formation, and the additional non-taxable members of such group.

(2) In the case of an affiliated group election, the term “combined group” refers to the group to which the election applies, which may constitute more than one Federal affiliated group.

(3) The combined group~~’s taxable entire net income or loss is the sum of the aggregate taxable entire net income or loss, subject to allocation and derived from a unitary business or the sum of the aggregate taxable entire net income or loss of a New Jersey affiliated group in the case of an~~ shall consist of members irrespective of their place of incorporation and include businesses operating as a unitary business. The determination of whether a group of entities constitutes a combined group occurs prior to determining the method (water’s-edge, worldwide, or affiliated group~~-election, in either case as reported on~~) of combined return to file. However, a combined ~~report of every taxable member and non-taxable member of the combined group~~group will file on a water’s-edge basis if no election to file a world-wide or affiliated group basis is made. See: 18:7-21.15 for more information on determining which members are included on a water’s-edge basis.

**"Common ownership" means:** that more than **fifty percent (50%)** of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with §318 of the Federal I. R. C., 26 U.S.C. §318.

**(1) Direct and indirect voting control, and tiered ownership.** If the same person (and/or any related persons) holds directly or indirectly more than **fifty percent (50%)** of the voting control of a corporation (a "parent corporation"), that person shall be considered to hold indirectly any stock or other interest in ownership or control in a lower-tier corporation (a "subsidiary corporation") that is directly or indirectly held by the parent corporation. Thus, by way of illustration, a parent corporation and any one or more corporations (whether or not in a direct chain) connected through direct or indirect stock ownership, where more than **fifty percent (50%)** of the voting control of each subsidiary corporation is directly or indirectly owned by a corporation (and/or any related persons), are treated as commonly owned or under common ownership, and subject to inclusion in a combined group.

**Example 1.** Corporation A, a widely-held publicly-traded corporation, owns **fifty-one percent (51%)** of the stock of Corporation B; B owns **fifty-one percent (51%)** of Corporation C; and C owns **sixty percent (60%)** of Corporation D. Corporations A, B, C, and D are all treated as commonly owned or under common ownership, and subject to inclusion in a combined group.

Example 2. Same facts as in Example 1, except Corporation C owns **forty percent (40%)** of Corporation D, with another **twenty percent (20%)** of D being owned by an individual who owns **one hundred percent (100%)** of Corporation A. All of Corporations A, B, C, and D are ~~again,~~ treated as commonly owned or under common ownership, and subject to inclusion in a combined group. D is treated as commonly owned through the aggregation of C's **forty percent (40%)** ownership in D and the related individual's **twenty percent (20%)** ownership in D.

(2) Related ~~Versus~~ **versus** Unrelated Owners.

i. Two or more corporations, where stock representing more than **fifty percent (50%)** of the voting control of each corporation is owned directly or indirectly by the same person (and/or any related persons), whether corporate or non-corporate, are treated as commonly owned or under common ownership, and subject to inclusion in a combined group. A common owner or owners need not be members of the combined group.

Example 1. Individual (W) owns **fifty-one percent (51%)** of Corporation A, **sixty percent (60%)** of Corporation B, and **one hundred percent (100%)** of Corporation C. Corporations A, B, and C are all treated as commonly owned or under common ownership, and subject to inclusion in a combined group. The same conclusion would be reached if W owned **thirty-five percent (35%)** of B and W's husband, a related person, owned **twenty-five percent (25%)** of B, so that together W and her husband owned **sixty percent (60%)** of B.

Example 2. Foreign corporation (F) owns **one hundred percent (100%)** of the stock of Corporation A (organized in the U.S.) and of Corporation B (also

organized in the U.S.). A and B each directly or indirectly own various corporate subsidiaries in separate chains leading up to A and B, where the voting control of each subsidiary is more than **fifty percent (50%)**-owned by a higher-tier corporation in the chain. A and B and all of their respective direct and indirect subsidiaries are treated as commonly owned or under common ownership, and subject to inclusion in a single combined group.

ii. Two or more corporations shall not be treated as commonly owned or under common ownership, and subject to inclusion in a combined group, ~~solely because such corporations have one or more unrelated owners in common,~~ where aggregation of the ownership of such unrelated owners would be necessary in order to represent more than **fifty percent (50%)** of the voting control of any of such corporations.

Example 1. Individual I-1 owns stock representing **forty percent (40%)** of the voting control of Corporation A and stock representing **twenty percent (20%)** of the voting control of Corporation B. Individual I-2 owns **thirty percent (30%)** of A and **forty-five percent (45%)** of B. I-1 and I-2 are not related persons, and A and B are not otherwise related persons. A and B are not treated as commonly owned or under common ownership, and thus are not subject to inclusion in a combined group.

iii. In applying Internal Revenue Code § 318 for determining whether indirect ownership exists, the beneficial and constructive ownership rules of Internal Revenue Code § 318 shall apply for the purposes of determining common ownership.

(3) Two or more corporations that are "stapled entities" are treated as commonly owned or under common ownership, and subject to inclusion in a combined group. Stapled entities are entities where, by reason of their form of ownership, or restrictions on transfer of ownership, or other terms or conditions (whether existing by operation of law, by written contract, or otherwise), in the case of a transfer of one or more ownership interests, more than **fifty percent (50%)** of the voting control of each entity is required to be transferred. [See: 26 C.F.R. §1.269B-1 for additional information on stapled entities.](#)

(4) A group of corporations under common ownership may be engaged in one or more unitary businesses.

(5) **Related Parties; Constructive Ownership.** In determining whether a person is a related person or is considered to hold stock or other ownership or control interests in an entity that is directly held by another person, the constructive ownership rules described in Internal Revenue Code § 318 shall generally apply, to the extent not inconsistent with the rules or requirements described in this definition or elsewhere in Chapter N.J.A.C. 18:7 or in N.J.S.A. 54:10A-1 et seq., except that:

i. In applying Internal Revenue Code § 318(a)(2), if a partnership, estate, trust or corporation owns, directly or indirectly, more than **fifty percent (50%)** of the voting control of a corporation, it shall be considered to own all of the stock or other ownership or control interests in such corporation, and

ii. If a person has an option to acquire stock or other ownership interests in an entity, such stock or other ownership interests shall be treated as



owned by such person only to such extent as determined by the Director as necessary to prevent tax avoidance.

(6) In determining common ownership, the Director may take into account any plan or arrangement, whether existing by operation of law, by contract, or otherwise, for bestowing or shifting ownership or voting control, in addition to the terms of any actual stock ownership or control.

"Group privilege period" means: if two or more members in the combined group file in the same ~~Federal~~federal consolidated tax return, the same income year as that used on the ~~Federal~~federal consolidated tax return and, in all other cases, the privilege period of the managerial member.

"Managerial member" means: if the combined group has a common parent corporation and that common parent corporation is a taxable member, the managerial member shall be the common parent corporation. In other cases, the combined group shall select a taxable member as its managerial member or, in the discretion of the Director or upon failure of the combined group to select its managerial member~~;~~, the Director shall designate a taxable member of the combined group as managerial member.

"Member" means: a business entity that is a part of a combined group.

i. A disregarded entity is not itself a member. See N.J.A.C. 18:7-21.3 for more information.

ii. A partnership is not a member of a combined group. See N.J.A.C. 18:7-21.3 for more information.

iii. A business entity that is treated as a corporation for either the purposes of the corporation business tax or for Federal purposes shall be a member of the combined group, unless some other exception or exclusion applies.

iv. A corporation exempt pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-1 et seq.) shall not be a member of a combined group.

"Nontaxable member" means: a member that is: (i) not subject to tax pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) ~~and is not a corporation exempted from the tax pursuant to section 3 of;~~ or (ii) ~~(deleted by amendment, P.L.19452020, c.162118 (C.54:10A-3) except for a combinable captive insurance company; or (ii) a New Jersey S corporation which does not elect to be included in the combined group~~5.46 et al.).

"Taxable member" means: a member that is subject to tax pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.). A member shall be a taxable member even if such member only owes the minimum tax. A New Jersey S corporation shall only be included as a taxable member of a combined group filing a New Jersey combined return if the New Jersey S corporation elects to be included as a member and taxed at the same rate as the other members of the combined group. A New Jersey S corporation that ~~does not elect to be included~~ shall be excluded as a member of the combined return and shall file a separate return.

**"Unitary business" means: a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts. "Unitary business" shall be construed to the broadest extent permitted under the Constitution of the United States. A business conducted by a partnership which is in a unitary business with the combined group shall be treated as the business of the partners that are members of the combined group, whether the partnership interest is held directly or indirectly through a series of partnerships, to the extent of a partner's distributive share of partnership income. The amount of partnership income to be included in the partner's entire net income shall be determined in accordance with subsection a. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a partnership.**

**(1) A group of corporations related by common ownership may be engaged in more than one unitary business.**

**(2) See N.J.A.C. 18:7-21.2 for more information on unitary business.**

**~~"Worldwide Election" means an election by a taxable member of a combined group on behalf of all of the members of such group engaged in a unitary~~**

~~business to treat as its combined group all members that are engaged in such unitary business, wherever located, on such terms and in keeping with such requirements and such forms or other notices as are issued by the Director of the Division of Taxation.~~

#### 18:7-21.2 Unitary Business

a. The definition of unitary business for New Jersey corporation business tax purposes is defined in N.J.S.A. 54:10A-4(gg). New Jersey construes the term “unitary business” to the broadest extent permitted under the United States Constitution. ~~Although a business entity may be “unitary” with other business entities, it is still necessary under the Due Process and Commerce Clause of the United States Constitution to identify the scope of the unitary business. To the extent compatible with New Jersey law and U.S. Supreme Court jurisprudence, any legal or factual determination relevant to the existence or nonexistence of a unitary business will favor consistency with legal and factual determinations of other mandatory unitary combined reporting states.~~

i. A determination as to whether an entity forms part of a unitary business with another entity is based on the facts and circumstances of each case. Such analysis is both quantitative and qualitative.

ii. A unitary business is characterized by significant flows of value evidenced by factors such as functional integration, centralization of management, and economies of scale, ~~as described in Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980).~~

These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence.

Thus, one or more related business organizations engaged in business activity – entirely within this State or both within and without this State – are unitary if there is interdependence in their functions. ~~This test adopts the decisional law of the~~The United States Supreme ~~Court with respect to the constitutional prerequisites for requiring unitary combination. The~~ Court has expressed the constitutional test ~~in various ways~~using a variety of language; in ~~various~~some cases, holding that a finding of unitary relationship requires “contribution or dependency” between businesses, ~~in others requiring~~ “substantial mutual interdependency” or “flow of value,” ~~and also finding that it requires~~ functional integration, centralized management, or economy of scale.

iii. The participants in an economic enterprise under common ownership may also be considered a unitary business if there is unity of ~~use and management (referred to as unity of operation and use by some other states)~~. See *Butler Brothers v. McColgan*, ~~The~~, 315 U.S. 501, 508 (1942). ~~Unity of use and management (unity of operation and use)~~ indicates the existence of interdependence of functions.

iv. An affiliated group/commonly controlled group may be engaged in one or more unitary businesses. Therefore, an affiliated group/commonly controlled group may contain more than one combined group and file more than one New Jersey combined return.

v. If the entities meet either the “Interdependence of Functions Test” or the “Unity of ~~Operations~~Use and ~~Use~~Management Test,” the entities are part of the unitary business.

b. Interdependence of Functions Test- Any of the following circumstances ~~indicates~~demonstrate that an interdependence of functions ~~exists~~may exist:

(1) Same Line of Business. The principal activities of the entities are in the same general line of business. Examples of the same line of business are manufacturing, wholesaling, retailing, servicing, and/or repairing of tangible personal property; transportation; or finance. (These examples are for illustration purposes and are not meant to be all inclusive.) In determining whether two entities are in the same general line of business, consideration is given to the nature and character of the basic operations of each entity. This includes, but is not limited to, sources of supply, goods or services produced or sold, labor force, and market. Two entities are in the same general line of business when their operations are sufficiently similar to reasonably conclude that the entities are likely to depend upon or contribute to one another.

(2) Vertically Structured Business. The principal activities of the entities are different steps of a vertically structured business. Illustrations of such different steps are: ~~For example in a natural resource business-~~ exploration, mining and drilling, production, refining, marketing, and transportation ~~of natural resource~~to market (whether wholesale or retail).

(3) Centralized Management. Centralized management may be evidenced by executive-level policy made by a central person, board, or committee and not by

each entity in areas such as, but not limited to, purchasing, accounting, finance, tax compliance, legal services, human resources, health and retirement plans, product lines, capital investment, and marketing.

(4) **Non-Arm's-Length Prices.** Goods or services or both are not supplied at arm's length prices between or among entities. Existence of arm's-length pricing between entities, however, does not indicate lack of unity.

(5) **Existence of Benefits from Joint, Shared, or Common Activity.** A discount, cost-saving, or other benefit can result from joint purchases, leaseholds, or other forms of joint, shared, or common activities between or among entities.

(6) **Relationship of Joint, Shared, or Common Activity to Income-Producing Operations.** When determining whether there exists a joint, shared, or common activity that is indicative of a unitary relationship, consideration is given to the nature and character of the basic operations of each entity. Such consideration includes, but is not limited to, the entity's sources of supply, its goods or services produced or sold, and its labor force and market. These considerations are used to determine whether the joint, shared, or common activity is directly beneficial to, related to, or reasonably necessary to the income-producing activities of the unitary business.

(7) **Exercise of Control.** The exercise of control by one entity over another entity is indicative of a unitary relationship.

c. **Unity of ~~Operations~~Use and ~~Use~~Management (referred to as unity of operations and use in several other states)** Test - Unity of ~~operation~~use means there is functional integration among the entities and is evidenced generally by shared

support functions. Unity of **usemanagement** is evidenced generally by centralized management or **useutilization** of centralized policies. These unities exist if each entity that is to be included in the unitary business benefits or receives goods, services, support, guidance, or direction arising from the actions of common staff resources or common executive resources, personnel, third-party providers, or operations under the direction of such common resources. The tests are overlapping and the indicators of each test also indicate the existence of interdependence of functions. The existence or non-existence of the following factors will assist in the determination of whether unity of **operationsuse** and **usemanagement** exist with respect to a combined group. The existence or non-existence of any one factor, by itself, is normally not determinative of whether there is a unity of **operationsuse** and **usemanagement**. Factors that may be considered include, but are not limited to:

- (1) Common purchasing;
- (2) Common advertising;
- (3) Common employees, including sales force;
- (4) Common accounting;
- (5) Common legal support;
- (6) Common retirement plan;
- (7) Common insurance coverage;
- (8) Common marketing;
- (9) Common cash management;
- (10) Common research and development;
- (11) Common offices;



- (12) Common manufacturing facilities;**
- (13) Common warehousing facilities;**
- (14) Common transportation facilities;**
- (15) Common computer systems and support;**
- (16) Common or significant financing support;**
- (17) Common management (meaning that one or more officers or directors of the parent are also officers or directors of the subsidiary);**
- (18) Control of major policies (e.g., the parent corporation's board of directors requires that it approve any acquisition by either the parent or subsidiary of any interest in any other company; or the parent corporation's board of directors requires that it approve any lending in excess of a minimum amount to any one or more of either the parent or subsidiary's suppliers);**
- (19) Inter-entity transactions (e.g., a subsidiary corporation licenses the use of personal property it developed to the parent corporation and the parent corporation uses the property in its production activities);**
- (20) Common policy or training manuals (e.g., the parent corporation's employee handbook applies to all of a subsidiary's employees; or the subsidiary's employees are required to attend parent corporation's employee training courses; or disciplinary procedures are the same for both corporations' employees, even if the appeal process is only through their respective entities);**
- (21) Required budgetary approval (e.g., the parent corporation's board of directors requires that it approve the budget and expenditure plans of the subsidiary on a periodic basis);**

(22) Required capital asset purchases approval (e.g., the parent corporation's board of directors requires that it approve any capital expenditures by the subsidiary in excess of a minimum set amount).

d. Without limiting the scope of a unitary business, the presumptions and inferences concerning whether and when two or more corporations under common ownership will be deemed to be engaged in a unitary business, **as explained in subsections (1) through (87) below, do not purport to set forth all of the indicia** of a unitary business, as that determination is to be made pursuant to U.S. constitutional principles.

(1) Without limiting the scope of a unitary business as determined in other situations, business activities conducted by corporations under common ownership that are in the same general line of business, such as a multistate grocery chain, will generally constitute a unitary business. Business activities conducted by corporations under common ownership that comprise different steps in a vertically structured business will **almost always** generally constitute a unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business.

(2) When the common ownership standard is first met by reason of merger, acquisition, or business formation, it is presumed that a unitary business relationship exists. Unity is generally presumed for newly-acquired or newly-formed entities.

- (3) Where a voting interest is directly or indirectly acquired by or in a corporation, ~~or by~~ or in a member of a corporation's combined group, that results in achieving the common ownership standard, there is presumption of unity where the combined group and the acquired corporation had been previously engaged in an otherwise unitary relationship, but did not meet the common ownership standard.
- (4) Where a member, or one or more other members of the member's combined group, forms a new corporation it shall be presumed that the formed corporation(s) is engaged in a unitary business with the forming corporation(s) from the date of its formation.
- (5) A passive parent holding company, that directly or indirectly controls one or more operating company subsidiaries engaged in a unitary business, shall be deemed to be engaged in a unitary business and includable in a combined report with the subsidiary or subsidiaries. An intermediate passive holding company shall be deemed to be engaged in a unitary business with the parent and subsidiary or subsidiaries and includable in a combined report with them.
- (6) Transfers or sharing of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of a unitary relationship when the information or property transferred or shared is significant to the businesses' operations. Similarly, a unitary relationship is indicated when there is significant common or

intercompany financing, including the guarantee by, or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities, if the financing activity serves an operational purpose.

- (7) ~~One indicia~~Other indicators of a unitary business conducted between corporations related by common ownership ~~is~~include, but are not limited to, sales, exchanges, or transfers of products, services and/or intangibles between such corporations. When such evidence exists, this evidence is not negated by the use of market-based or “arm’s length” pricing as to the transactions by the corporations in question.

- ~~(8) If a member of a combined group is completely spun off from the group, that business entity and the combined group must show clear and convincing evidence to the Director of the Division of Taxation that the factors denoting a unitary business no longer exist. Former members of a combined group will no longer be presumed unitary if sold to an unrelated third party. However, the Director may impose such conditions necessary to prevent the evasion of tax.~~

e. ~~There are instances where~~It is possible that a portion of a member’s business operations are independent of the unitary business activity of the combined group. Only the income, attributes, and allocation factors related to the portion of a company’s operations that are part of a unitary business of the combined group are included in the calculation of the combined group’s entire net income and allocation factor. The remaining (independent) portion of a member’s business operations may be subject to tax separately from the combined group if such member

~~individually~~ conducts business in New Jersey ~~individually~~ or with another combined group (if it is engaged in a unitary business with that combined group that also conducts business in New Jersey).

1. In lieu of filing a separate return to report such income, such member of a combined group must complete Schedule X to report the separate portion of its business operations (and those operations are not part of another combined group). Schedule X will be used to calculate the New Jersey taxable net income of that separate activity income that must be reported on ~~Part III of~~ Schedule A of the ~~CBT-100U~~ New Jersey combined return.

f. If a member of a combined group is completely spun-off from the group, that business entity and the combined group must show clear and convincing evidence to the Director of the Division of Taxation's satisfaction that the factors denoting a unitary business no longer exist. However, the Director may impose such conditions necessary to prevent the evasion of tax.

g. Former members of a combined group will no longer be presumed unitary if sold to an unrelated third party. However, the Director may impose such conditions necessary to prevent the evasion of tax.

#### N.J.A.C. 18:7-21.3 Entities included and excluded from a combined return

a. For the purposes of the corporation business tax, the following business entity types must be included as members of the combined group filing a New Jersey combined return:

1. Corporations;

2. Combinable captive insurance companies;
  3. Banking corporations and financial corporations;
  4. Limited liability companies (taxed as corporations);
  5. Foreign limited liability companies (taxed as corporations);
  6. S corporations except as provided in subsection (c) of this section;
  7. Casino Licensees;
  8. Qualified Subchapter S Subsidiaries that have not made a New Jersey S corporation election;
  9. New Jersey Qualified Subchapter S Subsidiaries that elected to be included in the combined group;
  10. Business entities that are treated as corporations for Federal purposes;
  11. Professional corporations; ~~and~~
  12. Business entities included in the combined group include entities incorporated under the laws of a foreign country as business entities that would be corporations if such entities had been incorporated under the laws of the United States; and
  13. Public utilities, as defined in N.J.S.A. 54:10A-4(q), that are not excluded pursuant to N.J.S.A. 54:10A-4.6(k).
- b. For the purposes of the corporation business tax, the following business entity types are excluded as members of the combined group filing a New Jersey combined return:**

**1. Public utility companies that are excluded pursuant to N.J.S.A. 54:10A-4.6(k) are not included in the combined group reporting on the combined return. Such public utility companies shall file separate returns;**

**e2. A New Jersey S corporation that does not elect to be included as part of the combined group reported on the combined return. Such New Jersey S corporations shall file ~~a separate return-~~returns;**

**d3. Insurance companies that are not combinable captive insurance companies are excluded from the combined group reported on the combined return, except that dividends from the insurance companies may be included in the income reported by the combined group members pursuant to N.J.A.C. 18:7-21;**

**4. A business entity that is treated as a disregarded entity for Federal income tax purposes;**

**5. Partnerships, limited partnerships, or limited liability companies treated as partnerships for Federal purposes; and**

**6. Corporations exempt from the corporation business tax pursuant to N.J.S.A. 54:10A-3.**

**ec.. A business entity that is treated as a disregarded entity for Federal income tax purposes is also treated as a disregarded entity for New Jersey corporation business tax purposes pursuant to N.J.S.A. 42:2C-92. Disregarded entities also include legal partnerships that are disregarded entities for Federal purposes.**

**~~A~~While a disregarded entity itself is not a member of a combined group-  
However, the tax attributes of a disregarded entity are reported by a member of a combined group when the member owns the disregarded entity. The attributes of a**

disregarded entity owned by a member of a combined group are included in the income and allocation factor of that member and the combined group. In making a determination of which members are included in a water's-edge combined group pursuant to N.J.S.A. 54:10A-4.11, the disregarded entity's attributes shall be used by the member that owns the disregarded entity. A disregarded entity is not subject to the \$2,000 minimum tax as a member of a combined group because a disregarded entity is not a member of the combined group. However, if a disregarded entity is part of a unitary business of a combined group, the owner of the disregarded entity will be a member of the combined group and must be included as part of the combined return except as otherwise excluded.

d. Partnerships, limited partnerships, or limited liability companies treated as partnerships for Federal purposes are business entities that can be unitary with a combined group. However, these entities are not members of a combined group for New Jersey corporation business tax purposes. Their income and attributes flow through to the corporate partners that are members of the combined group for the purposes of computing entire net income, allocation, and for the purposes of determining inclusion in the water's-edge basis. Partnerships, limited partnerships, and limited liability companies that are treated as partnerships for Federal purposes are not subject to the \$2,000 minimum tax as a member of a combined group because they are not a member of the combined group. However, form NJ-CBT-1065 must still be filed.

~~f. Although a business entity may otherwise be in a unitary business relationship with a combined group, it shall not be included in the combined group on the~~



~~combined return if the business entity is otherwise exempt from the corporation business tax pursuant to N.J.S.A. 54:10A-3.~~

~~g~~

**e.** Newly acquired business entities under common ownership with a combined group must be included as one of the members of the combined group if it is operating as part of the combined group's business enterprise as described in N.J.A.C. 18:7-21.2(a).

~~h. Former members of a combined group will no longer be presumed unitary if sold to an un-related third party. If a member of a combined group is completely spun-off from the group, that business entity and the combined group must show clear and convincing evidence to the Director of the Division of Taxation that the factors denoting a unitary business no longer exist. However, the Director may impose such conditions necessary to prevent the evasion of tax.~~

~~i~~

**f.** The Director may permit by petition of the taxpayer and the members of its unitary business group that a certain otherwise excluded taxpayer which is a member of a combined group be included in the combined group reported on the combined return. However, all of the members of the combined group including such otherwise excluded taxpayer must disclose all of their books and records to the Director. The otherwise excluded taxpayer will be denied inclusion as a member of the combined group on the combined return if the Director determines the principal purpose of such inclusion is to ~~harvest~~**exploit** the tax attributes of either the other members or the otherwise excluded taxpayer.

~~j. Partnerships, limited partnerships, or limited liability companies treated as partnerships for Federal purposes are business entities that can be unitary with a combined group. However, these entities are not members of a combined group for New Jersey corporation business tax purposes. Their income flows through to the corporate partners that are members of the combined group. Partnerships, limited partnerships, and limited liability companies that are treated as partnerships for Federal purposes are not subject to the \$2,000 minimum tax as a member of a combined group because they are not a member of the combined group. However, form NJ-CBT-1065 must still be filed.~~

**18:7-21.4 Mandatory Combined Returns ~~For Unitary Combined Groups~~for unitary combined groups.**

(a) In general, a business entity is required to file a New Jersey combined return when it is subject to tax under N.J.S.A. 54:10A-2 and is engaged in a unitary business with one or more other business entities that meet the requirements for inclusion as part of a combined group. In such cases, if any member of the group has income from the activities of the group's unitary business that is taxable in another state, the taxable member shall calculate its taxable net income derived from such unitary business as its allocated share of the income or loss of the combined group engaged in the unitary business, as determined in accordance with such combined return. The managerial member shall file a combined return on behalf of the combined group. The combined return shall include the income and allocation information of all members of the combined group and such other

information as required by the Director. The composition of the combined group and the computation of the taxable member's income and its allocation formula are explained ~~by~~[in](#) N.J.A.C. 18:7-21.7 through N.J.A.C. 18:7-21.28. A combined return is also required in cases where a corporation is engaged in a unitary business with one or more corporations and no member of the combined group has income from the activities of the group's unitary business that is taxable in another state. In some cases, the managerial member may make an election to treat as its combined group all corporations that are members of its New Jersey affiliated group, on such terms and in keeping with such requirements of [this subchapter](#) (Subchapter 21). The requirement to file a combined return is not dependent upon an evidentiary showing that there is a distortion of income between corporations that are related by common ownership or that there is a lack of arm's length pricing in transactions between such corporations.

1. The business entities that are included in a combined group generally retain their separate identities under N.J.S.A. 54:10A-1 et seq. The combined reporting requirements do not disregard the separate identity of an individual taxable member of a combined group. [However, the combined group is also one taxpayer pursuant N.J.S.A. 54:10A-4\(h\) and N.J.S.A. 54:10A-4\(z\).](#) In determining the corporation business tax liability on such taxable income, the rules ~~of N.J.S.A.~~ [promulgated pursuant to the Corporation Business Tax Act \(1945\), P.L.1945, c.162 \(C.54:10A-1 et seq.\)](#) generally apply to the computation of such income, the allocation formulas, tax attributes, and tax rate, as applicable, subject to modifications pursuant to N.J.S.A. 54:10A-1 et seq. or [this subchapter](#) (Subchapter

21) of the promulgated regulations. A taxable member may have tax attributes or tax consequences apart from those determined through the means of a combined return. For example, in any case where no affiliated group election is made, a taxable member of a combined group may have, in addition to its allocable share of the combined group's unitary business income, allocable income from activities that were conducted by the taxable member that are not part of the combined group's unitary business. In these cases, the taxable member shall be subject to tax on such other income under the general rules as set forth in the Corporation Business Tax Act (N.J.S.A. 54:10A-1 et seq.).

2. Where **one hundred percent (100%)** of the activities of the member are part of the unitary business of the combined group, the member does not have to file an additional separate tax return. The combined return filed by the managerial member of the combined group, shall count as the taxpayer's return.

3. A member that has any other activities and income that are non-unitary with the combined group shall complete Schedule X and the managerial member shall attach the member's Schedule X to the combined return. The member does not have to file an additional separate tax return.

~~4. A copy of the combined return that was filed with the Division of Taxation by the managerial member shall be filed with a taxpayer's separate part-year tax return, in a year the taxpayer departs the combined group.~~

(b) For privilege periods ending on and after July 31, 2019, business entities in a combined group shall be required to file a mandatory combined return. A combined group engaged in a unitary business in this State shall file a combined

return that includes the income and allocation factors of all entities that are members of the unitary business, and such other information as required by the Director. The combined group shall be required to file a combined return if one member has sufficient contacts within this State to be subject to tax in this State pursuant to Section 2 of P.L. 1945, c. 162 (C. 54:10A-2). Once one member with nexus exceeds the protections of P.L. 86-272, no other member with nexus may claim P.L. 86-272 protection **if such activities were part of the unitary business of the combined group.**

~~———(c) A combined group filing a combined return shall also file all of the copies of the Affiliations Schedule Form 851, which is filed with Form 1120 for Federal income tax purposes. If the members of the combined group reported on the combined return are reported on more than one Affiliations Schedule Form 851, and more than one Form 1120, all of the copies that each member of the combined group were reported on must be included.~~

18:7-21.5 Determining the ~~Managerial Member~~**managerial member** of the ~~Combined Group~~**combined group** and the ~~Managerial Member's~~**managerial member's responsibilities**

a. If the combined group has a common parent corporation within the meaning of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and that common parent corporation is a taxable member of the combined group, the managerial member shall be the common parent corporation. In other cases, the combined group shall select a taxable member as its managerial member

or, at the discretion of the Director or upon failure of the combined group to select its managerial member; the Director shall designate a taxable member of the combined group as managerial member. Once the election of the managerial member is made, the election shall be binding for 10 successive privilege periods, except as otherwise provided for by the Director(based on the facts and circumstances of the combined group and the specific business entity).

b. The managerial member of the combined group shall file the mandatory combined return on behalf of the ~~taxable~~ members of the combined group. The managerial member shall be required to file ~~taxable~~-member returns; file ~~taxable~~ member extensions for filing tax returns and other documents with the Director; pay ~~taxable~~-member liabilities; receive ~~taxable~~ member findings, assessments, and notices; make and receive ~~taxable~~ member claims or file ~~taxable~~ member protests and appeals; and shall be the responsible party liable for filing and paying the tax on behalf of the combined group.

(1) A combined group shall file a mandatory combined return in a form and manner prescribed by the Director. If a member of a combined group does not have any activities or income outside of the unitary business, the combined return filed by the managerial member shall constitute the member's New Jersey corporation business tax return.

c. Each taxable member of a combined group shall be jointly and severally liable for the tax due from any taxable member pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), whether or not that tax has been self-assessed, and for any interest, penalties, or additions to tax due.

**d.** The privilege period for the combined group is the privilege period of the managerial member. If a member of a combined group has a different fiscal or calendar accounting period from the combined group's privilege period, that member with a different period shall report amounts from its return for its fiscal or calendar accounting year that ends during the group privilege period.

~~**d.** Each taxable member of a combined group shall be jointly and severally liable for the tax due from any taxable member pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), whether or not that tax has been self-assessed, and for any interest, penalties, or additions to tax due.~~

**e.** If a combined group is eligible to elect the managerial member of the combined group, notice of the election shall be submitted in writing to the Director (by registering for a ~~managerial member~~unitary I.D. number ~~on the online portal~~) not later than the due date or, if an extension of time to file has been requested and granted, not later than the extended due date of the mandatory combined return for the initial privilege period for which a return is required. The managerial member shall be the designated agent and the responsible person for filing the combined return and paying the tax for the combined group. If another taxable member is subsequently designated as the managerial member, the subsequent designation shall be subject to the approval of the Director.

**f.** For privilege periods ending on and after July 31, 2019, a combined group must file a mandatory combined return. However, if privilege periods of the members of the combined group differ, the first mandatory combined return for the

combined group shall be required ~~for~~**in accordance with** the privilege period of the managerial member.

g. If a managerial member leaves the combined group, the unitary ID number (NU number) shall stay with the group. The NU number shall be used for filing the return, making estimated payments, and requesting payments.

h. The members of a combined group shall notify the Director ~~within 90 days~~ of a change in the combined group ~~where a member dissolves, a merger of any kind occurs, a member withdraws from the group, a member ceases doing business, a member of the group is acquired by a third party not in the group, or additional members enter the group which are required to be included~~**composition as described in further detail in N.J.A.C. 18:7-21.29.** Such notification shall satisfy the requirements of N.J.A.C. 18:7-14.1 through N.J.A.C. ~~18:7-14.6~~**18:7-14.5.**

i. Any notice shall be sent to the managerial member of the combined group at the last known address of the managerial member as indicated on either the last filing required or made under this section or a subsequent electronic or written notice provided by the managerial member under rules prescribed by the Director.

j. For more information on situations where the Director of the Division of Taxation may appoint a managerial member, see N.J.A.C. ~~18:7-21.25~~**18:7-21.26.**

~~k. For information on filing combined returns where a member is part of more than one unitary business group see N.J.A.C. 18:7-21.29.~~



**18:7-21.6 Methods for filing combined returns, assessments, making payments, requests for a refund.**

**Installment payments, estimated payments, overpayments, refunds and any other filing or payment matters related to combined groups filing combined returns shall be based on the same rules as apply generally in N.J.A.C. 18:7-11.1 through N.J.A.C. 18:7-13.13 except as follows:**

- 1. Deficiency assessments for the combined group shall be assessed against either the managerial member or a taxable member of the combined group where applicable;**
- 2. Refunds or credits for any overpayment will be submitted to either the managerial member or a taxable member of the combined group as indicated on the return;**
- 3. All payments by the combined group shall be made by electronic funds transfer;**
- 4. All combined returns shall be filed electronically;**
- 5. All safe harbor provisions for installment payments and estimated tax payments shall apply in aggregate by the number of members of the combined group;**
- 6. Unless a member ceases to be a member of the combined group during the group privilege period, the member shall not otherwise be required to file a separate return;**
- 7. A member with activities that are not part of the unitary business of the combined group, and for which the member independently conducts**

business in New Jersey, ~~should not file a separate return to report said portion, and instead~~ shall complete Schedule X, ~~and~~ include that portion of the member's taxable net income as part of the member's total taxable net income on the ~~CBT-100U, and shall not file a separate~~ New Jersey combined return ~~to report said portion.~~

**18:7-21.7 Determining the ~~Entire Net Income~~entire net income of the ~~Combined-Group~~combined group**

a. Each taxable member of a combined group shall determine its entire net income from the unitary business as its share of the entire net income of the combined group in accordance with a combined unitary tax return. The combined group's entire net income is the aggregate sum of entire net income or loss, subject to allocation and derived from a unitary business, or the aggregate sum of entire net income or loss of a New Jersey affiliated group in the case of an affiliated group election, ~~in either case~~ as reported on a combined return of every taxable member and non-taxable member of the combined group. The entire net income from the unitary business of a combined group shall be determined as follows:

b. For a member incorporated in the United States, the entire net income to be included in ~~the~~ income of the combined group shall be the member's entire net income otherwise determined pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).

c. For a member not incorporated in the United States, the income to be included in the entire net income of the combined group shall be determined from a

profit and loss statement that shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained, **and shall be** adjusted to conform to the accounting principles generally accepted in the United States for the presentation of those statements and further adjusted to take into account any book-tax differences required by Federal or State law. The profit and loss statement of each foreign member of the combined group and the allocation factors related thereto, whether United States or foreign, shall be translated into or from the currency in which the parent company maintains its books and records on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. Income shall be expressed in United States dollars. In lieu of these procedures and subject to the determination of the Director that the income to be reported reasonably approximates income as determined under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), income may be determined on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. See N.J.A.C. 18:7-21.8 for more information.

(1) The ~~income included by such a member shall include the worldwide income regardless of whether such income was included in entire net income for Federal income tax purposes. See N.J.A.C. 18:7-21.8 for more information~~ International Financial Reporting Standards (IFRS), which are issued by the International Accounting Standards Board (IASB), qualifies as an acceptable method that “reasonably approximates income” if that is the only method of accounting the specific entity used.

**d. Income from a partnership where a member of the combined group is a partner is as follows:**

**(1) If a member of a combined group receives income from the unitary business from a partnership, the combined group's entire net income shall include the member's direct and indirect distributive share of the partnership's unitary business income.**

**(2) The distributive share of income received by a limited partner from a qualified investment partnership shall not be considered to be derived from a unitary business unless the general partner of such investment partnership and such limited partner have common ownership. To the extent that the limited partner is otherwise carrying on or doing business in New Jersey, it shall allocate its distributive share of income from a qualified investment partnership in accordance with subsection a of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or subsection a of section 4 of (C.54:10A-15.7) as applicable. If the limited partner is not otherwise carrying on or doing business in New Jersey, its distributive share of income from an investment partnership is not subject to tax under this chapter.**

**e. All the dividends and deemed dividends paid by one member to another member of the combined group shall be eliminated from the income of the recipient. Any dividends that are not ~~eliminated~~ eligible for elimination (i.e., dividends from subsidiaries not included as members of the combined group) may be eligible for exclusion pursuant to N.J.S.A. 54:10A-4(k)(5).**

**(1) Where a taxpayer is a member of a combined group and receives dividends from a subsidiary that is not included in the combined return, the dividends**

must be included in the entire net income of the taxpayer pursuant to N.J.S.A. 54:10A-4(k)(5). For privilege periods ending on and after July 31, 2020, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group.

- (2) If the dividends and deemed dividends are not part of the unitary business of the combined group and ~~is~~are paid to a member of the group, the income is included on Schedule X in such recipient member's income and the dividend exclusion pursuant to N.J.S.A. 54:10A-4(k)(5) is applied against the separate income of such member on Schedule X.
- (3) For a combined group with a fiscal 2018 privilege period which ended on or after July 31, 2019, where the combined group included both U.S. domestic corporations as members and non-U.S. corporations as members, and pursuant to the applicability dates in 26 C.F.R. 1.965-9(a) ~~the~~for U.S. domestic corporations which were required to include the deemed repatriation dividends from those non-U.S. corporations, in entire net income during that fiscal period for which the first New Jersey combined return is due, the deemed repatriation dividends shall be eligible for the intercompany dividend elimination.

f. Except as otherwise provided by N.J.A.C. 18:7-21.7, business income from an intercompany transaction among members of the same combined group shall be deferred in a manner similar to the deferral under 26 C.F.R. s.1.1502-13. If one of

the events in either (1) and (2) of this subsection occurs, deferred income resulting from an intercompany transaction among members of a combined group shall be restored to the income of the seller and shall be included in the net income of the combined group as if the seller had earned the income immediately before the event:

(1) The object of a deferred intercompany transaction is: (a) resold by the buyer to an entity that is not a member of the combined group, (b) resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged, or (c) converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged; or

(2) The buyer and seller cease to be members of the same combined group, and no portion of the income or loss is included in the entire net income of the unitary group, regardless of whether the buyer and seller remain sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value between them.

**A. In the case of an event set forth in paragraph (2) of this subsection, no portion of the income or loss shall be included in entire net income of the combined group, but shall be included in the entire net income of the respective member.**

g. A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to § 170 of the Federal I. R. C., 26 U.S.C. §170, be subtracted first from the combined group's entire net income,

subject to the income limitations of that section applied to the entire ~~business~~ net income of the group. A charitable deduction disallowed under §170 of the Federal I. R. C., 26 U.S.C. §170, but allowed as a carryover deduction in a subsequent privilege period, shall be treated as originally incurred in the subsequent year by the same member and the provisions of this section shall apply in the subsequent privilege period in determining the allowable deduction for that privilege period.

h. ~~An~~ Pursuant to N.J.S.A. 54:10A-4.6(j), an expense of a member of the combined group that is directly or indirectly attributable to the income of any member of the combined group, which income this State is prohibited from taxing pursuant to the laws or Constitution of the United States, shall be disallowed as a deduction for purposes of determining the combined group's entire net income.

(1) In determining such amounts, the members may use such attribution ratio methods and tracing protocols that the members used for Federal tax purposes.

(2) Examples:

i. To the extent consistent with the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the Federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers shall apply to the New Jersey net operating loss carryover provisions under subsection h. of N.J.S.A. 54:10A-4.6(h) as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes.

j. The principles and provisions set forth in Federal regulations promulgated pursuant to section 1502 of the Internal Revenue Code (26 U.S.C. s.1502), shall apply to the extent consistent with the Corporation Business Tax Act (1945), New Jersey combined group membership principles, New Jersey combined unitary return principles, and regulations set forth by the Director. For more information, see N.J.A.C. 18:7-21.27.

k. For purposes of the deduction allowed in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a combined group shall be treated as one taxpayer; provided, however, a combined group shall only be eligible for the deduction if at least one of the taxable members is a banking corporation and the taxable member has an international banking facility. The income of the combined group shall not be eligible for the deduction allowed in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) if such income was already eliminated pursuant to other subsections of this section.

l. This section shall apply to world-wide group elective combined returns and affiliated group elective combined returns in accordance with section 23 of P.L.2018, c.48 (C.54:10A-4.11). An election to file an affiliated group combined return shall be an election to treat all of the member's attributes and income as though they were from one unitary business.

#### **18:7-21.8 Reporting the income of certain members**



a. For a member not incorporated in the United States and where the foreign corporation did not file a Federal Form 1120-F, the income to be included in the entire net income of the combined group shall be reported as follows:

1. The combined group may complete and attach a 1120-F as though the member had filed the return with the Federal government; or
2. If the other members of the combined group have a Form 5471 that was filed for Federal purposes reporting the income from that non-U.S. member, the combined group shall use the income information reported on Federal Form 5471 and attach a copy of the form that was filed with the Federal government.

b. ~~If the Articles on Non-Discrimination contained within the applicable~~**The International Financial Reporting Standards (IFRS), which are issued by the International Accounting Standards Board (IASB), qualifies as an acceptable method that “reasonably approximates income” under the corporation business tax treaty are for the only provisions of the treaty which apply to political subdivisions of the United States, then only the Articles on Non-Discrimination contained within the applicable treaty will be**purposes of N.J.S.A. 54:10A-4.6(b) if that is the only provisions**method of accounting the treaty that applies**specific entity used.

18:7-21.9 Combined ~~Groups, Combined Returns~~**groups, combined returns** and the interrelation with other New Jersey Laws

(a) ~~Transactions between members of a combined group filing a combined return in New Jersey will still be subject to the realty transfer fee (N.J.S.A. 46:15-5~~

~~et seq.) and the controlling interest transfer tax (N.J.S.A. 54:15C-1) on a separate entity basis. However, transactions between members of a combined group, may be exempt from either the realty transfer fee or the controlling interest transfer tax if a statutory exemption in the respective acts otherwise apply to the transactions.~~

~~(b) Transactions between members of a combined group filing a combined return are exempt from the bulk asset transfer notification requirements of N.J.S.A. 54:50-38 if the transactions occur as part of the unitary business of the combined group.~~

~~(e)~~ The members of the combined group shall each ~~still~~ be subject to N.J.S.A. 54:10A-20, N.J.S.A. 54:10A-21, and N.J.S.A. 54:11-1 et seq. on an individual basis.

~~(d)~~ The members of the combined group filing a combined return in New Jersey will be individually subject to the business registration requirements of N.J.S.A. 52:32-44 for public contracts.

18:7-21.10 Ordering of the ~~Dividend Elimination, Subsidiary Dividend Received Exclusion~~ dividend elimination, subsidiary dividend received exclusion, and ~~Net Operating Losses in a Combined Group Context~~ net operating losses in a combined group context

a. In calculating entire net income, the members of a combined group filing a combined return shall first eliminate **one hundred percent (100%)** of the intercompany dividends received from the other members of the combined group reported on the same New Jersey combined return.

b. If ~~the entire net income of~~ the combined group ~~as a whole is~~ has a loss in the current tax year, the entire group is deemed to have a net operating loss in the current tax year and the members of the combined group shall be entitled to their respective share of the net operating loss as a net operating loss carryover in subsequent privilege periods.

c. If the entire net income of the combined group is a positive number, the combined group is deemed to have entire net income for the year. The taxable members of the combined group shall be assigned their portion of the combined group's entire net income for the year using the allocation factor and shall subtract the unused unexpired converted prior net operating loss carryovers if the combined group allocated entire net income is greater than zero.

d. If after allocating the entire net income and subtracting the unused unexpired converted prior net operating loss carryovers, the taxable members of the combined group still have combined group allocated entire net income greater than zero, then the taxable members may use their share of the combined group net operating loss carryovers or use the portion of the combined group net operating loss carryovers received from other taxable members.

e. Dividends from separate return subsidiaries. Only dividends from subsidiaries that are not part of the combined group included in the combined return are excluded pursuant to N.J.S.A. 54:10A-4(k)(5). For privilege periods ending on and after July 31, 2019, the dividend exclusion is an allocated dividend exclusion. The exclusion occurs only if after the application of N.J.A.C. 18:7-21.19.(b) and N.J.A.C. 18:7-21.19.(d) allocated entire net income is greater than zero.

1. ~~When~~For privilege periods ending on and after July 31, 2019 but before July 31, 2020, ~~when~~ computing the allowable dividend exclusion for dividends received from excluded subsidiaries that are ~~nonetheless~~ unitary with the combined group, the pre-allocated dividend exclusions of each member of the combined group ~~shall calculate the dividend exclusion on a separate entity basis by multiplying the exclusion by their allocation factor determined pursuant to N.J.S.A. 54:10A-4.7~~are aggregated together and then distributed for use by each member using the member's allocation factor from Schedule J to arrive at the allocated dividend exclusion each member may deduct against allocated entire net income.

2. For privilege periods ending on and after July 31, 2020, for purposes of the dividend exclusion, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group.

(i) in computing the combined group dividend exclusion, the combined group shall use the group allocation factor on the Schedule J.

3. ~~When~~A member of a combined group that independently has separate activities to give rise to sufficient nexus with New Jersey is entitled to take the allocated dividend exclusion on Schedule X ~~when~~ the dividends from the excluded subsidiaries are not part of the unitary business of the combined group and not included in the entire net income of the combined group, ~~but the member of the combined group has separate activities to give rise to sufficient nexus with New Jersey independently, the member is entitled to take the allocated dividend exclusion on Schedule X.~~ In circumstances where New Jersey is prohibited from

taxing said subsidiary dividends, the member must nonetheless disclose such dividends and attach a rider with an explanation.

**18:7-21.11 Net ~~Operating Losses~~operating losses (NOLs) of ~~Members~~members in a ~~Combined Group~~combined group**

(a) Usage of prior net operating loss conversion carryovers in a combined group context. A prior net operating loss conversion carryover (PNOL) of a member of a combined group shall be deducted from the entire net income allocated to this State ~~pursuant to N.J.A.C. 18:7-21.11~~ as follows:

(1) Such prior net operating loss conversion carryover deduction shall be allowed to offset only the entire net income, allocated to this State, of the corporation that created the prior net operating loss; the prior net operating loss conversion carryover cannot be shared with other members of the combined group.

(2) The prior net operating loss conversion carryover deduction computed under N.J.A.C. 18:7-5.21 shall be applied against the entire net income, allocated to this State, of the corporation that created the prior net operating loss prior to subtracting the net operating loss carryover computed under subsection ~~h~~**b** of the section.

(3) Each member shall apply its prior net operating loss conversion carryover against its share of entire net income allocated to this State as if filing on a separate entity basis.

(4) ~~Where~~**For information on PNOLs of a corporation is acquired by a or** combined group, ~~the PNOLs will survive the merger only if instant unity exists upon~~

~~the merger and acquisition if the combined group is in the same line of business as the historic business of the acquired corporation. However, the managerial member shall provide sufficient documentation to the Division of Taxation upon request that~~ is a party to a merger or acquisition, see subsection i below.

(5) A member of a combined group may sell a prior net operating loss conversion carryover to other members of the combined group, if otherwise applicable and allowable under section 2 of P.L.1997, c.334 (C.54:10A-4.2) and section 1 of P.L.1997, c.334 (C.34:1B-7.42a); provided, however, such sale of a prior net operating loss conversion carryover must be made at arm's length price at the same rate as though the sale was to an unrelated taxpayer. The members must qualify and be eligible and meet the terms and conditions of the program.

(b) The calculation of the combined group net operating losses and the combined group members' share of the net operating loss carryovers shall be deducted from entire net income allocated to this State pursuant to N.J.S.A. 54:10A-4.6(h) as follows:

(1) For privilege periods beginning on or after the first day of the initial privilege period on or after July 31, 2019, for which a combined return is required under N.J.A.C. 18:7-21.4, if the computation of a combined group's entire net income allocated to this State results in a net operating loss, a taxable member of such group may carry over the net operating loss allocated to this State, as calculated under this section, N.J.A.C. 18:7-21.6, N.J.A.C. 18:7-21.7 and N.J.A.C. 18:7-21.13, and shall be deductible from entire net income allocated to this State derived from

the unitary business in a future privilege period to the extent that the carryover and deduction is otherwise consistent with N.J.A.C. 18:7-5.21.

(2) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred by a combined group in a privilege period beginning on or after the first day of the initial privilege period on or after July 31, 2019, for which a combined return is required, then the taxable member may share the net operating loss carryover with other taxable members of the combined group if such other taxable members were members of the combined group in the privilege period that the loss was incurred. Any amount of net operating loss carryover that is deducted by another taxable member of the combined group shall reduce the amount of net operating loss carryover that may be carried over by the taxable member that originally incurred the loss.

(3) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred in a privilege period during which the taxable member was not a member of such combined group, the carryover shall remain available to be deducted by that taxable member or other group members that, in the year the loss was incurred, were part of the same combined group as such taxable member. Such carryover shall not be deductible by any other members of the combined group.

(4) A net operating loss carryover shall not include any net operating losses (PNOLs under N.J.A.C. 18:7-5.21(a) or separate return NOLs under N.J.A.C. 18:7-5.21(b)) incurred during privilege periods beginning prior to the first day of

the initial privilege period for which a combined return is required for the combined group.

(5) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred by a combined group in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required and the taxable member **departs the combined group** and continues to be a taxpayer for the purposes of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the taxable member shall be entitled to take its respective portion of the combined group net operating loss carryover and the combined group shall not be entitled to use such portion of the net operating loss carryover.

(6) To the extent consistent with the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the Federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers shall apply to the New Jersey net operating loss carryover provisions under subsection b. as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes.

(c) The provisions of N.J.A.C. 18:7-5.14 shall not apply between members of the combined group reported on the combined return.

(d) Subsections (a) through (b) will apply in the same manner to taxpayers that are included as members on the New Jersey elective combined returns.

(e) Where a taxable member leaves a combined group and has net operating loss carryovers from the privilege periods the taxable member was a member of the



combined group, and the former member files a separate New Jersey corporation business tax return, the former member may deduct their portion of those net operating loss carryovers ~~shall be the taxable member's net operating loss carryovers and not the combined group's net operating loss carryovers from~~ subsection (b)(5) on their return.

(f) Post-allocation net operating losses of a separate return taxpayer which subsequently joins a combined group are not shareable. In privilege periods ending on and after July 31, 2019, where a taxpayer was filing a separate return and subsequently joined the combined group in later privilege periods, the taxpayer may use its separate return year post-allocation net operating loss carryovers either against its assigned portion of the combined group entire net income or its allocated entire income on Schedule X (if applicable), but may not share these separate return post-allocation net operating loss carryovers with the other members of the combined group.

(g) Separate activity net operating losses of combined group members derived from activities that are not part of the unitary business of the combined group are not shareable with other members of the combined group. Where the member of the combined group has activities that are not part of the unitary business of the combined group, ~~but also conducts business independently of the combined group in New Jersey~~ and those independent activities of that member generate a net operating loss which the member reports on Schedule X for the privilege period, ~~that~~ the net operating loss is a separate net operating loss that can be used by the member in future privilege periods on Schedule X or a separate

return in the case of a member that leaves the group, but cannot be shared with other members of the combined group or used on the combined return.

(h) ~~The~~For more on the reduction by the amount of the allocated discharge of indebtedness income excluded from Federal tax purposes ~~required under N.J.A.C. 18:7-5.22, see~~ N.J.S.A. 54:10A-4(k)(6)(F), N.J.S.A. 54:10A-4(u)(1), N.J.S.A. 54:10A-4(v)(3), ~~and~~ N.J.S.A. 54:10A-4.6(h)(1), ~~shall be applied at the member level and not the group level. As such a member's share of the combined group net operating losses may be reduced, but the allocated discharge of indebtedness of that member shall not reduce the other member's share of combined group net operating losses. See~~ N.J.S.A. 54:10A-4.6(n), N.J.S.A. 54:10A-4.6(m), and N.J.A.S. ~~CA. 18:7-5.22 for more information~~54: 10A-4.5(c).

(i) The Director may disallow the prior net operating loss carryovers or net operating loss carryovers in subsections (a) through (g) if the Director determines that the merger or acquisition was for the principle purpose of harvesting the members tax attributes. However, the prior net operating loss carryovers or net operating loss carryovers will survive where the merger or acquisition is (1) between members of a combined group reported on a combined return in New Jersey, or (2) between members of an affiliated group reported on the elective combined return in New Jersey, or (3) if corporations that were parties to the merger would be members of the combined group reported on a combined return in New Jersey within one group privilege period subsequent to the date of the merger, unless there is an unforeseen delay due to required approvals from Federal or other state regulatory authorities that delays the finality of the merger or acquisition. In a

situation where there is delay due to the regulatory approval requirements of Federal or other state regulatory authorities, the corporations may petition the Director, in a form and manner prescribed by the Director, documenting that the corporations' plan to be a combined group filing a New Jersey combined return upon approval of the merger or acquisition by the Federal or other state regulatory authorities. Within 180 days of approval by the Federal or other state regulatory authorities of the merger or acquisition, the corporations shall notify the Division of Taxation of the approval and the Director shall issue a stamped certificate of attestation (CBT-M) attesting that the net operating loss carryovers are not extinguished. The provisions of this paragraph (3) shall only apply to mergers and acquisitions occurring on or after November 4, 2020 and shall not apply to a binding agreement in effect prior to November 4, 2020.

**(j) Members must keep accurate books and records to keep track of the various PNOLs and NOLs.**

**(k) To the extent consistent with the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the Federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers shall apply to the New Jersey net operating loss carryover provisions under subsection h. of this section as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes.**

**(l) For privilege periods beginning on and after January 1, 2020, the provisions of the Internal Revenue Code, the Federal rules, limitations, and restrictions, thereto, governing Federal net operating losses, Federal net operating**

loss carryovers with regard but not limited to: mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business, or any other provision that limits or reduces Federal net operating losses and Federal net operating loss carryovers, shall apply to New Jersey net operating loss carryovers under subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

The Federal rules and regulations governing Federal consolidated return net operating losses and net operating loss carryovers shall apply to New Jersey net operating loss carryover provisions of subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes to the extent consistent with the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).

N.J.A.C. 18:7-21.12 Tax ~~Credits Earned~~credits earned by a ~~Member~~member of a ~~Combined Group~~combined group

a. Tax credits earned by a member of a combined group shall be utilized as follows:

(1) If a taxable member of a combined group earns a tax credit in a privilege period beginning on or after the first day of the initial privilege period for which a combined return is required, the taxable member may share the credit with other taxable members of the combined group. Any amount of credit that is utilized by

another taxable member of the combined group shall reduce the amount of credit carryover that may be carried over by the taxable member that originally earned the credit. If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning on or after the first day of the initial privilege period for which a combined return is required, the taxable member may share the carryover credit with other taxable members of the combined group.

(2) If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning prior to the first day of the initial privilege period for which a combined return is required, then the taxable member may share the carryover credit with other taxable members of the combined group.

(3) If a taxable member of a combined group has a tax credit carryover derived from a privilege period during which the taxable member was not a member of such combined group, the credit carryover shall remain available to be utilized by such taxable member or other group members.

(4) To the extent a taxable member has more than one corporation business tax credit that it may utilize in a privilege period, whether such credits were earned by said member or are available to said member, the order of priority of the application of the credits shall be as prescribed by the Director.

b. Tax credits purchased and transferred by a taxable member of a combined group from an unrelated third-party taxpayer may be shared by a taxable member of the combined group with its combined group members.

c. Subsections a and b will apply in the same manner to taxpayers that are included as members on the New Jersey elective combined returns.

**d. Taxable members are not required to share the tax credits. Refundable tax credits are refunded to the taxable member that earned the credit, unless otherwise agreed upon by the members of the combined group.**

**e. When a taxable member leaves the combined group, the departing taxable member shall be allowed to take its unused-unshared-unexpired tax credit carryovers for which the departing taxable member is entitled.**

**f. For the purposes of the tax credit authorized pursuant to N.J.S.A. 54:10A-5.46, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer.**

**g. For the purposes of the tax credit authorized by N.J.S.A. 54:10A-5.43, only the shareable portion of the credit is shareable with the other members of the combined group pursuant to N.J.S.A. 54:10A-5.43(d).**

**18:7-21.13 Allocation ~~Factor Computation For Combined Groups~~ factor computation for combined groups**

a. A taxable member of a combined group shall determine its allocation factor for determining its share of the entire net income of the combined group; provided however:

1. Each taxable member shall determine its allocation factor based on the otherwise applicable allocation provided in sections 6 through 10 of P.L. 1945 c. 162 (C.54:10A-6 through C. 54:10A-10). In computing its denominator, the taxable member shall use the combined group's denominator. **The combined group's denominator equals the receipts of both the taxable and nontaxable members.** In computing the numerator of its receipts factor, each taxable member shall include in its numerator its receipts assignable to this State, as provided herein.
2. A combined group which makes an affiliated group election shall include the receipts of all of the members in both the numerator and denominator of the receipts factor, regardless of whether the members are subject to tax, **if doing business in this State.** See N.J.S.A. 54:10A-4.11(c).

b. All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies if 50 percent **(50%)** or more of the combined group's entire net income is derived from the transportation of freight by air or ground. See N.J.A.C. ~~18:7-21.29~~ **18:7-21.28** for more information.

**c. In determining the numerator and denominator of the allocation factors of taxable members, transactions between or among members of the combined group shall be eliminated. Intercompany transactions between a combined group member and a partnership whose income is included in the unitary business of the combined group are also disregarded where the transactions relate to the unitary business to the extent of the group member's distributive share interest in partnership income.**

**1. A sale by a member of a combined group to a purchaser that is not a member of the combined group is attributed to the group member that books the sale, subject to the adjustments to be made to avoid distortion of applicable allocation formulas in the case of intra-group sales.**

**2. Where a combined group member ~~making~~ makes a sale to a purchaser that is not a member of the combined group, and previously acquired the property or services sold from another combined group member, the activities of both the member producing the property or services and the member making the sale to the non-member must jointly be considered for purposes of determining the appropriate allocation formula of the member making the sale.**

**d. Where a taxable member of a combined group receives unitary business income through a direct or indirect ownership interest in a partnership or disregarded entity, the sales/receipts factors of such taxable member shall include its pro rata share of the factors relating to such income as attributed to the taxable member through such ownership interest. In the case of an affiliated group election, a taxable member of a combined group shall include in its sales/receipts factors its pro rata share of the sales/receipts factors**



relating to all income that is attributed to the taxable member through its direct or indirect ownership interest in a partnership or disregarded entity. See N.J.A.C. 18:7-7.6.

e. Receipts of the members of the combined group shall otherwise be determined based on the same methods as prescribed in N.J.A.C. ~~18:7-1~~18:7-7.1 through N.J.A.C. 18:7-7.6 and N.J.A.C. 18:7-8.1 through N.J.A.C. 18:7-8.17 that are not inconsistent with subsection a through d above.

f. Nothing in subsections a through e shall preclude the Director from making adjustments pursuant to N.J.S.A. 54:10A-4(k)(3), N.J.S.A. 54:10A-8, or N.J.S.A. 54:10A-10.

g. Pursuant to N.J.S.A. 54:10A-4(h) and N.J.S.A. 54:10A-4(z) a combined group is a taxpayer for the purposes of the Corporation Business Tax Act, and taxed as one taxpayer on the taxable income from the unitary business activities of the combined group. Where a taxable member of a combined group has activities that exceed the protections of P.L. 86-272 and those activities are being performed by the taxable member as part of the unitary business of the combined group, all of the members with nexus must include their respective New Jersey receipts in the numerator.

#### 18:7-21.14 Conversion of the ~~Outstanding Alternative Minimum Assessment~~

~~Credits~~outstanding alternative minimum assessment credits

a. For privilege periods beginning on and after January 1, 2019, a combined group filing a combined return that has any outstanding alternative minimum assessment credit or credits at the time of the effective date of the repeal of section 7 of P.L.2002, c.40 (C.54:10A-5a) shall be allowed to use the credit to offset the combined group's ~~net deferred~~ tax liability ~~resulting from the transition to a mandatory unitary combined return. For~~

~~purposes under paragraph (1) of subsection c. of this section, "net deferred tax liability"~~  
~~shall mean the net increase, if any, in deferred tax liabilities minus the net increase, if any, in~~  
~~deferred tax assets of 5 of P.L.1945, c.165 (C.54:10A-5) for the combined group, as~~  
~~computed in accordance with generally accepted accounting principles, that is the result of~~  
~~the transition from filing separate returns to filing a mandatory unitary combined return~~  
**privilege period.** The remaining balance of the credit carryovers of members of the  
combined group from prior to the effective date of the repeal of section 7 of P.L.2002, c.40  
(C.54:10A-5a) shall not reduce the combined tax liability below **fifty percent (50%)** of the  
tax owed by the group. The remaining balance of the credit may be carried over until used  
by the combined group.

~~b. A combined group that is a public company may use either the converted **alternative**~~  
~~**minimum assessment credit** or the net deferred tax liability deduction. They may use both~~  
~~for the applicable privilege periods where both are allowed.~~

18:7-21.15 The Water's-Edge ~~Combined Group Default Return Method~~**combined group**  
**default return filing method**

a. Unitary combined returns are mandatory. The water's-edge group basis filing  
method is the default if no election is made. ~~The managerial member of a combined group~~  
~~may elect to have the combined group determined on a world-wide basis or an affiliated~~  
~~group basis.~~ If no such election is made, the combined group shall be determined on a  
water's-edge basis and will take into account the incomes and allocation factors of only the  
following members of the combined group:

(1) each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States, excluding such a member if eighty percent (80%) or more of both its property and payroll during the privilege period are located outside the United States, the District of Columbia, any territory or possession of the United States;

(2) each member, wherever incorporated or formed, if twenty percent (20%) or more of both its property and payroll during the privilege period are located in the United States, the District of Columbia, or any territory or possession of the United States;

(3) any member that earns more than twenty percent (20%) of its income, directly or indirectly, from intangible property or related service activities that are deductible against the income of other members of the combined group; and

(4) each member that has income as defined under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and has sufficient nexus in New Jersey pursuant to section 2 of P.L.1945, c.162 (C.54:10A-2) (see N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.14 for more detail on nexus);

b. ~~A worldwide election or an affiliated group election is effective only if made on a timely filed original return for a privilege period by the managerial member of the combined group. Only one election can be made for the applicable period. The worldwide election and affiliated group election cannot be made simultaneously for the same period.~~ Although the water's edge combined group filing method is the mandatory default filing method, the managerial member of the combined group may elect the worldwide election or an affiliated group election. See N.J.S.A. 54:10A-4.11; N.J.A.C. 18:7-21.16; and N.J.A.C. 18:7-21.17 for more information on elective combined return filing methods.

c. ~~The managerial member~~ For changes in the composition of the combined group, the members shall notify the Director ~~within 90 days of any change in the membership of the group. See~~ as set forth under the procedures in N.J.S.A.C. ~~54:10A-4.10(h)~~18:7-21.29.

d. For the purposes of a(1) and a(2) property and payroll are determined in accordance to the rules of N.J.A.C. 18:7-8.1 through N.J.A.C. 18:7-8.17.

e. In making a determination of which members are included in a water's-edge combined group, the disregarded entity's attributes shall be used by the member that owns the disregarded entity. In making a determination of which members are included in a water's-edge combined group pursuant to N.J.S.A. 54:10A-4.11, the attributes of the unitary partnerships, unitary limited partnerships, or unitary limited liability companies treated as partnerships, of which a member is a corporate partner shall be used as part of the member based on the member's proportionate share of the partnerships, limited partnerships, or limited liability companies.

f. For corporations with movable property and mobile employees transporting/shipping such mobile property, the following criteria are to be used for the purposes of guidance as to determining whether an entity should be included on a water's-edge basis as a member on the combined return pursuant to N.J.S.A. 54:10A-4.11, but are not all inclusive:

1. With regard to the property, movable property, such as tractors and trailers, shall be allocated to the U.S. using a mileage fraction consisting of the miles driven in the U.S. over the miles driven everywhere. Such allocated movable property shall be added to the non-movable property in the U.S. for the purposes of determining the percentage of property in the U.S.

2. With regard to the payroll, wages of mobile employees, such as drivers, shall be allocated to the U.S. based upon mileage driven in the U.S. over miles driven everywhere. Such allocated payroll shall be added to the non-mobile employee wages in the U.S. for the purposes of determining the percentage of payroll in the U.S.3. With regard to such movable property and such mobile employees, if the terms of an international transportation, shipping, export/import, or income tax treaty or agreement specify the allocation/apportionment of mileage/time/location method for determining when such property or employee is considered to be located in or assigned to the respective nation, the corporation may rely on such allocation/apportionment methods dictated by such treaties or agreements.

**18:7-21.16 The Worldwide ~~Election~~Group election.**

a. A worldwide election shall be made by the managerial member of the combined group. The election shall be made on an original, timely filed return or as otherwise required in writing by the Director. A return shall be considered timely if it is filed on or before the earliest due date or extended due date for the filing of the managerial member's return. No return filed after this date, whether filed with an application for abatement or otherwise, shall constitute a valid worldwide election. The election, to be valid, must indicate in the manner required by the Director that every corporation that is a member of the combined group has agreed to be bound by such election, including an agreement by each member of the group that such election shall apply to any member that subsequently enters the group and an agreement that each member continues to be bound by the election

in the event that such member is subsequently the subject of a reverse acquisition as described in U.S. Treas. Reg. § 1.1502-75(d)(3).

b. A worldwide election shall be binding for and applicable to the group privilege period for which it is made and for the next five group privilege periods. Any corporation entering the unitary combined group after the year of the election shall be deemed to have consented to the application of the election and to have waived any objection thereto.

Reverse acquisition rules based on the Federal rules set forth in U.S. Treas. Reg.

1.1502-75(d)(3) shall be applied in determining whether a corporation is bound by a worldwide election.

c. The renewal of an election shall be made on an original, timely filed return by the combined group's managerial member. A renewal shall be effective for the first privilege period after the completion of the six privilege periods for which the prior election was in place. If a prior worldwide election is neither affirmatively renewed after six privilege periods, the election shall terminate for the subsequent privilege period, but a new worldwide election may be made thereafter by election.

d. If either the water's edge ~~method~~ or ~~worldwide~~affiliated group method was used to account for the combined group members' income and allocation data in the preceding privilege period and the ~~other~~worldwide method is to be used for the combined group's combined return for the current privilege period, adjustments to the income and allocation data of the group members shall be made to prevent income and allocation data from being omitted or duplicated.

e. A managerial member may not make a worldwide election and an affiliated group election for the same group privilege period and may not make a worldwide election for any year in which an affiliated group election is in effect.

f. An election shall constitute consent to the production of documents or other information that the Director reasonably requires. The documents shall be provided in language and form acceptable to the Director.

g. ~~The managerial member~~For changes in the composition of the combined group, the members shall notify the Director ~~within 90 days of any change in the membership of the elective group. See~~as set forth under the procedures in N.J.S.A.C. ~~54:10A-4.10(h)~~18:7-21.29.

#### 18:7-21.17 The Affiliated ~~group~~Group election

a. The managerial member of the combined group may make an election to treat all corporations that are members of its New Jersey affiliated group (as defined by N.J.S.A. 54:10A-4(x)) as the combined group filed on the New Jersey combined return. Once the affiliated group election is made, the election shall be binding for and applicable to the privilege period for which it is made and for the next five group privilege periods. If an affiliated group election is made, all of the corporations that are members of their New Jersey affiliated group shall be treated as the members of a single New Jersey combined group hereunder irrespective as to, for example, whether:

1. The corporations are included in more than one Federal consolidated return filed by more than one Federal consolidated group;

2. The corporations are engaged in one or more unitary businesses; or

3. The corporations are not engaged in a unitary business with any other member of the affiliated group.

b. Upon making the election, the New Jersey affiliated group shall calculate the combined group's taxable income and the respective taxable income of the taxable members of the group in accordance with N.J.A.C. 18:7-21.7 through 21.28, ~~provided that, if any group member is taxable on its~~. An election to file an affiliated group combined return shall be an election to treat all of the member's attributes and income as though they were from one unitary business ~~activity in another state in a particular privilege period during the period of the election, all income of all group members for such year shall be treated as allocable income, irrespective as to whether such income would be allocable to a particular state in the absence of the election~~ pursuant to N.J.S.A. 54:10A-4.6(p). An affiliated group election can only be made if the New Jersey affiliated group to which the election is to apply in the first year of application includes one or more Federal affiliated groups filing a consolidated Federal income tax return.

c. ~~An affiliated group election determines the allocated entire net income of a taxable member of a combined group derived from the activities of the group on a water's edge basis.~~ An affiliated group election and a worldwide election cannot be made together. An affiliated group election cannot be made for any period in which a worldwide election is in effect.

d. ~~The affiliated group election shall include any corporation participating in the filing of a Federal consolidated return, but the New Jersey affiliated group is broader.~~ The membership of a combined group as determined pursuant to an affiliated group election is not limited to those corporations that are members of one or more affiliated groups under



Internal Revenue Code § 1504 that are filing a Federal consolidated return. **As the New Jersey affiliated group is broader pursuant to N.J.S.A. 54:10A-4(x), it shall also include corporations that meet the following standards.**

1. A New Jersey affiliated group shall ~~also~~ include a corporation that meets either of the following standards even though such corporations would not be included in a Federal consolidated return:

(i) each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States; ~~and~~

(ii) each member, wherever incorporated or formed, that is treated as a U.S. domestic corporation under the provisions of the ~~Federal~~ Internal Revenue Code; and

(iii) **each member incorporated or formed under the laws of a foreign nation that are required to file Federal tax returns if such entities have effectively connected income within the meaning of the Internal Revenue Code.**

2. With respect to (i) through ~~(iii)~~, only the members that are treated as domestic corporations under the Federal I. R. C. and Federal S corporations that have not made a validly approved New Jersey S corporation election will be included, ~~unless~~. **In instances in which** a New Jersey S corporation also elects to be included in the combined return; ~~in such instance~~, the New Jersey S corporation will also be included **and taxed in the same manner as a C corporation.**

3. The New Jersey affiliated group shall be determined by including all corporations that are related by common ownership applying the ~~common-ownership~~ **commonly owned** test described herein (i.e., direct or indirect ownership of more than **fifty percent (50%)** of voting control), rather than applying the standard applicable for Federal consolidated

return purposes that looks to **eighty percent (80%)** control of certain stock by vote and value. Further, control of members of the New Jersey affiliated group may be direct or indirect, and a common owner or owners may be corporate or non-corporate. **Whether voting control is indirectly owned shall be determined in accordance with section 318 of the Internal Revenue Code, 26 U.S.C. s.318.** For example, two or more Federal consolidated groups would be combined in one New Jersey affiliated group filing if both consolidated groups were commonly owned by a non-US corporation.

e. An affiliated group election shall be made by the managerial member of a combined group. ~~However, where the election is to apply to one or more combined groups that filed a combined return in New Jersey for the previous privilege period, the election shall be made by a corporation that served as the managerial member of the combined group for such prior tax privilege period.~~ The election shall be made on an original, timely filed return or as otherwise required in writing by the Director. A return shall be considered timely if it is filed by the managerial member on or before the earliest due date or extended due date for the filing of the combined group's combined return. No return filed after this date, whether filed with an application for abatement or otherwise, shall constitute a valid affiliated group election. To be valid, the election must indicate that every corporation that is a member of the New Jersey affiliated group has agreed to be bound by such election, including an agreement by each member of the group that such election shall apply to any member that subsequently enters the group and an agreement that each member continues to be bound by the election in the event that such member is subsequently the subject of a reverse acquisition as described in U.S. Treas. Reg. § 1.1502-75(d)(3).

f. An affiliated group election shall be binding for and applicable to the privilege period for which it is made and for the next five privilege periods. The election shall continue in place irrespective ~~as~~<sup>of</sup> whether a Federal consolidated group to which the combined group belongs discontinues the filing of a Federal consolidated return. Any corporation that enters a New Jersey affiliated group during the time that the affiliated group election is in effect shall be included in the New Jersey combined group beginning with the first group's tax reporting period after the corporation enters the group, and shall be considered to have consented to the application of the election and to have waived any objection to its inclusion in the combined group. Reverse acquisition rules based on the Federal rules set forth in U.S. Treas. Reg. § 1.1502-75(d)(3) shall be applied in determining whether a corporation is bound by an affiliated group election.

g. When an election is made it may be renewed after six privilege periods for another six privilege periods. The renewal of an election shall be made on an original, timely filed return by the ~~principal reporting corporation~~<sup>managerial member</sup> of the New Jersey affiliated group or as otherwise required in writing by the Director. A renewal shall be effective for the first privilege period after the completion of the six privilege periods for which the prior election was in place. ~~To be valid, the renewal must indicate that every corporation that is a member of the New Jersey affiliated group has agreed to be bound by such renewal.~~

h. If ~~either~~ the ~~unitary business standard~~<sup>water's-edge group filing method</sup> or the ~~New Jersey affiliated~~<sup>worldwide</sup> group ~~standard~~<sup>method</sup> was used to account for the combined group members' income and allocation data in the preceding privilege period and the ~~other standard~~<sup>affiliated group method</sup> is to be used for the combined group's combined ~~report~~<sup>return</sup> for the current privilege period, adjustments to the income and allocation data

of the group members shall be made to prevent income and allocation data from being omitted or duplicated, ~~etc.~~

i. An affiliated group election shall constitute consent to the production of documents or other information that the Director reasonably requires to support the return was properly filed. Examples include, **but are not limited to**, verification of the inclusion of the appropriate members of the group, that the requirements of the affiliated group election have been met, that the tax computations and tax reporting are proper, and to determine the revenue implications of the affiliated group election.

j. ~~The managerial member~~For changes in the composition of the combined group, the **members** shall notify the Director ~~within 90 days of any change in the membership of the elective group. See~~as set forth under the procedures in N.J.S.A.C. ~~54:10A-4.10(h)~~**18:7-21.29**.  
**18:7-21.18 Net ~~Deferred Tax Liability Deduction~~deferred tax liability deduction**

(a) There shall be allowed as a deduction an amount computed in accordance with N.J.S.A. 54:10A-4(k)(16) for publicly traded companies, ~~including affiliated~~. **Affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with generally accepted accounting principles, shall also be eligible for this deduction. The deduction shall be allowed beginning with the combined group's first privilege period beginning on or after January 1, 2023, i.e., the fifth year after the effective date of combined reporting pursuant to N.J.S.A. 54:10A-4(k)(16)(E).**

(b) A combined group claiming this deduction shall also be allowed the credit under N.J.A.C. 18:7-21.14 since the alternative minimum assessment credit under N.J.A.C. 18:7-21.14 is intended for all combined groups filing combined returns in New Jersey, not just publicly traded companies.

(c) A combined group claiming the deduction shall file the claim by July 1, 2020.

(d) The Division of Taxation will only accept U.S. Generally Accepted Accounting Principles (U.S. G.A.A.P.) and International Financial Reporting Standards (I.F.R.S.).

(e) Only taxpayers that are ~~publically~~publicly traded companies or their affiliates (subsidiaries) included in the financial statements filed with the U.S. regulatory authorities or the financial statements filed with the regulatory authorities of a foreign nation with which the U.S. has a reciprocal agreement will qualify so long as the financial statements are prepared in accordance with U.S. ~~Generally Accepted Accounting Principles (U.S. G.A.A.P.)~~ or in accordance with the ~~International Financial Reporting Standards (I.F.R.S.)~~.

(f) A publicly traded company is a company that is listed on a stock exchange or traded on over-the-counter markets.

(g) ~~For~~To qualify for the purposes of N.J.S.A. 54:10A-4(k)(16), ~~any~~ U.S. stock exchange or U.S. over-the-counter market ~~that is~~must be regulated by a U.S. regulatory authority, and ~~any~~ foreign stock exchange or foreign over-the-counter market ~~that is~~must be regulated by a regulatory authority of the foreign nation (so long as there is a reciprocal agreement with the U.S. government or U.S. regulatory authority).

(h) Financial statements are statements that are required to be filed annually, quarterly, etc. such as, but not limited to, the 10-K, 10-Q or the 8-K filings with the U.S. Securities and Exchange Commission (S.E.C.).

(i) The terms net deferred tax liability and net deferred tax asset, as defined in N.J.S.A. 54:10A-4(k)(16), shall otherwise have the same meaning as prescribed by the F.A.S.B. or I.A.S.B. and calculated in accordance with U.S. G.A.A.P. or I.F.R.S., as applicable.

**(j) The surtax imposed under N.J.S.A. 54:10A-5.41 shall be taken into account by the combined group when computing the deduction.**

**(k) Only the changes resulting from the change to filing combined returns apply for the purposes of computing the deduction.**

**(l) Where the U.S. subsidiaries are required to file a mandatory unitary combined return with New Jersey and are included in the non-U.S. parent corporation's financial statements filed with the regulatory authorities of a foreign nation, the combined group filing a New Jersey return shall be eligible for the deduction if the parent corporation files its financial statements in accordance with I.F.R.S. and is listed on a foreign stock exchange of a foreign nation that has a reciprocal agreement with the U.S. government.**

**(m) Where the publicly traded U.S. parent corporation is not unitary with its subsidiaries which constitute the combined group required to file a New Jersey combined return for New Jersey corporation business tax purposes, the combined group shall be eligible for the deduction where the combined group is included in the parent corporation's financial statements which are filed with the S.E.C.**

**(n) A combined group that is privately held does not qualify for the deduction. Only ~~publically~~publicly traded companies that file financial statements in accordance with U.S. G.A.A.P. or I.F.R.S. are eligible. Privately held combined groups are not eligible for the Net Deferred Tax Liability Deduction.**

**(o) A taxpayer that files a gross income tax return that is the owner of a closely held group of companies that is not ~~publically~~a publicly traded group of companies is not eligible for the deduction.**

## 18:7-21.19 Application of the minimum tax

- a. A **taxable** member of a combined group that is subject to the minimum tax must separately calculate that measure under N.J.A.C. ~~18:7-3~~**18:7-3.4**. The payment of the minimum tax is required even when a corporation is not subject to tax on its income either through the means of a combined return or otherwise. ~~For example, a corporation that would otherwise be subject to the income measure but for the application of Public Law 86-272 is nonetheless required to pay the minimum tax. Once one member with nexus exceeds the protections of P.L. 86-272, no other member with nexus may claim P.L. 86-272 protection~~However, for privilege periods ending on and after July 31, 2020, if the regular tax liability of the combined group exceeds the aggregate minimum tax of all of the taxable members of the combined group, then the combined group will only pay the regular tax liability and the taxable members will not additionally owe the statutory minimum tax.
- b. For privilege periods ending on or after July 31, 2019, the minimum tax shall be \$2,000 for each **taxable** member of the combined group filing a New Jersey combined return if the member has nexus with New Jersey.
- c. A business entity that is a disregarded entity for Federal purposes is not considered a member of the combined group itself, and therefore does not have to pay the minimum tax. However, the income and attributes of the disregarded entity flow-through to the owner and will be included in the income and attributes of the combined group if a member owns the disregarded entity.
- d. A partnership is not itself a member of a combined group.

**18:7-21.20 Combined ~~Group Tax Return Accounting Methods~~group tax return accounting methods**

(a) Tax returns filed by taxable members of a combined group and by members of a combined group ~~that are subject to the minimum tax~~ shall be filed consistent with the provisions set forth in **Subchapter 21 (and specifically N.J.A.C. ~~18:7-21.16~~18:7-21.15 through N.J.A.C. 18:7-21.17)**.

(b) The combined group's privilege period is determined as follows:

1. If two or more members of the group file a Federal consolidated return, the group's privilege period is the tax year of the Federal consolidated group (or the Federal consolidated group with the most total assets, in the case where the members of the combined group file more than one Federal consolidated return); and

2. In all other cases, the group's privilege period shall be the privilege period of the managerial member.

3. Where a corporation files Federal income tax returns on the basis of an annual period which varies from 52 to 53 weeks, its privilege period shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of such privilege period or ending with the last day of the calendar month ending nearest to the last day of such period.

(c) If the privilege period of one or more members of a combined group does not begin or end on the same dates as the group privilege period of the combined group, those members' accounting periods must be adjusted in order for the appropriate share of the combined group's unitary business income or affiliated group income, as the case may be, to be properly attributed to those members' privilege period.



**(d) In general, any member that has a privilege period different from that of the combined group should determine its income and allocation data for the group privilege period of the combined group by using the interim closing method. This method requires an interim closing of the books for members whose privilege period differs from that of the combined group. However, a pro rata method of converting income to the combined group's privilege period will be accepted in certain instances, provided that the pro rata method does not produce a material misstatement of income allocated to New Jersey. Further, the Director reserves the right to require use of the interim closing method in certain instances. Unless otherwise permitted or required by the Director, the treatment of both the income and the allocation data of any particular member must be determined based on the same method. If one method was used to account for a member's income and allocation data in the preceding privilege period and another method will be used in the combined return for the current group privilege period, adjustments to income and allocation data of the member shall be made to prevent income and allocation data from being omitted or duplicated.**

**(e) Under the interim closing method, the unitary business or affiliated group income or loss attributable to a member of a combined group is determined by first calculating the income or loss from the books and records of the member for the two periods that together encompass the combined group's single group privilege period. The allocation data shall also be determined by reference to the member's books and records for the appropriate partial privilege period. Interim income and allocation data from the respective partial privilege periods is then combined with the income and allocation data of the group privilege period of the combined group, along with the income and allocation data of other**

members of the combined group for the same period, and the members' share of the combined group's taxable income for the combined group's privilege period is computed.

(f) Under the pro rata method, the income and allocation data of the member as adjusted to reflect the determination of income under New Jersey law is assigned to the respective portion of the combined group's privilege period based on the ratio of months in common with the group privilege period of the combined group. The income and allocation data from the member's recomputed privilege period is then combined with the income and allocation data of the privilege period of the combined group, along with the income and allocation data of other members of the combined group for the same period, similarly recomputed if necessary. The combined group's taxable income is then allocated to each of the taxable members of the combined group.

i. In the event that the pro rata method requires the determination of income and allocation data of a corporation whose privilege period has not yet closed, and the information cannot be obtained in time for the other members to file an accurate return, the income and allocation data for that period shall be estimated based on available information. If the use of actual income and allocation data results in a material misstatement of income allocated to New Jersey by the combined group, the taxable members must file an amended return to reflect the change.

ii. For the purpose of determining whether a re-determination of income made with respect to the pro rata method results in a material misstatement of income allocated to New Jersey by the combined group, it is presumed that there is such material misstatement where the aggregate tax liability of the combined group members that filed returns based on a pro rata estimate is found to have understated the aggregate amounts based on N.J.A.C.

~~18:7-13~~18:7-13.1 and N.J.A.C. ~~18:7-3.15(e)~~18:7-5.10 or, a change in the allocated group income for any one taxable member of the group increases or decreases.

(g) After determining the combined group's taxable income allocated to New Jersey of a taxable member that is not filing its return with respect to that same privilege period, that income is then proportionately assigned to the applicable portion of that member's privilege period based on the number of months falling within the common group privilege period of the combined group.

(h) Where a member enters the combined group after the start of the combined group's privilege period, only the income, allocation data, and other tax attributes of the group member after it qualifies for inclusion are used to calculate and allocate the combined group's taxable income. Where a member leaves the combined group after the start of the combined group's privilege period, through a change of control or otherwise, only its tax attributes before it ceases to qualify for inclusion are used to calculate and allocate the combined group's taxable income. Whenever the income, allocation data, and other tax attributes of one or more members of the combined group are includible for only part of the period for which the combined group's taxable income is being determined and allocated, the value of the member's owned or rented property will be reduced to reflect the ratio of the number of months for which the member's tax attributes are included in the combined group's taxable income determination and the total number of months in the combined group's privilege period.

(i) The International Financial Reporting Standards (IFRS), which are issued by the International Accounting Standards Board (IASB), qualifies as an acceptable method that

**“reasonably approximates income” under the corporation business tax for the purposes of N.J.S.A. 54:10A-4.6(b) if that is the only method of accounting the specific entity used.**

**18:7-21.21 Subchapter S corporations and ~~Combined Returns~~combined returns**

**a. A New Jersey S corporation may elect to be included in a combined group reported on a combined return pursuant to [this subchapter](#) (Subchapter 21). Subsequent to electing to be included in the combined group on the combined return, the New Jersey S corporation shall be taxed in the same manner and rate as the other members of the combined group.**

**b. A qualified NJ-QSSS of a New Jersey S corporation that has elected to be included on a combined return must also be included along with its corporate parent New Jersey S corporation. A qualified NJ-QSSS of a Federal S corporation that has not elected New Jersey S corporation status must be included in a combined group on a combined return.**

**c. A Federal S corporation making a validly accepted retroactive New Jersey S corporation election cannot retroactively be excluded or included from the combined group filing a combined return. After being approved for a valid, retroactive New Jersey S corporation election, the approved New Jersey S corporation may prospectively elect to be included in the combined group filing a New Jersey combined return.**

**18:7-21.22 Application of other rules unaffected**

**All other rules under Chapter 7 shall be otherwise unaffected. Provided however, any statute under the Corporation Business Tax Act or Chapter 7 that is inconsistent with [this subchapter](#) (Subchapter 21) as applied to taxpayers that are members of a combined group reporting on a combined return, shall not apply to New Jersey combined returns only,**

but shall not affect the taxpayers reported on a combined return if and when the taxpayer has to also file a separate return ~~pursuant to N.J.A.C. 18:7-21.18.~~

**18:7-21.23 Authority of the Director of the Division to require a taxpayer be included in a combined return in certain instances**

a. The Director may require that a combined return include the income and associated allocation factor or factors of any taxpayer who is not otherwise included in a combined group on the combined return, but who is a member of a unitary business, in order to reflect proper allocation of income of the entire unitary business.

b. The Director may require that a combined return include the income and associated allocation factor or factors of taxpayers that are not corporations such as disregarded entities, limited liability companies (that are not corporations for tax purposes), and partnerships.

c. If the Director determines that the reported income or loss of a member of a combined group engaged in a unitary business with any taxpayer not otherwise included in the combined group on the combined return represents an avoidance or evasion of tax by the taxpayer or the combined group member, the Director may require all or any part of the income or loss and associated allocation factor or factors of the taxpayer be included in or excluded from the combined return for the unitary business or may require the use of a different allocation factor or factors.

d. The Director may require that a combined return include or exclude the income or loss and associated allocation factor or factors of taxpayers that are not corporations.

e. Such inclusion in a combined return is in addition to, and not a limitation of or dependent on, the provisions in **Corporation Business Tax Act (1945)** P.L.1945, c.162 (C.54:10A-1 et seq.) enacted to prevent tax avoidance or evasion or to clearly reflect the income of any taxpayer.

f. Any determination by the Director is presumed correct and the person challenging the determination has the burden of proving by clear and convincing evidence that the determination is incorrect.

#### **18:7-21.24 De-combination of a combined group**

The Director upon audit of the combined return, and upon review of the facts and circumstances, may de-combine and require a member or members file a separate return instead of the member(s) being included as part of the combined group filing a mandatory unitary combined return if the Director determines that the member(s) were not unitary and the principle purpose of including the members was to either shelter income, dilute the allocation factor of the combined group, improperly increase the combined group net operating losses, or for the purpose of sharing tax credits that were not related to any function of the combined group.

#### **18:7-21.25 Banking ~~Corporations~~corporations and ~~Combined Groups~~combined groups**

a. Where at least one of the members of the combined group is a banking corporation, as defined in N.J.S.A. 54:10A-36, and the group privilege period has a fiscal year end, then before being included as a member of the combined group on the New Jersey combined return, the banking corporation must first file a short period return to align its privilege

period with the combined group. Subsequent to filing a short period combined return, the banking corporation shall include and report its income and attributes as part of the combined group.

b. Where a banking corporation that switched to a fiscal privilege period as a result of subsection a. departs the combined group, the banking corporation shall continue to file a fiscal privilege period return.

c. Where at least one of the members of the combined group is a banking corporation, and the combined group has a calendar year privilege period, the banking corporation does not need to file a transitional return.

d. ~~Banking corporation combined group members that have~~For purposes of the deduction allowed in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a combined group shall be treated as one taxpayer; provided, however, a combined group shall only be eligible for the deduction if at least one of the taxable members is a banking corporation and the taxable member has an international banking facility ~~may still make an election under N.~~ The income of the combined group shall not be eligible for the deduction allowed in paragraph (4) of subsection (k) of section 4 of P.~~J.L.S.A~~1945, c.162 (C. 54:10A-4(k)(4) if ~~the banking corporation otherwise meets the requirements to make such an election. Such amounts will be excluded/deducted from the combined group entire net income while also taking into account~~such income was already eliminated pursuant to the provisions of N.J.S.A. 54:10A-4.6. ~~The managerial member may make the election on behalf of the banking corporation that is included as a member of the same combined return.~~

e. Any banking corporation member of a combined group (or the managerial member electing on the banking corporation member's behalf), having an international banking facility, which elects to take the deduction from entire net income provided by N.J.A.C. 18:7-5.2(a)2vii, shall complete the allocation factor under N.J.S.A. 54:10A-4.7, after intercompany eliminations. For the purpose of allocation, however, all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in N.J.S.A. 54:10A-4(n), shall be included in both the numerator and the combined group denominator after intercompany eliminations, whether or not such international banking facility income amounts are otherwise attributable to New Jersey.

f. All other banking corporations which have not filed transitional returns must do so for privilege periods ending on and after July 31, 2020. See N.J.S.A. 54:10A-34.1 for more information.

18:7-21.26 Conditions ~~Warranting~~warranting the ~~Designation~~designation of a ~~Managerial Member~~managerial member by the Director

a. The Director shall designate one of the members of the combined group as the managerial member of the combined group if one of the following conditions applies:

(1) The parent corporation that is a member of the combined group does not have nexus with New Jersey and the combined group refuses to select a new managerial member of the combined group;

(2) The managerial member dissolves or otherwise leaves the combined group because the managerial member is purchased by an unrelated third party or is no longer unitary



with the combined group, and the combined group does not elect a new managerial member of the combined group;

(3) The managerial member, which is not the parent corporation, no longer has nexus with New Jersey and the combined group refuses to elect a new managerial member of the combined group;

(4) The Director determines, based on the facts and circumstances, that separate return taxpayers and their affiliates are unitary and should be filing a New Jersey combined return, but they refuse to file a New Jersey combined return and designate a managerial member; or

(5) Where the non-U.S. parent corporation is otherwise the managerial member of the combined group, there are other non-U.S. corporations that are unitary with the combined group and meet the requirements for inclusion on a water's-edge basis pursuant to N.J.S.A. 54:10A-4.11, but the U.S. corporations make an affiliated group election, and the non-U.S. parent corporation otherwise refuses to file a water's-edge combined return for the non-U.S. corporations.

b. The items in subsection a. above shall not represent an all-inclusive list and there may be other circumstances that arise in the future where the Director exercises the right to designate the managerial member of the combined group.

18:7-21.27 Principles of Federal ~~Consolidated Returns Applicable~~ consolidated returns applicable

a. The principles and provisions set forth in Federal regulations promulgated pursuant to I.R.C. § 1502 of the Internal Revenue Code (26 U.S.C. s.1502), shall apply to the extent consistent with the Corporation Business Tax Act (1945), New Jersey combined group membership principles, New Jersey combined unitary return principles, and regulations set forth by the Director.

b. When computing the combined group entire net income, the principles set forth in the Treasury regulations promulgated under I.R.C. § 1502 ~~of the Internal Revenue Code~~ shall generally apply to the extent consistent with the New Jersey Corporation Business Tax Act and the unitary business principle to a combined group filing a New Jersey combined return as though the combined group filed a Federal consolidated return.

c. For New Jersey corporations business tax purposes, tax rates, tax computations, estimated payment provisions, and due dates are different than for Federal purposes.

d. The New Jersey Corporation Business Tax Act (Act) has its own definitions and its own included and excluded entity provisions, which differ from the Internal Revenue Code. The Act has its own additions, deductions, exclusions, and other modifications to entire net income. New Jersey combined returns are filed using a default mandatory water's-edge filing method or the elective world-wide or affiliated group filing method. To be included on a water's-edge return or world-wide return, an entity needs to be part of a unitary business of the combined group as defined in the Act. Water's-edge and world-wide returns are state tax concepts not Federal consolidated return concepts. The composition of the New Jersey affiliated group combined return for New Jersey purposes may be larger than the Federal affiliated group because there are specific New Jersey inclusions and exclusions. For

combined groups, New Jersey has its own the payment, accounting period, and liability provisions (N.J.S.A. 54:10A-4.8 and N.J.S.A. 54:10A-4.10). The managerial member of the New Jersey combined group (which may be a different corporation than the corporation filing the Federal consolidated return on behalf of a Federal consolidated group) files the combined return on behalf of the combined group.

e. **Ownership Requirements and Attribution Rules.** For New Jersey combined reporting purposes, the requisite ownership threshold is more than 50%. Although the Federal rules otherwise apply, New Jersey does not conform to the 80% ownership required for Federal consolidated returns. If a New Jersey combined group composition is different than the Federal consolidated return, the group must compute the combined group entire net income as though the entire group filed a Federal consolidated return and then make the New Jersey additions, deductions, exclusions, and other modifications.

f. **Intercompany Transactions.** Generally, the provisions of 26 C.F.R. 1.1502-13 apply, except as otherwise noted in N.J.S.A. 54:10A-4.6(e) and except where 26 C.F.R. 1.1502-13 deals with specific provisions of the Internal Revenue Code to which New Jersey does not conform.

g. **Depreciation and Certain Expensing Provisions.** The Federal consolidated return rules in relation to depreciation and expensing apply, except that New Jersey has decoupled from I.R.C. §168(k) bonus depreciation and I.R.C. § 179 expensing provisions and certain other depreciation and expensing provision. See N.J.S.A. 54:10A-4(k)(1), N.J.S.A. 54:10A-4(k)(2)(F), N.J.S.A. 54:10A-4(k)(12), and N.J.S.A. 54:10A-4(k)(13). Adjustments must be made accordingly.

**h. Net Operating Losses.** To the extent consistent with the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the Federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers shall apply to the New Jersey net operating loss carryover provisions under subsection h. of this section as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes.

**1.** Federal carrybacks do not apply because New Jersey net operating losses can only be carried forward for 20 privilege periods.

**2.** For privilege periods beginning on and after January 1, 2020, the provisions of the Internal Revenue Code, the Federal rules, limitations, and restrictions, thereto, governing Federal net operating losses and Federal net operating loss carryovers with regard but not limited to: mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business, or any other provision that limits or reduces Federal net operating losses and Federal net operating loss carryovers, shall apply to New Jersey net operating loss carryovers under subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

**3.** The provisions of the IRC governing the interaction between IRC §§172 and 250 that limits or reduces Federal net operating losses and Federal net operating loss carryovers, shall apply to New Jersey net operating loss carryovers under subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

**i. Dividends, Dividend Exclusion, GILTI, FDII, Net Operating Losses (NOLs), and Special Deductions.** There are interactions between N.J.S.A. 54:10A-4.15, N.J.S.A. 54:10A-4.6(d), N.J.S.A. 54:10A-4(k)(5), N.J.S.A. 54:10A-4.5(c), N.J.S.A. 54:10A-4.6(n), N.J.S.A. 54:10A-4(v), N.J.S.A. 54:10A-4.6(h), N.J.S.A. 54:10A-4.6(m), and N.J.S.A. 54:10A-5.46 as noted below.

**1. The Federal dividend received deductions (DRD) are special deductions for Federal purposes, which are adjustments below line 28. As such, these provisions in the Federal consolidated rules do not apply for New Jersey purposes. New Jersey has its own dividend exclusion (see N.J.S.A. 54:10A-4(k)(5)). The rules and limitations governing the Federal dividend received deductions were not incorporated into N.J.S.A. 54:10A-4(k)(5). Pursuant to N.J.S.A. 54:10A-4.6(d), dividends paid by one member to another member of the combined group are eliminated from the income of the recipient. Furthermore, there also is a New Jersey corporation business tax credit for certain dividends received from non-combined subsidiaries (or a separate combined group that files its own New Jersey combined return and is itself a subsidiary), see N.J.A.C. 18:7-3.28.**

**2. The NOL-DRD ordering rules found in N.J.S.A. 54:10A-4(u), N.J.S.A. 54:10A-4(v), and N.J.S.A. 54:10A-4.6(h)(1) (by operation of N.J.S.A. 54:10A-4(v)) still apply because they are provisions of the Corporation Business Tax Act. The Federal limitations that govern the interaction of the Federal net operating losses/net operating loss carry overs and the Federal dividend received deductions do not apply because the Federal dividend received deductions are special deductions under the Internal Revenue Code. Likewise, the**

Federal dividend deduction rules do not apply to N.J.S.A. 54:10A-4(k)(5) since the Federal dividend received deductions are special deductions for Federal purposes.

3. The only Federal rules with regard to a Federal special deduction that apply are the rules in relation to IRC section 250 (see N.J.S.A. 54:10A-4.15, which specifically coupled the Act to IRC section 250). None of the other Federal rules governing Federal special deductions apply. If a combined group has GILTI and FDII, and the members are eligible for the IRC section 250 deductions, the Federal consolidated return rules and Federal rules governing the interaction of net operating losses and the IRC section 250 deductions apply.

j. Tax Credits. New Jersey has its own tax credits and its own rules for tax credits, except with regard to the New Jersey Research and Development Tax Credit. Although the New Jersey Research and Development Tax Credit has its own specific limitations, the Federal rules governing IRC section 41 apply.

k .Discharge of Indebtedness. In general, New Jersey follows the guidelines set forth under Federal consolidated return regulations regarding IRC section 108.

l. For more on the interaction of the federal rules in relation to New Jersey net operating losses and net operating loss carryovers (but not prior net operating loss conversion carryovers), see N.J.S.A. 54:10A-4.5(c).

18:7-21.28 Combined ~~Groups Engaged in Transportation of Freight By Air~~ groups engaged in transportation of freight by air or ~~Ground~~ ground

a. All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this State by multiplying the income by a fraction, the

numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies if ~~(50%)~~ fifty percent **(50%)** or more of the combined group's entire net income is derived from the transportation of freight by air or ground. See N.J.A.C. 18:7-21.13**(b)**.

b. If ~~(50%)~~ fifty percent **(50%)** or more of the combined group's entire net income is derived from the transportation of freight by air or ground, as described in subsection a of this section, then subsection a of this section applies and N.J.A.C. 18:7-8.10A~~(a)(6)~~ (dealing with the sourcing of receipts for certain services) does not apply.

c. If less than ~~(50%)~~ fifty percent **(50%)** of the combined group's entire net income is derived from the transportation of freight by air or ground, then N.J.A.C. 18:7-8.10A~~(a)(6)~~ (dealing with the sourcing of receipts for certain services) applies.

d. This section shall apply to combined groups filing on a water's-edge group basis, a worldwide group basis, or an affiliated group basis.

e. For the purposes of subsection a of this section, receipts attributable to the income of certain international shipping companies and international airlines that were excluded from entire net income pursuant to N.J.S.A. 54:10A-4(k)(9) are not considered when determining whether ~~(50%)~~ fifty percent **(50%)** or more of the combined group's entire net income is derived from the transportation of freight by air or ground. Thus, when the income is excluded from the entire net income of the group pursuant to N.J.S.A. 54:10A-4(k)(9), but ~~(50%)~~ fifty percent **(50%)** or more of the remaining income that is included in the combined group's entire net income is derived from the transportation of freight by air or ground the income, subsection a of this section shall apply.

#### **18:7-21.29 Change in combined group composition**

**a. Members of a combined group shall notify the Director of a change in the combined group where a member dissolves, a merger of any kind occurs, a member withdraws from the group, a member ceases doing business, a member of the group is acquired by a third party not in the group, or additional members enter the group which are required to be included. Such notice shall be submitted in written form, as determined by the Director, not later than the due date, or, if an extension of time to file has been requested and granted, not later than the extended due date of the combined unitary tax return for the privilege period in which a change in the combined group occurs. See N.J.S.A. 54:10A-4.10(h).**

**b. Such notification shall satisfy the requirements of N.J.A.C. 18:7-14.1 through N.J.A.C. 18:7-14.5.**

**c. Subsections a and b shall also apply to elective combined returns.**



# Tab 4





# Changes to the New Jersey Corporation Business Tax

**TB-84(R) - Issued December 10, 2018**

## **Tax: Corporation Business Tax**

P.L. 2018, c. 48, signed into law on July 1, 2018, and P.L. 2018, c. 131, signed into law on October 4, 2018, significantly changed the New Jersey Corporation Business Tax Act. This Technical Bulletin summarizes the major changes listed by the effective dates.

### **Effective for tax years beginning on and after January 1, 2017:**

**Repatriation of Accumulated Foreign Earnings.** A taxpayer is not allowed to use any deduction, exemption, or credit taken for federal purposes when reporting repatriation income (IRC §965(a) deemed dividends) on its New Jersey Corporation Business Tax return.

**Dividend Exclusion Changes.** Taxpayers who own 80% or more of the stock of a subsidiary will only be able to exclude 95% of the dividends received from those subsidiaries for tax years beginning after December 31, 2016.

**Factor Relief.** A special allocation was created to provide factor relief. Taxpayers can use a special allocation formula that is the lesser of the three-year average 2014 through 2016 allocation factor or 3.5% for calculating the tax on dividends received (or deemed received) by a taxpayer from a subsidiary for tax years beginning on and after January 1, 2017, and beginning before January 1, 2019.

**Tiered Dividend Exclusion.** The law provides an allocated tiered subsidiary dividend exclusion for dividends paid to a taxpayer by certain subsidiaries. The exclusion is intended to avoid multiple layers of tax on dividends that are included in entire net income.

**Penalties and Interest.** The law provides that penalties and interest **are not imposed** on the underpayment of tax resulting from the retroactive changes for the 2017 tax year. This provision only applies if the payments are made by the second estimated payment due date subsequent to the enactment of the law (e.g., for a calendar year taxpayer, by December 31, 2018, for tax years beginning on or after January 1, 2017).

### **Effective for tax years beginning on and after January 1, 2018:**

**Surtax.** For tax years beginning on or after January 1, 2018, through December 31, 2021, there is a surtax imposed on every business entity that is subject to the Corporation Business Tax based on the taxpayer's allocated taxable net income to New Jersey. **The surtax is not imposed on New Jersey S corporation or partnership tax returns.** The surtax is imposed only if the taxpayer's allocated taxable net income is in excess of \$1,000,000. The rate varies depending on the tax year (2.5% for tax years beginning on or after January 1, 2018, through December 31, 2019, and 1.5% for tax years beginning on or after January 1, 2020, through December 31, 2021). Allocated taxable net income is defined as being either the allocated net income for tax years ending before July 31, 2019, or taxable net income for tax years ending on and after July 31, 2019. The definition of

allocated taxable net income was included to account for the change in net operating loss subtraction methods from a pre-allocation method to a post-allocation method.

The surtax does not apply to New Jersey S corporations and partnerships. A corporate partner's share of partnership income is subject to the surtax if the corporate partner's allocated taxable net income meets the threshold for the surtax. However, if a New Jersey S corporation is included in a unitary combined return, then its portion of income is subject to the surtax.

**GILTI and FDII.** The law permits the taxpayer to use the amount of its federal IRC §250(a) deduction against its Global Intangible Low Taxed Income (GILTI) and Foreign Derived Intangible Income (FDII) if the income was included in the taxpayer's entire net income for New Jersey Corporation Business Tax purposes. Additionally, GILTI and FDII income is treated the same as for federal purposes. For federal income tax purposes, GILTI and FDII are their own types of business income and are not dividends. Therefore, for New Jersey Corporation Business Tax purposes, GILTI and FDII are not dividends or deemed dividends.

**Treaty Exceptions.** The treaty exceptions for the related party addbacks of interest and intangible expenses (set forth in N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4) have been amended to add additional requirements. Previously, a taxpayer only needed to establish that the amounts were paid, accrued or incurred by or to related members domiciled in nations with a comprehensive tax treaty with the United States. The taxpayer must also now establish that: 1) the related member was subject to tax in the treaty nation on a tax base that included the amount paid, accrued or incurred, **and** 2) the related member's income received from the transaction was taxed at an effective tax rate equal to or greater than 6 percent.

**Qualified Business Income Deduction.** No deduction under IRC §199A is allowed for either Corporation Business Tax or Gross Income Tax purposes for tax years beginning after December 31, 2017.

**IRC §163(j) Limitation Method.** For Corporation Business Tax purposes, the 30% business interest expense deduction limitation set forth under IRC §163(j), applies on a "pro-rata" basis as between the total categories of related party and unrelated party interest. Additional information will be posted to the Division's website as soon as it becomes available.

**Research and Development Credit.** The New Jersey Research and Development Credit (R&D Credit) is recoupled to the current IRC §41. Previously, the New Jersey R&D Credit was coupled to IRC §41 in effect on June 30, 1992 and was not refundable. In recoupling to the current IRC §41, it was expressly made clear that the New Jersey R&D Credit continued to be non-refundable. In addition, to prevent any unintended consequences by acts of Congress, the law states that no act of Congress terminating the federal credit would terminate the New Jersey R&D Credit. Both of the methods used for calculating the federal corporate income tax credit are now allowable for purposes of calculating the New Jersey R&D Credit.

#### **Miscellaneous Major Changes.**

- Taxpayers must addback all income that is exempt under any law of the United States to their entire net income.

- The law adjusts the depreciable basis of assets for certain utility companies.

**Penalties and Interest.** The law provides that penalties and interest **are not imposed** on the underpayment of tax resulting from the retroactive changes applying to returns filed for tax year 2018. This provision only applies if the payments are made by the first estimated payment due after January 1, 2019.

**Effective for tax years ending on and after July 31, 2019** (beginning on or after August 1, 2018 for full 12-month fiscal tax years):

**Market Based Sourcing.** Under the new market-based sourcing provisions, sourcing for services is based on where the benefit of the service is received, rather than where the service is performed (aka “cost of performance” method).

**Alternative Minimum Assessment.** The Alternative Minimum Assessment is repealed and a transition conversion credit for unused Alternative Minimum Assessment credits of taxpayers that are members of a combined group provides relief to combined return filers.

**Mandatory Combined Reporting.** The law mandates combined returns for unitary businesses.

- The law provides a net deferred tax liability deduction for publicly traded corporations that are impacted by the switch to combined reporting, beginning five years after a combined group’s first combined return.
- The law designates the default managerial member, provides options for selecting an alternate manager, and details the various responsibilities of the managerial member.
- The law provides combined return exceptions to the related party addbacks.
- The law provides a method for calculating the entire net income of members of a combined group, and methods for using tax credits and net operating losses.
- New Jersey S corporations that do not elect to be included in a combined group are not considered “taxable members” included on the combined return.
- The minimum tax for each member of a combined group is \$2,000. Taxpayers filing a separate return must continue to calculate the minimum tax as per the statutes and regulations. Minimum tax is never prorated.

**Water’s-Edge Default Combined Return.** The default combined return filing method is the water’s-edge method. Taxpayers in a unitary business must file a mandatory unitary tax return on a water’s-edge basis. The members included in the water’s-edge group are: 1) 80/20 property and payroll domestic corporations; 2) 80/20 property and payroll foreign corporations; 3) members that earn more than 20% of their income, directly or indirectly, from intangible property or related service activities that are deductible against the income of other members of the combined group; and 4) all members that have nexus with New Jersey pursuant to N.J.S.A. 54:10A-2.

**Worldwide or Affiliated Group Combined Return Basis.** The law allows taxpayers to elect to file either on a worldwide combined return basis or an affiliated group combined return basis, but not both at the same time.

**Included and Excluded Business Entities in a Combined Group.** The Division has issued guidance on what business entities are included in a combined group and what business entities are not included in a combined group

**Combinable Captive Insurance Companies.** Combinable captive insurance companies are no longer exempt from the Corporation Business Tax, but are exempt from the Insurance Premiums Tax. Captive insurance companies that do not meet the definition of a combinable captive insurance company are still subject to Insurance Premiums Tax and the cap imposed under N.J.S.A. 17:47B-12. Combinable captive insurance companies are included in the combined group on a combined return.

**Penalties, Interest, and Estimated Payments.** In the first tax year that a mandatory combined return is due, penalties or interest **will not be imposed on an underpayment** that results from the change from separate return reporting to mandatory combined return reporting. Any overpayment by a member of the combined group from the prior tax year is credited as an overpayment of the tax owed by the combined group or credited toward future estimated payments by the combined group.

**Net Operating Loss Changes.** The law also transitions New Jersey net operating losses to a post-allocation method. Prior to the enactment of P.L. 2018, c. 48, New Jersey net operating losses were calculated on a pre-allocation method. The law includes a method for converting outstanding pre-allocation net operating loss carryovers to post-allocation net operating loss carryovers.

**Net Operating Losses and Changes in Ownership.** The law clarifies that N.J.S.A. 54:10A-4.5 does not apply to members of a combined group filing a New Jersey combined return.

**More Information.** This document provides a general summary of the major changes. More detailed information on certain topics that affect the Corporation Business Tax Act is forthcoming. Please continue to monitor our website for updates.

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## Tax Conformity to IRC §951A (GILTI) and IRC §250 (FDII)

**TB-85(R) - Issued December 24, 2018**

**Tax: Corporation Business Tax**

**Revised 12/24/18; replaces version posted 12/21/18**

The federal Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) was signed into law on December 22, 2017 and contained numerous changes to the federal Internal Revenue Code (IRC). This Technical Bulletin discusses the application of IRC §951A and IRC §250 enacted as part of the TCJA to the New Jersey Corporation Business Tax (CBT) Act.

### **Federal Tax Treatment of IRC §951A (GILTI) and IRC §250 (FDII and GILTI/FDII Deduction)**

IRC §951A created a new category of gross income for federal tax purposes known as "Global Intangible Low-Taxed Income" (GILTI). IRC §951A requires each U.S. shareholder of a controlled foreign corporation (CFC) to include its share of GILTI in its federal taxable income for the applicable tax year. IRC §250(b) identified another new category of gross income for federal tax purposes known as "Foreign Derived Intangible Income" (FDII). Neither GILTI nor FDII are treated as dividends or deemed dividends for federal purposes. These provisions were enacted to prevent abusive offshore tax-sheltering of income while encouraging business investment and job growth in the United States.

There is a corresponding deduction for both GILTI and FDII in IRC §250(a). For federal purposes, the §250(a) deductions are intended to reduce the effective tax rate for the GILTI and FDII amounts.

### **Treatment of IRC §951A and IRC §250 under the New Jersey CBT Act**

For New Jersey CBT purposes, the starting point for calculating entire net income (ENI), pursuant to N.J.S.A. 54:10A-4(k), is the amount of income reported for federal income tax purposes before the net operating loss deduction and special deductions. Therefore, GILTI and FDII are included in ENI. Further, GILTI and FDII are not treated as dividends or deemed dividend income for New Jersey CBT purposes; they are separate categories of income and are not treated as distributions from earnings and profits. As such, N.J.S.A. 54:10A-4(k)(5), dealing with the treatment of certain dividends, is not applicable.

P.L. 2018, c. 131, enacted a provision allowing the federal deductions under IRC §250(a) for New Jersey CBT purposes; however, such deductions are allowed only to the specific taxpayer that included the respective GILTI and FDII income on its federal and New Jersey CBT returns, *and* that actually took the deductions for federal tax purposes. If taxpayers

were not allowed the IRC §250(a) deduction for federal tax purposes, they will not be allowed the deduction for New Jersey CBT purposes.

### **Sourcing of GILTI and FDII under the New Jersey CBT Act**

GILTI and FDII are sourced under the category of “all other business receipts” pursuant to N.J.S.A. 54:10A-6(B)(6). While GILTI and FDII could generally be sourced to New Jersey based on N.J.A.C. 18:7-8.12(e) (Other Business Receipts), the result may not reflect a fair and equitable allocation.

GILTI and FDII are a hybrid of different income items. GILTI, by design, constitutes displaced U.S. income at least in part; FDII might also contain such income. Further, the result of the FDII deduction (an incentive meant to encourage certain domestic activities) could yield a disproportionate impact on New Jersey.

Taxpayers may not look through to underlying sales when determining how to allocate GILTI and FDII, because they represent items of receipt to the taxpayer.

The Division of Taxation has determined that in order to prevent distortion to the allocation factor, and arrive at a reasonable and equitable level of NJ taxation, ***all corporation business taxpayers*** filing a CBT-100 or BFC-1 will calculate the portion of GILTI and FDII that is subject to New Jersey tax based on a separate special accounting method.

The relevant allocation factor for computing the tax on net GILTI and net FDII amounts, **will be equal to the ratio of New Jersey’s gross domestic product (GDP) over the total GDP of every US state (and the District of Columbia) in which the taxpayer has economic nexus**. GDP amounts should be based on the most recent quarter’s data published by the US Bureau of Economic Analysis as of the end of the taxpayer’s privilege period.

For example, assuming economic nexus in all 50 states, the current ratio of New Jersey GDP for allocation purposes approximates 3.1%. When applied to the net GILTI amount (after reduction for the 50% §250 deduction), this results in taxation of approximately 1.6% of gross GILTI.

All CBT taxpayers reporting GILTI and FDII should complete the new Schedule A-6 in conjunction with their 2018 return, and include the allocated net GILTI and net FDII amounts on line 3c of page 1 of the CBT-100 or BFC-1 to remove those amounts from the regular tax calculation on page 1, line 3(a).

The Division of Taxation will promulgate regulations addressing the sourcing of GILTI, FDII and the §250(a) deductions, consistent with the treatment set forth in this Technical Bulletin.



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## Included and Excluded Business Entities in a Combined Group and the Minimum Tax of a Taxpayer that is a Member of a Combined Group

**TB-86(R) - Revised May 15, 2019**  
**Tax: Corporation Business Tax**

P.L. 2018, c. 48, and P.L. 2018, c. 131, collectively mandate combined reporting for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full 12-month privilege period of the managerial member begins August 1, 2018, and ends July 31, 2019). This bulletin explains what business entities are included in a combined group and what business entities are not included in a combined group.

A combined group is defined under N.J.S.A. 54:10A-4(z) as the following: "'Combined group' means the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax under this chapter, and shall include all business entities, except as provided for under any section of the Corporation Business Tax Act (1945), P.L.1945, c. 162 (C. 54:10A-1 et seq.)."

N.J.S.A. 54:10A-4 and N.J.S.A. 54:10A-4.6 include and exclude a number of entity types as described below.

### **Included Entity Types:**

- U.S. Corporations
- Foreign Corporations
- Casinos
- Banking Corporations
- Financial Corporations
- Limited Liability Companies (unless treated as partnerships or disregarded entities for federal purposes)
- Foreign Limited Liability Companies (unless treated as partnerships or disregarded entities for federal purposes)
- Federal S Corporations (that have not made a New Jersey S Corporation election)
- New Jersey S Corporations (that have elected to be included in the combined group)
- Combinable Captive Insurance Companies
- Qualified Subchapter S Subsidiaries (that have not made a New Jersey S Corporation election)
- New Jersey Qualified Subchapter S Subsidiaries (that elected to be included in the combined group)
- Professional Corporations
- Any other business entities however and/or wherever incorporated or formed that are treated as corporations for federal purposes except when excluded by statute or as described below

**Each member that has nexus with New Jersey is subject to the \$2,000 minimum tax. A member of a combined group has nexus if the member meets the standards of N.J.S.A. 54:10A-2 as either part of the unitary business of the combined group or independent of the combined group. If a member does not have nexus with New Jersey, the member is**

**not subject to the minimum tax. If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection.**

## **Disregarded Entities**

A business entity that is treated as a disregarded entity for federal income tax purposes is also treated as a disregarded entity for New Jersey Corporation Business Tax purposes pursuant to N.J.S.A. 42:2C-92. Disregarded entities also include legal partnerships that are disregarded entities for federal purposes.

Therefore, a disregarded entity is not itself a member of a combined group. However, the tax attributes of a disregarded entity are reported by a member of a combined group when the member owns the disregarded entity. The attributes of a disregarded entity owned by a member of a combined group are included in the income and allocation factor of that member as well as the combined group. In making a determination of which members are included in a water's-edge combined group pursuant to N.J.S.A. 54:10A-4.11, the disregarded entity's attributes shall be used by the member that owns the disregarded entity. **A disregarded entity is NOT subject to the \$2,000 minimum tax as a member of a combined group because a disregarded entity is not a member of the combined group. However, if a disregarded entity is part of a unitary business of a combined group, the owner of the disregarded entity will be a member of the combined group and must be included as part of the combined group except as otherwise excluded.**

## **Entities that File as Partnerships for Federal Purposes**

The definition of unitary business set forth under N.J.S.A. 54:10A-4(gg), in relevant part, states:

"A business conducted by a partnership which is in a unitary business with the combined group shall be treated as the business of the partners that are members of the combined group, whether the partnership interest is held directly or indirectly through a series of partnerships, to the extent of a partner's distributive share of partnership income. The amount of partnership income to be included in the partner's entire net income shall be determined in accordance with subsection a. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a partnership."

Partnerships, limited partnerships, or limited liability companies treated as partnerships for federal purposes are business entities that can be unitary with a combined group. However, these entities are not a member of a combined group for New Jersey corporation business tax purposes. Their income flows through to the corporate partners that are members of the combined group. **Partnerships, limited partnerships, and limited liability companies that are treated as partnerships for federal purposes are NOT subject to the \$2,000 minimum tax as a member of a combined group, because they are not a member of the combined group. However, form NJ-CBT-1065 and Part-100 must still be filed.**

## **Statutory Excluded Entity Types:**

- New Jersey S Corporations that do not elect inclusion in the combined group

- New Jersey Qualified Subchapter S Subsidiaries that do not elect inclusion in the combined group
- Captive Insurance Companies that do not meet the definition of a Combinable Captive Insurance Company as defined in N.J.S.A. 54:10A-4(y)
- All other insurance companies that are not Combinable Captive Insurance Companies
- Corporations exempt from the Corporation Business Tax under N.J.S.A. 54:10A-3
- Corporations that are regulated, in whole or in part, by the Federal Energy Regulatory Commission, the New Jersey Board of Public Utilities, or similar regulatory body of another state, with respect to rates charged to customers for electric or gas services and water and wastewater services

Statutory excluded entity types are not subject to the \$2,000 minimum tax as part of the combined group; however they may **be subject to the normal statutory minimum tax if they have nexus with New Jersey and are not exempt pursuant to N.J.S.A. 54:10A-3. Statutory excluded entities that are part of an affiliated group or controlled group that has a total payroll of \$5,000,000, are subject to a \$2,000 minimum tax unless they are exempt pursuant to N.J.S.A. 54:10A-3 or lack nexus with New Jersey.**

**New Jersey S Corporations that do not elect inclusion in the combined group and New Jersey Qualified Subchapter S Subsidiaries that do not elect inclusion in the combined group, but are nonetheless part of an affiliated group or controlled group that has a total payroll of \$5,000,000, are subject to a \$2,000 minimum tax.**

### **Entities Neither Specifically Included nor Excluded by Statute**

For 2019, the Division will require the following entities to report on a separate entity basis since the Corporation Business Tax statute neither specifically includes nor excludes such entities under combined reporting:

- Real Estate Investment Trusts
- Regulated Investment Companies
- Investment Companies

These entity types are subject to the statutory minimum tax or tax on income, as applicable, if they have nexus with New Jersey.

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**Revision Information:** This Technical Bulletin was revised on May 15, 2019, to clarify the reporting requirements for Real Estate Investment Trusts, Regulated Investment Companies, and Investment Companies in the section now titled "Entities Neither Specifically Included nor Exclude by Statute."

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## Initial Guidance for Corporation Business Tax Filers and the IRC § 163(j) Limitation

**TB-87 - Issued April 12, 2019**  
**Tax: Corporation Business Tax**

As part of the Tax Cuts and Jobs Act, I.R.C. § 163 was amended effective for tax years beginning on and after January 1, 2018. Specifically, a number of changes were made to the I.R.C. §163(j) limitation.

The Internal Revenue Service (IRS) published an initial notice on the I.R.C. § 163(j) limitation ([IRS Notice 2018-28](#)). They subsequently published proposed [regulations](#) consistent with their initial notice, which generally treats taxpayers filing a federal consolidated return as one taxpayer for the purposes of applying the I.R.C. § 163(j) limitation (i.e., the limitation applies at the federal consolidated tax return filing level and that group has a single I.R.C. § 163(j) limitation). For federal purposes, members of an affiliated group that do not file a consolidated return would not be aggregated for purposes of applying the I.R.C. § 163(j) limitation.

For purposes of the New Jersey Corporation Business Tax Act, the starting point for taxable income is entire net income before net operating losses and special deductions with several modifications for additions and deductions. (See [N.J.S.A. 54:10A-4](#); [N.J.A.C. 18:7-3.12](#).) Thus, a taxpayer's entire net income as reported on a federal consolidated return must match the taxpayer's entire net income on line 28 on Schedule A of the CBT-100 or BFC-1, before the respective New Jersey modifications, even though the taxpayer's New Jersey return was filed on a separate entity basis. This principle was successfully litigated by the Division in *MCI Communication Services, Inc. v. Director Division of Taxation*, Docket No. 013905-2010, (Tax Court of New Jersey 2015); affirmed 2018 N.J. Super. Unpub. LEXIS 1401; cert. denied 195 A.3d 528 (October 18, 2018).

P.L. 2018, c. 48, enacted a method for applying the I.R.C. § 163(j) limitation. Specifically [N.J.S.A. 54:10A-4\(k\)\(2\)\(K\)](#) states that:

(K) For privilege periods beginning after December 31, 2017, the interest deduction limitation in subsection (j) of section 163 of the Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-rata basis to interest paid to both related and unrelated parties, regardless of whether the related parties are subject to the add-back provision of either subparagraph (I) of paragraph (2) of this subsection or in section 5 of P.L.2002, c.40 (C.54:10A-4.4).

[N.J.S.A. 54:10A-4\(k\)\(2\)\(K\)](#) made no modification to the overall calculation of the I.R.C. § 163(j) limitation or the income that is reported on line 28 for federal purposes. Further, [N.J.S.A. 54:10A-4\(k\)\(2\)\(K\)](#) did not indicate that the taxpayer should apply the I.R.C. § 163(j) limitation without regard as to whether the taxpayer was included on a federal consolidated return.

Therefore, the amount the taxpayer reported for federal purposes is the amount that must be reported for New Jersey purposes. This means that taxpayers will use the interest expense and interest income allocation methods adopted in the federal regulations as the pro-rata calculation for New Jersey purposes ([N.J.S.A. 54:10A-4\(k\)\(2\)\(K\)](#)) and any related party addbacks must be applied after the I.R.C. § 163(j) limitation.

**Note:** The application of N.J.S.A. 54:10A-4(k)(2)(K) comes first before the application of N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4.

### **New Jersey Separate Returns and the I.R.C. § 163(j) Limitation**

Taxpayers that file separate New Jersey Corporation Business Tax returns but file a single federal consolidated return together are treated as one taxpayer for the purposes of applying the I.R.C. § 163(j) limitation. Each taxpayer makes the adjustments required by N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4, as applicable.

### **New Jersey Combined Returns and the I.R.C. § 163(j) Limitation**

Taxpayers must use the same accounting method for New Jersey purposes that they use for federal purposes. However, taxpayers included as members on a New Jersey combined return may: 1) be from multiple federal consolidated returns; 2) be from partially the same federal consolidated return; 3) be from the same federal consolidated return; or 4) file separate federal returns.

The Division of Taxation has determined it is fair and equitable to apply the single federal consolidated return rule to New Jersey combined returns. For the purposes of applying I.R.C. § 163(j) and N.J.S.A. 54:10A-4(k)(2)(K), the members included in a New Jersey combined return will be treated in the same manner as though they filed a single federal consolidated return. This is true regardless of whether the members of the New Jersey combined return are on one federal consolidated return. Therefore, the single federal consolidated return rules, as proposed by the U.S. Department of Treasury for the I.R.C. § 163(j) limitation, will apply.

The members of the combined group will be treated as one taxpayer for purposes of applying the new I.R.C. § 163(j) limitation. This is true even if some of the combined group members included in the New Jersey combined group were not included on the same federal consolidated return. If there are taxpayers that are in the same federal consolidated return that are not included on the same New Jersey combined return, the taxpayers will still be treated as one taxpayer for purposes of applying the new I.R.C. § 163(j) limitation. For example, a group of taxpayers that are included in the same federal consolidated return, but are not unitary, and have not made an affiliated group combined return election would still be treated as one taxpayer for the purposes of the I.R.C. § 163(j) limitation.

This also applies to the New Jersey world-wide group combined returns and New Jersey affiliated group combined returns, despite the intent of Congress to bar the super-aggregation of affiliates that were not included on the same federal consolidated return for the purposes of I.R.C. § 163(j). A combined return for New Jersey Corporation Business Tax purposes is treated as one return and taxpayers should make adjustments applying the I.R.C. § 163(j) limitation as though they had been included on a single federal consolidated return. The Division is in the process of creating a schedule on which taxpayers will report this information.

The single federal return rule will also apply to taxpayers that are not included in the same New Jersey combined return, but are included in the same federal consolidated return as one or all of the members of the New Jersey combined return. A rider detailing why the taxpayer was not included in the New Jersey combined return and a copy of the federal consolidated return must accompany the tax return.

Each member of the combined group included on the same New Jersey combined return will make the adjustments required by N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4, as applicable.

**Note:** N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4 do not apply to transactions between members of the combined group reported on the same New Jersey combined return because each provide an exception for New Jersey combined return members.

There will be additional guidance in the future.

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## Combined Groups: Exclusion of Double Inclusion of GILTI and Treatment of Related Party Addbacks

**TB-88 - Issued April 23, 2019**

### **Tax: Corporation Business Tax**

P.L. 2018, c. 48 and P.L. 2018, c. 131 collectively mandate combined reporting for tax years ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full 12-month tax year of the managerial member begins August 1, 2018, and ends July 31, 2019). The chapter laws also provided several other amendments. This Technical Bulletin addresses I.R.C. § 951A, I.R.C. § 250, N.J.S.A. 54:10A-4(k)(2)(I), and N.J.S.A. 54:10A-4.4 (in the context of New Jersey combined returns only), and the relevant portions of N.J.S.A. 54:10A-4.6.

Both N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4.e contain an exception to the related party addbacks for transactions between members of a combined group reported on a New Jersey combined return.

The relevant portions of N.J.S.A. 54:10A-4.6 state that:

A taxable member of a combined group shall determine its entire net income from the unitary business as its share of the entire net income of the combined group in accordance with a combined unitary tax return made pursuant to this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:10A-4.11). The entire net income from the unitary business of a combined group is the sum of the entire net incomes of each taxable member and each nontaxable member of the combined group derived from the unitary business, which shall be determined as follows:

- a. For a member incorporated in the United States, the income included in income of the combined group shall be the member's entire net income otherwise determined pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).
- b. For a member not incorporated in the United States, the income to be included in the entire net income of the combined group shall be determined from a profit and loss statement that shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained, adjusted to conform it to the accounting principles generally accepted in the United States for the presentation of those statements and further adjusted to take into account any book-tax differences required by federal or State law. The profit and loss statement of each foreign member of the combined group and the allocation factors related thereto, whether United States or foreign, shall be translated into or from the currency in which the parent company maintains its books and records on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. Income shall be expressed in United States dollars. In lieu of these procedures and subject to the determination of the director that the income to be reported reasonably approximates income as determined under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), income may be determined on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis.

N.J.S.A. 54:10A-4.11 also mandates a water's-edge default filing method with an option of the managerial member to choose either a world-wide election or affiliated group election.



This publication provides information on how members of a combined group included on the same New Jersey combined return will comply with various statutory provisions.

### **GILTI and the I.R.C. § 250(a) Deduction**

For New Jersey Corporation Business Tax purposes, a combined group can include the controlled foreign corporations that generate Global Intangible Low Tax Income (GILTI) included in other members' entire net income. Members of a combined group that are incorporated under the laws of a foreign nation must include all world-wide income regardless of whether it is included as income for federal purposes.

Although there are certain income exclusions for New Jersey Corporation Business Tax (CBT) purposes, there is not a provision in the CBT that specifically excludes the non-effectively connected income of a member of a combined group that is a corporation incorporated under the laws of a foreign nation. The income of a controlled foreign corporation is included in the combined group income if the controlled foreign corporation is a member included on the same New Jersey combined return. Therefore, the inclusion of GILTI generated by the controlled foreign corporation in the entire net income of other members of a combined group would improperly result in a double inclusion (and double taxation) of the same income. The Division of Taxation has determined that such double inclusion of the same income is improper. A schedule is being created for taxpayer's to use, which will eliminate the double taxation of GILTI. The schedule will require the following information:

1. The amount of GILTI (in part or in whole) reported for federal tax purposes by the members of the combined group that are included in the New Jersey combined return;
2. The identity of other members of the combined group that are included in the same New Jersey combined return, which are the controlled foreign corporations that generated GILTI;
3. The amount of the controlled foreign corporation members' income that generated GILTI, which is already included in the combined group's entire net income; and
4. The identity of any other controlled foreign corporations that were not included in the same New Jersey combined return but that also generated GILTI.

**Note:** Only GILTI amounts that are directly attributable to the controlled foreign corporation combined group members that are included in the same New Jersey combined return can be excluded. GILTI that is not attributable to any of the members of the same New Jersey combined return cannot be excluded.

The deduction available in N.J.S.A. 54:10A-4.15 (relating to IRC § 250) remains available to the extent it was taken for federal purposes if the GILTI is excluded by the Director to prevent double taxation.

### **Related Parties NOT Included on the Same New Jersey Combined Return and the Related Party Addbacks**

The related party expense addbacks do not apply to members of the combined group included on the same New Jersey combined return. If there are related parties not included on the same

New Jersey combined return, the related party deduction/expense addbacks will apply unless some other exception applies.

**The Unreasonable Exception.** Generally, the Director will allow the members of the combined group to claim an unreasonable exception for the expenses attributable to the related party for purposes of the addback required under N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4, consistent with the circumstances outlined in [TAM-2011-13R](#).

**GILTI and the Unreasonable Exception.** There are circumstances where the GILTI inclusion in entire net income of a member of the combined group is generated by a related party controlled foreign corporation that is not included as a member of the same New Jersey combined group. The expenses represented by the payments made by combined group members to the related party controlled foreign corporation are generally required to be added back pursuant to N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4. If no exception applies, it could lead to double taxation.

Therefore, the Director will allow the members of the combined group to claim an unreasonable exception for the expenses attributable to the related party controlled foreign corporation if:

1. There is a related party not included in the same New Jersey combined return; and
2. The members of the combined group have GILTI from the related party; and
3. The members of the combined group can demonstrate that the related party was the entity that generated the GILTI included in the member's entire net income.

**Note:** Taxpayers filing on a separate return basis that have GILTI from a related party included in their entire net income may also be able to claim an unreasonable exception to the related party addback provisions of N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4.

The amounts deducted pursuant to N.J.S.A. 54:10A-4.15 (relating to IRC § 250) are not subject to the related party addback provisions of N.J.S.A. 54:10A-4(k)(2)(I) or N.J.S.A. 54:10A-4.4.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.



## Combined Group Filing Methods

**TB-89(R) – [Revised June 28, 2019](#)**

### **Tax: Corporation Business Tax**

Combined reporting is mandatory in New Jersey for tax years ending on and after July 31, 2019 (this applies to any taxpayer whose tax year begins on and after August 1, 2018, if a full 12-month tax year of the managerial member begins August 1, 2018, and ends July 31, 2019).

#### **Combined Return Methods**

A combined return is a filing method for a group of business entities in a unitary business. Determining the combined group members involves imposing certain statutory limitations, which affect the treatment of income, allocation factors, and tax attributes. This decision is commonly referred to as "world-wide vs. water's-edge."

- *World-wide* group returns include all of the combined group's worldwide income and allocation factors, regardless of the source.
- *Water's-edge* group returns include only entities with significant business operations within the United States, with several inclusions and exceptions.

For New Jersey purposes, a combined group will use the water's-edge group filing method as the default filing method. However, the managerial member of the combined group may elect to make a world-wide election (see N.J.S.A. 54:10A-4.11).

As an alternative, there is an option to file the New Jersey combined return as an "affiliated group" as defined by statute. See *Affiliated Group Election* below.

The elective combined return methods were created by statute for the convenience of taxpayers. Therefore, regardless of whether the New Jersey combined return is filed on a water's-edge basis, world-wide group basis, or affiliated group basis, for purposes of calculating combined group entire net income, the application of prior net operating loss carryovers, net operating loss deductions, net operating loss carryovers, and tax credits, a combined group shall calculate their income tax attributes pursuant to N.J.S.A. 54:10A-4.6.

A taxpayer that is not in a unitary business relationship with a combined group must file a separate return if the taxpayer has nexus with New Jersey and the managerial member of the combined return does not make the election to file the affiliated group combined return. See *More Information on Nexus* below.

#### **Allocation Methods for Combined Returns**

The two methods available to allocate the income of a combined group are "*Joyce*" and "*Finnigan*." These allocation methods derive their names from California Franchise Tax Board cases<sup>†</sup>. These methods are differentiated by their determination of the allocation factor attributes (receipts, property, and payroll) of non-nexus entities in the numerator of the allocation factor. Under either method, the allocation factor attributes included in the denominator are the same. The denominator includes all of the combined group's total factors, regardless of nexus.

The *Joyce* method includes all of the New Jersey allocation factor attributes in the numerator that were derived from members that have nexus with New Jersey.

The *Finnigan* method includes all New Jersey allocation factor attributes in the numerator that were derived from all of the members of the combined group, regardless of whether a member has nexus with New Jersey.

<sup>†</sup>*Matter of Joyce, Inc.*, 1966 Cal Tax LEXIS 18; and *Matter of Finnigan Corp.*, 1988 Cal Tax LEXIS 28  
Rev. 6/19

The allocation method is tied to the combined return method that the managerial member uses to file the combined return. The water's-edge and world-wide group combined returns both use the *Joyce* method pursuant to N.J.S.A. 54:10A-4.7. As statutorily prescribed by N.J.S.A. 54:10A-4.11.c, affiliated group combined returns follow the *Finnigan* method.

## The Water's-Edge Group

The combined group determined on a water's-edge basis will take into account the incomes and allocation factors of only the statutorily mandated members of the combined group. The water's-edge combined group *does not* take into account the incomes and allocation factors of the other members that were excluded from the water's-edge combined group. The attributes of a disregarded entity owned by a member of a combined group are included in the income and allocation factor of that member. Therefore, when making the determination of which members are included in a water's-edge combined group, the disregarded entity's tax attributes must be included by the member that owns the disregarded entity. Below are the member inclusion categories that would require an entity to be included in the water's-edge combined group pursuant to N.J.S.A. 54:10A-4.11.a:

- (1) Each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States, excluding any member if 80 percent or more of both a member's property and payroll during the tax year are located outside the United States, the District of Columbia, and any territory or possession of the United States;
- (2) Each member, wherever incorporated or formed, if 20 percent or more of both a member's property and payroll during the tax year are located in the United States, the District of Columbia, or any territory or possession of the United States;
- (3) Any member that earns more than 20 percent of its income, directly or indirectly,\* from intangible property or related service activities that are deductible against the income of other members of the combined group;
- (4) Each member that has income as defined under the Corporation Business Tax Act (1945), P.L. 1945, c.162 (C.54:10A-1 et seq.) and has sufficient nexus in New Jersey pursuant to section 2 of P.L. 1945, c.162 (C.54:10A-2).

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\*The Division of Taxation interprets the "income, directly or indirectly, from intangible property or related service activities" in N.J.S.A. 54:10A-4.11.a(3) to mean the intangible property or the service activities related to the intangible property. This includes management fees and other intercompany service fees for managing, licensing, intellectual property defense, or other such service fees or payments related to the intangible property as well as certain research and development payments. Whether income from a service is directly or indirectly related to intangible property depends on the facts and circumstances. If the taxpayer can prove to the Division by clear and convincing evidence that an item of income from the service is not related to the intangible property, the item will be excluded.

Regardless of whether a member met items (1) through (3) of the member inclusion categories above, the member must be included in the combined group on the New Jersey combined return if the member has nexus with New Jersey. A member of a combined group can have nexus with New Jersey by deriving receipts from New Jersey or from any other factors pursuant to N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.11. The member can have nexus as part of the unitary business of the combined group or it may have nexus independently. **If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection.**

## Elective Combined Returns – World-Wide Group Basis or Affiliated Group Basis

A New Jersey combined return will default to a water's-edge group, unless the managerial member makes a world-wide or affiliated group election (N.J.S.A. 54:10A-4.11). The election must be made on a timely

filed original combined return in the tax year it becomes effective, not before or after. The world-wide group election and affiliated group election cannot be made at the same time, and the managerial member can only choose one election. The elections are binding for the tax year of the election, plus five subsequent tax years. In most cases, this will be six tax years. The election can be revoked prior to the expiration of the binding period by written request to the Director of the Division of Taxation

**World-Wide Group Election.** When making a world-wide group election, the combined group must include all of the income, attributes, and allocation factors of all of the worldwide business entities that are members of the unitary combined group, regardless of whether such members filed a federal tax return or whether such members filed a federal consolidated return(s).

**Affiliated Group Election.** For the purposes of the affiliated group election, "affiliated group" is defined pursuant to N.J.S.A. 54:10A-4(x), which states:

'Affiliated group' means an affiliated group as defined in section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, except such affiliated group shall include all domestic corporations that are commonly owned, directly or indirectly, by any member of such affiliated group, without regard to whether the affiliated group includes (1) corporations included in more than one federal consolidated return, (2) corporations engaged in one or more unitary businesses, or (3) corporations that are not engaged in a unitary business with any other member of the affiliated group.

The Division interprets "commonly owned" to mean the same as common ownership, regardless of whether there is a unitary relationship between the members. Common ownership is defined pursuant to N.J.S.A. 54:10A-4(aa) as:

'Common ownership' means that more than 50% of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code, 26 U.S.C. s.318.

The Division interprets N.J.S.A. 54:10A-4(aa) to mean that all of the ownership rules, including the beneficial and constructive ownership rules of I.R.C. section 318, apply since the definition of common ownership states that the control can be direct or indirect.

Only business entities that are treated as U.S. domestic corporations can be included in the affiliated group return. Corporations incorporated under the laws of a foreign nation that are treated as a U.S. domestic corporation for federal purposes under the provisions of the Internal Revenue Code can also be included.

The sole U.S. domestic corporation in a world-wide combined group cannot make the affiliated group election on its own. In this situation, the combined group must file a water's-edge or world-wide group combined return.

An affiliated group election by the U.S. domestic affiliate corporation does not relieve the non-U.S. affiliate corporations of their New Jersey Corporation Business Tax liability. Thus, any non-U.S. corporations organized outside of the United States that are not treated as U.S. domestic corporations must also file a combined return separate from the U.S. domestic affiliate combined return if the non-U.S. corporations are in a unitary business, at least one of the non-U.S. corporations has nexus with New Jersey, and the non-U.S. corporations meet one of the inclusion categories in a mandatory water's-edge group combined return with the other non-U.S. corporations. The non-U.S. corporations that have nexus with New Jersey that are not in a unitary business relationship with each other must file separate returns.

If the managerial member elects to determine the members of a combined group on an affiliated group basis, the taxable members must take into account the entire net income or loss and allocation factors of all of the members of its affiliated group, regardless of whether such members are engaged in a unitary business that are subject to tax or would be subject to tax under the Corporation Business Tax Act if doing business in this State. Unlike the water's-edge combined group return and the world-wide group elective combined return, the sourcing method for affiliated group returns follows the *Finnigan* method for allocation of receipts because N.J.S.A. 54:10A-4.11.c specifically differentiates the sourcing method to use for affiliated group elective combined returns from the sourcing used for water's-edge and world-wide combined returns in N.J.S.A. 54:10A-4.7, to include all of the New Jersey receipts of all of the members of a combined group filing an affiliated group elective combined return, regardless of whether a member is subject to tax based on income in New Jersey so long as one of the members is a taxable member.

### **More Information on Nexus**

Additional information on nexus is available on the Division's website, see [TB-79\(R\)](#), Nexus for Corporation Business Tax; [TAM 2011-6](#), Foreign Corporations Subject to Tax; or [Lanco, Inc. v. Director, Division of Taxation](#) (06-1236). In addition, the following is a list of additional court cases which are meant to illustrate certain aspects of nexus for New Jersey Corporation Business Tax purposes but are not meant to be all inclusive: *Preserve II, Inc. v. Director, Division of Taxation*, 30 N.J. Tax 133 (2017); *Springs Licensing Group v. Director, Division of Taxation*, 29 N.J. Tax 1 (2015); *Village Super Market of P.A., Inc. v. Director, Division of Taxation*, 27 N.J. Tax 394 (2013); *Telebright Corp., Inc. v. Director, Division of Taxation*, 25 N.J. Tax 333 (2010); and *Praxair Technology, Inc. v. Director, Division of Taxation*, 201 N.J. 126 (2009).

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

**Revision Information:** This Technical Bulletin was revised on June 28, 2019, to clarify that as long as one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection.



## Combined Group Filing Methods

**TB-89(R) – [Revised January 13, 2021](#)**

### **Tax: Corporation Business Tax**

Combined reporting is mandatory in New Jersey for tax years ending on and after July 31, 2019 (this applies to any taxpayer whose tax year begins on and after August 1, 2018, if a full 12-month tax year of the managerial member begins August 1, 2018, and ends July 31, 2019).

### **Combined Return Methods**

A combined return is a filing method for a group of business entities in a unitary business. Determining the combined group members involves imposing certain statutory limitations, which affect the treatment of income, allocation factors, and tax attributes. This decision is commonly referred to as "world-wide vs. water's-edge."

- *World-wide* group returns include all of the combined group's worldwide income and allocation factors, regardless of the source.
- *Water's-edge* group returns include only entities with significant business operations within the United States, with several inclusions and exceptions.

For New Jersey purposes, a combined group will use the water's-edge group filing method as the default filing method. However, the managerial member of the combined group may elect to make a world-wide election (see N.J.S.A. 54:10A-4.11).

As an alternative, there is an option to file the New Jersey combined return as an "affiliated group" as defined by statute. See *Affiliated Group Election* below.

The elective combined return methods were created by statute for the convenience of taxpayers. Therefore, regardless of whether the New Jersey combined return is filed on a water's-edge basis, world-wide group basis, or affiliated group basis, for purposes of calculating combined group entire net income, the application of prior net operating loss carryovers, net operating loss deductions, net operating loss carryovers, and tax credits, a combined group shall calculate their income tax attributes pursuant to N.J.S.A. 54:10A-4.6.

A taxpayer that is not in a unitary business relationship with a combined group must file a separate return if the taxpayer has nexus with New Jersey and the managerial member of the combined return does not make the election to file the affiliated group combined return. See *More Information on Nexus* below.

### **Allocation Methods for Combined Returns**

The two methods available to allocate the income of a combined group are "*Joyce*" and "*Finnigan*." These allocation methods derive their names from California Franchise Tax Board cases<sup>†</sup>. These methods are differentiated by their determination of the allocation factor attributes (receipts, property, and payroll) of non-nexus entities in the numerator of the allocation factor. Under either method, the allocation factor attributes included in the denominator are the same. The denominator includes all of the combined group's total factors, regardless of nexus.

The *Joyce* method includes all of the New Jersey allocation factor attributes in the numerator that were derived from members that have nexus with New Jersey.

The *Finnigan* method includes all New Jersey allocation factor attributes in the numerator that were derived from all of the members of the combined group, regardless of whether a member has nexus with New Jersey.

<sup>†</sup>*Matter of Joyce, Inc.*, 1966 Cal Tax LEXIS 18; and *Matter of Finnigan Corp.*, 1988 Cal Tax LEXIS 28  
Rev. 1/21

The allocation method is tied to the combined return method that the managerial member uses to file the combined return. The water's-edge and world-wide group combined returns both use the *Joyce* method pursuant to N.J.S.A. 54:10A-4.7. As statutorily prescribed by N.J.S.A. 54:10A-4.11.c, affiliated group combined returns follow the *Finnigan* method.

## The Water's-Edge Group

The combined group determined on a water's-edge basis will take into account the incomes and allocation factors of only the statutorily mandated members of the combined group. The water's-edge combined group *does not* take into account the incomes and allocation factors of the other members that were excluded from the water's-edge combined group. The attributes of a disregarded entity owned by a member of a combined group are included in the income and allocation factor of that member. Therefore, when making the determination of which members are included in a water's-edge combined group, the disregarded entity's tax attributes must be included by the member that owns the disregarded entity. Below are the member inclusion categories that would require an entity to be included in the water's-edge combined group pursuant to N.J.S.A. 54:10A-4.11.a (round to the nearest tenth decimal place when computing percentages):

- (1) Each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States, excluding any member if 80 percent or more of both a member's property and payroll during the tax year are located outside the United States, the District of Columbia, and any territory or possession of the United States;
- (2) Each member, wherever incorporated or formed, if 20 percent or more of both a member's property and payroll during the tax year are located in the United States, the District of Columbia, or any territory or possession of the United States;
- (3) Any member that earns more than 20 percent of its income, directly or indirectly,\* from intangible property or related service activities that are deductible against the income of other members of the combined group;
- (4) Each member that has income as defined under the Corporation Business Tax Act (1945), P.L. 1945, c.162 (C.54:10A-1 et seq.) and has sufficient nexus in New Jersey pursuant to section 2 of P.L. 1945, c.162 (C.54:10A-2).

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\*The Division of Taxation interprets the "income, directly or indirectly, from intangible property or related service activities" in N.J.S.A. 54:10A-4.11.a(3) to mean the intangible property or the service activities related to the intangible property. This includes management fees and other intercompany service fees for managing, licensing, intellectual property defense, or other such service fees or payments related to the intangible property as well as certain research and development payments. Whether income from a service is directly or indirectly related to intangible property depends on the facts and circumstances. If the taxpayer can prove to the Division by clear and convincing evidence that an item of income from the service is not related to the intangible property, the item will be excluded.

Regardless of whether a member met items (1) through (3) of the member inclusion categories above, the member must be included in the combined group on the New Jersey combined return if the member has nexus with New Jersey. A member of a combined group can have nexus with New Jersey by deriving receipts from New Jersey or from any other factors pursuant to N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.11. The member can have nexus as part of the unitary business of the combined group or it may have nexus independently. **If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection since the combined group is a taxpayer pursuant to N.J.S.A. 54:10A-4(h).**



## **Elective Combined Returns – World-Wide Group Basis or Affiliated Group Basis**

A New Jersey combined return will default to a water's-edge group, unless the managerial member makes a world-wide or affiliated group election (N.J.S.A. 54:10A-4.11). The election must be made on a timely filed original combined return in the tax year it becomes effective, not before or after. A world-wide group election and affiliated group election cannot be made at the same time, and the managerial member can only choose one election. The elections are binding for the tax year of the election, plus five subsequent tax years. In most cases, this will be six tax years. The election can be revoked prior to the expiration of the binding period by written request to the Director of the Division of Taxation. See [\*Elections made on the 2019 CBT-100U and Elections Made on the 2020 CBT-100U\*](#), below, for information on an exception to the binding period in the first year of combined reporting. Note: original returns are considered timely if they are filed by the original due date or by the extended due date if a taxpayer receives a return extension.

**World-Wide Group Election.** When making a world-wide group election, the combined group must include all of the income, attributes, and allocation factors of all of the worldwide business entities that are members of the unitary combined group, regardless of whether such members filed a federal tax return or whether such members filed a federal consolidated return(s).

**Affiliated Group Election (for privilege periods ending on and after July 31, 2019, but ending before July 31, 2020).** For the purposes of the affiliated group election, "affiliated group" is defined pursuant to N.J.S.A. 54:10A-4(x), which states:

'Affiliated group' means an affiliated group as defined in section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, except such affiliated group shall include all domestic corporations that are commonly owned, directly or indirectly, by any member of such affiliated group, without regard to whether the affiliated group includes (1) corporations included in more than one federal consolidated return, (2) corporations engaged in one or more unitary businesses, or (3) corporations that are not engaged in a unitary business with any other member of the affiliated group.

The Division interprets "commonly owned" to mean the same as common ownership, regardless of whether there is a unitary relationship between the members. Common ownership is defined pursuant to N.J.S.A. 54:10A-4(aa) as:

'Common ownership' means that more than 50% of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code, 26 U.S.C. s.318.

The Division interprets N.J.S.A. 54:10A-4(aa) to mean that all of the ownership rules, including the beneficial and constructive ownership rules of I.R.C. section 318, apply since the definition of common ownership states that the control can be direct or indirect.

Only business entities that are treated as U.S. domestic corporations can be included in the affiliated group return. Corporations incorporated under the laws of a foreign nation that are treated as a U.S. domestic corporation for federal purposes under the provisions of the Internal Revenue Code can also be included.

The sole U.S. domestic corporation in a world-wide combined group cannot make the affiliated group election on its own. In this situation, the combined group must file a water's-edge or world-wide group combined return.

An affiliated group election by the U.S. domestic affiliate corporation does not relieve the non-U.S. affiliate corporations of their New Jersey Corporation Business Tax liability. Thus, any non-U.S. corporations organized outside of the United States that are not treated as U.S. domestic

corporations must also file a combined return separate from the U.S. domestic affiliate combined return if the non-U.S. corporations are in a unitary business, at least one of the non-U.S. corporations has nexus with New Jersey, and the non-U.S. corporations meet one of the inclusion categories in a mandatory water's-edge group combined return with the other non-U.S. corporations. The non-U.S. corporations that have nexus with New Jersey that are not in a unitary business relationship with each other must file separate returns.

If the managerial member elects to determine the members of a combined group on an affiliated group basis, the taxable members must take into account the entire net income or loss and allocation factors of all of the members of its affiliated group, regardless of whether such members are engaged in a unitary business that are subject to tax or would be subject to tax under the Corporation Business Tax Act if doing business in this State. Unlike the water's-edge combined group return and the world-wide group elective combined return, the sourcing method for affiliated group returns follows the *Finnigan* method for allocation of receipts because N.J.S.A. 54:10A-4.11.c specifically differentiates the sourcing method to use for affiliated group elective combined returns from the sourcing used for water's-edge and world-wide combined returns in N.J.S.A. 54:10A-4.7, to include all of the New Jersey receipts of all of the members of a combined group filing an affiliated group elective combined return, regardless of whether a member is subject to tax based on income in New Jersey so long as one of the members is a taxable member.

**Affiliated Group Election (for privilege periods ending on and after July 31, 2020).** P.L. 2020, c. 118 (Chapter 118), clarified the definition of affiliated group for the purposes of the affiliated group election to specify that an affiliated group elective combined return would include the true U.S. footprint of a multinational business enterprise, without having to potentially file multiple combined returns.

For the purposes of the affiliated group election, "affiliated group" is defined pursuant to N.J.S.A. 54:10A-4(x), as:

'Affiliated group' means, for purposes of section 23 of P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, except such affiliated group shall include all U.S. domestic corporations that are commonly owned, directly or indirectly, by any member of such affiliated group, without regard to whether the affiliated group includes (1) corporations included in more than one federal consolidated return, (2) corporations engaged in one or more unitary businesses, or (3) corporations that are not engaged in a unitary business with any other member of the affiliated group.

For purposes of this subsection:

'U.S. domestic corporations' means: (1) business entities wherever incorporated or formed that are U.S. domestic corporations, are deemed to be, or are treated as U.S. domestic corporations under the provisions of the federal Internal Revenue Code; or (2) any entities incorporated or formed under the laws of a foreign nation that are required to file federal tax returns if such entities have effectively connected income within the meaning of the federal Internal Revenue Code; and

'commonly owned' means that more than 50 percent of the voting control of each member of an affiliated group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the affiliated group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code (26 U.S.C. s.318).

The Division interprets **commonly owned** to mean that the ownership rules, including the beneficial and constructive ownership rules of I.R.C. section 318 apply since the definition of common ownership states that control can be direct or indirect.

Only business entities that are U.S. domestic corporations (as defined in the statute) for the purposes of the definition can be included in the affiliated group return. Non-U.S. corporations that do not file a federal return cannot be included in a New Jersey affiliated group combined return.

**Note:** In most cases, the New Jersey affiliated group combined return constitutes the multinational corporation's entire U.S. footprint.

The sole U.S. domestic corporation in a world-wide combined group cannot make the affiliated group election on its own. In this situation, the combined group must file a water's-edge or world-wide group combined return.

An affiliated group election by the U.S. domestic corporations does not relieve a non-U.S. corporations of their New Jersey Corporation Business Tax liability. Thus, any non-U.S. corporations organized outside the United States that does not file a federal return, but has nexus with New Jersey, must still file a separate New Jersey Corporation Business Tax return.

If the managerial member elects to determine the members of a combined group on an affiliated group basis, the taxable members must take into account the entire net income or loss, and allocation factors of, all the members of its affiliated group. This is true regardless of whether such members are engaged in a unitary business that is subject to tax or would be subject to tax under the Corporation Business Tax Act if they were doing business in this State. Unlike the water's-edge combined group return and the world-wide group elective combined return, the sourcing method for affiliated group returns follows the *Finnigan* method for allocation of receipts. This is because N.J.S.A. 54:10A-4.11.c specifically differentiates the sourcing method to use for affiliated group elective combined returns from the sourcing used for water's-edge and world-wide combined returns in N.J.S.A. 54:10A-4.7, to include all of the New Jersey receipts of all the members of a combined group filing an affiliated group elective combined return, regardless of whether a member is subject to tax based on income in New Jersey so long as one of the members is a taxable member.

For a non-U.S. corporation that is a U.S. domestic corporation for purposes of the New Jersey affiliated group election, because such an entity files a federal return and has effectively connected income, only such effectively connected income, and other U.S. source income, of that corporation is included in the entire net income and allocation factor of the affiliated group. Such corporation's other income (that is not effectively connected income or other U.S. source income) and attributes would not be included.

## **Elections Made on the 2019 CBT-100U and Elections Made on the 2020 CBT-100U**

N.J.S.A. 54:10A-4.11(b) provides that:

A world-wide election or an affiliated group election is effective only if made on a timely filed, original return for a privilege period by the managerial member of the combined group. Such election is binding for, and applicable to, the privilege period for which it is made and for the five immediately succeeding privilege periods. Provided however, the election can be revoked prior to the expiration of the binding period by written request to the Director of Taxation for reasonable cause including but not limited to a substantial change in ownership, members of the combined group or principal business, or changes in tax law, regulation or policy.

Chapter 118 also included several changes impacting combined groups for privilege periods ending on and after July 31, 2019 and future privilege periods. These changes may impact taxpayers' decisions on their combined return filing method option. By statute, the filing method election cannot be changed because it must be made on a timely filed original return and would otherwise be binding for the subsequent five privilege periods in addition to the current tax year. **However, as a result of the law change, the Division of Taxation is providing a one-time exception to prospectively allow a change to the combined group's filing methods. Filing method elections selected on the 2019 CBT-100U will not be binding for subsequent years. Instead any election the combined group makes on their**

**2020 CBT-100U return will be considered the start of the binding period for the purposes of N.J.S.A. 54:10A-4.11(b).**

**In addition, as a result of the enactment of Chapter 118, and in accordance with N.J.S.A. 54:10A-4.11(b) and N.J.S.A. 54:10A-4.14, the Division will not penalize taxpayers for filing their 2019 returns following the 2019 CBT-100U instructions or the information provided in the Technical Bulletins. Taxpayers will not be penalized if they choose a different combined group filing method option when they file their 2020 CBT-100U return pursuant to Section 18 of P.L. 2020, c. 118. Nor will the Division assess taxpayers for the P.L. 2020, c. 118, changes that were otherwise different than 2019 CBT-100U return instructions and the Technical Bulletins for the 2019 return the taxpayer filed.**

**Note:** No retroactive changes will be permitted for the use of the mandatory default method or the affiliated or world-wide elections made for the 2019 privilege period with respect to any return previously filed returns for 2019. No amended returns changing the election or use of the mandatory default method will be permitted for the 2019 privilege period.

### **More Information on Nexus**

Additional information on nexus is available on the Division's website, see [TB-79\(R\)](#), Nexus for Corporation Business Tax; [TAM 2011-6](#), Foreign Corporations Subject to Tax; or [Lanco, Inc. v. Director, Division of Taxation](#) (06-1236). In addition, the following is a list of additional court cases which are meant to illustrate certain aspects of nexus for New Jersey Corporation Business Tax purposes but are not meant to be all inclusive: *Preserve II, Inc. v. Director, Division of Taxation*, 30 N.J. Tax 133 (2017); *Springs Licensing Group v. Director, Division of Taxation*, 29 N.J. Tax 1 (2015); *Village Super Market of P.A., Inc. v. Director, Division of Taxation*, 27 N.J. Tax 394 (2013); *Telebright Corp., Inc. v. Director, Division of Taxation*, 25 N.J. Tax 333 (2010); and *Praxair Technology, Inc. v. Director, Division of Taxation*, 201 N.J. 126 (2009).

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

**Revision Information:** This Technical Bulletin was revised on January 13, 2021, to incorporate technical corrections, clarifications, and changes resulting from P.L. 2020, c.118.



## Tax Credits and Combined Returns

**TB-90(R) – Revised March 18, 2021**

### **Tax: Corporation Business Tax**

**Revision Information:** This Technical Bulletin was revised on March 18, 2021, to clarify how tax credits are applied to a combined return based on the clarification that a combined group is a taxpayer. The information on how tax credits are used prior to Chapter 118 is provided solely for reference purposes.

Public law (P.L.) 2018, c. 48 and P.L. 2018, c. 131 collectively mandate combined reporting for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018 if a full 12-month privilege period of the managerial member begins August 1, 2018 and ends July 31, 2019). Subsequently, P.L. 2020, c. 118 (Chapter 118), which was signed into law on November 4, 2020, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act. Among other things, one of the technical changes made it clear that a combined group is a taxpayer. This clarification means that for privilege periods ending on and after July 31, 2020, tax credits can be applied against the group tax liability instead of on an entity-by-entity basis. The purpose of this Technical Bulletin is to provide an overview of how tax credits are shared on the Corporation Business Tax return.

N.J.S.A. 54:10A-4.6.i. states that:

Tax credits earned by a member of a combined group shall be utilized as follows:

- (1) If a taxable member of a combined group earns a tax credit in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54: 10A-4.7, C.54: 10A-4.8, and C.54: 10A-4.11), then the taxable member may share the credit with other taxable members of the combined group. Any amount of credit that is utilized by another taxable member of the combined group shall reduce the amount of credit carryover that **may** be carried over by the taxable member that originally earned the credit. If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54: 10A-4.7, C.54: 10A-4.8, and C.54: 10A-4.11), then the taxable member **may** share the carryover credit with other taxable members of the combined group.
- (2) If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54: 10A-4.7, C.54: 10A-4.8, and C.54: 10A-4.11), then the taxable member **may** share the carryover credit with other taxable members of the combined group.
- (3) If a taxable member of a combined group has a tax credit carryover derived from a privilege period during which the taxable member was not a member of such combined group, the credit carryover shall remain available to be utilized by such taxable member or other group members.
- (4) To the extent a taxable member has more than one corporation business tax credit that it may utilize in a privilege period, whether such credits were earned by said member or are available to said member in accordance with paragraphs (1), (2) and (3) of this subsection, the order of priority of the application of the credits shall be as prescribed by the director. **[Emphasis added]**

There are various tax credits with a variety of limitations. Some tax credits may not reduce the tax liability of a taxpayer below 50% of their tax liability for the tax year while other tax credits cannot reduce a taxpayer's tax liability below the minimum tax. There are tax credits that can reduce the tax liability of a

taxpayer to zero. There are also refundable credits that are refundable to the taxpayer that earned the credits. Each tax credit has its own limitations and carryovers.

**Tax credits belong to the taxable member that earned them unless a specific statute authorizing the tax credit states that it is earned or awarded at the group level. Any credit carryover available for future use belongs to the taxable member that originally earned the credit. If a member leaves the group, that member takes with them any tax credit/carryforward they generated.** Note: The carryforward must be reduced by any amount that is used by the group and/or member.

**Tiered Subsidiary Dividend Pyramid Tax Credit.** Chapter 118 created a new Tiered Subsidiary Dividend Pyramid Tax Credit, which replaces the tiered dividend exclusion. The Tiered Subsidiary Dividend Pyramid Tax Credit treats a combined group as one taxpayer for the purposes of the credit. There is no carryforward of this credit.

**New Jersey Research and Development (R&D) Credit.** For computing the New Jersey R&D tax credit (N.J.S.A. 54:10A-5.24), the combined group members shall apply the federal rules as if the combined group was a federal consolidated group return filer pursuant to N.J.S.A. 54:10A-4.6(n).

**Refundable Tax Credits.** Any refundable portion of a tax credit can be requested by the member that generated the tax credit or can be shared with the group regardless of the tax year. A tax credit that is refunded to a specific taxable member does not relieve that member from its joint and several liability pursuant to N.J.S.A. 54:10A-4.10.d.

### **For privilege periods ending on and after July 31, 2020**

A taxable member can use their tax credit to offset the group liability. A taxable member is not forced to share the tax credit and can choose to use it to only offset their own tax liability.

Taxable members may share tax credits with the **combined group** within the limitations of N.J.S.A. 54:10A-4.6.i and the applicable limitations in each tax credit statute.

**Sharing:** For tax credits with a 50% of tax liability limitation, the limitation will apply to 50% of the total combined group tax liability. For tax credits that cannot reduce the tax liability of a taxpayer below the minimum tax, this limitation will apply to the aggregate total of the minimum tax for all taxable members of the combined group.

**Not Sharing:** For tax credits with a 50% of tax liability limitation, the limitation will apply to 50% of the member's liability. For tax credits that cannot reduce the tax liability of a taxpayer below the minimum tax, this limitation will apply to the member's minimum tax. However, even if a member reduces or even eliminates its own tax liability using tax credits, it does not relieve that member from its joint and several liability pursuant to N.J.S.A. 54:10A-4.10.d.

**NOTE:** Tax credit limitations are always restricted by the entire group's liability limitations. For example, a taxable member shares a tax credit with the group and that credit reduces the tax liability of the entire group to the minimum tax. Another taxable member owns a different tax credit which reduces the user's tax liability to 50%. If the group has already reduced its tax liability to the minimum tax, a member cannot stack a nonshared credit to reduce its portion of liability. Taxable members who are not sharing their credits are still reducing the group's liability. Therefore, each credit restriction must be applied against the individual member's liability as well as the group's liability.

**Benefit Transfer Certificates.** The combined group is one taxpayer, therefore as long as the *taxable* member that generated the tax credit is sharing it with the combined return on which that taxable member is included, no benefit transfer certificate is necessary. Transfers of tax credits/credit carryovers to taxpayers outside the combined group filing a New Jersey combined return require a benefit transfer certificate, as applicable.

### **For privilege periods ending on and after July 31, 2019, but before July 31, 2020**

A taxable member can use their tax credit to offset their tax liability or they can share their tax credit/tax credit carryover with **another member of the group**. If a member is sharing the credit with another member, the tax credit offsets the member's tax liability with whom the credit is shared. The decision to share (or not share) tax credits or tax credit carryovers remains with the taxable member who generated the tax credit or tax credit carryover. Tax credits and tax credit carryovers may be shared among members of the same combined group regardless of whether such taxable members were part of the same combined group when the tax credit or tax credit carryover was generated. Sharing tax credits or tax credit carryovers is allowed as long as the taxable members are included on the same New Jersey combined return for the group privilege period.

The tax credit/credit carryover available for future use by the taxable member that originally earned the credit must be reduced by any amount that was shared (used) by another taxable member.

Taxable members may share tax credits with other taxable members of the combined group included on the same New Jersey combined return as the taxable members see fit within the limitations of N.J.S.A. 54:10A-4.6.i and the applicable limitations in each tax credit statute. For tax credits with a 50% of tax liability limitation, the limitation will apply on a separate entity basis and not 50% of the total combined group tax liability. For tax credits that cannot reduce the tax liability of a taxpayer below the minimum tax, this limitation will apply on a separate entity basis and not on the total minimum tax of the combined group.

**Benefit Transfer Certificates.** As long as tax credits/credit carryovers are shared among taxable members of a combined group included on the same New Jersey combined return, no benefit transfer certificate is necessary. Transfers of tax credits/credit carryovers to taxpayers outside the combined group filing a New Jersey combined return require a benefit transfer certificate, as applicable.

### **More Information**

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

General information on the changes resulting from P.L. 2018, c. 48, P.L. 2018 c. 131, and P.L. 2020, c. 118 can be found in Technical Bulletin TB-84(R), *Changes to the New Jersey Corporation Business Tax* and TB-97, *Changes and Corrections to the Corporation Business Tax and Other Taxes/Fees Pursuant to P.L. 2020, C. 118*. For additional information on the entities that can be included as a taxable member of a combined group, see Technical Bulletin TB-86(R), *Included and Excluded Business Entities in a Combined Group and the Minimum Tax of a Taxpayer That is a Member of a Combined Group*.

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## Banking Corporations and Combined Returns

**TB-91 - Issued July 19, 2019**

### **Tax: Corporation Business Tax**

P.L. 2018, c. 48 and P.L. 2018, c. 131 collectively mandate combined reporting for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018 if a full 12-month privilege period of the managerial member begins August 1, 2018 and ends July 31, 2019). This Technical Bulletin explains the treatment of banking corporations and combined groups.

A managerial member can have either a fiscal or calendar tax year end. However, the existing statute for banking corporations, N.J.S.A. 54:10A-34, requires banking corporations file on a calendar year privilege period basis for New Jersey reporting purposes for prior calendar year income. This could result in a discrepancy in reporting periods for New Jersey Corporation Business Tax purposes.

The managerial member may or may not be the common parent corporation. See N.J.S.A. 54:10A-4(cc). If the common parent corporation is a taxable member of the combined group, the common parent corporation is the managerial member. If the common parent is not a taxable member, the combined group must designate a taxable member as its managerial member. A banking corporation can be a common parent corporation. Furthermore, if the common parent corporation is not a taxable member, and one of the banking corporations is a taxable member, the combined group can designate the banking corporation as the managerial member of the combined group. A combined group is defined under N.J.S.A. 54:10A-4(z).

The relevant sections of N.J.S.A. 54:10A-4 state the following:

- (i) 'Fiscal year' shall mean an accounting period ending on any day other than the last day of December on the basis of which the taxpayer is required to report for federal income tax purposes.
- (j) Except as herein provided, 'privilege period' shall mean the calendar or fiscal accounting period for which a tax is payable under this act.
- ...
- (bb) 'Group privilege period' means, if two or more members in the combined group file in the same federal consolidated tax return, the same income year as that used on the federal consolidated tax return and, in all other cases, the privilege period of the managerial member.

The relevant part of N.J.S.A. 54:10A-34 state that:

Every banking corporation shall pay an annual franchise tax in the year 1976 and each year thereafter, as provided in the Corporation Business Tax Act, P.L.1945, c. 162 (C. 54:10A-1 et seq.) for the privilege of having or exercising its corporate franchise in this State, or for the privilege of doing business, employing or owning capital or property, or maintaining an office in this State. For the purposes of this act, (1) the privilege period of each banking corporation shall be the calendar year, and the initial privilege period shall be the calendar year ending December 31, 1976; (2) January 1, 1976 and January 1, of each year thereafter shall be the assessment dates; (3) the tax on income shall be based upon the income of the calendar year preceding the assessment date; (4) net worth shall be determined as of the December 31 preceding the assessment date; and (5) income of a banking corporation in any privilege period shall include the income of any banking corporation merged into or consolidated with such banking corporation in such privilege period.

The relevant subsections of N.J.S.A. 54:10A-4.10 state the following:

- a. Determination of Managerial Member. If the combined group has a common parent corporation within the meaning of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), and that common parent corporation is a taxable member of the corporate group, the managerial member shall be the common parent corporation. In other cases, the combined group shall select a taxable member as its managerial member or, in the discretion of the director or upon



failure of the combined group to select its managerial member, the director shall designate a taxable member of the combined group as managerial member. Once the election of the managerial member is made, the election shall be binding for 10 successive privilege periods, except as otherwise provided for by the director.

- b. A combined group shall file a mandatory combined return under this section in the form and manner prescribed by the director. The managerial member of the combined group shall file the mandatory combined return on behalf of the taxable members of the combined group. The managerial member shall be required to file taxable member returns; file taxable member extensions for filing tax returns and other documents with the director; pay taxable member liabilities; receive taxable member findings, assessments, and notices; make and receive taxable member claims, or file taxable member protests and appeals; and shall be the responsible party liable for filing and paying the tax on behalf of the combined group.
- c. The privilege period for the combined group is the privilege period of the managerial member. If a member of a combined group has a different fiscal or calendar accounting period from the combined group's privilege period, that member with a different period shall report amounts from its return for its fiscal or calendar accounting year that ends during the group privilege period.

...

- e. If a combined group is eligible to elect the managerial member of the combined group, notice of the election shall be submitted in writing to the director not later than the due date or, if an extension of time to file has been requested and granted, not later than the extended due date of the mandatory combined return for the initial privilege period for which a return is required. The managerial member shall be the designated agent and the responsible person for filing the combined return and paying the tax for the combined group. If another taxable member is subsequently designated as the managerial member, the subsequent designation shall be subject to the approval of the director.
- f. The director is authorized to promulgate regulations with regards to installment payments, estimated payments, overpayments, refunds **and any other filing or payment matters related to combined groups filing combined returns.**
- g. For privilege periods ending on and after July 31, 2019, a combined group must file a mandatory combined return. However, if privilege periods of the members of the combined group differ, the first mandatory combined return for the combined group shall be required for the privilege period of the managerial member.

In order to 1) align filing periods; 2) report the proper income and tax liabilities; and 3) ensure that tax attributes are properly accounted for, if a combined group has a calendar year group privilege period, a banking corporation should file a 2019 BFC-1, reporting their 2018 calendar year income for their 2019 privilege period, and then report their calendar 2019 income on the combined return (2019 CBT-100U) of their combined group. However, if the banking corporation is part of a combined group that has a 2018 fiscal group privilege period, the banking corporation should first file a 2019 BFC-1 reporting their 2018 calendar year income for their 2019 privilege period and then file a short period return (BFC-1-F) covering January 1, 2019 through the end of the month of the combined group's group privilege period. At that point, the banking corporation should file for the fiscal combined group's 2019 fiscal group privilege period and report all of its income on a fiscal basis. Thereafter, the banking corporation should continue reporting on a fiscal basis for future privilege periods. If a banking corporation, that would otherwise be a member of a fiscal combined group for the 2018 fiscal group privilege period ending on or after July 31, 2019, believes that application of the filing requirements set forth in this technical bulletin would result in an unfair or distorted reflection of income, the Division will entertain requests for discretionary relief.

Example 1: The managerial member's privilege period began August 1, 2018 and ended on July 31, 2019 and a banking corporation is a member of the combined group. The banking corporation will file the 2019 BFC-1 reporting their 2018 calendar year income. The banking corporation will then file a short period BFC-1 (BFC-1-F) reporting the income from January 1, 2019 through July 31, 2019. Following this return,

the banking corporation will then include and report its income from August 1, 2019 through July 31, 2020 on the CBT-100U for the combined group's fiscal 2020 group privilege period ending on July 31, 2020.

Example 2: The managerial member's privilege period began January 1, 2019 and ended on December 31, 2019 and a banking corporation is a member of the combined group. The banking corporation will file the 2019 BFC-1 reporting their 2018 calendar year income. The banking corporation would include and report its income from January 1, 2019 through December 31, 2019 on the 2019 CBT-100U for the combined group's 2019 year group privilege period ending on December 31, 2019.

Taxpayers may submit the banking corporation returns to the Division of Taxation Special Audit Unit at:

State of New Jersey  
Division of Taxation - BFC  
Revenue Processing Center  
PO Box 247  
Trenton, NJ 08646-0247

No penalties and interest will be assessed for underpayments, as applicable, pursuant to N.J.S.A. 54:10A-4.12. BFC-1 filers that choose to file under extension their 2019 privilege period returns by October 15 (instead of September 15) shall not be subject to penalties or interest due to the thirty day extension.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

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## Sourcing IRC §951A (GILTI) and IRC §250 (FDII) Replacing TB-85(R)

**TB-92 - Issued August 22, 2019**

**Tax: Corporation Business Tax**

The federal Tax Cuts and Jobs Act (TCJA) (P.L. 115-97) was signed into law on December 22, 2017, and contained numerous changes to the federal Internal Revenue Code (IRC). This Technical Bulletin discusses the application of IRC §951A and IRC §250 enacted as part of the TCJA to the New Jersey Corporation Business Tax (CBT) Act. The Division of Taxation has made a decision to revise the allocation methodology of Global Intangible Low-Taxed Income and Foreign Derived Intangible Income from the gross domestic product methodology detailed in TB-85(R). This Technical Bulletin Replaces TB-85(R).

### **Federal Tax Treatment of IRC §951A (GILTI) and IRC §250 (FDII and GILTI/FDII Deduction)**

IRC §951A created a new category of gross income for federal tax purposes known as "Global Intangible Low-Taxed Income" (GILTI). IRC §951A requires each U.S. shareholder of a controlled foreign corporation (CFC) to include its share of GILTI in its federal taxable income for the applicable tax year. IRC §250(b) identified another new category of gross income for federal tax purposes known as "Foreign Derived Intangible Income" (FDII). Neither GILTI nor FDII are treated as dividends or deemed dividends for federal purposes.

There is a corresponding deduction for both GILTI and FDII in IRC §250(a). For federal purposes, the §250(a) deductions are intended to reduce the effective tax rate for the GILTI and FDII amounts.

### **Treatment of IRC §951A and IRC §250 under the New Jersey CBT Act**

For New Jersey purposes, the income starting point is line 28 of federal Form 1120 (or the corresponding line of any other federal corporate return filed), which is entire net income (ENI) before net operating loss deductions and special deductions (N.J.S.A. 54:10A-4(k)). Therefore, GILTI and FDII are included in ENI. GILTI and FDII are not treated as dividends or deemed dividend income for New Jersey CBT purposes; they are separate categories of income and are not treated as distributions from earnings and profits. As such, N.J.S.A. 54:10A-4(k)(5), which deals with the treatment of certain dividends, is not applicable.

**Note:** FDII and GILTI are included on different lines for federal and New Jersey purposes. To avoid double reporting the income on Schedule A above line 28, taxpayers must reduce the amounts reported on any other lines by the amount of the FDII and GILTI included on lines 10a and 10b of the 2018 Schedule A when transferring income data reported on the federal form 1120 onto the New Jersey Schedule A. For the 2019 return, GILTI and FDII are reported on Schedule A, Part I, lines 4(b) and 4(c), respectively.

P.L. 2018, c. 131, enacted a provision allowing the federal deductions under IRC §250(a) for New Jersey CBT purposes. However, such deductions are allowed only to the specific taxpayer that included the respective GILTI and FDII income on its federal and New Jersey CBT returns **and** that actually took the deductions for federal tax purposes. If taxpayers were not allowed the IRC §250(a) deduction for federal tax purposes, they will not be allowed the deduction for New Jersey CBT purposes. See N.J.S.A. 54:10A-4.15.

### **Sourcing of GILTI and FDII under the New Jersey CBT Act**

GILTI and FDII are a hybrid of different income items. GILTI and FDII are sourced under the category of "all other business receipts" pursuant to N.J.S.A. 54:10A-6(B)(6) and N.J.A.C. 18:7-8.12(e). However, the result

may not reflect a fair and equitable allocation. Generally speaking, GILTI and FDII are integrated in the business of the taxpayer.

The GILTI income and the FDII income and the corresponding IRC §250(a) deductions must be reported on Schedule A. To compute the New Jersey allocation factor on Schedule J, the net amount of GILTI and the net FDII income amounts are included in the numerator (if applicable) and the denominator. This is to help prevent distortion to the allocation factor and arrive at a reasonable and equitable determination of New Jersey tax.

Taxpayers are not permitted to look through to underlying sales of the controlled foreign corporations (CFC) that generated the GILTI when determining how to allocate GILTI. The exception is when the CFCs are included as members of the combined group on the same New Jersey combined return as a taxpayer that is also required to include the GILTI in income for federal purposes. This is because, pursuant to N.J.S.A. 54:10A-4.7, the denominator of the allocation factor for a combined group filing a New Jersey combined return includes the receipts of all of the business entities included as members of the combined group on the same New Jersey combined return. Thus, the CFC's receipts are included in the denominator of the combined group allocation factor only when the CFCs are included in the same New Jersey combined return as the members required to include the GILTI in income for federal purposes. If the CFCs are not included in the same combined return as the taxpayer required to include the GILTI in income for federal purposes, the combined group denominator does not include the CFC's receipts.

### **Sourcing for Combined Groups**

*Water's-Edge Basis or Affiliated Group Elective Basis where none of the CFCs are included.* Taxpayers must include the net GILTI and net FDII income amounts in the numerator (if applicable) and the denominator of the allocation factor on Schedule J, pursuant to N.J.S.A. 54:10A-4.7. The GILTI income and the FDII income and the corresponding IRC §250(a) deductions must be reported on Schedule A. Controlled foreign corporations are usually not included on affiliated group combined returns.

*Water's-Edge Basis or World-Wide Group Elective Basis where the CFCs are included.* Taxpayers must include the CFC's receipts (net of the IRC §250(a) deduction for GILTI) in the numerator (if applicable) and the group denominator, pursuant to N.J.S.A. 54:10A-4.7. The GILTI income is excluded from the combined group's ENI, as prescribed in [TB-88](#), and the GILTI must be excluded in the allocation factor. This is to prevent the double taxation and double counting of the income and receipts derived from the same source since the CFC's income is already included in the combined group's ENI. The combined group must include the net FDII income amount in the numerator (if applicable) and the group denominator of the allocation factor on Schedule J, pursuant to N.J.S.A. 54:10A-4.7. The GILTI income, CFC income, and FDII income and the corresponding IRC §250(a) deductions must be reported on Schedule A as part of the combined group's ENI. The Division of Taxation is developing a schedule (Schedule A-8) to prevent the double counting of income.

*GILTI and FDII Derived from a Combined Group Member's Independent Business Operations.* There are instances where a portion of a member's business operations can be independent of the unitary business activity of the combined group. Such member of a combined group must complete Schedule X and report the separate portion of its business operations (and those operations that are not part of another combined group). If the income from those operations is the GILTI income or FDII income, that income must be reported on Schedule X in the same manner. This is in lieu of filing a separate return to report the separate portion of the member's business operations.

### **Filing Instructions**

Taxpayers currently on extension for their 2018 tax year that ended before July 31, 2019, and taxpayers with a 2019 short period that ended before July 31, 2019, that file a 2018 CBT-100 or 2018 BFC-1 **will not**

**complete the Schedule A-6 that was contained in the original package of forms.** The lines that referenced the Schedule A-6 have been adjusted as follows:

- CBT-100 and BFC-1, Page 1, line 3c "Total allocated net income – Add lines 3a and 3b"
- CBT-100, Page 1, line 6 "Investment Company – Enter 40% of the total of line 1 plus line 3b"
- CBT-100, Page 1, line 7 "Real Estate Invest. Trust – Enter 4% of the total of line 1 plus line 3b"
- CBT-100 and BFC-1, Schedule A, lines 10a and b, disregard the instruction to carry the amounts onto Schedule A-6
- CBT-100, Schedule A, line 37b has been blanked out. Treat this line as if the entry is zero.
- BFC-1, Schedule A, line 38b has been blanked out. Treat this line as if the entry is zero.
- CBT-100 and BFC-1, Schedule J must include the net amount of the GILTI income and the net amount of the FDII income, as applicable.

Taxpayers that already filed a 2018 CBT-100, CBT-100-R, or 2018 BFC-1 for their 2018 tax year that ended before July 31, 2019, may need to file an amended return taking into account this Technical Bulletin. If an amended return is required, write "GILTI Amended Return" at the top of the return. Any resulting overpayment can either be credited toward future payments or refunded.

**Note:** A taxpayer that will be part of a 2019 combined group can have the overpayment credited toward the combined group's future estimated payments and tax liabilities.

The 2019 CBT-100, 2019 CBT-100U, BFC-1-F, and 2019 BFC-1 will reflect the information contained in this Technical Bulletin. As such, taxpayers that have a 2018 fiscal tax year that ends on or after July 31, 2019, and taxpayers that have a 2019 tax year that ends before July 31, 2020, will report their GILTI and FDII income and corresponding GILTI and FDII deductions, accordingly.

Information clarifying the intent of this Technical Bulletin has been posted [online](#).

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.



# The Unitary Business Principle and Combined Returns

**TB-93 - Issued October 17, 2019**

**Tax: Corporation Business Tax**

P.L. 2018, c. 48, as amended by P.L. 2018, c. 131, requires mandatory unitary combined reporting for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full 12-month privilege period of the managerial member begins August 1, 2018, and ends July 31, 2019). This Technical Bulletin explains the unitary business principle and the definition of unitary business for New Jersey Corporation Business Tax purposes.

For privilege periods ending on and after July 31, 2019, unitary business is defined pursuant to N.J.S.A. 54:10A-4(gg) as:

'Unitary business' means a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts. "Unitary business" shall be construed to the broadest extent permitted under the Constitution of the United States. A business conducted by a partnership which is in a unitary business with the combined group shall be treated as the business of the partners that are members of the combined group, whether the partnership interest is held directly or indirectly through a series of partnerships, to the extent of a partner's distributive share of partnership income. The amount of partnership income to be included in the partner's entire net income shall be determined in accordance with subsection a. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a partnership.

Common ownership is defined in N.J.S.A. 54:10A-4(aa) as: "'Common ownership' means that more than 50% of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code, 26 U.S.C. s.318."

The Division interprets N.J.S.A. 54:10A-4(aa) to mean that the beneficial and constructive ownership rules of I.R.C. section 318 apply to the analysis of common ownership since the definition of common ownership states that the ownership can be direct or indirect.

A combined group is defined in N.J.S.A. 54:10A-4(z) as: "'Combined group' means the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax under this chapter, and shall include all business entities, except as provided for under any section of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.)."

The definition of unitary business for New Jersey Corporation Business Tax purposes (N.J.S.A. 54:10A-4(gg)) is based on the Multistate Tax Commission's Model definition of a Unitary Business, with some state-specific variations. New Jersey construes the term "unitary business" to the broadest extent permitted under the United States Constitution. Although a business entity may be "unitary" with other business entities, it is still necessary under the Due Process and Commerce Clause of the United States Constitution to identify the scope of the unitary business. To the extent compatible with New Jersey law and U.S. Supreme Court jurisprudence, any legal or factual determination relevant to the existence or nonexistence of a unitary business will favor consistency with legal and factual determinations of other mandatory unitary combined reporting states. New Jersey will also look to the definitions and other

guidance in the Multistate Tax Commission Reg. IV.1.(b), Principles for Determining the Existence of a Unitary Business.

In addition to New Jersey law, there are a number of different aspects of the unitary business principle and combined reporting that were developed from court decisions. In order to help determine whether a group of affiliated business entities is engaged in a unitary business, please review the following cases:

*Butler Brothers v. McColgan*, 315 U.S. 501 (1942)

*Mobil Oil Corp. v. Commissioner of Taxes of Vermont*, 445 U.S. 425 (1980)

*Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159 (1983)

*Allied-Signal Inc. v. Director Division of Taxation*, 504 U.S. 768 (1992)

*Barclays Bank PLC v. Franchise Tax Board of California*, 512 U.S. 298 (1994)

*MeadWestvaco Corp. v. Illinois Dept. of Revenue*, 553 U.S. 16 (2008)

A unitary business is characterized by significant flows of value evidenced by factors such as functional integration, centralization of management, and economies of scale, as described in *Mobil Oil Corp. v. Vermont*, 445 U.S. 425 (1980). These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence.

Thus, one or more related business organizations engaged in business activity – entirely within this state, or both within and without this state – are unitary if there exists interdependence in their functions. This test adopts the decisional law of the United States Supreme Court with respect to the constitutional prerequisites for requiring unitary combination. The Court has expressed the constitutional test in various ways in various cases, holding that a finding of unitary relationship requires “contribution or dependency” between businesses; “substantial mutual interdependency” or “flow of value,” functional integration, centralized management, or economy of scale.

The participants in an economic enterprise under common ownership may also be considered a unitary business if there is unity of operation and use. See *Butler Brothers v. McColgan*. The unity of operation and use indicates the existence of interdependence of functions.

**Note:** An affiliated group/commonly controlled group may be engaged in one or more unitary businesses. Therefore, an affiliated group/commonly controlled group may contain more than one combined group and file more than one New Jersey combined return.

If the taxpayers meet either the “Interdependence of Functions Test” or the “Unity of Operations and Use Test,” the taxpayers are part of the unitary business. A determination of whether an entity forms part of a unitary business with another is determined based on the facts and circumstances of each case.

## **Interdependence of Functions Test**

Any of the following circumstances indicate that an interdependence of functions exists:

- **Same Line of Business.** The principal activities of the entities are in the same general line of business. Examples of the same line of business are manufacturing, wholesaling, retailing, servicing, and/or repairing of tangible personal property; transportation; or finance (these examples are for illustration purposes and are not meant to be all-inclusive). In determining whether two entities are in the same general line of business, consideration is given to the nature and character of the basic operations of each entity. This includes, but is not limited to, sources of supply, goods or services produced or sold, labor force, and market. Two entities are in the same general line of business when their operations are sufficiently similar to reasonably conclude that the entities are likely to depend upon or contribute to one another.
- **Vertically Structured Business.** The principal activities of the entities are different steps of a vertically structured business. Illustrations of such different steps are exploration, mining and drilling, production, refining, marketing, and transportation of natural resources.

- **Centralized Management.** Centralized management may be evidenced by executive-level policy made by a central person, board or committee and not by each entity in areas such as, but not limited to, purchasing, accounting, finance, tax compliance, legal services, human resources, health and retirement plans, product lines, capital investment, and marketing.
- **Non-Arm's-Length Prices.** Goods or services or both are not supplied at arm's-length prices between or among entities. Existence of arm's-length pricing between entities, however, does not indicate lack of unity.
- **Existence of Benefits from Joint, Shared, or Common Activity.** A discount, cost-saving, or other benefit that arise from the joint purchases, leaseholds, or other forms of joint, shared, or common activities between or among entities.
- **Relationship of Joint, Shared, or Common Activity to Income-Producing Operations.** When determining whether there exists a joint, shared, or common activity that is indicative of a unitary relationship, consideration is given to the nature and character of the basic operations of each entity. Such consideration includes, but is not limited to, the entity's sources of supply, its goods or services produced or sold, and its labor force and market. These considerations are used, to determine whether the joint, shared, or common activity is directly beneficial to, related to, or reasonably necessary to the income-producing activities of the unitary business.
- **Exercise of Control.** The exercise of control by one entity over another entity is indicative of a unitary relationship.

## Unity of Operations and Use Tests

Unity of operation means there is functional integration among the entities and is evidenced generally by shared support functions. Unity of use is evidenced generally by centralized management or use of centralized policies. These unities exist if each entity that is to be included in the unitary business benefits or receives goods, services, support, guidance, or direction arising from the actions of common staff resources or common executive resources, personnel, third-party providers, or operations under the direction of such common resources. The tests are overlapping and the indicators of each test also indicate the existence of interdependence of functions. The existence or non-existence of the following factors will assist in the determination of whether unity of operations and use exist with respect to a combined group. The existence or non-existence of any one factor, by itself, is normally not determinative of whether there is a unity of operations and use. Factors that may be considered include, but are not limited to:

- Common purchasing;
- Common advertising;
- Common employees, including sales force;
- Common accounting;
- Common legal support;
- Common retirement plan;
- Common insurance coverage;
- Common marketing;
- Common cash management;
- Common research and development;
- Common offices;
- Common manufacturing facilities;
- Common warehousing facilities;
- Common transportation facilities;
- Common computer systems and support;
- Financing support;
- Common management (meaning that one or more officers or directors of the parent are also officers or directors of the subsidiary);
- Control of major policies (e.g., the parent corporation's board of directors requires that it approve any acquisition by either the parent or subsidiary of any interest in any other company; or the



parent corporation's board of directors requires that it approve any lending in excess of a minimum amount to any one or more of either the parent or subsidiary's suppliers);

- Inter-entity transactions (e.g., a subsidiary corporation licenses the use of personal property it developed to the parent corporation and the parent corporation uses the property in its production activities);
- Common policy or training manuals (e.g., the parent corporation's employee handbook applies to all of a subsidiary's employees; *or* the subsidiary's employees are required to attend parent corporation's employee training courses; *or* disciplinary procedures are the same for both corporations' employees, even if the appeal process is only through their respective entities);
- Required budgetary approval (e.g., the parent corporation's board of directors requires that it approve the budget and expenditure plans of the subsidiary on a periodic basis);
- Required capital asset purchases approval (e.g., the parent corporation's board of directors requires that it approve any capital expenditures by the subsidiary in excess of a minimum set amount).

**Holding Companies.** The tests for a unitary business apply when determining whether a holding company is included or excluded from a unitary business of a combined group. If a holding company is organizationally structured between two unitary entities, it does not negate unity of ownership. A passive holding company that is in a commonly controlled economic enterprise and holds intangible assets that are used by the enterprise in a unitary business is deemed to be engaged in the unitary business, even though the holding company's activities are primarily passive.

**Sharing of Intellectual Property; Intercompany Financing.** Transferring or sharing technical information or intellectual property (e.g., patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development) provides evidence of a unitary relationship when the information or property transferred or shared is significant to the businesses' operations. Similarly, a unitary relationship is indicated when there is significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities, if the financing activity serves an operational purpose.

### **Portion of a Company's Operations Engaged in a Unitary Business**

There are instances where a portion of a member's business operations are independent of the unitary business activity of the combined group. Only the income, attributes, and allocation factors related to the portion of a company's operations that are part of a unitary business of the combined group are included in the calculation of the combined group's entire net income and allocation factor. The remaining portion of a member's business operations may be subject to tax separately from the combined group if such member individually conducts business in New Jersey or with another combined group (if it is engaged in a unitary business with that combined group that also conducts business in New Jersey).

**Note:** In lieu of filing a separate return to report such income, such member of a combined group must complete Schedule X to report the separate portion of its business operations (and those operations are not part of another combined group). Schedule X will be used to calculate the New Jersey taxable net income of that separate activity income that must be reported on Part III of Schedule A of the CBT-100U.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a

Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.



## General Information on the New Net Operating Loss Regime for Tax Years Ending on and After July 31, 2019

### TB-94 - Issued October 25, 2019 Tax: Corporation Business Tax

P.L. 2018, c. 48 and P.L. 2018, c. 131 collectively changed the net operating loss and net operating loss carryover regime from pre-allocation to post allocation for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018 if a full 12-month privilege period begins August 1, 2018 and ends July 31, 2019). This Technical Bulletin explains various aspects of the new net operating losses and net operating loss carryovers **for taxpayers filing a separate return for New Jersey purposes**. Information for members of combined groups filing New Jersey combined returns will be published in a separate Technical Bulletin, which is forthcoming.

For New Jersey purposes, the income starting point is Line 28 of federal Form 1120 (or the corresponding line of any other federal corporate return filed), which is taxable income before net operating loss deductions and special deductions (N.J.S.A. 54:10A-4(k)). New Jersey has its own statutorily created net operating loss calculations. See N.J.S.A. 54:10A-4(k)(6), N.J.S.A. 54:10A-4(u), and N.J.S.A. 54:10A-4(v). In order to claim New Jersey net operating losses and net operating loss carryovers (deductions), the taxpayer must have filed a New Jersey Corporation Business Tax return in the applicable privilege periods.

**Prior Net Operating Loss Conversion Carryovers (PNOL)** are governed by N.J.S.A. 54:10A-4(u), which states:

'Prior net operating loss conversion carryover' means a net operating loss incurred in a privilege period ending prior to July 31, 2019 and converted from a pre-allocation net operating loss to a post-allocation net operating loss as follows:

(1) As used in this subsection:

'Base year' means the last privilege period ending prior to July 31, 2019.

'Base year BAF' means the taxpayer's business allocation factor as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period ending prior to July 31, 2019.

'UNOL' means the unabsorbed portion of net operating loss as calculated under paragraph (6) of subsection (k) of this section as such paragraph was in effect for the last privilege period ending prior to July 31, 2019, that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year **subject to the limitations for deduction under such subsection, including any net operating loss sustained by the taxpayer during the base year**.

(2) The prior net operating loss conversion carryover shall be calculated as follows:

(A) The taxpayer shall first calculate the tax value of its UNOL for the base year and for each preceding privilege period for which there is an UNOL. The value of the UNOL for each privilege period is equal to the product of (I) the amount of the taxpayer's UNOL for a privilege period, and (II) the taxpayer's base year BAF. This result shall equal the taxpayer's prior net operating loss conversion carryover.

(B) The taxpayer shall continue to carry over its prior net operating loss conversion carryover to offset its allocated entire net income as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on and after July 31, 2019. Such carryover periods shall not exceed the twenty privilege periods following the privilege period of the initial loss. The entire amount of the prior net operating loss conversion carryover for any privilege period shall be carried to the earliest of the privilege periods to which the loss

may be carried. The portion of the prior net operating loss conversion carryover which is carried to each of the other privilege periods shall be the excess, if any, of the amount of the prior net operating loss conversion carryover over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State.

- (C) The prior net operating loss conversion carryover computed under this subsection shall be applied against the entire net income allocated to this State before the net operating loss carryover computed under subsection (v) of this section. *[emphasis added]*

The limitations governing the UNOLs that are converted to PNOLs from the period where the UNOLs were sustained by the taxpayer can be found in N.J.S.A. 54:10A-4(k)(6), which states in part:

- (B) Net operating loss carryover. A net operating loss for any privilege period ending after June 30, 1984 shall be a net operating loss carryover to each of the seven privilege periods following the period of the loss and a net operating loss for any privilege period ending after June 30, 2009 shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period (the "loss period") shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior privilege periods to which the loss may be carried.

...

- (D) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover.

...

- (F) **Reduction for discharge of indebtedness.** A net operating loss for any privilege period ending after June 30, 2014, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code (26 U.S.C. s.108), for the privilege period of the discharge of indebtedness." *[emphasis added]*

**Post Allocation Net Operating Losses and Post Allocation Net Operating Loss Carryovers for tax years ending on and after July 31, 2019**, are governed by N.J.S.A. 54:10A-4(v) which states:

'Net operating loss deduction' means the amount allowed as a deduction for the net operating loss carryover to the privilege period, calculated as follows:

- (1) Net operating loss carryover. A net operating loss for any privilege period ending on or after July 31, 2019, shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State.
- (2) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income, without regard to any net operating loss carryover, and computed without the exclusions in paragraphs (4) and (5) of

subsection (k) of this section, allocated to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

- (3) **Reduction for discharge of indebtedness.** A net operating loss for any privilege period ending on or after July 31, 2019, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108, for the privilege period of the discharge of indebtedness.
- (4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period ending prior to July 31, 2019.
- (5) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock, and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition, where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover; provided, however, this paragraph shall not apply between members of a combined group reported on a New Jersey combined return. *[emphasis added]*

**Taxable Net Income** is defined in N.J.S.A. 54:10A-4(w), which states: "'Taxable net income' means entire net income allocated to this State as calculated pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by subtracting any prior net operating loss conversion carryforward calculated pursuant to subsection (u) of this section, and any net operating loss calculated pursuant to subsection (v) of this section."

### **Prior Net Operating Loss Conversion Carryovers (PNOL)**

For tax years ending prior to July 31, 2019, net operating losses were calculated on a pre-allocation basis pursuant to N.J.S.A. 54:10A-4(k)(6). The new law requires the unused and unexpired net operating loss carryovers that were calculated pursuant to N.J.S.A. 54:10A-4(k)(6) to be converted from a pre-allocation net operating loss carryover to an allocated prior net operating loss conversion carryover (PNOL). PNOLs are then used to reduce the allocated entire net income of the taxpayer. In order to have New Jersey net operating losses and net operating loss carryovers that can be converted to PNOLs, the taxpayer must have filed New Jersey Corporation Business Tax return in the applicable privilege periods.

To calculate a PNOL conversion carryover, a taxpayer must first calculate its pre-allocated net operating losses for each preceding privilege period, then multiply those amounts by the corporation's allocation factor from the last privilege period ending prior to July 31, 2019. A Prior Net Operating Loss Conversion Worksheet is included in the Corporation Business Tax Return to assist taxpayers with the conversion.

PNOLs expire 20 privilege periods after the loss was originally generated. For the most part, N.J.S.A. 54:10A-4(u) changed the ordering of where PNOLs are subtracted but did not change the expiration period. There is an exception for taxpayers with losses that met the qualifications of N.J.S.A. 54:10A-4.3.a, which provided emerging technology or biotechnology companies a 15-year net operating loss carryover from privilege periods ending on or before June 30, 2009. Taxpayers that met the qualifications of N.J.S.A. 54:10A-4.3 and that have unused and unexpired net operating loss carryovers as a result must convert those net operating loss carryovers to PNOLs. However, when converting those net operating loss carryovers, N.J.S.A. 54:10A-4(u)(2)(B) extends the carryover period of these PNOLs by 5 tax years. For example: A taxpayer has an unused and unexpired net operating loss carryover that met the qualifications of N.J.S.A. 54:10A-4.3 for a privilege period that ended on December 31 2008. The carryover would have expired on December 31, 2023. As a result of the unused and unexpired net operating loss carryover being converted to a PNOL, the net operating loss carryover that would have expired on December 31, 2023, is extended to December 31, 2028.

PNOLs are subtracted from allocated entire net income unless the taxpayer is in a loss position in that tax year. PNOLs cannot be used to create an allocated current year net operating loss or current year net operating loss carryover that is carried over into future tax years. Furthermore, a PNOL is still subject to the limitations in N.J.S.A. 54:10A-4(k)(6)(D) and N.J.S.A. 54:10A-4(k)(6)(F).

## **Current Year Post Allocation Net Operating Losses and Post Allocation Net Operating Loss Carryovers**

For tax years ending on and after July 31, 2019, net operating loss deductions and net operating loss carryovers are calculated on a post allocation basis. This means that if the taxpayer's allocated entire net income is a loss, then such loss will equal the amount of taxpayer's post allocation net operating loss for the tax year. A post allocation net operating loss carryover can be carried forward for 20 tax years. If the taxpayer has a post allocation net operating loss for the year, the taxpayer cannot subtract its prior net operating loss conversion carryover (PNOL). The post allocation net operating loss carryover is subtracted from allocated entire net income after the taxpayer uses all of its PNOLs if the taxpayer still has allocated entire net income after the PNOL subtraction.

## **Discharge of Indebtedness Income and Net Operating Losses**

The Internal Revenue Code excludes certain categories of debt cancellation from income (such as discharges in bankruptcy). IRC Section 108(b) calls for a reduction of certain tax attributes, including net operating losses. Therefore, if the taxpayer has a discharge of indebtedness amount that is excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC section 108, it must be reflected on the tax return as explained below.

**In a tax year that the taxpayer has a current year post allocation net operating loss** and a discharge of indebtedness, the taxpayer must reduce its post allocation net operating loss by the allocated discharge of indebtedness income, using the current year allocation factor to calculate the allocated discharge of indebtedness income, pursuant to N.J.S.A. 54:10A-4(v)(3) and N.J.S.A. 54:10A-4(w). Additionally, if the taxpayer has PNOLs, the taxpayer must reduce the PNOLs by its allocated discharge of indebtedness income, if the allocated discharge of indebtedness income exceeds the current year post allocation net operating loss. If the taxpayer does not have any PNOLs, the taxpayer must reduce its post allocation net operating loss carryovers by its allocated discharge of indebtedness income if the allocated discharge of indebtedness income exceeds the current year post allocation net operating loss.

**In a tax year that the taxpayer has allocated entire net income** and has discharge of indebtedness, the taxpayer must reduce any PNOLs that are being utilized by its allocated discharge of indebtedness income pursuant to N.J.S.A. 54:10A-4(k)(6)(F), N.J.S.A. 54:10A-4(u)(1), and N.J.S.A. 54:10A-4(w). In order to calculate how much the taxpayer's PNOLs are being reduced, the taxpayer must multiply the discharge of indebtedness income amount by its current year allocation factor to arrive at an allocated discharge of indebtedness income amount. If the allocated discharge of indebtedness amount exceeds all of the taxpayer's PNOLs and the taxpayer has post allocation net operating loss carryovers, the taxpayer must also reduce its post allocation net operating loss carryovers by the remaining balance of the allocated discharge of indebtedness income, and then the taxpayer will reduce its allocated entire net income by the remaining post allocation net operating loss carryover pursuant to N.J.S.A. 54:10A-4(v)(3). If the taxpayer does not have any PNOLs, the taxpayer must reduce its post allocation net operating loss carryovers by its allocated discharge of indebtedness income.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

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## General Information on the New Net Operating Loss Regime for Tax Years Ending on and After July 31, 2019

**TB-94(R) – Revised February 18, 2020**

### **Tax: Corporation Business Tax**

P.L. 2018, c. 48 and P.L. 2018, c. 131 collectively changed the net operating loss and net operating loss carryover regime from pre-allocation to post allocation for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018 if a full 12-month privilege period begins August 1, 2018 and ends July 31, 2019). This Technical Bulletin explains various aspects of the new net operating losses and net operating loss carryovers **for taxpayers filing a separate return for New Jersey purposes**. Information for members of combined groups filing New Jersey combined returns will be published in a separate Technical Bulletin, which is forthcoming.

For New Jersey purposes, the income starting point is Line 28 of federal Form 1120 (or the corresponding line of any other federal corporate return filed), which is taxable income before net operating loss deductions and special deductions (N.J.S.A. 54:10A-4(k)). New Jersey has its own statutorily created net operating loss calculations. See N.J.S.A. 54:10A-4(k)(6), N.J.S.A. 54:10A-4(u), and N.J.S.A. 54:10A-4(v). In order to claim New Jersey net operating losses and net operating loss carryovers (deductions), the taxpayer must have filed a New Jersey Corporation Business Tax return in the applicable privilege periods.

**Prior Net Operating Loss Conversion Carryovers (PNOL)** are governed by N.J.S.A. 54:10A-4(u), which states:

'Prior net operating loss conversion carryover' means a net operating loss incurred in a privilege period ending prior to July 31, 2019 and converted from a pre-allocation net operating loss to a post-allocation net operating loss as follows:

(1) As used in this subsection:

'Base year' means the last privilege period ending prior to July 31, 2019.

'Base year BAF' means the taxpayer's business allocation factor as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period ending prior to July 31, 2019.

'UNOL' means the unabsorbed portion of net operating loss as calculated under paragraph (6) of subsection (k) of this section as such paragraph was in effect for the last privilege period ending prior to July 31, 2019, that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year **subject to the limitations for deduction under such subsection, including any net operating loss sustained by the taxpayer during the base year**.

(2) The prior net operating loss conversion carryover shall be calculated as follows:

(A) The taxpayer shall first calculate the tax value of its UNOL for the base year and for each preceding privilege period for which there is an UNOL. The value of the UNOL for each privilege period is equal to the product of (I) the amount of the taxpayer's UNOL for a privilege period, and (II) the taxpayer's base year BAF. This result shall equal the taxpayer's prior net operating loss conversion carryover.

(B) The taxpayer shall continue to carry over its prior net operating loss conversion carryover to offset its allocated entire net income as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on and after July 31, 2019. Such carryover periods shall not exceed the twenty privilege periods following the privilege period of the initial loss. The entire amount of the prior net operating loss conversion carryover for any privilege period shall be carried to the earliest of the privilege periods to which the loss



may be carried. The portion of the prior net operating loss conversion carryover which is carried to each of the other privilege periods shall be the excess, if any, of the amount of the prior net operating loss conversion carryover over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State.

- (C) The prior net operating loss conversion carryover computed under this subsection shall be applied against the entire net income allocated to this State before the net operating loss carryover computed under subsection (v) of this section. *[emphasis added]*

The limitations governing the UNOLs that are converted to PNOLs from the period where the UNOLs were sustained by the taxpayer can be found in N.J.S.A. 54:10A-4(k)(6), which states in part:

- (B) Net operating loss carryover. A net operating loss for any privilege period ending after June 30, 1984 shall be a net operating loss carryover to each of the seven privilege periods following the period of the loss and a net operating loss for any privilege period ending after June 30, 2009 shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period (the "loss period") shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior privilege periods to which the loss may be carried.

...

- (D) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover.

...

- (F) **Reduction for discharge of indebtedness.** A net operating loss for any privilege period ending after June 30, 2014, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code (26 U.S.C. s.108), for the privilege period of the discharge of indebtedness." *[emphasis added]*

**Post Allocation Net Operating Losses and Post Allocation Net Operating Loss Carryovers for tax years ending on and after July 31, 2019**, are governed by N.J.S.A. 54:10A-4(v) which states:

'Net operating loss deduction' means the amount allowed as a deduction for the net operating loss carryover to the privilege period, calculated as follows:

- (1) Net operating loss carryover. A net operating loss for any privilege period ending on or after July 31, 2019, shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State.
- (2) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income, without regard to any net operating loss carryover, and computed without the exclusions in paragraphs (4) and (5) of

subsection (k) of this section, allocated to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

- (3) **Reduction for discharge of indebtedness.** A net operating loss for any privilege period ending on or after July 31, 2019, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108, for the privilege period of the discharge of indebtedness.
- (4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period ending prior to July 31, 2019.
- (5) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock, and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition, where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover; provided, however, this paragraph shall not apply between members of a combined group reported on a New Jersey combined return. *[emphasis added]*

**Taxable Net Income** is defined in N.J.S.A. 54:10A-4(w), which states: "'Taxable net income' means entire net income allocated to this State as calculated pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by subtracting any prior net operating loss conversion carryforward calculated pursuant to subsection (u) of this section, and any net operating loss calculated pursuant to subsection (v) of this section."

### **Prior Net Operating Loss Conversion Carryovers (PNOL)**

For tax years ending prior to July 31, 2019, net operating losses were calculated on a pre-allocation basis pursuant to N.J.S.A. 54:10A-4(k)(6). The new law requires the unused and unexpired net operating loss carryovers that were calculated pursuant to N.J.S.A. 54:10A-4(k)(6) to be converted from a pre-allocation net operating loss carryover to an allocated prior net operating loss conversion carryover (PNOL). PNOLs are then used to reduce the allocated entire net income of the taxpayer. In order to have New Jersey net operating losses and net operating loss carryovers that can be converted to PNOLs, the taxpayer must have filed New Jersey Corporation Business Tax return in the applicable privilege periods.

To calculate a PNOL conversion carryover, a taxpayer must first calculate its pre-allocated net operating losses for each preceding privilege period, then multiply those amounts by the corporation's allocation factor from the last privilege period ending prior to July 31, 2019. A Prior Net Operating Loss Conversion Worksheet is included in the Corporation Business Tax Return to assist taxpayers with the conversion.

PNOLs expire 20 privilege periods after the loss was originally generated. For the most part, N.J.S.A. 54:10A-4(u) changed the ordering of where PNOLs are subtracted but did not change the expiration period. There is an exception for taxpayers with losses that met the qualifications of N.J.S.A. 54:10A-4.3.a, which provided emerging technology or biotechnology companies a 15-year net operating loss carryover from privilege periods ending on or before June 30, 2009. Taxpayers that met the qualifications of N.J.S.A. 54:10A-4.3 and that have unused and unexpired net operating loss carryovers as a result must convert those net operating loss carryovers to PNOLs. However, when converting those net operating loss carryovers, N.J.S.A. 54:10A-4(u)(2)(B) extends the carryover period of these PNOLs by 5 tax years. For example: A taxpayer has an unused and unexpired net operating loss carryover that met the qualifications of N.J.S.A. 54:10A-4.3 for a privilege period that ended on December 31 2008. The carryover would have expired on December 31, 2023. As a result of the unused and unexpired net operating loss carryover being converted to a PNOL, the net operating loss carryover that would have expired on December 31, 2023, is extended to December 31, 2028.

PNOLs are subtracted from allocated entire net income unless the taxpayer is in a loss position in that tax year. PNOLs cannot be used to create an allocated current year net operating loss or current year net operating loss carryover that is carried over into future tax years. Furthermore, a PNOL is still subject to the limitations in N.J.S.A. 54:10A-4(k)(6)(D) and N.J.S.A. 54:10A-4(k)(6)(F).

**Note:** In a situation where an inactive corporation, which has been filing New Jersey corporation business tax returns and paying the minimum tax, has UNOLs from prior periods, the allocation factor from the last privilege period that a New Jersey corporation business tax return was filed under the active status may be used for purposes of calculating their PNOLs.

## **Current Year Post Allocation Net Operating Losses and Post Allocation Net Operating Loss Carryovers**

For tax years ending on and after July 31, 2019, net operating loss deductions and net operating loss carryovers are calculated on a post allocation basis. This means that if the taxpayer's allocated entire net income is a loss, then such loss will equal the amount of taxpayer's post allocation net operating loss for the tax year. A post allocation net operating loss carryover can be carried forward for 20 tax years. If the taxpayer has a post allocation net operating loss for the year, the taxpayer cannot subtract its prior net operating loss conversion carryover (PNOL). The post allocation net operating loss carryover is subtracted from allocated entire net income after the taxpayer uses all of its PNOLs if the taxpayer still has allocated entire net income after the PNOL subtraction.

## **Discharge of Indebtedness Income and Net Operating Losses**

The Internal Revenue Code excludes certain categories of debt cancellation from income (such as discharges in bankruptcy). IRC Section 108(b) calls for a reduction of certain tax attributes, including net operating losses. Therefore, if the taxpayer has a discharge of indebtedness amount that is excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC section 108, it must be reflected on the tax return as explained below.

**In a tax year that the taxpayer has a current year post allocation net operating loss** and a discharge of indebtedness, the taxpayer must reduce its post allocation net operating loss by the allocated discharge of indebtedness income, using the current year allocation factor to calculate the allocated discharge of indebtedness income, pursuant to N.J.S.A. 54:10A-4(v)(3) and N.J.S.A. 54:10A-4(w). Additionally, if the taxpayer has PNOLs, the taxpayer must reduce the PNOLs by its allocated discharge of indebtedness income, if the allocated discharge of indebtedness income exceeds the current year post allocation net operating loss. If the taxpayer does not have any PNOLs, the taxpayer must reduce its post allocation net operating loss carryovers by its allocated discharge of indebtedness income if the allocated discharge of indebtedness income exceeds the current year post allocation net operating loss.

**In a tax year that the taxpayer has allocated entire net income** and has discharge of indebtedness, the taxpayer must reduce any PNOLs that are being utilized by its allocated discharge of indebtedness income pursuant to N.J.S.A. 54:10A-4(k)(6)(F), N.J.S.A. 54:10A-4(u)(1), and N.J.S.A. 54:10A-4(w). In order to calculate how much the taxpayer's PNOLs are being reduced, the taxpayer must multiply the discharge of indebtedness income amount by its current year allocation factor to arrive at an allocated discharge of indebtedness income amount. If the allocated discharge of indebtedness amount exceeds all of the taxpayer's PNOLs and the taxpayer has post allocation net operating loss carryovers, the taxpayer must also reduce its post allocation net operating loss carryovers by the remaining balance of the allocated discharge of indebtedness income, and then the taxpayer will reduce its allocated entire net income by the remaining post allocation net operating loss carryover pursuant to N.J.S.A. 54:10A-4(v)(3). If the taxpayer does not have any PNOLs, the taxpayer must reduce its post allocation net operating loss carryovers by its allocated discharge of indebtedness income.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

**Revision Information:** This Technical Bulletin was revised on February 18, 2020, to clarify that inactive corporations may use the allocation factor from the last privilege period during which they filed as an active New Jersey corporation for purposes of converting pre allocated net operating losses.



## Net Operating Losses and Combined Groups

**TB-95 - Issued February 18, 2020**

**Tax: Corporation Business Tax**

P.L. 2018, c. 48, and P.L. 2018, c. 131, collectively mandate combined reporting for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full 12-month privilege period of the managerial member begins August 1, 2018, and ends July 31, 2019). In addition, the laws change the net operating loss and net operating loss carryover regime from pre-allocation to post-allocation for privilege periods ending on and after July 31, 2019. This Technical Bulletin explains various aspects of prior net operating loss conversion carryovers (PNOLs), post-allocation net operating losses, and net operating loss carryovers **in a combined group context** pursuant to N.J.S.A. 54:10A-4.6. (See [TB-94](#), *General Information on the New Net Operating Loss Regime for Tax Years Ending on and After July 31, 2019*, for details on the general changes to net operating losses and net operating loss carryovers. The Division is prepared to release additional guidance on net operating losses in a combined group context as may be necessary.)

For New Jersey purposes, the income starting point is Line 28 of federal Form 1120 (or the corresponding line of any other federal corporate return filed), which is taxable income before net operating loss deductions and special deductions (N.J.S.A. 54:10A-4(k)). New Jersey has its own statutorily created net operating loss calculations. See N.J.S.A. 54:10A-4(k)(6); N.J.S.A. 54:10A-4(u); N.J.S.A. 54:10A-4(v); and N.J.S.A. 54:10A-4.6.h. In order to claim New Jersey net operating losses and net operating loss carryover deductions, a taxpayer must have filed a New Jersey Corporation Business Tax return in the applicable privilege periods. For New Jersey combined returns, there are specific rules governing current year combined group post-allocation net operating losses, prior net operating losses conversion carryovers (PNOLs), and combined group post-allocation net operating loss carryovers.

Regardless of whether the New Jersey combined return is filed on a **mandatory** water's-edge basis or the **elective** world-wide group or affiliated group basis, for purposes of calculating combined group entire net income, current year combined group net operating losses, prior net operating loss carryovers, combined group post-allocation net operating loss carryovers, and tax credits, a combined group must calculate its tax attributes pursuant to N.J.S.A. 54:10A-4.6; N.J.S.A. 54:10A-4.8; N.J.S.A. 54:10A-4.10; N.J.S.A. 54:10A-4.11. Furthermore, because world-wide group and affiliated group bases are elections to file combined returns and calculate group income and attributes as though they were a combined group filing a mandatory combined return, they are also governed by the rules provided in N.J.S.A. 54:10A-4.6.

**Note:** For purposes of applying net operating losses to the combined group's Schedule A, if the combined group has a loss then every member of the group is deemed to have a loss. Conversely, if the combined group has income then every member is deemed to have income.

**Prior Net Operating Loss Conversion Carryovers (PNOLs)** are governed by N.J.S.A. 54:10A-4(u) which states that:

"'Prior net operating loss conversion carryover' means a net operating loss incurred in a privilege period ending prior to July 31, 2019 and converted from a pre-allocation net operating loss to a post-allocation net operating loss as follows:

(1) As used in this subsection:

'Base year' means the last privilege period ending prior to July 31, 2019.

'Base year BAF' means the taxpayer's business allocation factor as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period ending prior to July 31, 2019.

'UNOL' means the unabsorbed portion of net operating loss as calculated under paragraph (6) of subsection (k) of this section as such paragraph was in effect for the last privilege period ending prior to July 31, 2019, that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year **subject to the limitations for deduction under such subsection, including any net operating loss sustained by the taxpayer during the base year.**

(2) The prior net operating loss conversion carryover shall be calculated as follows:

- (A) The taxpayer shall first calculate the tax value of its UNOL for the base year and for each preceding privilege period for which there is a UNOL. The value of the UNOL for each privilege period is equal to the product of (I) the amount of the taxpayer's UNOL for a privilege period, and (II) the taxpayer's base year BAF. This result shall equal the taxpayer's prior net operating loss conversion carryover.
- (B) The taxpayer shall continue to carry over its prior net operating loss conversion carryover to offset its allocated entire net income as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on and after July 31, 2019. Such carryover periods shall not exceed the twenty privilege periods following the privilege period of the initial loss. The entire amount of the prior net operating loss conversion carryover for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the prior net operating loss conversion carryover which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the prior net operating loss conversion carryover over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State.
- (C) The prior net operating loss conversion carryover computed under this subsection shall be applied against the entire net income allocated to this State before the net operating loss carryover computed under subsection (v) of this section." *[emphasis added]*

**Note:** UNOLs are the pre-allocation NOLs that were generated in privilege periods ending before July 31, 2019 (i.e., the privilege periods prior to the effective date of the switch to both combined reporting and post-allocation application of net operating losses).

The limitations governing the UNOLs that are converted to PNOLs from the period in which the UNOLs were sustained by the taxpayer can be found in N.J.S.A. 54:10A-4(k)(6) which states, in part:

"(B) Net operating loss carryover. A net operating loss for any privilege period ending after June 30, 1984 shall be a net operating loss carryover to each of the seven privilege periods following the period of the loss and a net operating loss for any privilege period ending after June 30, 2009 shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period (the "loss period") shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior privilege periods to which the loss may be carried.

...

- (D) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover.

...

- (F) Reduction for discharge of indebtedness. A net operating loss for any privilege period ending after June 30, 2014, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code (26 U.S.C. s.108), for the privilege period of the discharge of indebtedness."

**Post Allocation Net Operating Losses and Post Allocation Net Operating Loss Carryovers (NOLs) for tax years ending on and after July 31, 2019,** are governed by N.J.S.A. 54:10A-4(v) which states:

"'Net operating loss deduction' means the amount allowed as a deduction for the net operating loss carryover to the privilege period, calculated as follows:

- (1) Net operating loss carryover. A net operating loss for any privilege period ending on or after July 31, 2019, shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of subsection (k) of this section allocated to this State.
- (2) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income, without regard to any net operating loss carryover, and computed without the exclusions in paragraphs (4) and (5) of subsection (k) of this section, allocated to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).
- (3) Reduction for discharge of indebtedness. A net operating loss for any privilege period ending on or after July 31, 2019, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108, for the privilege period of the discharge of indebtedness.
- (4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period ending prior to July 31, 2019.
- (5) Change in ownership. Where there is a change in 50% or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition, where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the director may disallow the carryover; provided, however, this paragraph shall not apply between members of a combined group reported on a New Jersey combined return."

**Taxable Net Income** is defined in N.J.S.A. 54:10A-4(w), which states: "'Taxable net income' means entire net income allocated to this State as calculated pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by subtracting any prior net operating loss conversion

carryforward calculated pursuant to subsection (u) of this section, and any net operating loss calculated pursuant to subsection (v) of this section.”

**The rules governing PNOLs in a Combined Return Context and Combined Group Post-Allocation NOLs (derived from the unitary business of the combined group) can be found in N.J.S.A. 54:10A-4.6 which states, in part:**

“g. A prior net operating loss conversion carryover incurred by a member of a combined group shall be deducted from the entire net income or loss allocated to this state pursuant to section 19 of P.L.2018, c.48 (C.54:10A-4.7) as follows:

- (1) Such prior net operating loss conversion carryover deduction shall be allowed to offset only the entire net income allocated to this state of the corporation that created the prior net operating loss; the prior net operating loss conversion carryover cannot be shared with other members of the combined group.
- (2) The prior net operating loss conversion carryover deduction **computed under subsection (u) of section 4 of P.L.1945, c.162 (C.54:10A-4)** shall be applied against the entire net income allocated to this state of the corporation that created the prior net operating loss before the net operating loss carryover computed under subsection h. of this section.

The director shall provide regulations establishing rules on how each such corporation shall apply its prior net operating loss conversion carryover against its share of entire net income allocated as if filing on a separate entity basis.

h. A net operating loss carryover incurred by a member of a combined group shall be deducted from entire net income or loss allocated to this State pursuant to section 19 of P.L.2018, c.48 (C.54:10A-4.7) as follows:

- (1) For privilege periods beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11), if the computation of a combined group's entire net income allocated to this state results in a net operating loss, a taxable member of such group may carry over the net operating loss allocated to this state, as calculated under this section and sections 19 and 23 of P.L.2018, c.48 (C.54:18A-4.7 and C.54:18A-4.11), and shall be deductible from entire net income derived from the unitary business in a future privilege period to the extent that the carryover and deduction is **otherwise consistent with subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4)**.
- (2) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred by a combined group in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11), then the taxable member may share the net operating loss carryover with other taxable members of the combined group if such other taxable members were members of the combined group in the privilege period that the loss was incurred. Any amount of net operating loss carryover that is deducted by another taxable member of the combined group shall reduce the amount of net operating loss carryover that may be carried over by the taxable member that originally incurred the loss.
- (3) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred in a privilege period during which the taxable member was not a member of such combined group, the carryover shall remain available to be deducted by that taxable member or other group members that, in the year the loss was incurred, were part of the same



combined group as such taxable member. Such carryover shall not be deductible by any other members of the combined group.

- (4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19 and 23 of P.L.2018, c.48 (C.54:18A-4.7 and C.54:18A-4.11).“ *[emphasis added]*

## **Prior Net Operating Loss Conversion Carryovers (PNOLs) and Combined Groups**

For tax years ending *prior* to July 31, 2019, net operating losses were calculated on a pre-allocation basis pursuant to N.J.S.A. 54:10A-4(k)(6). For tax years ending *on and after* July 31, 2019, **any unused unexpired net operating loss carryovers that were calculated pursuant to N.J.S.A. 54:10A-4(k)(6) must be converted to allocated prior net operating loss conversion carryovers (PNOLs)**. PNOLs are then used to reduce the allocated entire net income of the taxpayer.

**Note:** In order to have New Jersey net operating losses and net operating loss carryovers converted to PNOLs, a taxpayer must have filed a New Jersey Corporation Business Tax return in the applicable privilege periods. (See [TB-94](#), *General Information on the New Net Operating Loss Regime for Tax Years Ending on and After July 31, 2019*.)

PNOLs cannot be used to increase a current year loss. If the amount reported on the Entire Net Income/(Loss) line of the combined group’s tax return is negative (i.e., a loss) for the group privilege period, the members of the combined group cannot use the PNOLs.

If the total combined group amount reported on the Entire Net Income/(Loss) line of the combined group’s New Jersey combined return is positive (i.e., income), a member can use their own PNOLs to offset their portion of the group’s allocated entire net income. Members are not permitted to share PNOLs pursuant to N.J.S.A. 54:10A-4.6. The member must apply its own PNOLs before applying a combined group post-allocation net operating loss conversion carryover. However, if the member’s portion of allocated entire net income is still more than zero after subtracting the PNOLs, the member can then subtract their portion of the combined group’s post-allocation net operating loss carryovers. N.J.S.A. 54:10A-4.6.g applies to all combined group filing methods.

**Note:** See below for further discussion about PNOLs and members that are partially included in combined groups.

## **Combined Group Post-Allocation Net Operating Losses/Loss Carryovers**

For tax years ending on and after July 31, 2019, N.J.S.A. 54:10A-4.6.h mandates New Jersey combined group net operating loss deductions and New Jersey combined group net operating loss carryovers be calculated on a post-allocation basis.

If the total combined group amount reported on the Entire Net Income/(Loss) line of the combined group’s New Jersey combined return is negative, that loss becomes the combined group’s post-allocation net operating loss which is then carried over by the taxable members of the combined group. This combined group post-allocation net operating loss can be carried over for a maximum of 20 subsequent tax years. Taxable members are entitled to a respective share of the combined group post-allocation net operating loss and that net operating loss becomes their carryover for subsequent periods.

**Note:** Combined group net operating losses and combined group net operating loss carryovers cannot offset a member’s income from activities that are independent of the unitary business of the

combined group. Net operating losses and net operating loss carryovers generated by a member's activities that are independent of the combined group generally cannot offset the combined group entire net income.

### **Sharing Combined Group Post-Allocation Net Operating Losses/Loss Carryovers**

Taxable members can **only** share the combined group post-allocation net operating losses with other taxable members that were part of the same combined group in the period in which the loss was generated. The taxable member that shared the loss must reduce the member's respective portion of the combined group post-allocation net operating loss by the amount that was shared. If a non-taxable member becomes a taxable member of the combined group, then the other taxable members may share their respective portion of the combined group post-allocation net operating loss carryovers with that new taxable member. If a taxable member leaves the combined group, the taxable member takes its portion of the combined group post-allocation net operating loss carryovers for its own use outside the combined group, and the combined group cannot use this portion of the combined group post-allocation net operating loss carryovers.

When a new taxpayer joins an established combined group that is filing New Jersey combined returns, the new member can bring with them any separate post-allocation net operating loss carryovers that they have from previously filed New Jersey Corporation Business Tax returns. These carryovers can only be used by the new member and cannot be shared with other members of the combined group pursuant to N.J.S.A. 54:10A-4.6.h(3). Additionally, the preexisting members cannot share any combined group post-allocation net operating loss carryovers that were generated in privilege periods prior to the new member joining the group. However, if the combined group's allocated entire net income is positive for the year, the new member can use its separate post-allocation net operating loss carryover (that it brought with it) against its portion of the combined group allocated entire net income. If the member has income from separate activities that is being reported on Schedule X, the member may be eligible to use its separate post-allocation net operating loss carryovers to offset that income.

Combined group post-allocation net operating loss carryovers can only be shared with members that were part of the same combined New Jersey return when the losses were generated. Thus, if multiple members join a new combined group and they have combined group post-allocation net operating loss carryovers that were generated when they were both part of another combined group that filed a New Jersey combined return, they can then share those losses with each other but not the other taxable members of the new combined group.

**Note:** The members of the combined group must keep accurate books and records to prevent the double use and/or inadvertent sharing of post-allocation net operating loss carryovers.

### **Affiliated Group Basis Combined Returns and Post-Allocation Net Operating Losses/Loss Carryovers**

For New Jersey affiliated group basis combined returns, the managerial member makes the election to include all of the larger affiliated group of corporations under common ownership, regardless of whether the members are unitary. This is an election to deem all of the activities as one single business. As such, **all** of the activities, income, and tax attributes of the affiliated group members are included in the combined group and **members cannot complete Schedule X** (which is the schedule where taxpayers report activities that are independent of any combined group activities). There would be no separate post-allocation net operating losses or separate post-allocation net operating loss carryovers in the privilege periods where a New Jersey affiliated group combined return is filed. Thus, for an affiliated group combined return, there would not be separate business activity net operating losses and separate business activity net operating loss carryovers, unless a taxpayer becomes a member of the affiliated group at a later time. In years that the affiliated group basis combined return is filed, there would be only

combined group post-allocation net operating losses and combined group post-allocation net operating loss carryovers determined in the same manner and sharable in accordance with N.J.S.A. 54:10A-4.6.h.

## **Water's Edge and World-Wide Basis Combined Groups with Members that have Activities Independent of the Combined Group**

If a member has activities that are independent of the activities of the combined group, the member is considered a partially included member of the group. If the partially included member's separate business activities are part of another combined group's activities, the member reports those activities with that group. However, if the partially included member has activities that are not related to **any** combined group activities, the member will use Schedule X to report the separate portion of its business operations. Schedule X is used in lieu of filing a separate return to calculate the New Jersey taxable income from the separate activity that must be reported on Part III of Schedule A of the CBT-100U.

If a partially included member has a loss on the Entire Net Income/(Loss) line of Schedule X, this loss becomes the member's post-allocation net operating loss from its activities. **This is a separate net operating loss consistent with N.J.S.A. 54:10A-4(v) and must be used as if it was a separate return loss.** The member cannot share these separate post-allocation net operating losses. The member's separate business activity post-allocation net operating loss carryovers can only be used by the member to offset its separate business activity allocated entire net income after the member uses its PNOLs. These separate post-allocation net operating losses and post-allocation net operating loss carryovers can only be claimed and/or used on Schedule X while the member is part of the combined group.

If a partially included member has income on the Entire Net Income/(Loss) line of Schedule X, the member can use their PNOLs to offset the separate activity income. If the member's Schedule X allocated Entire Net Income is still greater than zero after subtracting its PNOLs, the member may then subtract its separate business activity post-allocation net operating loss carryovers from their separate business activity allocated entire net income.

The member must keep accurate books and records to prevent the double use of the same PNOLs.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.



## Net Deferred Tax Liability Deduction and Combined Returns

### TB-96 – Issued February 24, 2020 Tax: Corporation Business Tax

P.L. 2018, c. 48 and P.L. 2018, c. 131 collectively mandate combined reporting for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full 12-month privilege period of the managerial member begins August 1, 2018, and ends July 31, 2019). Recognizing that certain companies could be adversely affected by the shift to combined reporting, a special ASC-740 relief deduction was included in the two laws. This bulletin explains the eligibility requirements for the deduction and addresses specific questions that the Division has received.

N.J.S.A. 54:10A-4(k)(16) states:

- (A) There shall be allowed as a deduction an amount computed in accordance with this paragraph.
- (B) For purposes of this paragraph, "net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of the combined group, as computed in accordance with generally accepted accounting principles, and "net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the combined group, as computed in accordance with generally accepted accounting principles.
- (C) Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with generally accepted accounting principles, as of the effective date of this paragraph, shall be eligible for this deduction.
- (D) If the provisions of sections 18 through 23 of P.L.2018, c.48 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to the members' net deferred tax liability or an aggregate decrease to the members' net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.
- (E) For 10 years beginning with the combined group's first privilege period beginning on or after January 1 of the fifth year after the effective date of P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6 to C.54:10A-4.11), a combined group shall be entitled to a deduction from combined group entire net income equal to one-tenth of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability. Such increase in the net deferred tax liability or decrease in the net deferred tax asset or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the unitary reporting requirements under sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided under this paragraph as of the effective date of this paragraph.
- (F) The deferred tax impact determined in subparagraph (E) of this paragraph must be converted to the annual Deferred Tax Deduction amount, as follows:
  - (i) the deferred tax impact determined in subparagraph (E) of this paragraph shall be divided by the rate determined under section 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.);
  - (ii) the resulting amount shall be further divided by the New Jersey unitary business allocation factor that was used by the combined group in the calculation of the deferred tax assets and deferred tax liabilities as described in subparagraph (E) of this paragraph;

(iii) the resulting amount represents the total net Deferred Tax Deduction available over the ten-year period as described in subparagraph (E) of this paragraph.

(G) The deduction calculated under this paragraph shall not be adjusted as a result of any events happening subsequent to such calculation, including, but not limited to, any disposition or abandonment of assets. Such deduction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the deduction under this section is greater than combined group entire net income, any excess deduction shall be carried forward and applied as a deduction to combined group entire net income in future privilege periods until fully utilized.

(H) Any combined group intending to claim a deduction under this paragraph shall file a statement with the director on or before July 1 of the year subsequent to the first privilege period for which a combined return is required. Such statement shall specify the total amount of the deduction which the combined group claims on such form and in such manner as prescribed by the director. No deduction shall be allowed under this paragraph for any privilege period except to the extent claimed on such timely filed statement in accordance with this paragraph.

## Definitions

For purposes of the Net Deferred Tax Liability Deduction, the Division defines the following terms as stated:

**Publicly Traded Company** means a company that is listed on a stock exchange or over-the-counter markets.

**Generally Accepted Accounting Principles** refers to accounting principles, standards, and procedures established by either:

- *U.S. Generally Accepted Accounting Principles (U.S. GAAP)*, which are issued by the Financial Accounting Standards Board (FASB); **or**
- *International Financial Reporting Standards (IFRS)*, which are issued by the International Accounting Standards Board (IASB).

**Financial Statements** are statements that are required to be filed on a schedule (annually, quarterly, etc.) and that are prepared in accordance with generally accepted accounting principles. This includes, but is not limited to, 10-K, 10-Q, or SEC Form 8-K that are filed with the U.S. Securities and Exchange Commission.

**Net Deferred Tax Asset** refers to the deferred tax assets that exceed the deferred tax liabilities of a combined group that are computed in accordance with generally accepted accounting principles.

**Net Deferred Tax Liability** refers to the deferred tax liabilities that exceed the deferred tax assets of the combined group that are computed in accordance with generally accepted accounting principles.

## Net Deferred Tax Liability Deduction

Publicly-traded companies and their affiliates (subsidiaries) whose deferred tax positions are negatively affected as a direct result of the change to mandatory combined reporting can claim a Net Deferred Tax Liability Deduction (NDTLD) in an amount necessary to offset the increase in the net deferred tax liability, decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability.

Financial statements must be filed with a United States regulatory authority or a regulatory authority of a foreign nation with which the United States has a reciprocal agreement. Financial statements must be prepared in accordance with generally accepted accounting principles.

In order to be able to claim the deduction, taxpayers must complete Form DT-1 (New Jersey Corporation Business Tax Statement of Net Deferred Tax Liability Deduction) on or before July 1, 2020. The form will be available online no later than April 1, 2020. Please continue to check the website ([www.state.nj.us/treasury/taxation/cbt/cbtreform.shtml](http://www.state.nj.us/treasury/taxation/cbt/cbtreform.shtml)). **Once completed, the form must be uploaded through the New Jersey Online Notice Response Service (NJ ONRS).** Note: The Division will not accept Form DT-1 through the mail.

Taxpayers will use one-tenth of the deduction per year over a ten-year period beginning on or after January 1, 2023.

## **Q & A on Net Deferred Tax Liability Deduction**

The Division has received several questions regarding the Net Deferred Tax Liability Deduction (NDTLD), which are answered below:

**1. Can a privately held company apply for the NDTLD?**

No. Privately held companies are not eligible for the NDTLD. The law specifies that in order to be eligible for the deduction a company must be publicly traded, listed on a stock exchange or over-the-counter market, and file financial statements in accordance generally accepted accounting principles (defined above).

**2. I am an owner of a closely held group of companies that is now required to file mandatory combined returns, am I eligible for the NDTLD?**

No, only publicly traded companies that file financial statements in accordance with U.S. G.A.A.P. or I.F.R.S. are eligible. Individuals and privately held combined groups are not eligible for the NDTLD.

**3. Are there specific stock exchanges or over-the-counter markets on which a company must be listed to qualify for the NDTLD?**

A company can be listed on any stock exchange or over-the-counter market that is regulated by a U.S. regulatory authority or a regulatory authority of the foreign nation that has a reciprocal agreement with the U.S. government or U.S. regulatory authority.

**4. Is the surtax included in the computation of the NDTLD?**

Yes. The surtax is part of the overall tax rate of the combined group so it must be included when calculating the NDTLD.

**5. Is the impact of changing to market-based sourcing included in the computation of the NDTLD?**

No. The NDTLD was designed to mitigate the financial impact of New Jersey's shift to combined reporting. The change to market-based sourcing is not a result of combined reporting. Therefore, it cannot be included in the NDTLD calculation.

**6. The parent corporation files financial statements in accordance with IFRS and is listed on a foreign stock exchange that has a reciprocal agreement with the U.S. government. The U.S. subsidiaries are required to file a mandatory unitary combined return with New Jersey and are included in the parent corporation's financial statements filed with the foreign nation. Are the U.S. subsidiaries eligible for the NDTLD?**

Yes, because the subsidiaries are affiliates of the parent corporation that files financial statements in accordance with I.F.R.S. and the parent corporation is listed on a relevant stock exchange.

**7. The parent corporation files financial statements in accordance with U.S. GAAP and is listed on the New York Stock Exchange. The parent corporation is not unitary with its subsidiaries. The subsidiaries are required to file a mandatory unitary combined return for New Jersey Corporation Business Tax purposes. The combined group is included in the parent corporation's financial statements filed with the U.S. Securities and Exchange Commission (SEC). Is the combined group eligible for the NDTLD?**

Yes. Even though the publicly traded parent corporation is not unitary with its subsidiaries, the subsidiaries are required to file a New Jersey combined return and they participate in the financial statements filed with the SEC, which makes them eligible for the NTDL.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

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## Changes and Corrections to the Corporation Business Tax and Other Taxes/Fees Pursuant to P.L. 2020, C. 118

**TB-97 - Issued December 14, 2020**

**Tax: Corporation Business Tax**

P.L. 2020, c. 118 (Chapter 118), which was signed into law on November 4, 2020, made a series of technical corrections, clarifications, and changes to legislation affecting the Corporation Business Tax Act (CBT). This Technical Bulletin summarizes the changes and categorizes them by effective date. There will be more detailed explanations for various topics at a later point.

### **Effective for privilege periods ending on and after July 31, 2019:**

**Definition of Taxpayer.** The law clarified that a combined group is considered one taxpayer. This impacts various aspects of the Corporation Business Tax that will be discussed in further detail in subsequent technical bulletins.

**Definition of Affiliated Group.** Chapter 118 clarified and simplified the definition of an affiliated group for purposes of the affiliated group combined return election method. The result is that instead of having to file multiple combined returns, one combined return is filed for the entire affiliated group if the affiliated group election is made and contains the true U.S. footprint of the group's U.S. operations. The Division is aware that this may affect a combined group's filing method decision, and we will be issuing a notice to address this issue shortly. Continue to check our [website](#) for information.

**Note:** Only in extremely rare situations where there is a non-U.S. corporation that does not file federal returns but has nexus with New Jersey would a non-U.S. corporation have to file a separate return, otherwise no other returns would have to be filed.

**Included and Excluded Entities.** The law clarified and corrected the definitions of member, non-taxable member, and taxable member. This is in line with the Division's policy stated in [TB-86\(R\)](#) that exempt corporations are not members of a combined group, and that a New Jersey S corporation is only included as a taxable member if it elects to be included as a member. New Jersey S corporations that elect to be part of a combined return are taxed at the same rate as the other members of the combined group.

**Dividend Exclusion.** Chapter 118 clarified various aspects of the dividend exclusion at various intervals. In conjunction with the definition of a taxpayer being expanded to include a combined group, the dividend exclusion is now applied at the group level. This retroactively rectifies the "trapped dividend exclusion scenario" for certain members of the combined group. See [Notice: CBT-100U Schedule R](#) for more information.

**Combined Group Income Computation Issues.** P.L. 2020, c. 118, made various corrections and clarifications to [N.J.S.A. 54:10A-4.6](#), as follows:

*Net Operating Loss (NOL).* The law clarifies that a taxable member of a combined group can take its portion of the group's NOLs if it leaves the combined group.

*Federal Consolidated Return Regulations and Principles.* The law makes clear that the federal consolidated return regulations and principles apply to combined groups to the extent consistent with the CBT, the unitary business principal, and combined reporting.

*Federal Consolidated Return NOLs.* The law extends the federal rules and regulations governing federal consolidated return net operating losses and net operating loss carryovers for purposes of



New Jersey combined group NOLs as though the combined group filed a federal consolidated return to the extent that the federal rules are consistent with the CBT.

*International Banking Facility (IBF) Deduction.* The law clarifies the treatment of the IBF deduction if a combined group includes a banking corporation that is eligible for the deduction.

*Elective Combined Group Filing Methods.* The law clarifies the applicability of N.J.S.A. 54:10A-4.6 to affiliated group returns and world-wide group returns.

*Prior Net Operating Loss (PNOL).* The law provides the ability of a member of a combined group to sell its PNOL carryovers to other members of the combined group as long as they are otherwise eligible to do so under N.J.S.A. 34:1B-7.42a. This is an exception to the general historic rule prohibiting affiliate sales under that program. However, the sale of PNOL carryovers must be made at an arm's-length price as though the sale was to an unrelated taxpayer.

**Alternative Minimum Assessment (AMA) Credit.** Chapter 118 clarifies and corrects the application of N.J.S.A. 54:10A-4.9 to ensure that taxpayers can utilize the credit to offset the combined group's tax liability.

**Minimum Tax.** The law clarifies that the application of the minimum tax is \$2,000 per taxable member of a combined group.

**Tax Base.** P.L.2020, c.118 law clarifies and corrects various aspects of the tax base for combined groups, separate return filers, real estate investment trusts, and investment companies consistent with the Corporation Business Tax returns for computing the tax base for various taxpayers.

**Note on Filing Methods:** The Division will be issuing guidance for taxpayers that want to prospectively revise their combined return filing method option as a result of the law changes. Continue to monitor the web site for updates.

## **Effective for privilege periods ending on and after July 31, 2020:**

**Tax Rates.** The law was amended to treat the entire combined group as one taxpayer, thus the regular tax rate will be imposed at the group level instead of entity by entity.

Note: The \$2,000 minimum tax is imposed on taxable members of the combined group.

**Surtax.** Under Chapter 118, the 2.5% surtax is calculated using the combined group's allocated taxable income. The law also clarifies that any income from a member that is attributable to public utility income is exempt from the surtax. The surtax additionally applies to the taxable net income from a member's independent business activities as applicable.

**Dividend Exclusion Changes.** The law revised the dividend exclusion application method for combined groups, and now treats the combined group as one taxpayer for the purposes of the exclusion. The law also replaced the tiered dividend exclusion with a Tiered Subsidiary Dividend Pyramid Tax Credit (which treats a combined group as one taxpayer).

**Copy of Federal Return Mandatory.** The law mandates that a taxpayer's federal return or pertinent extracts of the federal return be included as part of a full and complete New Jersey CBT return.

**Due Dates.** The law changed the original due date of the Corporation Business Tax returns to 30 days after the due date of the federal return. For administrative purposes, the Division will use the 15th day of the month following the federal due date unless that results in a gap of less than 30 days between the federal due date and the CBT due date. This means a return for a calendar year taxpayer that files Form CBT-100, Form CBT-100U, or Form BFC-1 is due May 17, 2021 (this date includes adjustments for the

Division's administrative policy and the due date falling on a weekend). If a taxpayer files for a six-month extension of time to file, the extended due date is in November. New Jersey S corporation returns are also due 30 days after the due date of the federal return. However, since federal S corporation returns are due by the 15th day of the third month following the end of their tax year, the return for a New Jersey calendar year filer is 30 days after their federal return, which is April 14, 2021, but will be treated as April 15, 2021, under the Division's administrative procedure.

Note: While the law changed tax return due dates, the due dates for estimated payments are unaffected by the law. Taxpayers that are required to make estimated payments must still submit such payments on or before the 15th day of the fourth, sixth, ninth, and 12th months.

**Banking Corporations.** The law mandates the transition to reporting of income for Banking Corporations in the same manner as other taxpayers for any banking corporations that have not already transitioned their income reporting to align with their combined group (per [TB-91](#)). In addition, separate return banking corporations that file on a fiscal basis for federal purposes also have the option to transition to a fiscal filing period for filing their New Jersey Corporation Business Tax returns when transitioning to regular reporting.

## **Effective for privilege periods beginning on and after Jan. 1, 2020:**

**New Jersey Research and Development (R&D) Credit.** The law extends the applicability of the New Jersey R&D tax credit to qualified research expenditures that had been used for the federal qualified small business R&D payroll tax credit. Chapter 118 also clarifies the treatment of energy research for the purposes of the New Jersey R&D tax credit in line with the Division's position that such research qualifies for the New Jersey R&D tax credit.

**Federal Net Operating Loss Rules.** The law extends the application of various aspects of the federal net operating loss rules to separate return and combined return filers to the extent that the federal rules are consistent with the New Jersey Corporation Business Act. For example, the New Jersey net operating loss statutes only allow a 20-year carryforward and do not allow carrybacks, thus neither the federal unlimited duration of NOLs nor the carryback provisions of the federal rules would not apply.

Note: The New Jersey Corporation Business Tax NOL-DRD ordering rules still apply and were **not** affected by the law changes.

## **Effective for privilege periods ending on and after Nov. 4, 2020:**

**Treatment of Net Operating Losses in Mergers and Acquisitions.** The law simplifies the treatment of net operating losses, net operating loss carryovers, and PNOLs in a merger and acquisition context where the parties to the merger and acquisition will be part of a combined group filing a combined return within one group privilege period subsequent to the merger. In addition the law provides a special simplified procedure if there is a regulatory delay of the merger and acquisition approval process by federal or state authorities (other than the Division of Taxation).

## **Effective for Certain Transfers Entered into on and after Jan. 1, 2021:**

**Realty Transfer Fees.** P.L.2020, c.118 exempts intercompany transfers between combined group members that are part of the unitary business of the combined group for the purposes of the grantor and grantee Realty Transfer Fees.

**Controlling Interest Transfer Tax.** Chapter 118 exempts intercompany transfers between combined group members that are part of the unitary business of the combined group for the purposes of the Controlling Interest Transfer Tax.

**Bulk Sales.** The law exempts intercompany transfers between combined group members that are part of the unitary business of the combined group from the Bulk Sales Notice Withholding Requirements.

## Other Miscellaneous Changes:

**Joint Emerging Technology and Biotechnology Companies.** The benefit transfer program was updated under the new law to cite to the PNOL and NOL statutes. Further, the Chapter Law allows combined group members to sell both NOL and PNOL carryovers at arm's-length to each other as part of the program.

**Penalty Relief.** There will be no penalties or interest assessed on underpayments resulting from the enactment of this law if the taxpayer's first privilege period ended on and after July 31, 2020, and began before January 1, 2020, provided that the payments are made by the second next estimated payment due date after January 1, 2021.

**Administrative Procedure Change.** Under the law, a managerial member of a combined group is required to notify the Division when a member of the combined group leaves (e.g., dissolves, mergers, withdraws, etc.) or if a new member joins the group. The law repealed the 90-day notice requirement in N.J.S.A. 54:10A-4.10(h) and replaced it with a simplified process.

**Administration of the Corporation Business Tax.** The law mandates the creation of a simplified standardized return for privilege periods ending on and after July 31, 2021. Combined groups, banking corporations, financial business corporations, and separate return filers will use the new standardized return which replaces the CBT-100U, BFC-1, and CBT-100. New Jersey S corporations will continue to use Form CBT-100S. Chapter 118 further requires that returns and schedules be housed in a centralized location on the Division of Taxation's website with appropriate links and access to notices to ensure that practitioners have easy access to CBT forms and information.

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## Federal Return and the Forms and Schedules to Include with the Corporation Business Tax Return Pursuant to P.L. 2020, C. 118

TB-98 - January 13, 2021

### Tax: Corporation Business Tax

P.L. 2020, c. 118 (Chapter 118), which was signed into law on November 4, 2020, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act. This Technical Bulletin discusses the amendments to N.J.S.A. 54:10A-14.

Effective for **privilege periods ending on and after July 31, 2020**, N.J.S.A. 54:10A-14 states in relevant part:

- (a) The director shall require any taxpayer or managerial member to submit, as part of a full and complete New Jersey return, copies or pertinent extracts of its federal income tax returns, or of any other tax return filed with any agency of the federal government, or of this or any other state, or of any statement or registration made pursuant to any state or federal law pertaining to securities or securities exchange regulation. The director shall issue regulations describing which federal extracts are required and which extracts are optional.

For federal purposes, taxpayers are required to complete and attach a variety of schedules for various parts of the federal return in order to comply with various provisions of the federal Internal Revenue Code. For New Jersey Corporation Business Tax purposes, some of the supporting schedules that are required for federal tax purposes are not necessary since certain federal forms are not applicable to provisions of the New Jersey Corporation Business Tax Act.

Taxpayers must include a copy of the federal return (or returns in the case of certain combined groups), **including all attachments**, that was filed with the Internal Revenue Service for the privilege period (i.e., Form 1120, 1120-F, 1120-S, etc., as applicable).

If any of the following forms and/or schedules were submitted with the federal return(s), they must also be included as part of a full and complete New Jersey Corporation Business Tax return:

- |               |                |
|---------------|----------------|
| • Form 851    | • Form 5472    |
| • Form 1118   | • Form 8858    |
| • Form 1125-A | • Form 8990    |
| • Form 1125-E | • Form 8992    |
| • Form 4562   | • Form 8993    |
| • Form 4797   | • Schedule D   |
| • Form 5471   | • Schedule M-3 |

**Failure to include a copy of the federal return as well as the above noted forms (if the taxpayer attached them as part of their original federal return) filed with the Internal Revenue Service will result in an incomplete New Jersey Corporation Business Tax Return and the taxpayer may be assessed penalties and interest for noncompliance.**

All other federal forms and schedules not listed above must be made available to Division of Taxation staff upon request.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

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# Federal Return and the Forms and Schedules to Include with the Corporation Business Tax Return Pursuant to P.L. 2020, C. 118

TB-98(R) – [Revised August 20, 2021](#)

Tax: Corporation Business Tax

**Revision Information:** This Technical Bulletin was revised on August 20, 2021, to include that Schedule UTP is one of the items that is required to be submitted as part of a full and complete New Jersey return if the taxpayer filed the schedule for Federal purposes.

P.L. 2020, c. 118 (Chapter 118), which was signed into law on November 4, 2020, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act. This Technical Bulletin discusses the amendments to N.J.S.A. 54:10A-14.

Effective for **privilege periods ending on and after July 31, 2020**, N.J.S.A. 54:10A-14 states in relevant part:

- (a) The director shall require any taxpayer or managerial member to submit, as part of a full and complete New Jersey return, copies or pertinent extracts of its federal income tax returns, or of any other tax return filed with any agency of the federal government, or of this or any other state, or of any statement or registration made pursuant to any state or federal law pertaining to securities or securities exchange regulation. The director shall issue regulations describing which federal extracts are required and which extracts are optional.

For federal purposes, taxpayers are required to complete and attach a variety of schedules for various parts of the federal return in order to comply with various provisions of the federal Internal Revenue Code. For New Jersey Corporation Business Tax purposes, some of the supporting schedules that are required for federal tax purposes are not necessary since certain federal forms are not applicable to provisions of the New Jersey Corporation Business Tax Act.

Taxpayers must include a copy of the federal return (or returns in the case of certain combined groups), **including all attachments**, that was filed with the Internal Revenue Service for the privilege period (i.e., Form 1120, 1120-F, 1120-S, etc., as applicable).

If any of the following forms and/or schedules were submitted with the federal return(s), they must also be included as part of a full and complete New Jersey Corporation Business Tax return:

- Form 851
- Form 1118
- Form 1125-A
- Form 1125-E
- Form 4562
- Form 4797
- Form 5471
- Form 5472
- Form 8858
- Form 8990
- Form 8992
- Form 8993
- Schedule D
- Schedule M-3
- Schedule UTP

**Failure to include a copy of the federal return as well as the above noted forms (if the taxpayer attached them as part of their original federal return) filed with the Internal Revenue Service will result in an incomplete New Jersey Corporation Business Tax Return and the taxpayer may be assessed penalties and interest for noncompliance.**

All other federal forms and schedules not listed above must be made available to Division of Taxation staff upon request.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

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## Income Reporting and Returns for Banking Corporations for Privilege Periods Ending on and after July 31, 2020

**TB-99 - Issued January 14, 2021**

**Tax: Corporation Business Tax**

P.L. 2020, c. 118 (Chapter 118), which was signed into law on November 4, 2020, made a series of technical corrections, clarifications, and changes affecting the Corporation Business Tax Act. This Technical Bulletin discusses Section 16 of Chapter 118 (N.J.S.A. 54:10A-34.1), in conjunction with TB-91 and N.J.S.A. 54:10A-14(d).

Subsequent to P.L. 2018, c. 48, and P.L. 2018, c. 131, banking corporations that were part of a combined group were required to harmonize their reporting period with that of the managerial member of the combined group for which it was a member. In accordance with TB-91, affected taxpayers filed a series of transitional returns to synchronize their income reporting with that of the managerial member, since the legacy income reporting method for banking corporations under N.J.S.A. 54:10A-34 was different than the requirements for all other Corporation Business Tax (CBT) taxpayers. If a banking corporation was not a member of a combined group, it would not have been required to file transitional returns.

Pursuant to N.J.S.A. 54:10A-34.1, all banking corporations are required to transition away from the legacy income reporting method (N.J.S.A. 54:10A-34) and report their income and file their returns in the same manner as all other CBT taxpayers. This was enacted to modernize and simplify the New Jersey Corporation Business Tax returns.

N.J.S.A. 54:10A-34.1 states:

- a. For a banking corporation that is a member of a combined group that has a fiscal group privilege period, before the banking corporation is included as a member of the New Jersey combined return, the banking corporation shall first file the applicable BFC-1 return reporting their calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) for the applicable privilege period which ended during the privilege period of the managerial member and then file a transitional short period return covering January 1st through the end of the month of the combined group's fiscal group privilege period during the current calendar year. Subsequently, the banking corporation shall file for the fiscal combined group's privilege period and report all of its income on a fiscal basis with the combined group. Thereafter, the banking corporation shall continue reporting on a fiscal basis for future privilege periods. If a banking corporation, that would otherwise be a member of a fiscal combined group but for the transitional provisions of this section, believes that application of the filing requirements set forth will result in an unfair or distorted reflection of income, the banking corporation may request relief from the director, which may be granted at the director's discretion.
- b. For a banking corporation that is not a member of a combined group, which files a BFC-1 return reporting its calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34), but which files on a fiscal federal tax year basis, the banking corporation may elect to file separate returns in a manner similar to subsection a. of this section, file a transitional short period return, and subsequently file its New Jersey corporation business tax returns on a fiscal year basis. Otherwise, such banking corporations shall file transitional returns in order to subsequently file in the same manner as other corporation business taxpayers. If a banking corporation, that would otherwise continue to file the BFC-1 return reporting its calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) but for the transitional provisions provided for in this section, believes that application of the filing requirements set forth will result in an unfair or



distorted reflection of income, the banking corporation may request relief from the director, which may be granted at the director's discretion.

- c. For a banking corporation that is not a member of a combined group, which files a BFC-1 return reporting its calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34), and files on a calendar federal tax year basis, the banking corporation shall file transitional returns in order to subsequently file in the same manner as other corporation business taxpayers. If a banking corporation, that would otherwise continue to file the BFC-1 return reporting its calendar year income in accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) but for the transitional provisions provided for in this section, believes that application of the filing requirements set forth will result in an unfair or distorted reflection of income, the banking corporation may request relief from the director, which may be granted at the director's discretion.
- d. No penalties or interest shall be assessed on any underpayment due to this section if the applicable returns are filed within six months of enactment of this section.

All banking corporations that have not already filed transitional returns under TB-91, **must file transitional returns. The transition is mandatory.** A banking corporation with a fiscal tax year for federal purposes has the option to switch to a fiscal year basis when the banking corporation files its transitional returns, so that it also reports on a fiscal-year basis for New Jersey Corporation Business Tax purposes. In order to identify which returns are transitional returns, taxpayers must check the box on the top portion of page 1 titled "BFC-1-F" when completing Form BFC-1.

**Example 1:** A banking corporation that was not part of a combined group and continued to file separate returns for New Jersey Corporation Business Tax purposes has a federal calendar tax year. The banking corporation will file the 2020 BFC-1 reporting their 2019 calendar year income. The banking corporation would then file the 2020 BFC-1 with the BFC-1-F check box marked off, reporting its 2020 calendar year income. For the banking corporation's 2021 calendar tax year, the banking corporation will file the new standardized return being developed by the Division of Taxation.

**Example 2:** A banking corporation that was not part of a combined group and continued to file separate returns for New Jersey Corporation Business Tax purposes has a federal fiscal tax year. If the banking corporation opts to transition to a fiscal reporting basis, the banking corporation will file the 2020 BFC-1 reporting their 2019 calendar year income. The banking corporation would then file short year 2020 BFC-1 with the BFC-1-F check box marked off, reporting the income from the months in 2020 from its fiscal year that ended in 2020. For the banking corporation's fiscal tax year that began in 2020 and ended on or after July 31, 2021, the banking corporation will file the new standardized return being developed by the Division of Taxation.

If a banking corporation believes that the transition away from the legacy income reporting method will result in an unfair or distorted reflection of income, the banking corporation may request relief from the director, which may be granted at the director's discretion.

Beginning with the 2021 returns, banking corporations and financial business corporations will file a new standardized return, which is being developed by the Division of Taxation as required by N.J.S.A. 54:10A-14(d). Form BFC-1 will be phased out in future tax years. NOTE: financial business corporations already report their income in the same manner as other CBT taxpayers.

No penalties or interest will be assessed on any underpayment due to this statutory change if the applicable returns are filed timely by the taxpayer's original/[automatic extension](#) due date for the return or six months after November 4, 2020, whichever is later.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

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# The Combined Group as a Taxpayer under the Corporation Business Tax Act

**TB-100 – Issued January 25, 2021**  
**Tax: Corporation Business Tax**

Beginning with tax year 2019, New Jersey mandated combined reporting. Subsequently, P.L. 2020, c. 118 (Chapter 118), which was signed into law on November 4, 2020, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act. Among other things, one of the technical changes made it clear that a combined group is a taxpayer. The purpose of this Technical Bulletin is to provide an overview of how this change will affect various aspects of the Corporation Businesses Tax return.

## **The following provisions are applicable for privilege periods ending on and after July 31, 2019**

N.J.S.A. 54:10A-4(h) states that:

‘Taxpayer’ shall mean any corporation, any combined group filing a mandatory or elective New Jersey combined return, and any partnership required, or consenting, to report or to pay taxes, interest or penalties under this act. ‘Taxpayer’ shall not include a partnership that is listed on a United States national stock exchange.

N.J.S.A. 54:10A-5(c)(1) states in relevant part that:

For privilege periods ending on or after July 31, 2019, for a combined group filing a mandatory or elective combined return, for the portion of a taxable member’s activities that are independent from the unitary business of the combined group filing a mandatory unitary combined return where the taxable member independently has nexus with this State, and for a taxpayer that files a separate return, the tax rate shall be applied against taxable net income plus such portion thereof as is specifically assigned to this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

N.J.S.A. 54:10A-4.6(o) states that:

For purposes of the deduction allowed in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a combined group shall be treated as one taxpayer; provided, however, a combined group shall only be eligible for the deduction if at least one of the taxable members is a banking corporation and the taxable member has an international banking facility. The income of the combined group shall not be eligible for the deduction allowed in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) if such income was already eliminated pursuant to other subsections of this section.

## **The following provisions were enacted to simplify certain computations at the combine group level, for privilege periods ending on and after July 31, 2020:**

N.J.S.A. 54:10A-4(k)(5)(E) states that:

For privilege periods ending on and after July 31, 2020, for purposes of this paragraph (5), the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group.

N.J.S.A. 54:10A-4(z) states that:

‘Combined group’ means the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax under this chapter, and shall include all business entities, except as provided for under any section of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).

A combined group shall be treated, for privilege periods ending on and after July 31, 2020, as one taxpayer for purposes of paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for the income derived from the unitary business; provided however, with regard to the surtax imposed pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) and for that purpose only, the portion of income that is attributable to a member which is a public utility exempt from the surtax shall not be included when computing the surtax due.

Note: Section 15 of Chapter 118, treats a combined group as one taxpayer for the purposes of the Tiered Subsidiary Dividend Pyramid Tax Credit (see Form 332, Tiered Subsidiary Dividend Pyramid Tax Credit, which will be available on the Division's website).

### **Taxable Members with Operations that are Independent of the Combined Group**

The combined group and the group members are both considered taxpayers. The various tax base components are added together to arrive at the total tax base pursuant to N.J.S.A. 54:10A-5(c)(1). For privilege periods ending on and after July 31, 2020, rather than compute the tax on an entity-by-entity basis, the tax liability for the purposes of N.J.S.A. 54:10A-5(c)(1) is computed on the group level. For purposes of the surtax, the combined group is taxed as one taxpayer. However, a taxable member is also taxed on the portion of the tax attributable to the activities that are independent from the unitary business of the combined group. Pursuant to N.J.S.A. 54:10A-4.10 and N.J.S.A. 54:10A-4.8, taxable members are jointly and severally liable for the tax due from any taxable member. The decision as to whether the taxable member reimburses the combined group for the portion of the tax attributable to the portion of a taxable member's activities that are independent from the unitary business of the combined group is a matter to be worked out by the members of the combined group.

### **Combined Groups and P.L. 86-272**

A combined group is a taxpayer. Therefore, the activities of the members of the combined group in relation to the unitary business of the combined group determine whether the combined group exceeds P.L. 86-272. Consistent with the Division's policy stated in [TB-86\(R\)](#) and [TB-89\(R\)](#), if one member of the combined group exceeds the protections of P.L. 86-272, the entire combined group exceeds P.L. 86-272.

### **Members Sharing Tax Credits with Other Members of the Combined Group**

Tax credits belong to the taxable member that earned them unless a specific statute authorizing the tax credit states that it is earned or awarded at the group level. However, for privilege periods ending on and after July 31, 2020, tax credits can be applied against the group tax liability instead of being applied on an entity-by-entity basis unless a specific credit statute restricts sharing (for example, N.J.S.A. 54:10A-5.43). Refundable credits are refundable to the member that earned the credit, and a member can share the refundable credit with other members if the member so chooses. The decision to share a refundable credit is a matter to be worked out by the members of the combined group.

### **Dividend Exclusions of a Combined Group**

For the purposes of N.J.S.A. 54:10A-4(k)(5) and by operation of N.J.S.A. 54:10A-4(h), for privilege periods ending on and after July 31, 2019, a combined group is eligible for a dividend exclusion. For privilege periods ending on and after July 31, 2020, N.J.S.A. 54:10A-4(k)(5)(E) provides a further simplified group level computation of the dividend exclusion.

## **International Banking Facility (I.B.F.) Deduction and a Combined Group**

If a combined group includes a taxable member that is a banking corporation with an international banking facility as defined by N.J.S.A. 54:10A-4(n), the combined group is eligible to deduct such income amounts that were not eliminated (so that the entire combined group is treated as one banking corporation). The income must have otherwise been eligible for the I.B.F. deduction under N.J.S.A. 54:10A-4(k)(4).

## **Computing the Minimum Tax of a Combined Group**

The statutory minimum tax is \$2,000 for each taxable member of the combined group for the group privilege period pursuant to N.J.S.A. 54:10A-5(e). For privilege periods ending on and after July 31, 2020, when computing the tax due for a combined group, the statutory minimum tax of the taxable members is added together.

## **Managerial Member Responsibilities**

The managerial member is required to be the party that comes forward on behalf of the combined group and its members to address any inquiries into refunds, the procedures involving closing agreements, Section 8 relief requests, and other matters, in accordance with N.J.S.A. 54:10A-4(h); N.J.S.A. 54:10A-4(cc); N.J.S.A. 54:10A-4.10, and N.J.S.A. 54:10A-4.8.

## **Misc.**

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

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## Income Reporting and Accounting Methods of Non-U.S. Corporations Members of a Combined Group

**TB-101 - Issued February 8, 2021**

**Tax: Corporation Business Tax**

Combined reporting is mandatory in New Jersey for tax years ending on and after July 31, 2019 (this applies to any taxpayer whose tax year begins on and after August 1, 2018, if a full 12-month tax year of the managerial member begins August 1, 2018 and ends July 31, 2019). This Technical Bulletin discusses the income reporting and accounting methods for non-U.S. corporations that are included as members of a combined group filing a New Jersey Combined Return where a member of the combined group is a non-U.S. corporation that only uses the International Financial Reporting Standards for financial and tax purposes.

Under N.J.S.A. 54:10A-4.6(b), the income of a non-U.S. corporation is required to be determined based on "accounting principles generally accepted in the United States for the presentation of those statements" or in a manner that "reasonably approximates income" under the Corporation Business Tax:

For a member not incorporated in the United States, the income to be included in the entire net income of the combined group shall be determined from a profit and loss statement that shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained, adjusted to conform it to the **accounting principles generally accepted in the United States** for the presentation of those statements and further adjusted to take into account any book-tax differences required by federal or State law. The profit and loss statement of each foreign member of the combined group and the allocation factors related thereto, whether United States or foreign, shall be translated into or from the currency in which the parent company maintains its books and records on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. Income shall be expressed in United States dollars. In lieu of these procedures and subject to the determination of the director that the income to be reported **reasonably approximates income** as determined under the Corporation Business Tax Act (1945), P.L. 1945, c. 162 ( C. 54:10A-1 et seq.), income may be determined on any reasonable basis consistently applied on a year-to-year or entity-by entity basis. **(Emphasis added.)**

Generally Accepted Accounting Principles refers to accounting principles, standards, and procedures established by either:

- U.S. Generally Accepted Accounting Principles (U.S. GAAP), which are issued by the Financial Accounting Standards Board (FASB); **or**
- International Financial Reporting Standards (IFRS), which are issued by the International Accounting Standards Board (IASB).

Insofar as International Financial Reporting Standards (IFRS) are used globally by many foreign corporations doing business in the United States and are permitted to be used by foreign registrants by the Securities and Exchange Commission, IFRS qualifies as a set of "accounting principles generally accepted in the United States." The Division recognizes that IFRS qualifies as one of the "generally accepted accounting principles" for purposes of the net deferred tax liability deduction computation (as outlined in TB-96).

Since a non-U.S. corporation that only uses IFRS as its method of accounting would have substantial difficulty converting to U.S. GAAP merely for New Jersey Corporation Business Tax purposes, the Division

will accept IFRS as an acceptable accounting method that “reasonably approximates income” if that is the only method of accounting the specific entity uses.

**Note:** In most instances, taxpayers will use either IFRS or GAAP, not both **or parts of both**. Taxpayers cannot deviate from their accounting method that was used for federal purposes.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

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## Net Operating Losses (NOLs) and Post Allocation Net Operating Losses (PNOLs) with Certain Mergers & Acquisitions

**TB-102 - Issued March 2, 2021**

**Tax: Corporation Business Tax**

Beginning with tax year 2019, New Jersey mandated combined reporting. P.L. 2020, c. 118 (Chapter 118), which was signed into law on November 4, 2020, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act. This Technical Bulletin discusses the impact of the amendments on mergers and acquisitions in the context of Prior Net Operating Loss Conversion Carryovers (PNOLs) and the new post-allocation net operating losses and post-allocation net operating loss carryovers (NOLs) as a result of N.J.S.A. 54:10A-4.5(b). Other aspects of Chapter 118 impacting PNOLs and NOLs (such as, but not limited to, N.J.S.A. 54:10A-4.5(c); N.J.S.A. 54:10A-4.6(m); N.J.S.A. 54:10A-4.6(n); and N.J.S.A. 54:10A-4(z)) will be discussed in subsequent Technical Bulletins and/or subsequent updates to existing Technical Bulletins.

Prior to enactment of P.L. 2018, c. 48, P.L. 2018, c. 131, and P.L. 2020, c. 118, net operating losses and net operating loss carryovers of a non-surviving entity generally would have not survived a merger or acquisition pursuant to N.J.S.A. 54:10A-4.5; N.J.S.A. 54:10A-4(k)(6)(D); N.J.A.C. 18:7-5.13; and *Richard's Auto City v. Dir.*, NJ S. Ct., (1995) 659 A.2d 1360.

As a result of P.L. 2018, c. 48 and P.L. 2018, c. 131, subsection b was added to N.J.S.A. 54:10A-4.5, which stated: "Subsection a. of this section shall not apply between members of a combined group reported on a combined return in New Jersey, or between members of a commonly owned group reported on the elective combined return in New Jersey." The result was that PNOLs and NOLs survived the mergers between group members. However, the statute was ambiguous with regard to mergers and acquisitions between separate return filers or separate combined groups.

Chapter 118 amended the statute. N.J.S.A. 54:10A-4.5 in relevant part states:

- a. Notwithstanding any provision of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal Revenue Code, including but not limited to 26 U.S.C. s.381 or any successor or equivalent provision, that permits a corporation to use the net operating losses of another for federal income tax purposes following certain transactions, including but not limited to those qualifying as reorganizations under the provisions of subparagraph (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368, a net operating loss for a privilege period ending after June 30, 1984, may be carried over and allowed as a deduction only by the corporation that sustained the loss; provided, however, that in the case of a merger of two or more corporations pursuant to statute of this State or any other jurisdiction, the net operating loss may be carried over only by the corporation that sustained the loss and that is also the surviving corporation following the merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation.
- b. Subsection a. of this section shall not apply: (1) between members of a combined group reported on a combined return in New Jersey, or (2) between members of an affiliated group reported on the elective combined return in New Jersey, or (3) if corporations that were parties to the merger would be members of the combined group reported on a combined return in New Jersey within one group privilege period subsequent to the date of the merger, unless there is an unforeseen delay due to required approvals from federal or other state regulatory authorities that delays the finality of the merger or acquisition. In a situation where there is delay due to the regulatory approval requirements of federal or other state regulatory authorities, the corporations may petition the



director, in a form and manner prescribed by the director, documenting that the corporations' plan to be a combined group filing a New Jersey combined return upon approval of the merger or acquisition by the federal or other state regulatory authorities. Within 180 days of approval by the federal or other state regulatory authorities of the merger or acquisition, the corporations shall notify the Division of Taxation of the approval and the director shall issue a stamped certificate of attestation attesting that the net operating loss carryovers are not extinguished. The provisions of this paragraph (3) shall only apply to mergers and acquisitions occurring on or after the effective date of P.L. 2020, c. 118 (C.54:10A-5.46 et al.) and shall not apply to a binding agreement in effect prior to the effective date of P.L. 2020, c. 118 (C.54:10A-5.46 et al.).\*

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\* Meaning the provision only applies to mergers and acquisitions that closed on or after the date that Chapter 118 was signed into law (November 4, 2020).

**For mergers entered into for privilege periods ending on and after July 31, 2019, and entered into before November 4, 2020**

– For mergers and acquisitions between members of a group that already file a New Jersey combined return together, PNOLs and NOLs survive the merger or acquisition. For mergers and acquisitions involving entities that had not previously filed a New Jersey combined return together, PNOLs and NOLs may survive post-merger/acquisition depending on the facts and circumstances and whether the corporations (or separate combined groups) subsequently file a New Jersey combined return together.

**For mergers and acquisitions occurring on or after November 4, 2020** – PNOLs and NOLs survive the merger or acquisition if the parties to the merger or acquisition are, or will be, members of the combined group reported on a New Jersey combined return within the first group privilege period subsequent to the date of the merger. This means that if there is a merger or acquisition in Year 1 between two corporations (or two combined groups) that had not previously filed New Jersey combined returns together, the corporations/combined groups must file a New Jersey combined return together no later than for the Year 2 privilege period in order for the PNOLs and NOLs to survive the merger or acquisition.

**Regulatory Delay Situations.** N.J.S.A. 54:10A-4.5(b)(3) provides a procedure for situations where there is delay in the approval requirements by federal or state regulatory authorities (other than the Division of Taxation). In such situations, the corporations must notify the Director documenting that the corporations' plan to be a combined group filing a New Jersey combined return upon approval of the merger or acquisition by the federal or state regulatory authorities. Once the acquisition of merger is approved by the federal or other state regulatory authorities, the corporation has 180 days to notify the Division of Taxation of the approval. Then, the Director will issue a stamped certificate attesting that the PNOLs and NOLs are not extinguished. Only certificates with the raised seal of the Director of the Division of Taxation are valid approved certificates.

The Division is in the process of creating a procedure that taxpayers can use to satisfy the notification requirements and to receive the stamped certificate of attestation attesting that the PNOLs and NOLs are not extinguished. Information will be posted once it becomes available.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

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## Initial Guidance on New Jersey's Conformity to I.R.C. §1502 for Combined Returns

**TB-103 - Issued March 16, 2021**  
**Tax: Corporation Business Tax**

Beginning with tax year 2019, New Jersey mandated combined reporting. Subsequently, P.L. 2020, c. 118, which was signed into law on November 4, 2020, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act. Among other things, the technical changes clarified that several aspects of the federal consolidated return rules apply to combined returns.

The purpose of this Technical Bulletin is to provide general guidance on the federal Internal Revenue Code sections or rules as they relate to, or differ from, the New Jersey Corporation Business Tax Act. However, it may not encompass all of the various issues. Therefore, the Division of Taxation reserves the right to add additional topics or cover specific issues involving the federal consolidated return rules and the Corporation Business Tax Act in updates to this publication or in additional Technical Bulletins.

Combined returns are not necessarily the same as consolidated returns, although they are similar. A consolidated return is filed with the IRS by a parent company or a corporation that owns a group of affiliated companies. Whereas, a combined return is filed by members of a commonly controlled group of businesses that are required to combine the profits/losses they earned in a state. A New Jersey combined group can be composed of:

- The same group of taxpayers filing a federal consolidated return,
- A group of taxpayers filing various separate federal returns,
- Multiple federal consolidated return groups,
- Taxpayers that are partially from the same federal consolidated group, or
- Taxpayers that do not file any federal returns.

For purposes of the New Jersey Corporation Business Tax Act, the starting point for taxable income is entire net income before net operating losses and special deductions with several modifications for additions and deductions (see N.J.S.A. 54:10A-4 and N.J.A.C. 18:7-3.12). Thus, a taxpayer's entire net income as reported on a federal consolidated return must match the taxpayer's entire net income on line 28 on Schedule A of the CBT-100, CBT-100U, or BFC-1, before the respective New Jersey modifications. This principle was successfully litigated by the Division in *MCI Communication Services, Inc. v. Director Division of Taxation*, Docket No. 013905-2010, (Tax Court of New Jersey 2015); affirmed 2018 N.J. Super. Unpub. LEXIS 1401; cert. denied 195 A.3d 528 (October 18, 2018).

**For privilege periods ending on and after July 31, 2019, N.J.S.A. 54:10A-4.6 in relevant part states:**

- e. Except as otherwise provided by regulation, business income from an intercompany transaction among members of the same combined group shall be deferred in a manner similar to the deferral under 26 C.F.R. s.1.1502-13, as determined by the director. Upon the occurrence of either of the events set forth in paragraphs (1) and (2) of this subsection, deferred income resulting from an intercompany transaction among members of a combined group shall be restored to the income of the seller and shall be included in the net income of the combined group as if the seller had earned the income immediately before the event:
  - (1) The object of a deferred intercompany transaction is: (a) resold by the buyer to an entity that is not a member of the combined group, (b) resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are

engaged, or (c) converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged; or

- (2) The buyer and seller cease to be members of the same combined group, regardless of whether the buyer and seller remain sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value between them.

In the case of an event set forth in paragraph (2) of this subsection, no portion of the income or loss shall be included in entire net income of the combined group, but shall be included in the entire net income of the respective member.

- f. A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, be subtracted first from the combined group's entire net income, subject to the income limitations of that section applied to the entire net income of the group. A charitable deduction disallowed under section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, but allowed as a carryover deduction in a subsequent privilege period, shall be treated as originally incurred in the subsequent year by the same member and the provisions of this section shall apply in the subsequent privilege period in determining the allowable deduction for that privilege period.
- ...
- j. An expense of a member of the combined group that is directly or indirectly attributable to the income of any member of the combined group, which income this State is prohibited from taxing pursuant to the laws or Constitution of the United States, shall be disallowed as a deduction for purposes of determining the combined group's entire net income.
- ...
- m. To the extent consistent with the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers shall apply to the New Jersey net operating loss carryover provisions under subsection h. of this section as though the combined group filed a federal consolidated return, regardless of how the members of the combined group filed for federal purposes.
- n. The principles and provisions set forth in federal regulations promulgated pursuant to section 1502 of the Internal Revenue Code (26 U.S.C. s.1502), shall apply to the extent consistent with the Corporation Business Tax Act (1945), New Jersey combined group membership principles, New Jersey combined unitary return principles, and regulations set forth by the director.
- ...
- p. This section shall apply to world-wide group elective combined returns and affiliated group elective combined returns in accordance with section 23 of P.L.2018, c.48 (C.54:10A-4.11). An election to file an affiliated group combined return shall be an election to treat all of the member's attributes and income as though they were from one unitary business.

Thus, in general, the principles set forth in the Treasury regulations promulgated under Section 1502 of the Internal Revenue Code (including the principles relating to deferrals, eliminations, intercompany offsets, etc.) apply to the extent they are consistent with the New Jersey Corporation Business Tax Act and the unitary business principles to a combined group filing a New Jersey combined return as though the combined group filed a consolidated return. Additionally, the limitations governing federal net operating losses and net operating loss carryovers apply. Federal carrybacks do not apply because New Jersey net operating losses can only be carried *forward* for 20 privilege periods.

**Tax Rates, Payments, and Due Dates.** For New Jersey Corporation Business Tax purposes, tax rates, tax computations, estimated payment provisions, and due dates are different than for federal purposes.

**Definitions, Inclusions, Exclusions, Modifications, Tax Base, and Return Matters.** The New Jersey Corporation Business Tax Act ("Act") has its own definitions for combined group, affiliated group (for the purposes of the affiliated group election), member, taxable member, nontaxable member, group privilege period, common ownership, commonly owned, managerial member, etc. It also has its own included and excluded entity provisions, which differ from the federal consolidated return entity inclusions and exclusions. The Act has its own additions, deductions, exclusions, and other modifications to entire net income. New Jersey combined returns are filed using a default mandatory water's-edge filing method or the elective world-wide or affiliated group filing method. To be included on a water's-edge return or world-wide return, an entity needs to be part of a unitary business of the combined group as defined in the Act. Water's-edge and world-wide returns are state tax concepts not federal consolidated return concepts. The composition of the New Jersey affiliated group combined return for New Jersey purposes may be larger than the federal affiliated group because there are specific New Jersey inclusions and exclusions. For combined groups, New Jersey has its own payment, accounting period, and liability provisions (N.J.S.A. 54:10A-4.8 and N.J.S.A. 54:10A-4.10). The managerial member of the New Jersey combined group (which may be a different corporation than the corporation filing the federal consolidated return on behalf of a federal consolidated group) files the combined return on behalf of the combined group.

**Ownership Requirements and Attribution Rules.** For New Jersey combined reporting purposes, the requisite ownership threshold is more than 50%. Although the federal rules otherwise apply, New Jersey does not conform to the 80% ownership required for federal consolidated returns. If a New Jersey combined group composition is different than the federal consolidated return, the group must compute the combined group entire net income as though the entire group filed a federal consolidated return and then make the New Jersey additions, deductions, exclusions, and other modifications.

**Intercompany Transactions.** Generally, the provisions of 26 C.F.R. 1.1502-13 apply, except as otherwise noted in N.J.S.A. 54:10A-4.6(e) and except where 26 C.F.R. 1.1502-13 deals with specific provisions of the federal Internal Revenue Code to which New Jersey does not conform.

**Depreciation and Certain Expensing Provisions.** The federal consolidated return rules in relation to depreciation and expensing apply, except that New Jersey has decoupled from I.R.C. §168(k) bonus depreciation and I.R.C. §179 expensing provisions and certain other depreciation and expensing provisions. See N.J.S.A. 54:10A-4(k)(1), N.J.S.A. 54:10A-4(k)(2)(F), N.J.S.A. 54:10A-4(k)(12), and N.J.S.A. 54:10A-4(k)(13). Adjustments must be made accordingly.

**Dividends, Dividend Exclusion, GILTI, FDII, Net Operating Losses (NOLs), and Special Deductions.** The federal dividend received deductions (DRD) are special deductions for federal purposes, which are adjustments below line 28. As such, these provisions in the federal consolidated rules **do not** apply for New Jersey purposes. New Jersey has its own dividend exclusion (see N.J.S.A. 54:10A-4(k)(5)). The rules and limitations governing the federal dividend received deductions were not incorporated into N.J.S.A. 54:10A-4(k)(5). Pursuant to N.J.S.A. 54:10A-4.6(d), dividends paid by one member to another member of the combined group are eliminated from the income of the recipient.

**Note:** The rules and limitations of the NOLs will be discussed in separate Technical Bulletins.

The NOL-DRD ordering rules found in N.J.S.A. 54:10A-4(u), N.J.S.A. 54:10A-4(v), and N.J.S.A. 54:10A-4.6(h)(1) (by operation of N.J.S.A. 54:10A-4(v)) still apply because they are provisions of the Corporation Business Tax Act. The federal limitations that govern the interaction of the federal net operating losses/net operating loss carry overs and the federal dividend received deductions **do not** apply because the federal dividend received deductions are special deductions under the Internal Revenue Code. Likewise, the federal dividend deduction rules do not apply to N.J.S.A. 54:10A-4(k)(5) since the federal dividend received deductions are special deductions for federal purposes.

The only federal rules with regard to a federal special deduction that apply are the rules in relation to IRC section 250 (see N.J.S.A. 54:10A-4.15, which specifically coupled the Act to IRC section 250). None of the other federal rules governing federal special deductions apply. If a combined group has GILTI and FDII, and the members are eligible for the IRC section 250 deductions, the federal consolidated return rules and federal rules governing the interaction of net operating losses and the IRC section 250 deductions apply.

**Tax Credits.** New Jersey has its own tax credits and its own rules for tax credits, except with regard to the New Jersey Research and Development Tax Credit. Although the New Jersey Research and Development Tax Credit has its own specific limitations, the federal rules governing IRC section 41 apply.

**Discharge of Indebtedness.** In general, New Jersey follows the guidelines set forth under federal consolidated return regulations regarding IRC section 108. Although there may be some caveats, see N.J.S.A. 54:10A-4(k)(6), N.J.S.A. 54:10A-4(k)(14), N.J.S.A. 54:10A-4(u), and N.J.S.A. 54:10A-4(v). Additionally, IRC section 108 and the interaction with NOLs will be discussed in separate Technical Bulletins.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**Note:** A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

# NJ Division of Taxation - NOTICE: The World-Wide and Affiliated Group Elections for 2019/2020 CBT-100U Returns

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## NOTICE: The World-Wide and Affiliated Group Elections for 2019/2020 CBT-100U Returns

Current law dictates that the water's-edge group filing method is the mandatory default filing method for New Jersey combined returns. However, the managerial member of the combined group may elect to make a world-wide election or affiliated group election.

N.J.S.A. 54:10A-4.11(b) provides that:

A world-wide election or an affiliated group election is effective only if made on a timely filed, original return for a privilege period by the managerial member of the combined group. Such election is binding for, and applicable to, the privilege period for which it is made and for the five immediately succeeding privilege periods. Provided however, the election can be revoked prior to the expiration of the binding period by written request to the Director of Taxation for reasonable cause including but not limited to a substantial change in ownership, members of the combined group or principal business, or changes in tax law, regulation or policy.

P.L. 2020, c. 118 (Chapter 118), signed into law on November 4, 2020, included several changes impacting combined groups for privilege periods ending on and after July 31, 2019, and in future privilege periods. These changes may impact taxpayers' decisions on their combined return filing method option. By statute, the filing method election cannot be changed because it must be made on a timely filed original return and would otherwise be binding for the subsequent five privilege periods in addition to the current tax year. **However, as a result of the law change, the Division of Taxation is providing a one-time exception to prospectively allow a change to the combined group's filing methods. Filing method elections selected on the 2019 CBT-100U will not be binding for subsequent years. Instead, any election the combined group makes on their 2020 CBT-100U return will be considered the start of the binding period for the purposes of N.J.S.A. 54:10A-4.11(b).**

As a result of the enactment of Chapter 118, and in accordance with N.J.S.A. 54:10A-4.11(b) and N.J.S.A. 54:10A-4.14, the Division will not penalize taxpayers for filing their 2019 returns following the 2019 CBT-100U instructions or the information provided in the Technical Bulletins. Taxpayers will not be penalized if they choose a different combined group filing method option when they file their 2020 CBT-100U return pursuant to Section 18 of P.L. 2020, c. 118. Nor will the Division assess taxpayers for the P.L. 2020, c. 118, changes that were otherwise different than 2019 CBT-100U return instructions and the Technical Bulletins for the 2019 return the taxpayer filed.

No retroactive changes will be permitted for the use of the mandatory default method or the affiliated or world-wide elections made for the 2019 privilege period with respect to any return previously filed for 2019. No amended returns changing the election or use of the mandatory default method will be permitted for the 2019 privilege period.

Last Updated: Wednesday, 01/13/21

# Tab 5





## New Jersey Corporation Business Tax Unitary Return

For Tax Years Ending On or After  
July 31, 2019, Through June 30, 2020**2019**  
**CBT-100U**

Tax year beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_, \_\_\_\_\_

Unitary ID Number <b>NU</b>			Managerial Member's FEIN		
Unitary Group Name			Managerial Member Name		
Mailing Address			Mailing Address		
City	State	ZIP Code	City	State	ZIP Code
Check if this is an amended return <input type="checkbox"/>			Business Contact Name _____		
Check applicable filing method (see instructions)			Email _____		
Default <input type="checkbox"/> Water's-Edge			Election <input type="checkbox"/> Affiliated Group <input type="checkbox"/> World-Wide Election Period _____ of 6		
			Phone Number (_____) _____		

1. Total Amount of Tax of Combined Group – Enter amount from line 5, column (a) of Schedule A, Part III.....	1.	
2. Total Tax Credits Used by Combined Group – Enter amount from line 6, column (a) of Schedule A, Part III (see instructions) .....	2.	
3. TOTAL COMBINED GROUP CBT TAX LIABILITY – Enter amount from line 7, column (a) of Schedule A, Part III .....	3.	
4. Total surtax on taxable net income of Combined Group Members – Enter amount from line 8b, column (a) of Schedule A, Part III (see instructions) .....	4.	
5. Total Combined Group Tax Due – Enter amount from line 9, col. (a) of Schedule A, Part III (see instructions)....	5.	
6. Reserved for future use .....	6.	
7. Professional Corporation Fees (from Schedule PC, line 9, column (a)).....	7.	
8. TOTAL TAX AND PROFESSIONAL CORPORATION FEES – Add lines 5 and 7 .....	8.	
9. Payments and Credits (from Schedule E, line 4).....	9.	
10. Payments made by partnerships on behalf of member (include copies of all NJK-1s).....	10.	
11. a) Total Refundable Tax Credits to applicable members that earned the credits .....	11a.	
b) Total Refundable Tax Credit to be refunded to individual members .....	11b.	
c) Balance of Refundable Tax Credit to be applied to the group .....	11c.	
12. Total Payments and Credits – Add lines 9, 10, and 11c .....	12.	
13. Balance of Tax Due – If line 12 is less than line 8, subtract line 12 from line 8 .....	13.	
14. Penalty and Interest Due (see instructions) .....	14.	
15. Total Balance Due – Add line 13 and line 14 .....	15.	
16. Amount Overpaid – If line 12 is greater than the sum of lines 8 and 14, subtract lines 8 and 14 from line 12.	16.	
17. Amount of line 16 to be Refunded .....	17.	
18. Amount of line 16 to be Credited to 2020 Tax Return .....	18.	

SIGNATURE AND  
VERIFICATION  
(See Instructions)

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules, forms, and statements, and to the best of my knowledge and belief, it is true, correct, and complete. If prepared by a person other than the managerial member, this declaration is based on all information of which the preparer has any knowledge.

(Date)	(Signature of Duly Authorized Officer of Managerial Member)	(Title)
(Date)	(Signature of Individual Preparing Return)	(Address) (Preparer's ID Number)
(Name of Tax Preparer's Employer)	(Address)	(Employer's ID Number)

**Members and Affiliates Schedule — List all members of the combined group**

	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>
Member Name		
Member FEIN		
Member's NJ Corporation Number		
Date Member Joined Combined Group		
Date Member Left Combined Group		
State/Territory or Country of Incorporation		
Location of the actual seat of management or control of the corporation		
Federal Business Activity Code		
Type of business		
Principal products handled		
Date Authorized to do Business in New Jersey		
<b>If the answer to any of the following questions for a member is "yes," check the box in the appropriate member column.</b>		
1. Is member is inactive? If yes, complete Schedule I.	<input type="checkbox"/>	<input type="checkbox"/>
2. Does member have nexus with New Jersey?	<input type="checkbox"/>	<input type="checkbox"/>
3. (a) Is only a portion of the business included in the combined group entire net income? If yes, complete lines 3b and 3c.	<input type="checkbox"/>	<input type="checkbox"/>
(b) Is the partially included member also included as a member of another New Jersey combined return?	<input type="checkbox"/>	<input type="checkbox"/>
(c) Is the member reporting income on Schedule X that was excluded on line 1b of Schedule A, Part I? (water's-edge and world-wide returns only)	<input type="checkbox"/>	<input type="checkbox"/>
4. Is member a banking corporation?	<input type="checkbox"/>	<input type="checkbox"/>
5. Is member a financial corporation? (See instructions.)	<input type="checkbox"/>	<input type="checkbox"/>
6. Is this corporation a Professional Corporation (PC) formed pursuant to N.J.S.A. 14A:17-1 et seq. or any similar law from a possession or territory of the United States, a state, or political subdivision thereof?	<input type="checkbox"/>	<input type="checkbox"/>
7. Is member a federal 1120S filer	<input type="checkbox"/>	<input type="checkbox"/>
8. Has member made a New Jersey S Corporation Election?	<input type="checkbox"/>	<input type="checkbox"/>
9. Does member own any Qualified Subchapter S Subsidiaries	<input type="checkbox"/>	<input type="checkbox"/>
10. Is member a combinable captive insurance company?	<input type="checkbox"/>	<input type="checkbox"/>
11. Is member a partner in a partnership?	<input type="checkbox"/>	<input type="checkbox"/>
12. Is member an owner of a disregarded entity?	<input type="checkbox"/>	<input type="checkbox"/>
13. Is member a licensee under the Casino Control Act?	<input type="checkbox"/>	<input type="checkbox"/>
14. Does member own or lease real or tangible property in New Jersey?	<input type="checkbox"/>	<input type="checkbox"/>
15. Does member have payroll in New Jersey?	<input type="checkbox"/>	<input type="checkbox"/>
16. Has member taken any uncertain tax positions when filing this return or their federal tax return? If yes, include a rider detailing the information.	<input type="checkbox"/>	<input type="checkbox"/>

**Annual General Questionnaire (See Instructions)**Unitary ID Number **NU**

1. (a) Enter total number of members in the group ..... (a) \_\_\_\_\_  
 (b) Enter number of taxable group members..... (b) \_\_\_\_\_  
 (c) Enter number of nontaxable group members ..... (c) \_\_\_\_\_  
 (d) Enter number of related parties or affiliates that are not included in the combined return ..... (d) \_\_\_\_\_

2. Did any member own beneficiall , or control, a majority of the stock of any corporation not included as a member of the combined group or did the same interests own beneficiall , or control, a majority of the stock of any other corporation not included as a member of the combined group? If yes, provide a rider indicating the name and FEIN of the controlled corporation, the name and FEIN of the controlling/parent corporation, and the percentage of stock owned or controlled. Yes ☐ No ☐

Questions 3a and 3b must be answered by corporations with a controlling interest in certain commercial property.

3. (a) During the period covered by the return, did any member acquire or dispose of, directly or indirectly, a controlling interest in certain commercial property? If yes, answer question 3b. Yes ☐ No ☐  
 (b) Was the CITT-1, *Controlling Interest Transfer Tax*, or CITT-1E, *Statement of Waiver of Transfer Tax*, filed with the Division of Taxation? If yes, provide information and include a copy of the CITT-1 or CITT-1E filed. If no, provide a rider indicating the name and FEIN of the transferee, the name and FEIN of the transferor, and the assessed value of the property. Yes ☐ No ☐

4. Did any member receive any deemed repatriation dividends reported under IRC §965 from a subsidiary in the member's federal tax year 2017 or 2018 for which the member files a New Jersey 2017, 2018, or 2019 tax return? If yes, provide a rider indicating the name and FEIN of the subsidiary, the amount of deemed repatriation dividends, and indicate on which year's New Jersey return the income was included. Yes ☐ No ☐

5. Is income from sources outside the United States included in entire net income on Schedule A, Part II, line 20? If no, provide such items of gross income, the source, the deductions, and the amount of foreign taxes paid. Enter on Schedule A, Part II, line 10, the difference between the net of such income and the amount of foreign taxes paid not previously deducted (include a rider). Yes ☐ No ☐

6. Is 50% or more of the group's income derived from transportation of freight by air or ground? Yes ☐ No ☐

Schedule A

Calculation of New Jersey Taxable Net Income (See instructions)  
Every Member Must Complete Parts I, II, and III of This Schedule

PART I – Computation of Entire Net Income (All data must match the federal return that was filed or that would have been filed.)

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU	NU	NU
Member FEIN	NU	NU	NU		
Member Name					
Tax Year Beginning Date					
Tax Year Ending Date					
Income					
1. (a) Gross receipts or sales everywhere .....	1a.				
(b) Less: returns and allowances .....	1b.				
(c) Balance – Subtract line 1b from line 1a.....	1c.				
2. Less: Cost of goods sold (from Schedule A-2, line 8) (include copy of federal 1125-A) .....	2.				
3. Gross profit – Subtract line 2 from line 1 .....	3.				
4. (a) Dividends .....	4a.				
(b) Gross Foreign Derived Intangible Income (see instructions) (include copy of federal Form 8993) .....	4b.				
(c) Gross Global Intangible Low-Taxed Income (see instructions) (include copy of federal Form 8992).....	4c.				
5. Interest.....	5.				
6. Gross rents.....	6.				
7. Gross royalties.....	7.				
8. Capital gain net income (include a copy of federal Schedule D) .....	8.				
9. Net gain or (loss) (from federal Form 4797, include a copy).....	9.				
10. Other income (see instructions) (include schedule(s)).....	10.				
11. Total Income – Add lines 3 through 10 .....	11.				
Deductions					
12. Compensation of officers (from Schedule F) (include copy of federal 1125-E).....	12.				
13. Salaries and wages (less employment credits).....	13.				
14. Repairs (Do not include capital expenditures) .....	14.				
15. Bad debts .....	15.				
16. Rents .....	16.				
17. Taxes and licenses .....	17.				
18. Interest (see instructions).....	18.				
19. Charitable contributions (see instructions) .....	19.				
20. Depreciation (from federal Form 4562, include a copy) less depreciation claimed elsewhere on return .....	20.				
21. Depletion .....	21.				
22. Advertising.....	22.				
23. Pension, profit-sharing plans, etc .....	23.				
24. Employee benefit program .....	24.				
25. Reserved for future use .....	25.				
26. Other deductions (attach schedule).....	26.				
27. Total Deductions - Add lines 12 through 26.....	27.				
28. Taxable income before federal net operating loss deductions and federal special deductions – Subtract line 27 from line 11 (Must agree with line 28, page 1 of the federal Form 1120, or the appropriate line of any other federal corporate return) (See instructions) .....	28.				

**PART II – New Jersey Modifications to Entire Net Income**

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
1. (a) Taxable income/(loss) from Schedule A, Part I, line 28 .....	1a.				
(b) Income included in line 1a from Separate Activities not includible in the combined group entire net income (water's-edge and world-wide returns only) (see instructions) .....	1b.				
(c) Taxable income/(loss) of combined group – Subtract line 1b from line 1a.....	1c.				
<b>Additions</b>					
2. Income of a non-U.S. corporation member not included in line 1.....	2.				
3. Other federally exempt income not included in line 1 (see instructions) .....	3.				
4. Interest on federal, state, municipal, and other obligations not included in line 1 (see instructions) .....	4.				
5. New Jersey State and other states taxes deducted in line 1 (see instructions) .....	5.				
6. Related party interest addback (from Schedule G, Part I) .....	6.				
7. Related party intangible expenses and costs addback (from Schedule G, Part II) (see instructions) .....	7.				
8. I.R.C. § 965 deductions and exemptions (see instructions) .....	8.				
9. Depreciation modification being added to income (from Schedule S) .....	9.				
10. Other additions. Explain on separate rider (see instructions).....	10.				
11. Taxable income/(loss) with additions – Add line 1c through line 10.....	11.				
<b>Deductions</b>					
12. Depreciation modification being subtracted from income (from Schedule S) .....	12.				
13. Previously Taxed Dividends (from Schedule PT) .....	13.				
14. (a) Enter the I.R.C. § 250(a) deduction amount allowed federally for GILTI if GILTI income is included in line 1c above.....	14a.				
(b) Enter the I.R.C. § 250(a) deduction amount allowed federally for FDII if FDII income is included on line 1c above .....	14b.				
15. I.R.C. § 78 Gross-up included in line 1 (do not include dividends that were excluded/ deducted elsewhere) .....	15.				
16. Reserved for future use .....	16.				
17. (a) Elimination of nonoperational activity (from Schedule O, Part I) .....	17a.				
(b) Elimination of nonunitary partnership income/loss (from Schedule P-1, Part II, line 4) .....	17b.				
18. Other deductions. Explain on separate rider (see instructions).....	18.				
19. Total deductions – Add line 12 through line 18.....	19.				

**PART II – New Jersey Modifications to Entire Net Income — continue**

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
<b>Taxable Net Income/(Loss) Calculation</b>					
20. Entire Net Income/(Loss) Subtotal – Subtract line 19 from line 11 .....	20.				
21. Member's allocation factor from Schedule J .....	21.				
22. Allocated entire net income/(loss) before any net operating loss deductions and dividend exclusion – Multiply the group entire net income in line 20, column a by member's allocation factor in line 21 (if zero or less, enter zero on line 32) .....	22.				
23. Prior year net operating loss (PNOL) deduction (from Form 500U, Section A) (Amount entered cannot be more than amount on line 22) .....	23.				
24. Allocated entire net income before post allocation net operating loss deduction – Subtract line 23 from line 22 (If column a is zero or less, enter zero here and on line 32) .	24.				
25. Post allocation net operating loss (NOL) deduction (from Form 500U, Section B) (Amount entered cannot be more than amount on line 24.).....	25.				
26. Allocated entire net income before allocated dividend exclusion – Subtract line 25 from line 24 (If column a is zero or less, enter zero here and on line 32) .....	26.				
27. Allocated Dividend Exclusion (from Schedule R, Part I or Part III, whichever is applicable) (see instructions) .....	27.				
28. If Schedule R, Part III, was completed, enter amount from Schedule RT, Part I, line 2, if applicable .....	28.				
29. Allocated entire net income subtotal – Subtract lines 27 and 28 from line 26 .....	29.				
30. Allocated dividend income from certain subsidiaries, if applicable (from Schedule R, Part II) .....	30.				
31. (a) I.B.F. Exclusion.....	31a.				
(b) Allocated I.B.F. Exclusion – Multiply line 31a by member's allocation factor (line 21) .....	31b.				
32. <b>Member's Share of Combined Group Taxable Net Income</b> – Add line 29 and line 30 and subtract line 31b.....	32.				

**PART III – Calculation of Tax Credits, Minimum Tax and Surtax, and Member Tax**

1. Member's Share of Combined Group Taxable Net Income/(Loss) from Schedule A, Part II, line 32 .....	1.				
2. Member's Taxable Net Income from Separate Activities (from Schedule X)(If Schedule X, Part I, line 32 is zero or less, enter zero).....	2.				
3. (a) New Jersey nonoperational income from Schedule O, Part III .....	3a.				
(b) Nonunitary partnership income (from Schedule P-1, Part II, line 5) .....	3b.				
4. Member Tax Base – Add lines 1, 2, 3a, and 3b.....	4.				
5. Amount of Tax – For each member, multiply line 4 by the applicable tax rate (see instructions). Enter the total of all members in column a .....	5.				
6. Tax Credits (from Schedule A-3, Part I, line 24).....	6.				
7. CBT TAX LIABILITY – Subtract line 6 from line 5.....	7.				
8a. Taxable Net Income Subject to Surtax – Add line 1 and line 2.....	8a.				
8b. Surtax on taxable net income – For each member, multiply line 8a by the applicable surtax rate (see instructions). Enter the total of all members in column a.....	8b.				
9. Tax Due – Add line 8b to the greater of line 7 or \$2,000. ....	9.				

Schedule A-2

Cost of Goods Sold (See Instructions)

All data must match amounts reported on federal Form 1125-A of the federal pro forma or federal return, whichever is applicable.

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU	NU	NU
Member FEIN	NU	NU	NU		
Member Name					
1. Inventory at beginning of year .....	1.				
2. Purchases.....	2.				
3. Cost of labor .....	3.				
4. Additional section 263A costs.....	4.				
5. Other costs (include schedule) .....	5.				
6. Total – Add lines 1 through 5.....	6.				
7. Inventory at end of year.....	7.				
8. Cost of goods sold – Subtract line 7 from line 6. Include here and on Schedule A, Part I, line 2.....	8.				

## Schedule A-3

## Summary of Tax Credits (See Instructions)

	Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU
Member FEIN	NU		
Member Name			

**PART I – Credits Used Against Liability**

1. New Jobs Investment Tax Credit from Form 304 .....	1.		
2. Angel Investor Tax Credit from Form 321 .....	2.		
3. Business Employment Incentive Program Tax Credit from Form 324 .....	3.		
4.       a) Urban Enterprise Zone Employee Tax Credit from EITHER/   Form 300 OR       b) Urban Enterprise Zone Investment Tax Credit from Form 301	4.		
5. Redevelopment Authority Project Tax Credit from Form 302 .....	5.		
6. Manufacturing Equipment and Employment Investment Tax Credit from Form 305 .....	6.		
7. Research and Development Tax Credit from Form 306 .....	7.		
8. Reserved for future use .....	8.		
9. Neighborhood Revitalization State Tax Credit from Form 311 .....	9.		
10. Effluent Equipment Tax Credit from Form 312 .....	10.		
11. Economic Recovery Tax Credit from Form 313 .....	11.		
12. AMA Tax Credit from Form 315 .....	12.		
13. Business Retention and Relocation Tax Credit from Form 316 .....	13.		
14. Sheltered Workshop Tax Credit from Form 317 .....	14.		
15. Film Production Tax Credit from Form 318 .....	15.		
16. Urban Transit Hub Tax Credit from Form 319 .....	16.		
17. Grow NJ Tax Credit from Form 320 .....	17.		
18. Wind Energy Facility Tax Credit from Form 322 .....	18.		
19. Residential Economic Redevelopment and Growth Tax Credit from Form 323 .....	19.		
20. Public Infrastructure Tax Credit from Form 325 .....	20.		
21. Reserved for future use .....	21.		
22. Film and Digital Media Tax Credit from Form 327 .....	22.		
23. Other Tax Credit (see instructions) .....	23.		
24. Total tax credits – Add lines 1 through 23. Include here and on Schedule A, Part III, line 6 .....	24.		

**PART II – Refundable Tax Credits**

1. Refundable portion of New Jobs Investment Tax Credit from Form 304 .....	1.		
2. Refundable portion of Angel Investor Tax Credit from Form 321 .....	2.		
3. Refundable portion of Business Employment Incentive Program Tax Credit from Form 324 .....	3.		
4. Other Tax Credit to be refunded .....	4.		
5. Total Refundable Tax Credit to be refunded to individual members. Enter here and on page 1, line 11b .....	5.		
6. Balance of Refundable Tax Credit to be applied to the group. Enter here and on page 1, line 11c .....	6.		



**Schedule A-4 Summary Schedule (See Instruction 20) .**

		Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number		NU	NU	NU
Member FEIN		NU		
Member Name				
<b>PNOL Deduction and Carryover</b>				
1. Form 500U, Section A, line 6 minus line 8 .....	1.			
<b>NOL Deduction and Carryover</b>				
2. Form 500U, Section B, line 9 minus line 11 .....	2.			
<b>Interest and Intangible Costs and Expenses</b>				
3. Schedule G, Part I, line b.....	3.			
4. Schedule G, Part II, line b.....	4.			
<b>Schedule J Information – Water's-Edge and World-Wide Returns</b>				
5. Schedule J, line 8 .....	5.			
6. Schedule J, line 9 .....	6.			
7. Schedule J, line 11 .....	7.			
<b>Schedule J Information – Affiliated Group Return</b>				
8. Schedule J, line 6 .....	8.			
9. Schedule J, line 7 .....	9.			
10. Schedule J, line 9 .....	10.			
<b>Net Operational Income Information</b>				
11. Schedule O, Part III, line 31.....	11.			
<b>Dividend Exclusion Information</b>				
12. Schedule R, Part I, line 4 or Part III, line 6, as applicable .....	12.			
13. Schedule R, Part I, line 6 or Part III, line 8, as applicable .....	13.			
14. Schedule R, Part I, line 8 or Part III, line 10, as applicable .....	14.			

## Schedule B

Figures appearing below must be the same as beginning of the year and end of the year figures shown on the member's books. If not, explain and reconcile on rider. See instructions. Where applicable, data must match amounts reported on Schedule L of the federal pro forma or federal return, whichever is applicable.

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU	NU	NU
Member FEIN	NU	NU	NU		
Member Name					

**PART I – Beginning of the Year****Assets**

1. Cash .....	1.				
2. Trade notes and accounts receivable .....	2.				
(a) Reserve for bad debts .....	2a.	( )	( )	( )	( )
3. Loans to stockholders/affiliate .....	3.				
4. Stock of subsidiaries .....	4.				
5. Corporate stocks .....	5.				
6. Bonds, mortgages, and notes .....	6.				
7. New Jersey state and local government obligations .....	7.				
8. All other government obligations .....	8.				
9. Patents and copyrights .....	9.				
10. Deferred charges .....	10.				
11. Goodwill .....	11.				
12. All other intangible personal property (itemize) .....	12.				
13. <i>Total intangible personal property</i> (total lines 1 to 12) .....	13.				
14. Land .....	14.				
15. Buildings and other improvements .....	15.				
(a) Less accumulated depreciation .....	15a.	( )	( )	( )	( )
16. Machinery and equipment .....	16.				
(a) Less accumulated depreciation .....	16a.	( )	( )	( )	( )
17. Inventories .....	17.				
18. All other tangible personal property (net) (itemize on rider) .....	18.				
19. <i>Total real and tangible personal property</i> (total lines 14 to 18) .....	19.				
20. Total assets (add lines 13 and 19) .....	20.				

**Liabilities and Stockholder's Equity**

21. Accounts payable .....	21.				
22. Mortgages, notes, bonds payable in less than 1 year (include schedule) .....	22.				
23. Other current liabilities (include schedule) .....	23.				

Assets	
--------	--

1. Cash .....	1.				
2. Trade notes and accounts receivable.....	2.				
(a) Reserve for bad debts.....	2a.				
3. Loans to stockholders/affiliate .....	3.				
4. Stock of subsidiaries.....	4.				
5. Corporate stocks .....	5.				
6. Bonds, mortgages, and notes.....	6.				
7. New Jersey state and local government obligations .....	7.				
8. All other government obligations .....	8.				
9. Patents and copyrights.....	9.				
10. Deferred charges.....	10.				
11. Goodwill.....	11.				
12. All other intangible personal property (itemize).....	12.				
13. Total intangible personal property (total lines 1 to 12).....	13.				
14. Land.....	14.				
15. Buildings and other improvements .....	15.				
(a) Less accumulated depreciation .....	15a.				
16. Machinery and equipment .....	16.				
(a) Less accumulated depreciation.....	16a.				
17. Inventories .....	17.				

		(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
18. All other tangible personal property (net) (itemize on rider) .....	18.					
19. Total real and tangible personal property (total lines 14 to 18).....	19.					
20. Total assets (add lines 13 and 19).....	20.					
<b>Liabilities and Stockholder's Equity</b>						
21. Accounts payable .....	21.					
22. Mortgages, notes, bonds payable in less than 1 year (include schedule) .....	22.					
23. Other current liabilities (include schedule).....	23.					
24. Loans from stockholders/affiliate .....	24.					
25. Mortgages, notes, bonds payable in 1 year or more (include schedule) .....	25.					
26. Other liabilities (include schedule) .....	26.					
27. Capital stock: (a) Preferred stock .....	27a.					
(b) Common stock .....	27b.					
28. Paid-in or capital surplus .....	28.					
29. Retained earnings – appropriated (include schedule) .....	29.					
30. Retained earnings – unappropriated .....	30.					
31. Adjustments to shareholders' equity (include schedule).....	31.					
32. Less cost of treasury stock .....	32.					
33. Total liabilities and stockholder's equity (total lines 21 to 32) .....	33.					

## Schedule C

**Reconciliation of Income/(Loss) per Books With Income per Return (See Instructions)**

Data must match amounts reported on Schedule M-1 of the federal pro forma or federal return, whichever is applicable.

If the member completed federal Schedule M-3 (Form 1120 /1120-F), include a copy.

	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>
Member FEIN		
Member Name		
1. Net income/(loss) per books.....	1.	
2. Federal income tax per books.....	2.	
3. Excess of capital losses over capital gains.....	3.	
4. Income subject to tax not recorded on books this year (itemize for each member) _____ _____	4.	
5. Expenses recorded on books this year not deducted on this return (itemize for each member) (a) Depreciation \$ _____ (b) Contributions Carryover \$ _____ (c) Other (itemize) \$ _____ _____	5.	
6. Total of lines 1 through 5 .....	6.	
7. Income recorded on books this year not included on this return (itemize for each member) (a) Tax-exempt interest \$ _____ (b) _____ (c) _____	7.	
8. Deductions on this tax return not charged against book income this year (itemize for each member) (a) Depreciation \$ _____ (b) Contributions Carryover \$ _____	8.	
9. Total of lines 7 and 8.....	9.	
10. Income (Schedule A, Part I, line 28) – line 6 less 9.....	10.	

## Schedule C-1

**Analysis of Unappropriated Retained Earnings per Books (See Instructions)**

Data must match amounts reported on Schedule M-2 of the federal pro forma or federal return, whichever is applicable.

	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>
Member FEIN		
Member Name		
1. Balance at beginning of year.....	1.	
2. Net income/(loss) per books.....	2.	
3. Other increases (itemize) _____ _____	3.	
4. Total of lines 1, 2, and 3.....	4.	
5. Distributions (a) Cash \$ _____ (b) Stock \$ _____ (c) Property \$ _____	5.	
6. Other decreases (itemize) _____ _____	6.	
7. Total of lines 5 and 6.....	7.	
8. Balance end of year – line 4 less 7.....	8.	

**Schedule CG****Reconciliation With Consolidated Group****Section A – Federal Consolidated Group**

1. List the entities included in the federal consolidated return(s). List the corporation(s) name, federal employer identification number (FEIN), and the amount on line 28.

	Name	FEIN	Form 1120, Line 28
a.			
b.			
c.			
d.			
e.			
f.			
2. Total.....			

**Section B – Members Included in the New Jersey Combined Group Not Reported in Section A**

3. List any members included in the New Jersey combined group not included in Section A.

	Name	FEIN	Taxable Income*
a.			
b.			
c.			
d.			
e.			
f.			
4. Total.....			

\* Taxable income before federal net operating loss deductions and federal special deductions (Must agree with line 28, page 1 of the unconsolidated federal Form 1120, or the appropriate line of any other federal corporate return that was filed or would have been filed)

**Section C – Members Reported in Section A Not Included in the New Jersey Combined Group**

5. List any member from Section A that are not part of the New Jersey combined group.

	Name	FEIN	Form 1120, Line 28
a.			
b.			
c.			
d.			
e.			
f.			
6. Total .....			

**Section D – Adjustments to Federal Taxable Income**

7. Other additions/subtractions to federal taxable income (include rider)

	Name	FEIN	Adjustments to Federal Taxable Income
a.			
b.			
c.			
d.			
e.			
f.			
8. Total.....			
9. Total lines 2, 4, 6, and 8 (must reconcile to Schedule A, Part II, line 1c, column (a)) .....			

## Schedule E

**Summary of Estimated Payments and Credits Submitted by Individual Group****Members to be Credited to the Group**

See instructions before completing this schedule.

	Group Combined	Managerial Member (1)	Member 2...	
Unitary ID Number	NU	NU	NU	
Member FEIN	NU			
Member Name				
1. (a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
(a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
(a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
(a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
(a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
(a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
(a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
(a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
(a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
(a) Estimate or payment amount submitted.....				
(b) Date submitted .....				
2. Overpayment to be credited from 2018 return.....				
3. Total amount of member's credit to be applied to the group .....				
4. Total amount of credit to be applied to the group. Include here and on page 1, line 9 .....				

**Schedule F****Corporate Officers – General Information and Compensation (See Instructions)**

Data must match amounts reported on federal Form 1125-E of the federal pro forma or federal return, whichever is applicable.

**Managerial Member (1)**Unitary ID Number **NU**

Member FEIN

Member Name

(a) Name of Office	(b) Social Security Number	(c) Percent of Time Devoted to Business	Percentage of Corporation Stock Owned		(f) Amount of Compensation
			(d) Common	(e) Preferred	
1. Total compensation of officer .....					
2. Less: Compensation of officers claimed elsewhere on the retur .....					
3. Balance of compensation of officers (include here and on Schedule A, Part I, line 12).....					

**Member 2...**Unitary ID Number **NU**

Member FEIN

Member Name

(a) Name of Office	(b) Social Security Number	(c) Percent of Time Devoted to Business	Percentage of Corporation Stock Owned		(f) Amount of Compensation
			(d) Common	(e) Preferred	
1. Total compensation of officer .....					
2. Less: Compensation of officers claimed elsewhere on the retur .....					
3. Balance of compensation of officers (include here and on Schedule A, Part I, line 12).....					



## Schedule G

### Managerial Member (1)

Unitary ID Number **NU**

Member FEIN

Member Name

### PART I – Interest (See Instructions)

1. Was interest paid, accrued, or incurred to a related member(s) not included in the combined group deducted from entire net income?

☐ Yes. Fill out the following schedule. ☐ No.

Name of Related Member	Federal ID Number	Relationship to Member	Amounts
(a) Total amount of interest deducted .....			
(b) Subtract: Exceptions (see instructions).....			(                      )
(c) Related Party Interest Expenses Disallowed for New Jersey purposes (include here and in the member's column of Schedule A, Part II, line 6) .....			

### PART II – Interest Expenses and Costs and Intangible Expenses and Costs (See Instructions)

1. Were intangible expenses and costs, including intangible interest expenses and costs, paid, accrued or incurred to related members not included in the combined group, deducted from entire net income? ☐ Yes. Fill out the following schedule. ☐ No.

Name of Related Member	Federal ID Number	Relationship to Member	Type of Intangible Expense Deducted	Amounts
(a) Total amount of intangible expenses and costs deducted .....				
(b) Subtract: Exceptions (see instructions).....				(                      )
(c) Related Party Intangible Expenses and Costs Disallowed for New Jersey purposes (include here and in the member's column of Schedule A, Part II, line 7) .....				

### Member 2...

Unitary ID Number **NU**

Member FEIN

Member Name

### PART I – Interest (See Instructions)

1. Was interest paid, accrued, or incurred to a related member(s) not included in the combined group deducted from entire net income?

☐ Yes. Fill out the following schedule. ☐ No.

Name of Related Member	Federal ID Number	Relationship to Member	Amounts
(a) Total amount of interest deducted .....			
(b) Subtract: Exceptions (see instructions).....			(                      )
(c) Related Party Interest Expenses Disallowed for New Jersey purposes (include here and in the member's column of Schedule A, Part II, line 6) .....			

### PART II – Interest Expenses and Costs and Intangible Expenses and Costs (See Instructions)

1. Were intangible expenses and costs, including intangible interest expenses and costs, paid, accrued or incurred to related members not included in the combined group, deducted from entire net income? ☐ Yes. Fill out the following schedule. ☐ No.

Name of Related Member	Federal ID Number	Relationship to Member	Type of Intangible Expense Deducted	Amounts
(a) Total amount of intangible expenses and costs deducted .....				
(b) Subtract: Exceptions (see instructions).....				(                      )
(c) Related Party Intangible Expenses and Costs Disallowed for New Jersey purposes (include here and in the member's column of Schedule A, Part II, line 7) .....				

**Schedule H****Taxes (See Instructions)**

Include all taxes paid or accrued during the accounting period wherever deducted on Schedule A.

**Managerial Member (1)**Unitary ID Number **NU**

Member FEIN

Member Name

	(a) Corporation Franchise Business Taxes	(b) Corporation Business/ Occupancy Taxes	(c) Property Taxes	(d) U.C.C. or Payroll Taxes	(e) Other Taxes/ Licenses (include schedule)	(f) Total
1. New Jersey Taxes						
2. Other States & U.S. Possessions						
3. City and Local Taxes						
4. Taxes Paid to Foreign Countries*						
5. Total						
6. Combine lines 5(a) and 5(b)						
7. Sales & Use Taxes Paid by a Utility Vendor						
8. Add lines 6 and 7						
9. Federal Taxes						
10. Total (Combine line 5 and line 9)						

\* Include on line 4 taxes paid or accrued to any foreign country, state, province, territory, or subdivision thereof.

**Member 2...**Unitary ID Number **NU**

Member FEIN

Member Name

	(a) Corporation Franchise Business Taxes	(b) Corporation Business/ Occupancy Taxes	(c) Property Taxes	(d) U.C.C. or Payroll Taxes	(e) Other Taxes/ Licenses (include schedule)	(f) Total
1. New Jersey Taxes						
2. Other States & U.S. Possessions						
3. City and Local Taxes						
4. Taxes Paid to Foreign Countries*						
5. Total						
6. Combine lines 5(a) and 5(b)						
7. Sales & Use Taxes Paid by a Utility Vendor						
8. Add lines 6 and 7						
9. Federal Taxes						
10. Total (Combine line 5 and line 9)						

\* Include on line 4 taxes paid or accrued to any foreign country, state, province, territory, or subdivision thereof.

## Schedule J Computation of Group and Members' Allocation Factors (See Instructions)

Each member, regardless of entire net income reported on Schedule A, Part II, line 20 must complete Schedule J.

**For tax years ending on and after July 31, 2019, services are sourced based on market sourcing not cost of performance.**

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU	NU	NU
Member FEIN	NU	NU	NU		
Member Name					

### Water's-Edge and World-Wide Returns

**Note:** If only a portion of a member's operations are part of a unitary business, only the income, attributes, and allocation factors related to said portion should be included in the calculation of the combined group's tax. Do not include amounts from Schedule X.

Receipts					
1. From sales of tangible personal property shipped to points within New Jersey	1.				
2. From services if the benefit of the service is received in New Jersey .....	2.				
3. From rentals of property situated in New Jersey .....	3.				
4. From royalties for the use in New Jersey of patents, copyrights, and trademarks ..	4.				
5. All other business receipts earned in New Jersey (See instructions) .....	5.				
6. Total New Jersey receipts (Total of lines 1 through 5) .....	6.				
7. New Jersey receipts from non-nexus entities .....	7.				
8. Total New Jersey receipts (Subtract line 7 from line 6) .....	8.				
9. Total receipts from all sales, services, rentals, royalties, and other business transactions everywhere .....	9.				
10. Group Denominator (Enter amount from line 9, column a) .....	10.				
11. Member's Allocation Factor (line 8 divided by line 10). Carry the fraction to six decimal places. Do not express as a percent. Include here and on Schedule A, Part II, line 21 .....	11.				

### Affiliated Group Return

**Note:** By making an Affiliated Group Election, all of the activities of all of the members are deemed to be the activities of the group. Include all receipts

Receipts					
1. From sales of tangible personal property shipped to points within New Jersey	1.				
2. From services if the benefit of the service is received in New Jersey .....	2.				
3. From rentals of property situated in New Jersey .....	3.				
4. From royalties for the use in New Jersey of patents, copyrights, and trademarks ..	4.				
5. All other business receipts earned in New Jersey (See instructions) .....	5.				
6. Total New Jersey receipts (Total of lines 1 through 5) .....	6.				
7. Total receipts from all sales, services, rentals, royalties, and other business transactions everywhere .....	7.				
8. Group Denominator (Enter amount from line 7, column (a)) .....	8.				
9. Member's Allocation Factor (line 6 divided by line 8). Carry the fraction to six decimal places. Do not express as a percent. Include here and on Schedule A, Part II, line 21 .....	9.				

**NOTE:** Include the GILTI and the receipts attributable to the FDII, net of the respective allowable IRC §250(a) deductions, in the allocation factor. The net amount of GILTI (i.e., the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and the net FDII (i.e., the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) amounts are included in the numerator (if applicable) and the denominator.

## Schedule L

## Banking and Financial Corporation Members – Allocation of New Jersey Corporation Business Tax Among New Jersey Municipalities

### Managerial Member (1)

Unitary ID Number **NU**

Member FEIN

Member Name

Office Locations in New Jersey		Deposit Balances or Receipts	Percentages
Taxing District	County		
Member's Total Deposit Balances or Receipts.....			
Member's Total Percentages.....			

**Member 2...**

Unitary ID Number **NU**

Member FEIN

Member Name

Office Locations in New Jersey		Deposit Balances or Receipts	Percentages
Taxing District	County		
Member's Total Deposit Balances or Receipts.....			
Member's Total Percentages.....			

Member Name

(1) Partnership, LLC, or Other Entity Information		(2) Date and State where Organized	(3) Percentage of Ownership	(4)		(5) Tax Accounting Method		(6) New Jersey Nexus		(7) Tax Payments Made on Behalf of Member by Partnerships
Name	Federal ID Number			Limited Partner	General Partner	Flow Through	Separate Accounting*	Yes	No	
Enter total of column 7 here and on page 1, line 10 .....										

\*Taxpayers using a separate accounting method must complete Part II.

(1) Nonunitary Partnership's Federal ID Number		(2) Distributive Share of Income/ Loss from Nonunitary Partnership	(3) Partnership's Allocation Factor (see instructions)	(4) Taxpayer's Share of Income Allocated to New Jersey (Multiply Column 2 by Column 3)
1.				
2.				
3.				
4.	Total Column 2. Enter amount here and Schedule A, Part II, line 17(b) .....			
5.	Total Column 4. Enter amount here and Schedule A, Part III, line 3(b) .....			

If additional space is needed, include a rider.

Member Name

(1) Partnership, LLC, or Other Entity Information		(2) Date and State where Organized	(3) Percentage of Ownership	(4)		(5) Tax Accounting Method		(6) New Jersey Nexus		(7) Tax Payments Made on Behalf of Member by Partnerships
Name	Federal ID Number			Limited Partner	General Partner	Flow Through	Separate Accounting*	Yes	No	
Enter total of column 7 here and on page 1, line 10 .....										

\*Taxpayers using a separate accounting method must complete Part II.

(1) Nonunitary Partnership's Federal ID Number		(2) Distributive Share of Income/ Loss from Nonunitary Partnership	(3) Partnership's Allocation Factor (see instructions)	(4) Taxpayer's Share of Income Allocated to New Jersey (Multiply Column 2 by Column 3)	
1.					
2.					
3.					
4.	Total Column 2. Enter amount here and Schedule A, Part II, line 17(b)) .....				
5.	Total Column 4. Enter amount here and Schedule A, Part III, line 3(b) .....				

If additional space is needed, include a rider.

## Schedule PC

## Per Capita Licensed Professional Fee (See instructions)

## Read the Instructions Before Completing This Form

	Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU
Member FEIN	NU		
Member Name			
How many licensed professionals are owners, shareholders, and/or employees from this Professional Corporation (PC) as of the first day of the privilege period?			

\* Include a rider providing the names, addresses, and FID or SSN of the licensed professionals in the PC. If there are more than 2 licensed professionals, complete the remainder of Schedule PC. See instructions for examples of licensed professionals.

1. (a) Enter number of resident and nonresident professionals with physical nexus with New Jersey .....	1a.		
(b) Multiply line 1a by \$150.....	1b.		
2. (a) Enter number of nonresident professionals without physical nexus with New Jersey .....	2a.		
(b) Multiply line 2a by \$150 and multiply the result by the allocation factor of the PC.....	2b.		
3. Total Fee Due – Add line 1b and line 2b.....	3.		
4. Installment Payment – 50% of line 3 .....	4.		
5. Total Fee Due (line 3 plus line 4).....	5.		
6. Less prior year 50% installment payment and credit (if applicable) .....	6.		
7. Balance of Fee Due (line 5 minus line 6). .....	7.		
8. Credit to next year's Professional Corporation Fee (if line 7 is below zero, enter the amount here).....	8.		
9. Total Professional Corporation Fees If the result is zero or above, include the amount here and on page 1, line 7 of Form CBT-100U .....	9.		

# Schedule R Dividend Exclusion (See instructions)

Is this return for a tax year beginning before January 1, 2019?

☐ Yes. Complete Part I and Part II.
 ☐ No. Complete Part III.

	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU
Member FEIN		
Member Name		

## PART I – Dividend Exclusion – For Tax Years Beginning Before January 1, 2019

1. (a) Enter the total dividends and deemed dividends reported and not eliminated on Schedule A .....	1a.	
(b) Previously taxed dividends (from Schedule PT, Section D, line 3) .....	1b.	
(c) Dividends eligible for dividend exclusion – Subtract line 1b from line 1a .....	1c.	
2. (a) Enter amount from 80% or more owned domestic subsidiaries .....	2a.	
(b) Enter amount from 80% or more owned foreign subsidiaries .....	2b.	
(c) Total dividend income from 80% or more owned subsidiaries – Add line 2a and line 2b .....	2c.	
3. Subtract line 2c from line 1c .....	3.	
4. Dividend income from investments where member owns less than 50% of voting stock and less than 50% of all other classes of stock that were not already included as previously taxed dividends (include here and on Schedule A-4, line 12) .....	4.	
5. Subtract line 4 from line 3 .....	5.	
6. Multiply line 5 by 50% (include here and on Schedule A-4, line 13) .....	6.	
7. Enter the amount from Schedule RT, Part III, line 3 (if applicable) .....	7.	
8. DIVIDEND EXCLUSION: Add lines 2c, 6, and 7 (include here and on Schedule A-4, line 14) .....	8.	
9. Member's allocation factor from current Schedule J .....	9.	
10. ALLOCATED DIVIDEND EXCLUSION: Multiply line 8 by line 9 (include here and on Schedule A, Part II, line 27) .....	10.	

## PART II – 80% or More Owned Subsidiary Dividends Subject to Special Allocation – For Tax Years Beginning Before January 1, 2019

### Section A

1. Enter amount from Schedule A, Part II, line 29 (If positive, complete Section B, if negative complete Section C) .....	1.	
2. Special Allocation Factor		
(a) Enter the allocation factor previously reported on the 2014 Schedule J (see instructions) .....	2a.	
(b) Enter the allocation factor previously reported on the 2015 Schedule J (see instructions) .....	2b.	
(c) Enter the allocation factor previously reported on the 2016 Schedule J (see instructions) .....	2c.	
(d) Average allocation (see instructions) .....	2d.	
3. Enter the lesser of the average allocation (line 2d) or 3.5% .....	3.	

### Section B (Complete only if Schedule R, Part II, Section A, line 1 is a positive number)

1. Dividend income from 80% or more owned subsidiaries (from Part I, line 2c) .....	1.	
2. Enter the amount from Schedule RT, Part III, line 3 (if applicable) .....	2.	
3. Subtract line 2 from line 1 (if zero or less, enter zero) .....	3.	
4. Multiply line 3 by 5% (0.05) .....	4.	
5. Special allocation factor (from Schedule R, Part II, Section A, line 3) .....	5.	
6. Allocated dividends – Multiply line 4 by line 5 .....	6.	
7. Enter the amount from Schedule RT, Part I, line 2, if applicable .....	7.	
8. Subtract line 7 from line 6 (include here and on Schedule A, Part II, line 30 ONLY if greater than zero) .....	8.	

	Managerial Member (1)	Member 2...
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**Section C (Complete only if Schedule R, Part II, Section A, line 1 is a negative number)**

1. Dividend income from 80% or more owned subsidiaries (from Part I, line 2c)...	1.		
2. Enter amount from Schedule RT, Part III, line 3, if applicable .....	2.		
3. Subtract line 2 from line 1 (if zero or less, enter zero) .....	3.		
4. Multiply line 3 by 5% (0.05) .....	4.		
5. Enter member's allocation factor from current Schedule J.....	5.		
6. Multiply line 4 by line 5 .....	6.		
7. Enter amount from Schedule R, Part I, line 10.....	7.		
8. Enter amount from Schedule A, Part II, line 26 (if zero or less, enter zero) .....	8.		
9. Subtract line 8 from line 7 (if zero or less, enter zero) .....	9.		
10. Subtract line 9 from line 6 (if zero or less, enter zero) .....	10.		
11. Special allocation factor – Enter amount from Schedule R, Part II, Section A, line 3.....	11.		
12. Multiply line 10 by line 11.....	12.		
13. Allocated dividends – divide line 12 by line 5 .....	13.		
14. Enter the amount from Schedule RT, Part I, line 2, if applicable .....	14.		
15. Subtract line 14 from line 13 (include here and on Schedule A, Part II, line 30 ONLY if greater than zero) .....	15.		

**PART III – Dividend Exclusion – For Tax Years Beginning On and After January 1, 2019.**

1. (a) Enter the total dividends and deemed dividends reported and not eliminated on Schedule A .....	1a.		
(b) Previously taxed dividends – Enter amount from Schedule PT, Section D, line 3.....	1b.		
2. Dividends eligible for dividend exclusion – Subtract line 1b from line 1a.....	2.		
3. (a) Enter amount from 80% or more owned domestic subsidiaries.....	3a.		
(b) Enter amount from 80% or more owned foreign subsidiaries .....	3b.		
(c) Total dividend income from 80% or more owned subsidiaries – Add line 3a and line 3b.....	3c.		
4. Multiply line 3c by .95.....	4.		
5. Subtract line 3c from line 2.....	5.		
6. Dividend income from investments where member owns less than 50% of voting stock and less than 50% of all other classes of stock that were not already excluded as previously taxed dividends (include here and on Schedule A-4, line 12).....	6.		
7. Subtract line 6 from line 5.....	7.		
8. Multiply line 7 by 50% (include here and on Schedule A-4, line 13).....	8.		
9. Enter the amount from Schedule RT, Part III, line 3 (if applicable).....	9.		
10. DIVIDEND EXCLUSION: Add lines 4, 8, and 9 (include here and on Schedule A-4, line 14).....	10.		
11. Member's allocation factor from current Schedule J.....	11.		
12. ALLOCATED DIVIDEND EXCLUSION: Multiply line 10 by line 11 (include here and on Schedule A, Part II, line 27) .....	12.		



## Schedule S

## Depreciation and Safe Harbor Leasing

		Managerial Member (1)	Member 2...
Unitary ID Number		<b>NU</b>	<b>NU</b>
Member FEIN			
Member Name			
1. IRC § 179 Deduction .....	1.		
2. Special Depreciation Allowance – for qualified property placed in service during the tax year .....	2.		
3. MACRS.....	3.		
4. ACRS.....	4.		
5. Other Depreciation .....	5.		
6. Listed Property .....	6.		
7. Total depreciation claimed in arriving at Schedule A, Part II, line 1c .....	7.		
<b>Include Federal Form 4562 and Federal Depreciation Worksheet</b>			
Modification at Schedule A, Part II, line 9 or line 12 – Depreciation and Certain Safe Harbor Lease Transactions			
<b>Additions</b>			
8. Amounts from lines 3, 4, 5, and 6 above.....	8.		
9. Special Depreciation Allowance from line 2 above.....	9.		
10. Distributive share of the special depreciation allowance from a partnership.....	10.		
11. Distributive share of ACRS, MACRS, and other depreciation from a partnership.....	11.		
12. Deductions on federal return resulting from an election made pursuant to IRC § 168(f)8 exclusive of elections made with respect to mass commuting vehicles			
(a) Interest .....	12a.		
(b) Rent.....	12b.		
(c) Amortization of Transactional Costs.....	12c.		
(d) Other Deductions .....	12d.		
13. IRC § 179 depreciation in excess of New Jersey allowable deduction .....	13.		
14. Other additions (include an explanation/reconciliation).....	14.		
15. Total lines 8 through 14 .....	15.		
<b>Deductions</b>			
16. New Jersey depreciation (see instruction).....	16.		
17. Recomputed depreciation attributable to distributive share of recovery property from a partnership .....	17.		
18. Any income included in the return with respect to property solely as a result of an IRC § 168(f)(s) election.....	18.		
19. The lessee/user should enter the amount of depreciation that would have been allowable under the Internal Revenue Code on December 31, 1980, had there been no safe harbor lease election .....	19.		
20. Excess of accumulated ACRS, MACRS, or bonus depreciation over accumulated New Jersey depreciation on physical disposal of recovery property (include computations) .....	20.		
21. Other deductions (include an explanation/reconciliation).....	21.		
22. Total lines 16 through 21 .....	22.		
23. <b>ADJUSTMENT</b> – Subtract line 22 from line 15 (If line 23 is positive, enter at Schedule A, Part II, line 9. If line 23 is negative, enter as a positive number at Schedule A, Part II, line 12).....	23.		

## Form 500U

**Computation of Prior Net Operating Loss Conversion Carryover (PNOL) and Post Allocation Net Operating Loss (NOL) Deductions**

	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU
Member FEIN		
Member Name		

**Section A – Computation of Prior Net Operating Losses (PNOL) Deduction** from periods ending PRIOR to July 31, 2019

Complete the section only if the Allocated Entire Net Income/(Loss) from Schedule A, Part II, line 22, column (a) is positive (income).

1. Prior Net Operating Loss Conversion Carryover (PNOL) – Enter the amount from Form 500U-P, Part II, line 21 .....	1.		
2. Enter the portion of line 1 previously deducted (see instructions) .....	2.		
3. Enter the portion of line 1 that expired.....	3.		
4. Enter the portion of line 1 that is used on current period Schedule X .....	4.		
5. Enter any discharge of indebtedness excluded from federal taxable income in the current tax period pursuant to subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC § 108* .....	5.		
6. PNOL available in the current tax year – Subtract lines 2, 3, 4, and 5 from line 1 (if zero or less, enter zero).....	6.		
7. Enter the member's allocated entire net income from Schedule A, Part II, line 22 (if zero or less, enter zero) .....	7.		
8. <b>Current tax year's PNOL deduction</b> – Enter the lesser of line 6 or line 7 here and on Schedule A, Part II, line 23 .....	8.		

\* If the allocated discharge of indebtedness exceeds the amount of PNOL that is available and the member has post allocation net operating loss carryover in Form 500U Section B, carry the remaining balance to line 6 of Section B.

**Section B – Post Allocation Net Operating Losses (NOLs) For Tax Years Ending ON AND AFTER July 31, 2019**

1. Post Allocation Net Operating Loss Carryover – Enter the amount from Form 500U-PA, line 21 .....	1.		
2. Enter the portion of line 1 previously deducted .....	2.		
3. Enter the portion of line 1 that expired (after 20 privilege periods) .....	3.		
4. Enter the portion of line 1 that is used on current period Schedule X (see instructions) .....	4.		
5. Enter any discharge of indebtedness excluded from federal taxable income in the current tax period pursuant to subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC § 108* .....	5.		
6. Post Allocation NOL Carryover Subtotal – Subtract lines 2, 3, 4, and 5 from line 1 (if zero or less, enter zero).....	6.		
7. Portion of line 1 that was shared – Enter amount from Form 500U-S, Section A, line 4 (see instructions).....	7.		
8. Amount of NOL received from other taxable member – Enter amount from Form 500U-S, Section B, line 4 (see instruction) .....	8.		
9. Post Allocation Net Operating Loss available – Net lines 6, 7, and 8.....	9.		
10. Enter the member's allocated entire net income from Schedule A, Part II, line 24 (if zero or less, enter zero) .....	10.		
11. <b>Current tax year's Post Allocation NOL deduction</b> – Enter the lesser of line 9 or line 10 here and on Schedule A, Part II, line 25.....	11.		

 \* If the member has any allocated discharge of indebtedness that was not used in Form 500U Section A, enter the balance. See TB-94, *General Information on the New Net Operating Loss Regime for Tax Years Ending on and After July 31, 2019*, for more information.

**Note:** When filing a combined return, net operating loss (NOL) carryovers derived from the unitary business of the combined group are available to be shared by other taxable members of the combined group with which the taxpayer is a member and included as part of the same New Jersey combined return in the year the NOL carryover was generated, pursuant to N.J.S.A. 54:10A-4.6.h. The taxpayer cannot share the NOL carryovers with members of the combined group which were not included in the same New Jersey combined return in the year the NOL carryover was originally generated or the member's NOLs from separate activities independent of the group. See TB-95, *Net Operating Losses and Combined Groups*, for more information.

**Form 500U-P Prior Net Operating Loss Carryovers (PNOL) For Tax Periods Ending PRIOR TO July 31, 2019**

	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>
Member FEIN		
Member Name		

**PART I**

Allocation Factor For The Last Tax Period Ending Prior to July 31, 2019 (from Schedule J) from last separate return .....

**PART II**

1. (a) Tax Period Ending .....	1a.		
(b) Prior Net Operating Loss.....	1b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 1b by the allocation factor in Part I.....	1c.		
2. (a) Tax Period Ending .....	2a.		
(b) Prior Net Operating Loss.....	2b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 2b by the allocation factor in Part I.....	2c.		
3. (a) Tax Period Ending .....	3a.		
(b) Prior Net Operating Loss.....	3b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 3b by the allocation factor in Part I.....	3c.		
4. (a) Tax Period Ending .....	4a.		
(b) Prior Net Operating Loss.....	4b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 4b by the allocation factor in Part I.....	4c.		
5. (a) Tax Period Ending .....	5a.		
(b) Prior Net Operating Loss.....	5b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 5b by the allocation factor in Part I.....	5c.		
6. (a) Tax Period Ending .....	6a.		
(b) Prior Net Operating Loss.....	6b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 6b by the allocation factor in Part I.....	6c.		
7. (a) Tax Period Ending .....	7a.		
(b) Prior Net Operating Loss.....	7b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 7b by the allocation factor in Part I.....	7c.		
8. (a) Tax Period Ending .....	8a.		
(b) Prior Net Operating Loss.....	8b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 8b by the allocation factor in Part I.....	8c.		
9. (a) Tax Period Ending .....	9a.		
(b) Prior Net Operating Loss.....	9b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 9b by the allocation factor in Part I.....	9c.		
10. (a) Tax Period Ending .....	10a.		
(b) Prior Net Operating Loss.....	10b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 10b by the allocation factor in Part I.....	10c.		

		Managerial Member (1)	Member 2...
11. (a) Tax Period Ending .....	11a.		
(b) Prior Net Operating Loss.....	11b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 11b by the allocation factor in Part I.....	11c.		
12. (a) Tax Period Ending .....	12a.		
(b) Prior Net Operating Loss.....	12b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 12b by the allocation factor in Part I.....	12c.		
13. (a) Tax Period Ending .....	13a.		
(b) Prior Net Operating Loss.....	13b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 13b by the allocation factor in Part I.....	13c.		
14. (a) Tax Period Ending .....	14a.		
(b) Prior Net Operating Loss.....	14b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 14b by the allocation factor in Part I.....	14c.		
15. (a) Tax Period Ending .....	15a.		
(b) Prior Net Operating Loss.....	15b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 15b by the allocation factor in Part I.....	15c.		
16. (a) Tax Period Ending .....	16a.		
(b) Prior Net Operating Loss.....	16b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 16b by the allocation factor in Part I.....	16c.		
17. (a) Tax Period Ending .....	17a.		
(b) Prior Net Operating Loss.....	17b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 17b by the allocation factor in Part I.....	17c.		
18. (a) Tax Period Ending .....	18a.		
(b) Prior Net Operating Loss.....	18b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 18b by the allocation factor in Part I.....	18c.		
19. (a) Tax Period Ending .....	19a.		
(b) Prior Net Operating Loss.....	19b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 19b by the allocation factor in Part I.....	19c.		
20. (a) Tax Period Ending .....	20a.		
(b) Prior Net Operating Loss.....	20b.		
(c) Converted Prior Net Operating Loss Carryover – Multiply line 20b by the allocation factor in Part I.....	20c.		
21. Total Converted Prior Net Operating Losses .....	21.		

## Form 500U-PA

## Post Allocation Net Operating Loss Carryovers (NOL) For Tax Periods Ending ON AND AFTER July 31, 2019

Taxable members can only share the combined group allocated NOL with other taxable members of the combined group in periods they were both members of the same combined group.

	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU
Member FEIN		
Member Name		

**PART I**

Enter the date on which the member entered the group .....

**PART II**

1. (a) Tax Period Ending .....	1a.		
(b) Post Allocation Net Operating Loss.....	1b.		
2. (a) Tax Year Ending .....	2a.		
(b) Post Allocation Net Operating Loss.....	2b.		
3. (a) Tax Period Ending .....	3a.		
(b) Post Allocation Net Operating Loss.....	3b.		
4. (a) Tax Period Ending .....	4a.		
(b) Post Allocation Net Operating Loss.....	4b.		
5. (a) Tax Period Ending .....	5a.		
(b) Post Allocation Net Operating Loss.....	5b.		
6. (a) Tax Period Ending .....	6a.		
(b) Post Allocation Net Operating Loss.....	6b.		
7. (a) Tax Period Ending .....	7a.		
(b) Post Allocation Net Operating Loss.....	7b.		
8. (a) Tax Period Ending .....	8a.		
(b) Post Allocation Net Operating Loss.....	8b.		
9. (a) Tax Period Ending .....	9a.		
(b) Post Allocation Net Operating Loss.....	9b.		
10. (a) Tax Period Ending .....	10a.		
(b) Post Allocation Net Operating Loss.....	10b.		
11. (a) Tax Period Ending .....	11a.		
(b) Post Allocation Net Operating Loss.....	11b.		
12. (a) Tax Period Ending .....	12a.		
(b) Post Allocation Net Operating Loss.....	12b.		
13. (a) Tax Period Ending .....	13a.		
(b) Post Allocation Net Operating Loss.....	13b.		
14. (a) Tax Period Ending .....	14a.		
(b) Post Allocation Net Operating Loss.....	14b.		
15. (a) Tax Period Ending .....	15a.		
(b) Post Allocation Net Operating Loss.....	15b.		
16. (a) Tax Period Ending .....	16a.		
(b) Post Allocation Net Operating Loss.....	16b.		
17. (a) Tax Period Ending .....	17a.		
(b) Post Allocation Net Operating Loss.....	17b.		
18. (a) Tax Period Ending .....	18a.		
(b) Post Allocation Net Operating Loss.....	18b.		
19. (a) Tax Period Ending .....	19a.		
(b) Post Allocation Net Operating Loss.....	19b.		
20. (a) Tax Period Ending .....	20a.		
(b) Post Allocation Net Operating Loss.....	20b.		
21. Total Post Allocation Net Operating Losses.....	21.		

# Form 500U-S

When filing a combined return, post allocation net operating loss (NOL) carryovers derived from the unitary business of the combined group are available to be shared by other taxable members of the combined group with which the taxpayer is a member and included as part of the same New Jersey combined return in the year the NOL carryover was generated, pursuant to N.J.S.A. 54:10A-4.6.h. The taxpayer cannot share the NOL carryovers with members of the combined group which were not included in the same New Jersey combined return in the year the NOL carryover was originally generated or the member's NOLs from separate activities independent of the group.

	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU
Member FEIN		
Member Name		

## Section A – Calculation of the Allowable Shared NOL Deduction

If a member who earned an NOL carryover is using and sharing their NOL carryover for the current tax year, the member must use their portion before completing this section.

1. Post Allocation Net Operating Loss Carryover available for use – From Form 500U, Section B, line 6.....	1.	
2. Enter the member's Allocated Entire Net Income from Schedule A, Part II, line 24 .....	2.	
3. Post Allocation Net Operating Loss Carryover available for Sharing – Subtract line 2 from line 1 (if zero or less, enter zero).....	3.	
4. Amount of Post Allocation Net Operating Loss Carryover Shared with other Taxable Member(s) (see instructions).....	4.	

## Section B – Calculation of the Allowable NOL Deduction Received from Another Taxable Member

If a member received an NOL carryover from another member and is also using their own NOL carryover for the current tax year, the member must use their own carryover before completing this section.

1. Enter the member's Allocated Entire Net Income from Schedule A, Part II, line 24.....	1.	
2. Post Allocation Net Operating Loss Carryover available for use – From Form 500U, Section B, line 6.....	2.	
3. Allocated Entire Net Income after Post Allocation Net Operating Loss – Subtract line 2 from line 1 (if zero or less, enter zero).....	3.	
4. Amount of Post Allocation Net Operating Loss Carryover Received from other Taxable Member(s) (see instructions).....	4.	

## Section C – Shared/Received NOL Deduction Information

1. Total NOLs shared with other members (itemize on rider) .....	1.	
2. Total NOLs received from other members (itemize on rider).....	2.	



# NEW JERSEY 2019 CBT-100U

General Instructions For  
CORPORATION BUSINESS TAX RETURN  
AND RELATED SCHEDULES

## For Combined Return Filers Only

TO FILE AND PAY THE ANNUAL REPORT ELECTRONICALLY, VISIT THE DIVISION OF  
REVENUE AND ENTERPRISE SERVICES WEBSITE AT: [www.nj.gov/treasury/revenue](http://www.nj.gov/treasury/revenue)



**State of New Jersey**  
DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION

Dear Taxpayer,

Beginning with tax year 2019, the Division will be enforcing the 2016 mandate that all corporations must electronically file all their returns. This includes Forms CBT-100U, CBT-200-T, and CBT-150. Payments must also be made electronically. Electronic filing benefits everyone — taxpayers, practitioners, and State government. Faster refunds, more accurate processing, and greater security of sensitive information are just some of the advantages offered by electronic tax filing systems.

P.L. 2018, c. 48, and P.L. 2018, c. 131, made significant changes to the Corporation Business Tax Act, including the adoption of mandatory combined. A complete list of changes to the New Jersey Corporation Business Tax is detailed in Technical Bulletin [TB-84\(R\)](#), *Changes to the New Jersey Corporation Business Tax*.

I also want to provide a quick synopsis of some of the major changes that may have the biggest impact on 2019 filings.

- **Mandatory Combined Reporting.** New Jersey has adopted mandatory combined filing for combined groups that have common ownership, conduct a unitary business, and have at least one member corporation subject to the Corporation Business Tax (CBT). A list of the included and excluded entity types can be found on page 4. For detailed information, see [TB-86\(R\)](#), *Included and Excluded Business Entities in a Combined Group and the Minimum Tax of a Taxpayer That is a Member of a Combined Group*.

The default filing method is a Water's-Edge basis. The managerial member of a combined group may make an election to have the group file on a World-Wide basis or an Affiliated group basis.

Members included in a Water's-Edge group are: 1) 80/20 property and payroll domestic corporations; 2) 80/20 property and payroll foreign corporations; 3) members that earn more than 20% of their income, directly or indirectly, from intangible property or related service activities that are deductible against the income of other members of the combined group; and 4) all members that have nexus with New Jersey.

The minimum tax for each member with nexus of a combined group is \$2,000.

- **Allocation.** Each taxable member of a combined group must determine its share of the Entire Net Income from the unitary business of the combined group. The unitary Entire Net Income of a combined group is the sum of the Entire Net Incomes of both the domestic and foreign, taxable and nontaxable members of the group. The combined Entire Net Income is then allocated to each taxable member according to its sales allocation factor. The numerator of the allocation factor for each taxable member is the amount of its receipts assignable to New Jersey while a taxable member's denominator is the total combined allocable receipts of the entire combined group. Intercompany transactions between members of a combined group are eliminated from the sales allocation factor.
- **Market Based Sourcing.** Receipts from sales of services will be allocated to New Jersey if the benefit of the service is received in New Jersey.
- **Net Operating Losses.** If the taxpayer has net operating losses from on or before July 31, 2019, those unused unexpired pre-allocation net operating loss carryovers must be converted to prior net operating loss conversion carryovers using the allocation factor from the taxpayer's last tax year prior to the change to post-allocation net operating losses. Losses incurred on and after July 31, 2019, are calculated on a post-allocation basis. See the instructions for Form 500 for more information about the new net operating loss regime, including the order in which the losses must be used as well as what can be shared with other taxable members.
- **Dividend Exclusion.** The dividend received deduction from separate return subsidiaries is a post-allocation deduction.

If you have questions about filing your return, please visit our [website](#).

Sincerely,

John Ficarra  
Acting Director  
Division of Taxation



# CBT-100U

## State of New Jersey

### Division of Taxation

### Corporation Business Tax

## Instructions for Corporation Business Tax Unitary Return (Form CBT-100U – 2019)

### Electronic File Mandate

All Corporation Business Tax returns and payments must be made electronically. This mandate includes all returns, estimated payments, extensions, and vouchers. Visit [www.state.nj.us/treasury/taxation/payments-notices.shtml](http://www.state.nj.us/treasury/taxation/payments-notices.shtml) or check with your software provider to see if they support any or all of these filings.

### Before You Begin

*Read all instructions carefully before completing returns.*

Include a complete copy of the federal Form 1120 (or any other federal corporate return) that was filed with the federal government for (or on behalf of) each member of the combined group, and include all related forms and schedules that were filed as part of the **full and complete** federal return of the member.

### Managerial Member Responsibilities

The managerial member acts as the agent on behalf of the combined group. The managerial member is required to address all tax matters including, but not limited to: filing and amending tax returns, filing extensions, and making estimated tax payments and or any tax liability payment on behalf of its taxable members. The managerial member is also responsible for responding to notices and assessments for its combined group. (N.J.S.A. 54:10A-4.10)

The managerial member of the combined group must register the group in order to file the combined return. Information on managerial member registration is available on the Division's [website](#).

### Personal Liability of Officers and Director

Even though the managerial member is responsible for making payments on behalf of the combined group, each taxable member is jointly and severally liable for the tax due. In addition, any officer or director of any corporation who shall distribute or cause to be distributed any assets in dissolution or liquidation to the stockholders without having first paid all corporation franchise taxes, fees, penalties, and interest imposed on said corporation, in accordance with N.J.S.A. 14A:6-12, N.J.S.A. 54:50-18 and other applicable provisions of law, shall be personally liable for said unpaid taxes, fees, penalties, and interest. Compliance with N.J.S.A. 54:50-13 is also required in the case of certain mergers, consolidations, and dissolutions.

### Distortion of Net Income

The Director is authorized to adjust and redetermine items of gross receipts and expenses as may be necessary to make a fair and reasonable determination of tax payable under the Corporation Business Tax Act. For details regarding the conditions under which this authority may be exercised, refer to regulation N.J.A.C. 18:7-5.10.

### Accounting Method

The return must be completed using the same method of accounting, cash, accrual or other basis, that was used on the federal income tax return. If a federal income tax return was not filed, use the same accounting method that would have been used if a federal return was filed.

### Riders

If space is insufficient, include riders as PDFs in the same form as the original printed sheets. The riders must be numbered and clearly list the schedule(s) and line(s) of each corresponding rider item.

### Federal/State Tax Agreement

The New Jersey Division of Taxation and the Internal Revenue Service participate in a federal/State program for the mutual exchange of tax information to verify the accuracy and consistency of information reported on federal and New Jersey tax returns.

### Mandatory Combined Reporting

For group privilege periods ending on and after July 31, 2019, members that are part of a combined group must file a combined New Jersey return, Form CBT-100U. **Combined returns are mandatory, not elective.**

### Definition

**Combined group** is a group of companies that have common ownership and are engaged in a unitary business, and at least one company is subject to tax under this chapter. It includes all business entities except as provided for under any section of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.). See N.J.S.A. 54:10A-4(z).

**Common ownership** means that more than 50% of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code, 26 U.S.C. s.318. See: N.J.S.A. 54:10A-4(aa). The Division interprets N.J.S.A. 54:10A-4(aa) to mean that all of the ownership rules, including the beneficial and constructive ownership rules of I.R.C. section 318, apply since the definition of common ownership states that the control can be direct or indirect.

**Managerial member** is the common parent corporation if that corporation is a taxable member. If the common parent corporation is not a taxable member, the group must select a taxable member to be its managerial member or, at the discretion of the Director or upon failure of the combined group to select its managerial member, the Director will designate a taxable member of the combined group as managerial member.

**Member** is a business entity that is a part of a combined group, unless otherwise excluded. See “Corporations Required to File” for more information.

**Taxable member** is a member that is subject to tax pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.). See [N.J.S.A. 54:10A-4\(ff\)](#).

**Nontaxable member** is a member that is not subject to tax. See [N.J.S.A. 54:10A-4\(ee\)](#).

**Unitary business** is a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts. A unitary business shall be construed to the broadest extent permitted under the Constitution of the United States. See [N.J.S.A. 54:10A-4\(gg\)](#) and [TB-93](#), *The Unitary Business Principle and Combined Returns*, for more information and the full definition of a unitary business for the purposes of combined reporting.

## Combined Return Filing Methods

A combined return is a filing method for a group of business entities in a unitary business. Determining the combined group members involves imposing certain statutory limitations, which affect the treatment of income, allocation factors, and tax attributes. This decision is commonly referred to as “world-wide vs. water’s-edge.” As an alternative, there is an option to file the New Jersey combined return as an “affiliated group” as defined by statute. Information is available in [TB-89\(R\)](#), *Combined Group Filing Methods*.

**Mandatory Default Water’s-Edge Group Basis** returns include only entities with significant business operations within the United States, with several inclusions and exceptions. **This is the mandatory default filing method. Combined reporting is not elective.** See [N.J.S.A. 54:10A-4.8](#); [N.J.S.A. 54:10A-4.10](#); [N.J.S.A. 54:10A-4.11](#); and [TB-89\(R\)](#) for more information on the entities that are statutorily required to be included.

**Elective World-Wide Group Election.** When making a world-wide group election, the combined group must include all of the income, attributes, and allocation factors of all of the worldwide business entities that are members of the unitary combined group, regardless of whether such members filed a federal tax return or whether such members filed a federal consolidated return(s).

**Elective Affiliated Group Election** For the purposes of the affiliated group election, “affiliated group” is defined pursuant [N.J.S.A. 54:10A-4\(x\)](#).

Only business entities that are treated as U.S. domestic corporations can be included in the affiliated group return. Corporations incorporated under the laws of a foreign nation that are treated as a U.S. domestic corporation for federal purposes under the provisions of the Internal Revenue Code can also be included.

A sole U.S. domestic corporation in a world-wide combined group cannot make the affiliated group election on its own. In this situation, the combined group must file a water’s-edge or world-wide group combined return.

An affiliated group election by the U.S. domestic affiliate corporation does not relieve the non-U.S. affiliate corporations of their New Jersey Corporation Business Tax liability. Thus, any non-U.S. corporations organized outside of the United States that are not treated as U.S. domestic corporations must also file a combined return separate from the U.S. domestic affiliate combined return if the non-U.S. corporations are in a unitary business, at least one of the non-U.S. corporations has nexus with New Jersey, and the non-U.S. corporations meet one of the inclusion categories in a mandatory water’s-edge group combined return with the other non-U.S. corporations. The non-U.S. corporations that have nexus with New Jersey that are not in a unitary business relationship with each other must file separate returns.

## Allocation Methods for Combined Returns

The two methods available to allocate the income of a combined group are “Joyce” and “Finnigan.” These methods are differentiated by their determination of the allocation factor. Under either method, the allocation factor attributes included in the denominator are the same. The denominator includes all of the combined group’s total factors, regardless of nexus. See Schedule J instructions for more information.

## Nexus

Each member that has nexus with New Jersey is subject to the \$2,000 minimum tax. A member of a combined group has nexus if the member meets the standards of [N.J.S.A. 54:10A-2](#) as either part of the unitary business of the combined group or independent of the combined group. If a member does not have nexus with New Jersey, the member is not subject to the minimum tax. If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection.

**Note:** A taxpayer that is not in a unitary business relationship with a combined group must file a separate return if the taxpayer has nexus with New Jersey and the managerial member of the combined return does not make the election to file the affiliated group combined return.

## Corporations Required to File

If one member of a combined group has nexus, the combined group must file a New Jersey combined return.

In general, every corporation existing under the laws of the State of New Jersey is required to file a Corporation Business Tax Return.

A foreign corporation has nexus if that foreign corporation:

1. Holds a general certificate of authority to do business in this State issued by the Secretary of State; or
2. Holds a certificate, license, or other authorization issued by any other department or agency of this State, authorizing the company to engage in corporate activity within this State; or
3. Derives income from this State; or
4. Employs or owns capital in this State; or
5. Employs or owns property in this State; or
6. Maintains an office in this State

Foreign corporations see [N.J.A.C. 18:7-1.6](#); [N.J.A.C. 18:7-1.8](#); [N.J.A.C. 18:7-1.9](#); [N.J.A.C. 18:7-1.10](#); [N.J.A.C. 18:7-1.11](#);

N.J.A.C. 18:7-1.14 and TB-79(R), *Nexus for Corporation Business Tax*, for more information on nexus.

A foreign corporation that is a partner of a New Jersey partnership is deemed subject to tax in the State and must file a return

**Corporations Claiming P.L. 86-272.** Foreign corporations that meet the filing requirements and whose income is immune from tax pursuant to Public Law 86-272, must obtain and complete Schedule N, Nexus – Immune Activity Declaration, and all of the schedules from the CBT-100U. In addition, the member must include a copy of the Nexus Questionnaire. P.L. 86-272 filers are not subject to the surtax imposed by N.J.S.A. 54:10A-5.41.

**Note:** If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, **no** member that has nexus with New Jersey may claim P.L. 86-272 protection.

**New Corporations.** Every New Jersey corporation acquires a taxable status beginning 1) on the date of its incorporation, or 2) on the first day of the month following its incorporation if so stated in its certificate of incorporation. Every corporation that incorporates, qualifies or otherwise acquires a taxable status in New Jersey must file a Corporation Business Tax return.

**S Corporations.** Federal S corporations that have **not** elected and been authorized to be New Jersey S corporations must complete this return as though no election had been made under I.R.C. § 1362. A copy of Form 1120S as filed must be submitted. Lines 1 through 28 in Part I, Schedule A of the CBT-100U must be completed.

**New Jersey S Corporations.** New Jersey S corporations that **elect** to be included as a member on the combined return will be taxed in the same manner as the other members of the combined group. A copy of Form 1120S as filed must be submitted. Lines 1 through 28 in Part I, Schedule A of the CBT-100U must be completed.

**Domestic International Sales Corporations (DISC).** A DISC must complete this return as though no election had been made under Sections 992-999 of the Internal Revenue Code. A DISC must complete all applicable schedules on the return.

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**Combinable Captive Insurance Companies.** Combinable captive insurance companies are no longer exempt from the Corporation Business Tax.

**Note:** A regular captive insurance company that does not meet the definition of a *combinable captive insurance company* in N.J.S.A. 54:10A-4(y) is still exempt from the Corporation Business Tax.

**Foreign Sales Corporations (FSC).** An FSC must complete this return as though no election had been made under Sections 922-927 of the Internal Revenue Code. FSCs must complete all applicable schedules on the return. Under Section 5, P.L. 106-519, no corporation may elect to be an FSC after September 30, 2000.

**Financial Business Corporations.** Corporations that qualify as financial businesses, those that derive 75% of their gross income from the financial activities enumerated at N.J.A.C. 18:7-1.16(a)1 through (a)7, must use Schedule A-7 as a worksheet and keep with their records. It does not need to be included with the return. Schedule A-7 is available on the Division's [website](#).

**Banking Corporations.** A banking corporation filing as part of a combined group that uses a fiscal year basis must align its privilege period with the combined group. For more information, see TB-91, *Banking Corporations and Combined Returns*.

**Professional Corporations.** Corporations formed under N.J.S.A. 14A:17-1 et seq. or any similar laws of a possession or territory of the U.S., a state, or political subdivision thereof, must complete Schedule PC. Examples of licensed professionals include certified public accountants, architects, optometrists, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, veterinarians, and attorneys.

**Inactive Corporations.** Inactive corporations that, during the period covered by the return, did not conduct any business, did not have any income, receipts or expenses, and did not own any assets, must complete Schedule I – Certificate of Inactivity, the Members and Affiliates Schedule, the Annual General Questionnaire, and Schedules A, A-2, A-3, and A-4. Payment for the related minimum tax liability and the installment payment (if applicable) must be submitted electronically.

**Portion of a Company's Operations That are Nonunitary With This Combined Group.** There are instances when a portion of a member's business operations are independent of the unitary business activity of the combined group. Only the income, attributes, and allocation factors related to the portion of a company's operations that are part of a unitary business of the combined group are included in the calculation of the combined group's entire net income and allocation factor. The remaining portion of a member's business operations may be subject to tax separately from the combined group if such member individually conducts business in New Jersey or with another combined group (if it is engaged in a unitary business with that combined group that also conducts business in New Jersey and files a CBT-100U).

**Note:** Schedule X will be used to calculate the New Jersey taxable net income of that separate activity income that must be reported in Part III of Schedule A of the CBT-100U. See Schedule X instructions for more information.

A combined group member with business operations that are independent of the unitary business activity of the combined group must report such income on Schedule X. Schedule X must be submitted with the combined return.

See "Additional Forms and Instructions" for details on obtaining Schedule X.

**Former Member of Combined Group.** A taxpayer that was a member of a combined group filing a New Jersey combined return for part of the group privilege period and subsequently departs the combined group to file on a separate entity basis must report the income for months subsequent to departing the combined group on a separate return (Form CBT-100) unless the member joined a second combined group that files a New Jersey combined return. The taxpayer filing a separate return would not report the income on CBT-100 for the months the member was part of the combined group. If determining what amount of income is attributable to the portions of the twelve month period are for the periods before and after departing a combined group, the taxpayer must prorate their income/losses and receipts.



## Included and Excluded Entity Types

Not all business entities are included in a combined group. The lists below provide information on which entities are or are not included. Additional information is available in [TB-86\(R\)](#), *Included and Excluded Business Entities in a Combined Group and the Minimum Tax of a Taxpayer that is a Member of a Combined Group*.

### Included Entity Types

- U.S. Corporations
- Foreign Corporations
- Casino Licensees
- Banking Corporations
- Financial Corporations
- Limited Liability Companies (unless treated as partnerships or disregarded entities for federal purposes)
- Foreign Limited Liability Companies (unless treated as partnerships or disregarded entities for federal purposes)
- Federal S Corporations (that have not made a New Jersey S Corporation election)
- New Jersey S Corporations (that have elected to be included in the combined group)
- Combinable Captive Insurance Companies
- Qualified Subchapter S Subsidiaries (that have not made a New Jersey S Corporation election)
- New Jersey Qualified Subchapter S Subsidiaries (that elected to be included in the combined group)
- Professional Corporations
- Any other business entities however and/or wherever incorporated or formed that are treated as corporations for federal purposes except when excluded by statute or as described below

### Casino Licensees

Pursuant to the Casino Control Act, any business conducted by an individual, partnership, or corporation or any other entity, or any combination thereof, holding a license in New Jersey is required to file a consolidated return. A consolidated return is similar to an affiliated group combined return. See [N.J.S.A. 5:12-148](#). All Casino licensees are taxable members. The affiliated businesses that are unitary with the casino licensees must also be included when completing CBT-100U.

### Disregarded Entities

A business entity that is treated as a disregarded entity for federal income tax purposes is also treated as a disregarded entity for New Jersey Corporation Business Tax purposes pursuant to [N.J.S.A. 42:2C-92](#). Disregarded entities also include legal partnerships that are disregarded entities for federal purposes. A disregarded entity is not itself a member of a combined group. However, the tax attributes of a disregarded entity are reported by a member of a combined group when the member owns the disregarded entity. The attributes of a disregarded entity owned by a member of a combined group are included in the income and allocation factor of that member as well as the combined group. In making a determination of which members are included in a water's-edge combined group pursuant to [N.J.S.A. 54:10A-4.11](#), the disregarded entity's attributes shall be used by the member that owns the disregarded entity. A disregarded entity is **not** subject to the \$2,000 minimum tax as a member of a combined group because a disregarded entity is not a member of the combined group. However, if a disregarded entity is part of a unitary business of a combined group, the owner of the disregarded entity

will be a member of the combined group and must be included as part of the combined group except as otherwise excluded.

### Entities that File as Partnerships for Federal Purposes

Partnerships, limited partnerships, or limited liability companies treated as partnerships for federal purposes are business entities that can be unitary with a combined group. However, these entities are not a member of a combined group for New Jersey Corporation Business Tax purposes. Their income flows through to the corporate partners that are members of the combined group. Partnerships, limited partnerships, and limited liability companies that are treated as partnerships for federal purposes are **not** subject to the \$2,000 minimum tax as a member of a combined group because they are not a member of the combined group. However, Form NJ-CBT-1065 must still be filed.

### Excluded Entity Types

- New Jersey S Corporations that do not elect inclusion in the combined group
- New Jersey Qualified Subchapter S Subsidiaries that do not elect inclusion in the combined group
- Captive Insurance Companies that do not meet the definition of a Combinable Captive Insurance Company as defined in [N.J.S.A. 54:10A-4\(y\)](#)
- All other insurance companies that are not Combinable Captive Insurance Companies
- Corporations exempt from the Corporation Business Tax under [N.J.S.A. 54:10A-3](#)
- Corporations that are regulated, in whole or in part, by the Federal Energy Regulatory Commission, the New Jersey Board of Public Utilities, or similar regulatory body of another state, with respect to rates charged to customers for electric or gas services and water and wastewater services
- Real Estate Investment Trusts
- Regulated Investment Companies
- Investment Companies

**A taxpayer that has nexus with New Jersey that is excluded from the New Jersey combined return must file a separate return.**

## When to File

### 2019 Accounting Periods and Due Dates

The 2019 Corporation Business Tax return should only be used for accounting periods ending on and after July 31, 2019, through June 30, 2020. The due dates for all 2019 Corporation Business Tax returns and payments are reported on the following schedule. If the due date falls on a weekend or a legal holiday, the return and payment are due on the following business day.

If accounting period ends on:	July 31, 2019	Aug. 31, 2019	Sept. 30, 2019	Oct. 31, 2019	Nov. 30, 2019	Dec. 31, 2019
Due date for filing is	Nov. 15, 2019	Dec. 15, 2019	Jan. 15, 2020	Feb. 15, 2020	Mar. 15, 2020	Apr. 15, 2020
If accounting period ends on:	Jan. 31, 2020	Feb. 28, 2020	Mar. 31, 2020	Apr. 30, 2020	May 31, 2020	June 30, 2020
Due date for filing is	May 15, 2020	June 15, 2020	July 15, 2020	Aug. 15, 2020	Sept. 15, 2020	Oct. 15, 2020

**Note:** The start of the 2019 filing season was delayed due to clarifying language changes to the Corporation Business

Tax statutes. Information on affected due dates is available on the Division of Taxation's [website](#).

A New Jersey combined return must be filed for the accounting period (calendar or fiscal, as applicable) of the managerial member of the combined group, or part of the period, beginning on the date the combined group acquired a taxable status in New Jersey regardless of whether it had any assets or conducted any business activities. All accounting periods must end on the last day of the month, except that the managerial member may use the same 52-53 week accounting year that is used for federal income tax purposes.

The combined group's reporting period for the New Jersey combined return is the same tax period that the managerial member uses for federal purposes. Generally, this is the same privilege period as the federal consolidated return since in most instances the managerial member is one of the members included in the federal consolidated return. Any members that operate under a different return period must file a short-period return to align their privilege periods with the group's privilege period. This is done either on Form CBT-100 (separate filers) or Form BFC-1-F (Banking Corporations). Affected members must also fiscalize or annualize their income and attributes reported as part of the combined group. See [N.J.S.A. 54:10A-4.10.c](#) and [N.J.S.A. 54:10A-4.8.b](#).

## Extension of Time to File

The Tentative Return and Application for Extension of Time to File, Form CBT-200-T, must be filed and paid **electronically**. You can also check with your software provider to see if the software you use supports filing of extensions

Combined groups filing Form CBT-100U will automatically receive a six-month extension only if they have paid at least 90% of the tax liability and timely filed Form CBT-200-T.

An extension of time is granted only to file the New Jersey combined return. There is no extension of time to pay the tax due. The Division will notify you only if we deny your extension request, but not until after you actually file your return. Penalties and interest are imposed whenever tax is paid after the original due date.

**Note:** An extension payment must include any applicable professional Corporation (PC) fees and/or installment payments. See the online application for more information.

## How to Pay

The managerial member acts as the agent on behalf of the combined group to make all payments.

To make payments electronically, go to the Division of Taxation's website at [www.nj.gov/treasury/taxation](http://www.nj.gov/treasury/taxation) and select "Make a Payment." Managerial members who do not have access to the internet can call the Division's Customer Service Center at 609-292-6400.

If registered, payments can also be made by Electronic Funds Transfer (EFT). For information or to enroll in the program, visit the Division of Revenue and Enterprise Services' website at [www.nj.gov/treasury/revenue/eft1.shtml](http://www.nj.gov/treasury/revenue/eft1.shtml), call 609-984-9830, fax 609-292-1777, or write to NJ Division of Revenue and Enterprise Services, EFT Section, PO Box 191, Trenton, NJ 08646-0191.

**Note:** Managerial members that are required to remit payments by EFT can satisfy the EFT requirement by making e-check or credit card payments.

## Penalties and Interest

For 2019 **only**, no interest or penalties are due on an underpayment that results from the switch to mandatory combined reporting. Any overpayment by a member of the combined group from the prior privilege period will be credited as a payment of the tax owed by the combined group toward future estimated payments by the combined group. See [N.J.S.A. 54:10A-4.12](#).

**Each taxable member is jointly and severally liable for any penalties and interest assessed.** See [N.J.S.A. 54:10A-4.8](#) and [N.J.S.A. 54:10A-4.10](#).

**Insufficiency Penalty** . If the amount paid with the Tentative Return, Form CBT-200-T, is less than 90% of the tax liability computed on Form CBT-100U, or in the case of a combined group with a preceding return covering a full 12-month period that is less than the amount of the tax computed at the rates applicable to the current accounting year but on the basis of the facts shown and the law applicable to the preceding accounting year, the combined group may be liable for a penalty of 5% per month or fraction of a month not to exceed 25% of the amount of underpayment from the original due date to the date of actual payment.

**Late Filing Penalty.** 5% per month or fraction of a month on the amount of underpayment not to exceed 25% of that underpayment, except if no return has been filed within 30 days of the date on which the first notice of delinquency in filing the return was sent, the penalty shall accrue at 5% per month or fraction of a month of the total tax liability not to exceed 25% of such tax liability. Also, a penalty of \$100 for each month the return is delinquent may be imposed.

**Late Payment Penalty.** 5% of the balance of tax due paid after the due date for filing the return may be imposed

**Interest.** 3% above the average predominant prime rate for every month or part of a month the tax is unpaid, compounded annually. At the end of each calendar year, any tax, penalties, and interest remaining due will become part of the balance on which interest will be charged. The interest rates assessed by the Division of Taxation are published [online](#).

**Note:** The average predominant prime rate is the rate as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses on December 1st of the calendar year immediately preceding the calendar year in which payment was due or as redetermined by the Director in accordance with [N.J.S.A. 54:48-2](#).

**Collection Fees.** In addition, if the tax bill is sent to our collection agency, a referral cost recovery fee of 10.7% of any tax, penalty, and interest due will be added to the liability in accordance with [N.J.S.A. 54:49-12.3](#). If a certificate of debt is issued for the outstanding liability, a fee for the cost of collection of the tax may also be imposed.

**Underpayment of Estimated Tax.** To calculate the amount of interest for the underpayment of estimated tax, complete either Form CBT-160-A or Form CBT-160-B. If the combined group qualifies for any of the exceptions to the imposition of interest for any of the installment payments, Part II must be completed and submitted with the return as evidence of such exception.

**Civil Fraud.** If any part of an assessment is due to civil fraud, there shall be added to the tax an amount equal to 50% of the assessment in accordance with N.J.S.A. 54:49-9.1.

**Transacting Business Without a Certificate of Authority.** In addition to any other liabilities imposed by law, a foreign corporation that transacts business in this State without a certificate of authority shall forfeit to the State a penalty of not less than \$200, nor more than \$1,000 for each calendar year, not more than 5 years prior thereto, in which it shall have transacted business in this State without a certificate of authority. N.J.S.A. 14A:13-11(3).

## Amended Returns

All CBT-100U amended returns must be submitted electronically.

**Final Determination of Net Income by Federal Government.** Any change or correction made by the Internal Revenue Service to the federal taxable income must be reported to the Division within 90 days.

## Page 1 Line-by-Line Instructions

Enter the unitary ID number, unitary group name, and complete mailing address in the space provided on the return. Also provide the managerial member's FEIN, name, complete mailing address, and contact information.

Check the box if this is an amended return.

Check the box to indicate which filing method is being used. A New Jersey combined return will default to a water's-edge group, unless the managerial member makes a world-wide or affiliated group election (N.J.S.A. 54:10A-4.11). The election must be made on a timely filed original combined return in the privilege period it becomes effective. The world-wide group election and affiliated group election cannot be made at the same time, and the managerial member can only choose one election. The elections are binding for the privilege period of the election plus five subsequent privilege periods. If filing on an affiliated group on a world-wide basis, indicate the number of years into the election period of the combined group.

### Line 1 – Total Tax of Combined Group

Enter amount from line 5, column (a) of Schedule A, Part III.

### Line 2 – Total Tax Credits Used by Combined Group

Enter amount from line 6, column (a) of Schedule A, Part III.

### Line 3 – Total Combined Group CBT Tax Liability

Enter amount from line 7, column (a) of Schedule A, Part III.

### Line 4 – Total Surtax of Combined Group Members

Enter amount from line 8b, column (a) of Schedule A, Part III.

### Line 5 – Total Combined Group Tax Due

Enter amount from line 9, column (a) of Schedule A, Part III.

### Line 7 – Professional Corporation Fees

Enter amount from Schedule PC, line 9, column (a).

### Line 8 – Total Tax and Professional Corporation Fees

Enter the total of lines 5 and 7.

### Line 9 – Payments and Credits

Enter amount from Schedule E, line 4.

### Line 10 – Payments Made by Partnerships

Include the total payments made by partnerships on behalf of the members. Total the amounts reported in column 7 of Schedule P-1, Part I for all members. Submit copies of the NJK-1s or K-1s (as applicable) reflecting payments made by each partnership entity.

### Line 11a – Total Refundable Tax Credits

Add the amounts from Schedule A-3, Part II, line 5 and Schedule A-3, Part II, line 6 and enter the total.

### Line 11b – Total Refundable Tax Credits Refunded to Members

Enter the amount from Schedule A-3, Part II, line 5. This amount will be refunded to the managerial member, which is responsible for distributing to the appropriate group members.

### Line 11c – Total Refundable Tax Credits Applied to Group

Enter the amount from Schedule A-3, Part II, line 6.

### Line 12 – Total Payments and Credits

Add lines 9, 10, and 11c and enter the result.

### Amount Due or Overpayment – Lines 13–18

Compare lines 12 and 8.

- If line 12 is less than line 8, you have a balance due. Complete lines 13, 14, and 15.
- If line 12 is more than line 8, you have an overpayment. Complete line 14 (if applicable) and lines 16 through 18.

### Line 13 – Balance of Tax Due

Subtract line 12 from 8 and enter the difference.

### Line 14 – Penalty and Interest Due

Include any penalties and interest. See "Penalties and Interest" for information.

**Note:** If the group has an overpayment or no tax liability and has calculated penalties and interest due, such amounts must be added to the balance due line or subtracted from the overpayment.

### Line 15 – Total Balance Due

Enter the total of line 13 and line 14.

### Line 16 – Amount Overpaid

Subtract the sum of line 8 and line 14 (if applicable) from the amount on line 12.

### Line 17 – Refund

Enter the amount of the overpayment to be refunded. This amount will be refunded to the managerial member.

### Line 18 – Credit to 2020

Enter the amount of the overpayment that you want to credit to the 2020 combined group tax liability.

## Signature

Each return must be signed by an officer of the managerial member who is authorized to attest to the truth of the statements contained therein. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of all of the members of the combined group.



**Tax preparers** who fail to sign the return or provide their assigned tax identification number shall be liable for a \$25 penalty for each such failure. If the tax preparer is not self-employed, the name of the tax preparer's employer and the employer's tax identification number should also be provided. In the case of a corporation in liquidation or in the hands of a receiver or trustee, certification shall be made by the person responsible for the conduct of the affairs of such corporation.

## Members and Affiliates Schedule

Enter the requested information for each member of the combined group.

## Annual General Questionnaire

Answer all questions on this schedule for each member. If necessary, include a rider detailing the requested information.

## Schedule A

The managerial member must complete this schedule for each member.

### Intercompany Eliminations

Enter member's amounts in the member's column. In column (c), enter the total amounts of all members prior to intercompany eliminations and adjustments. In column (b), enter the intercompany eliminations and adjustments. In column (a) enter the total amounts for the combined group after intercompany eliminations and adjustments.

### Income of the Combined Group

The relevant portions of N.J.S.A. 54:10A-4.6 require the income of the members derived from the unitary business of the combined group to include what was reported for federal purposes (federal taxable income before federal net operating losses and federal special deductions) modified for New Jersey modifications (additions and subtractions) required by the Corporation Business Tax Act. See N.J.S.A. 54:10A-4(k). For a member of the combined group that is a non-U.S. corporation N.J.S.A. 54:10A-4.6.b requires all of the income be included even if the entity did not file a federal return. In instances where the other members of the combined group filed a federal form 5471 with the IRS reporting the non-U.S. members income, the form 5471 may be used if the non-U.S. member did not file Form 120-F. However, the copy of the Form 5471 that was filed with the federal government must be included with the combined return. The member's income and tax attribute data from Form 5471 must be entered in Part I of Schedule A in that member's column as though the taxpayer filed a federal return, and in Part II, line 2, enter the amount of income that would not be in federal taxable income. If a non-U.S. corporation did not file federal Form 120-F or was not reported on federal Form 5471, it must complete an 1120-F reporting its income and tax attributes as though the entity filed a federal return. For New Jersey purposes, on Schedule A, in Part I and Part II, the non-U.S. corporation will make the additions and deductions. All data must match the federal return that was filed or that would have been filed.

### Federal Consolidated Return Principles

Combined returns are not necessarily the same as a consolidated return, although they are similar. The principles set forth in the Treasury regulations promulgated under Section 1502 of the Internal Revenue Code **generally** apply to the extent consistent

with the New Jersey Corporation Business Tax Act and the unitary business principle to a combined group filing a New Jersey combined return. **However**, for purposes of the New Jersey Corporation Business Tax Act, the starting point for taxable income is entire net income before net operating losses and special deductions with several modifications for additions and deductions. See N.J.S.A. 54:10A-4.6.e; N.J.S.A. 54:10A-4(k); N.J.S.A. 54:10A-4(bb); and *MCI Communication Services, Inc. v. Director Division of Taxation*, Docket No. 013905-2010, (Tax Court of New Jersey 2015); affirmed 2018 N.J. Super. Unpub. LEXIS 1401; cert. denied 195 A.3d 528 (October 18, 2018).

For the purposes of applying I.R.C. § 163(j) and N.J.S.A. 54:10A-4(k)(2)(K), the members included in a New Jersey combined return will be treated in the same manner as though they filed a single federal consolidated return. This is true regardless of whether the members of the New Jersey combined return are on one federal consolidated return. See TB-87, Initial Guidance for Corporation Business Tax Filers and the IRC § 163(j) Limitation, for more information.

### Intercompany Dividend Elimination

N.J.S.A. 54:10A-4.6 allows a 100% intercompany dividend elimination for dividends and deemed dividends between members of the combined group included on the same New Jersey combined return. This elimination is a pre-allocation elimination that occurs in Schedule A, Part I or on Schedule A, Part II (above line 21). Dividends and deemed dividends from subsidiaries that are not included as members of the combined group are not eligible for this elimination, but may be eligible for the dividend exclusion in Schedule R if those dividends and deemed dividends received from the excluded subsidiaries are part of the unitary business of the combined group.

### Part I – Computation of Entire Net Income

#### Lines 4b and 4c – FDII and GILTI

The **gross** I.R.C. § 951A and the **gross** I.R.C. § 250(b) amounts included in income for federal purposes must be included for New Jersey purposes. Enter the **gross** I.R.C. § 951A (GILTI) and/or the **gross** I.R.C. § 250(b) (FDII) amounts. **Do not enter negative amounts on line 4b or 4c of Schedule A, Part I.** Include a copy of federal Schedules 8993 and 8992 that were completed and submitted with federal Form 1120. **Do not enter the net numbers.** The I.R.C. § 250(a) deductions are taken in Schedule A Part II since the I.R.C. § 250(a) deductions permitted by N.J.S.A. 54:10A-4.15 are special deductions taken below line 28 for federal purposes (and are to be taken below in Part II, and **not** in Part I).

A combined group may include the controlled foreign corporations (CFC) that generated Global Intangible Low Tax Income (GILTI) included in other members' entire net income. Members of a combined group that are incorporated under the laws of a foreign nation must include all world-wide income regardless of whether it is included as income for federal purposes. If the CFCs are included as members in the combined return, the GILTI income that is attributable to those CFCs should be eliminated on Schedule A in column (b) rather than on an additional special schedule.

**Note:** Only GILTI amounts that are directly attributable to the CFC combined group members that are included in the same New Jersey combined return can be excluded. GILTI that is not attributable to any of the members of the same New Jersey combined return cannot be eliminated in column (b) of Schedule A.

**FYI**

To avoid double reporting the income on Schedule A, Part I, members must reduce the amounts reported on any other lines by the amount of the FDII and GILTI included on lines 4b and 4c. **Amounts on lines 4b and 4c cannot be negative.**

**Line 8 and Line 9**

Include a rider or schedules showing the same information shown on federal Form 1120, Schedule D and/or Form 4797. Gains and losses resulting from the disposition of property where an I.R.C. § 179 expense deduction was passed through to S corporation shareholders are not reported on federal Form 4797, and should be reported on Schedule A, Part I, line 10. If a sale of shares of stock or partnership interest resulted in a taxable transfer of a controlling interest in certain commercial real property under N.J.S.A. 54:15C-1, indicate so on a rider.

**Line 28 – Taxable income before federal net operating loss deductions and federal special deductions**

The amount on line 28 must agree with line 28, page 1, of the federal Form 1120 or the appropriate line of any other federal corporate return that was filed or would have been filed by the member.

**Part II – Modifications to Entire Net Income****Additions****Line 1a – Taxable income/(loss)**

Enter the amount from Schedule A, Part I, line 28.

**Line 1b – Separate activity income**

Enter the amount of entire net income that is not derived from the unitary business of the combined group. Also enter this amount on Schedule X, Part I, line 1. See "Portion of a Company's Operations That are Nonunitary With This Combined Group" for more information.

**Line 1c – Taxable income/(loss) of combined group**

Subtract line 1b from line 1a and enter the result. The amount in column (a) represents the entire net income attributable to the unitary business of the combined group before New Jersey additions and subtractions.

**Note:** The amount reported in column (a) on line 1c must match the amount reported on Schedule CG, line 9.

**Line 2 – Income of non-U.S. group members**

Enter the income attributable to the unitary business of the combined group of the members that were organized in a foreign nation, if such income was not included on line 1c.

**Line 3 – Other federally exempt income**

All income that was exempt for federal income tax purposes under any provision of the Internal Revenue Code or any federal law must be added back. If such amounts were not added back on any other line of Schedule A, include such amounts on line 3 and include a rider detailing such amounts and such provisions of the Internal Revenue Code.

**Line 4 – Interest on federal, state, municipal, and other obligations**

Include any interest income that was not taxable for federal income tax purposes and was not included in taxable net income reported on line 1c.

**Line 5 – New Jersey State and other states taxes**

Enter the total taxes paid or accrued to the United States, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia, or to any foreign country, state, province, territory or subdivisions thereof, on or measured by profits or income, business presence or business activity, including any foreign withholding tax taken as a deduction in Part I of Schedule A and reflected in line 28. For additional information, see [TB-80](#), *Addback of Other States' Taxes*, and the Schedule H instructions.

**Line 6 – Related party interest addback**

Enter the total amount of interest deducted on Schedule A that was paid to related members that were not included as members of this combined return and reported on Schedule G, Part I. See Schedule G instructions for more information.

**Line 7 – Related party intangible expenses and costs addback**

Enter the total amount of intangible expenses and costs deducted on Schedule A that was paid to related members not included as members of this combined return and reported on Schedule G, Part II. See Schedule G instructions for more information.

**Line 8 – I.R.C. § 965 deductions and exemptions**

The I.R.C. § 965(c) deduction and any federally exempt I.R.C. § 965 amounts must be added back on Schedule A, Part II, line 8. Include a copy of the I.R.C. § 965 Transition Tax Statement filed with your federal return.

**Note:** The I.R.C. § 965(a) amounts must be included on Schedule R and Schedule RT, if applicable, and included on Schedule A, Part II, line 10 (if not included on line 4 of Schedule A, Part I).

**Line 9 – Depreciation modification being added to income**

Enter the depreciation and other adjustments being added to income. See Schedule S instructions for more information.

**Line 10 – Other additions**

Report any other additions to income for which a place has not been provided somewhere else on the return. This includes, but is not limited to:

- Gross income, less deductions and expenses in connection with such income, from sources outside the United States, not included in federal taxable income;
- I.R.C. § 199A amounts that were deducted for federal purposes;
- The I.R.C. § 965(a) amounts. Only include amounts that were **not** included on Part I, line 4. (Only enter the amounts that were not eliminated in column (b) onto Schedule R and Schedule RT, if applicable);
- Any deductions for research and experimental expenditures, to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and experimental expenditures are also used to compute a federal credit claimed pursuant to I.R.C. § 41.

Include separate riders explaining any items reported and the I.R.C. § 965 Transition Tax Statement filed with your federal return.



**Line 11 – Taxable income/(loss) with additions**

Add line 1c through line 10 and enter the total.

**Deductions****Line 12 – Depreciation modification being subtracted from income**

Enter the depreciation and other adjustments being subtracted from income. See Schedule S instructions for more information.

**Line 13 – Previously Taxed Dividends**

If line 1 includes any dividends that were previously taxed for New Jersey purposes, complete Schedule PT and Schedule R to determine the amount that can be deducted. Include only dividends that were taxed in a prior privilege period by New Jersey. Do not include any federal previously taxed income that was not taxed by New Jersey. Schedule PT is available on the Division's [website](#).

**Lines 14(a)–14(b) – I.R.C. § 250(a) Deduction**

If lines 4b and 4c of Schedule A, Part I include GILTI and/or FDII amounts, enter the amount of the deduction allowable and taken for federal purposes under I.R.C. § 250(a) on the appropriate line. The amounts claimed must match the amounts reported on federal Form 8993 (federal Form 8993 must be submitted).

**Note:** If the GILTI income (or portion thereof) or FDII income (or portion thereof) amounts were excluded from the tax base or exempt from taxation by this State, no deduction or portion of the deduction can be taken for the amount of income that was excluded or exempt from taxation. See: N.J.S.A. 54:10A-4.15.

**Line 15 – I.R.C. § 78 Gross-Up**

The portion of any I.R.C. § 78 gross-up included in dividend income on line 4 of Schedule A, Part I, that is not excluded/deducted from taxable net income elsewhere may be treated as a deduction. This line cannot include the amount deducted under the I.R.C. § 250(a) deduction. Include a copy of federal foreign tax credit, Form 1118.

**Note:** I.R.C. § 78 gross-up amounts cannot be included in the dividend exclusion calculation on Schedule R or Schedule RT. In addition, if any portion of the Section 78 amount is included in the member's Section 250 deduction, the amount being deducted on line 15 must be reduced accordingly.

**Line 17a – Nonoperational Activity**

Enter the net effect of the elimination of nonoperational activity from Schedule O, Part I, line 36. Schedule O is available on the Division's [website](#).

**Note:** Members cannot net nonoperational losses against operational income.

**Line 17b – Nonunitary Partnership Income**

Enter the net effect of the elimination of nonunitary partnership income and expenses from Schedule P-1, Part II, line 4.

**Note:** Members cannot net nonunitary partnership losses against operational income.

**Line 18 – Other deductions**

Report any other deduction adjustments for which a place has not been provided somewhere else on the return. Include a rider detailing the information.

**Line 19 – Total Deductions**

Add lines 12 through 18 and enter the total.

**Line 20 – Entire Net Income/(Loss) Subtotal**

Subtract line 19 from line 11 and enter the total.

**Line 21 – Member's Allocation Factor from Schedule J**

Enter each member's allocation factor from Schedule J.

**Line 22 – Allocated entire net income/(loss) before net operating loss deductions and dividend exclusion**

Multiply the group entire net income on line 20, column (a) by the member's allocation factor on line 21 and enter the result.

**FYI**

The amount on line 20, column (a) is attributed to each member based on the individual member's allocation factor. If column (a) of line 20 is positive, all of the members will have entire net income derived from the unitary business of the combined group. The members must determine their share of Combined Group Entire Net Income (line 20, column (a)) by using the member's allocation factor calculated from Schedule J. The member's share of the allocated entire net income is reported on line 22 in the member's column. See: N.J.S.A. 54:10A-4.6 and N.J.S.A. 54:10A-4.7.

Conversely, if column (a) of line 20 is negative, all of the members will have a combined group net operating loss derived from the unitary business of the combined group. The members will determine their share of the combined group net operating loss by using the member's allocation factor calculated from Schedule J. This amount becomes the member's post allocation net operating loss for the current period available for carryover into future privilege periods.

- **If the amount is zero or less**, this is the member's portion of the current year combined group net operating loss that can be carried forward as a post allocation net operating loss (NOL) deduction to a succeeding tax period pursuant to N.J.S.A. 54:10A-4(v) and N.J.S.A. 54:10A-4.6.h. Skip lines 23 through 30 and enter zero on line 32.
- **If the amount is a positive number**, the member must first use any unused, unexpired prior net operating loss conversion carryovers pursuant to N.J.S.A. 54:10A-4(u). This deduction occurs on Schedule A, Part II, line 23. If the member does not have any unused, unexpired prior net operating loss conversion carryovers, enter zero and go to line 25.

**Note:** A net operating loss is the excess of allowable deductions over gross income used in computing entire net income. Neither a net operating loss deduction nor the dividend exclusion is an allowable deduction in computing a net operating loss. Post allocation net operating losses expire 20 privilege periods after the loss was originally generated. Information on the net operating losses must be detailed on Form 500U.

**Line 23 – Prior-year net operating loss (PNOL) deduction**

Any unused and unexpired net operating loss carryovers that were calculated on a pre-allocation basis (net operation losses from privilege periods ending prior to July 31, 2019) must be converted to an allocated prior net operating loss conversion carryover (PNOL) before they can be used.

If the member does not have any unused, unexpired prior net operating loss conversion carryovers, skip to line 24.

See Form 500U instructions for more information.

**Line 24 – Allocated entire net income before post allocation net operating loss deduction**

Subtract line 23 from line 22 and enter the result.

- If the amount is zero or less, skip lines 25 through 31 and enter zero on line 32.
- If the amount is a positive number, continue to line 25.

**Line 25 – Post allocation net operating loss (NOL) deduction**

Members with net operating losses generated in privilege periods ending on and after July 31, 2019, can use such losses as a post allocation net operating loss deduction. See Form 500U instructions for more information.

**Line 26 – Allocated entire net income before allocated dividend exclusion**

Subtract line 25 from line 24 and enter the result. If the amount in column (a) is zero or less, enter zero here and on line 32.

**Line 27 – Allocated dividend exclusion**

Enter the amount from Schedule R. If the tax period covered by the return began **before** January 1, 2019, use the amount from Schedule R, Part I, line 10. If the tax period began **on or after** January 1, 2019, use the amount from Schedule R, Part III, line 12. See Schedule R instructions for more information.

**Note:** The amount of the dividend exclusion allowed to be taken as a deduction is limited to the amount of income reported on line 26 for the privilege period.

Pursuant to N.J.S.A. 54:10A-4(k)(5), N.J.S.A. 54:10A-4(u), N.J.S.A. 54:10A-4(v), and N.J.S.A. 54:10A-4(w), the dividend exclusion is now an allocated exclusion.

**Line 28 – If Schedule R, Part III, was completed, enter amount from Schedule RT, Part I, line 2, if applicable**

Enter the amount reported on Schedule RT, Part I, line 2. If Schedule R, Part III was not completed, enter zero. See Schedule RT instructions for information.

**Line 29 – Allocated entire net income subtotal**

Subtract lines 27 and 28 from line 26 and enter the result.

**Line 30 – Allocated dividend income from certain subsidiaries**

If the member completed Schedule R, Parts I and II, enter the amount reported in Part II, Section B or C, of Schedule R. Otherwise, enter zero. See Schedule R instructions for information.

**Line 31a – I.B.F. exclusion**

A banking corporation that is operating as an International Banking Facility may exclude the eligible net income of the I.B.F. from its entire net income. If a member of the combined group is a banking corporation, enter the amount on this line. For privilege periods ending on and after July 31, 2019, this amount is an allocated amount.

**Note:** Income that was eliminated above line 31a is not eligible for the I.B.F. exclusion.

**Line 31b – Allocated I.B.F. exclusion**

Multiply the amount on line 31a by the member's allocation factor and enter the result.

**Line 32 – Member's share of combined group taxable net income**

Add lines 29 and 30, and subtract line 31b if applicable, and enter the result.

**Part III – Calculation of Tax Credits, Minimum Tax and Surtax, and Member Tax**

**Line 1 – Members share of combined group taxable net income/(loss)**

Enter the amount from Schedule A, Part II, line 32.

**Line 2 – Members taxable net income from separate activities**

If the member completed Schedule X, include the taxable net income from Part I of Schedule X on this line. If the amount is zero or less, enter zero. See Schedule X instructions for more information.

**Line 3a – New Jersey nonoperational income**

Enter the amount from Schedule O, Part III. See Schedule O for more information. The schedule is available on the Division's [website](#).

**Note:** Nonoperational losses cannot be netted against operational income.

**Line 3b – Nonunitary partnership income**

Enter the amount from Schedule P-1, Part II, line 5. See Schedule P-1 instructions for more information.

**Note:** Nonunitary partnership losses cannot be netted against operational income.

**Line 4 – Member tax base**

Add lines 1 through 3b and enter the total.

**Line 5 – Amount of tax**

For each member, multiply the amount on line 4 by the applicable tax rate. The tax rate is imposed at the entity level, not the group level.

- If line 4 is greater than \$100,000, the tax rate is 9% (.09).
- If line 4 is greater than \$50,000 and less than or equal to \$100,000, the tax rate is 7.5% (.075). Tax periods of less than 12 months qualify for the 7.5% rate if the prorated entire net income does not exceed \$8,333 per month.
- If line 4 is \$50,000 or less, the tax rate is 6.5% (.065). Tax periods of less than 12 months qualify for the 6.5% rate if the prorated entire net income does not exceed \$4,166 per month.

Enter the total tax of all members in column (a) and on page 1, line 1.

**Line 6 – Tax credits**

For each member, enter amount from Schedule A-3, Part I, line 24. Include the applicable credit form(s) with the return. See Schedule A-3 instructions for more information.

Enter the total tax credits of all members in column (a) and on page 1, line 2.

**Line 7 – CBT tax liability**

Subtract line 6 from line 5 and enter the result. Enter the amount from column (a) on page 1, line 3.

**Line 8a – Taxable net income subject to surtax**

For each member, add line 1 and line 2. Enter the total of all members in column (a).

**Line 8b – Surtax**

Each member whose taxable net income on line 8a exceeds \$1,000,000 is subject to the surtax. Multiply each member's amount on line 8a by the applicable surtax rate. The rate is imposed as follows:

- 2.5% for privilege periods beginning on or after January 1, 2018, through December 31, 2019; and
- 1.5% for privilege periods beginning on or after January 1, 2020, through December 31, 2021.

**Note:** I.R.C. § 965 dividends are not subject to the surtax. If the member's allocated taxable net income includes I.R.C. § 965 dividends, such amounts must be excluded before computing the surtax. Include a rider detailing the information.

If a member's taxable net income on line 8a is \$1,000,000 or less, enter zero on line 8b.

Enter the total surtax of all members in column (a) and on page 1, line 4.

**Line 9 – Tax due**

For each member, add the surtax calculated on line 8b to the greater of line 7 or \$2,000. Enter the total surtax of all members in column (a) and on page 1, line 5.

**Note:** If a tax credit can be applied to 100% of the tax liability, add the surtax (if applicable) to any remaining liability not exhausted on the credit form and enter the amount on line 9.

## Schedule A-2

### Cost of Goods Sold

Enter member's amounts in the member's column. In column (c), enter the total amounts of all members prior to intercompany eliminations and adjustments. In column (b), enter the intercompany eliminations and adjustments. In column (a) enter the total amounts for the combined group after intercompany eliminations and adjustments.

The amounts reported on this schedule must be the same as the amounts reported on Form 1125-A.

## Schedule A-3

### Summary of Tax Credits

This schedule must be completed if any tax credits are being claimed for the current tax period. There are various tax credits with a variety of limitations. Each tax credit has its own limitations and carryovers. Tax credits are earned by the member of the combined group and are shareable among combined group members. See [N.J.S.A. 54:10A-4.6.i](#) and [TB-90, Tax Credits and Combined Returns](#).

Any tax credit(s) claimed on this schedule must be documented with a valid New Jersey Corporation Business Tax Credit form and must be included with the tax return. See "Additional Forms and Instructions" for a list of available credit forms and for instructions on obtaining them. If a member is claiming a valid tax

credit that is allowable in accordance with the New Jersey Corporation Business Tax Act for which a place has not been provided somewhere else on the schedule, report the amount on line 23 of Schedule A-3, Part I.

**Part I – Tax Credits Used Against Liability**

On line 24, enter the total credits from all members in column (a). This amount must equal the amount reported on Schedule A, Part III, line 6. Amounts to be entered for each member are calculated on the credit forms. See the specific New Jersey Corporation Business Tax Credit form for information about each credit.

**Note:** Most tax credits cannot reduce the tax liability below the minimum tax. However, there are rare instances where it can. Follow the instructions on the credit form regarding how and where to record the information to ensure the credit is properly offsetting the tax liability.

**Part II – Refundable Tax Credits**

If a credit form for a member calculates an amount to be refunded, enter the refundable portion on the appropriate line for that member. On line 5, enter the total for all members in column (a). This amount must equal the amount reported on page 1, line 11b. On line 6, enter the total for all members in column (a). This amount must equal the amount reported on page 1, line 11c.

## Schedule A-4

### Summary Schedule

This schedule must be completed for each member. Report the information on each line of Schedule A-4 from the return schedules indicated.

## Schedule B

### Balance Sheet

This schedule must be completed for each member. The amounts reported must be the same as the beginning-of-year and end-of-year figures shown on the member's books. Where applicable, data must match amounts reported on Schedule L of the federal return. If not, explain and reconcile on a rider. If the member is included in a consolidated federal income tax return, this schedule must be completed by the member on its own separate basis. The total of the members is entered in column (c). Eliminations and adjustments are made in column (b) and the consolidated amount after eliminations and adjustments is reported in column (a).

## Schedule C and Schedule C-1

### Reconciliation of Income per Books with Income per Return AND Analysis of Unappropriated Retained Earnings per Books

This schedule must be completed for each member or legible copies of Schedules M-1 and M-2 must be submitted from their unconsolidated federal Form 1120.

If member files federal Schedule M-3, New Jersey Schedule C must still be filed, and a copy of federal Schedule M-3 must be included with the member's New Jersey combined return.

## Schedule CG

### Reconciliation With Consolidated Group

Schedule CG is used to reconcile taxable income of the federal consolidated group to the taxable income of the members reported on the New Jersey CBT-100U. Any differences between members of the consolidated group and members on the New Jersey combined return must be reconciled on this schedule. Furthermore, differences between federal taxable income and taxable income/(loss) of combined group as reported on Schedule A, Part II, line 1(c) must be reconciled here.

**Note:** If filing under the affiliated group election, the New Jersey combined group must match the members reported in Section A.

#### Section A – Federal Consolidated Group

List the entities included in the federal consolidated return(s). List the corporation name, federal employer identification number (FEIN), and the amount on line 28 of the federal Form 1120 or the appropriate line of any other federal corporate return that was filed. The entities listed must match the entities reported on the federal Form 851.

#### Section B – Members Included in the New Jersey Combined Group Not Reported in Section A

List any members included in the New Jersey combined group (CBT-100U) not included in Section A. Any member of the New Jersey CBT-100U that is not reported in Section A (federal consolidated group) must be reported in this section.

#### Section C – Members Reported in Section A Not Included in the New Jersey Combined Group

List any entity from Section A that is not part of the New Jersey combined group. Any member of the federal consolidated group that is reported in Section A and is not a member of the CBT-100U must be reported in Section C. **Members in this section will not be part of the New Jersey combined return.**

#### Section D – Adjustments to Federal Taxable Income

Any adjustment to federal taxable income must be reported in this section. Include a rider detailing each adjustment and the reason for the adjustment.

## Schedule E

### Summary of Estimated Payments and Credits

Complete this schedule to reconcile any overpayments from previously filed returns or estimated payments that were made. The amount and the date on which the estimated payment was submitted must be an exact match in order for the Division to transfer the funds from the member's account to the managerial member's account.

The Division previously released guidelines detailing the steps a managerial member could take in order to merge the funds before filing the tax return. If the managerial member has already submitted a spreadsheet to the Division, include a copy with this return. Otherwise, complete Schedule E and include it with the return. To help facilitate the transfer of these funds in the first year of combined reporting, also submit a copy of Schedule E, accompanied by a cover letter with a contact name and phone number in the event the Division needs additional information or clarification, using one of the following methods:

**Mail** – New Jersey Division of Taxation, Managerial Member Request, PO Box 266, Trenton, NJ 08695-0266

**Fax** – 609-633-6444

**Email** – Please use a secure email account and send to [NewJerseyBusinessTax@treas.nj.gov](mailto:NewJerseyBusinessTax@treas.nj.gov).

All future estimated payments must be made by the managerial member, not the individual members.

## Schedule F

### Corporate Officers – General Information and Compensation

Provide all applicable information for each corporate officer regardless of whether compensation was received. The data reported on Schedule F must match amounts reported on federal Form 1125-E.

## Schedule G

### Interest

If the member is claiming an exception to the disallowance of the expense reported in Part I or Part II of Schedule G, the member must complete and include Schedule G-2. The schedule is available on the Division's [website](#).

Intercompany transactions between members of the combined group are eliminated/adjusted on Schedule A, Part I or Part II and are exempt from the related party addbacks pursuant to N.J.S.A. 54:10A-4(k)(2)(i) and N.J.S.A. 54:10A-4.4. Report those amounts on the respective line of column (b) on Schedule A. Do not report these amounts on Schedule G.

**Note:** Treaty exceptions have been limited pursuant to P.L. 2018, c. 48. There are additional requirements to meet the treaty exceptions that are reported for the purposes of Part I and Part II of Schedule G. See the instructions for Schedule G-2 for more information.

For definitions, see N.J.S.A. 54:10A-4(k)(2)(i) and N.J.S.A. 54:10A-4.4.

#### Part I – Interest

Interest paid, accrued, or incurred to related members that was deducted in calculating taxable net income on Schedule A, Part I, line 28, must be reported on Schedule G, Part I. Enter the total of such interest expense on Schedule A, Part II, line 6.

Do not include interest expenses and costs that were deducted directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange, or disposition of intangible property in Part I of Schedule G.

#### Part II – Interest expenses and costs and intangible expenses and costs

Interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members that were deducted in calculating taxable net income on Schedule A, Part I, line 28, must be reported on Schedule G, Part II. Enter the total of such intangible expenses and costs on Schedule A, Part II, line 7.



## Schedule H

### Taxes

Itemize all taxes that were in any way deducted in arriving at taxable net income, whether reflected in Schedule A, Part I at line 2 (Cost of goods sold and/or operations), line 17 (Taxes), line 26 (Other deductions) or anywhere else on Schedule A.

## Schedule J

### Computation of Group and Members' Allocation Factors

Combined groups using either the water's-edge or world-wide basis filing methods complete only the top portion of this schedule. Combined groups using the affiliated group basis filing method complete only the bottom portion of this schedule. All members of the combined group must use the same portion of Schedule J. A combined group cannot have members with calculations in both sections.

Enter each member's amount in the member's column. All members must complete this schedule to calculate the allocation factor. The total of the members is entered in column (c). Eliminations and adjustments are made in column (b) and the consolidated amount after eliminations and adjustments is reported in column (a).

Only activities related to operational activity are to be used in computing the general allocation factors. If the member has non-operational activity, see Schedule O. If the member has nonunitary partnership income, see Schedule P-1.

**FYI**

In computing the group denominator and the member's allocation factor, intercompany receipts are eliminated.

#### Lines 1–5 – Receipts Fraction

Receipts from sales of tangible personal property are allocated to New Jersey if the goods are shipped to points within New Jersey. Receipts from the sale of goods are allocable to New Jersey if shipped to a New Jersey or a non-New Jersey customer where possession is transferred in New Jersey. Receipts from the sale of goods shipped to a taxpayer from outside New Jersey to a New Jersey customer by a common carrier are allocable to New Jersey. Receipts from the sale of goods shipped from outside New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside New Jersey are not allocable to New Jersey. Receipts from the following are allocable to New Jersey: services performed if the benefit of the service is received in New Jersey; rentals from property situated in New Jersey; royalties from the use in New Jersey of patents, copyrights, and trademarks; all other business receipts earned in New Jersey.

**FYI**

Services are sourced based on market sourcing, not cost of performance.

**Receipts from Sales of Capital Assets.** Receipts from sales of capital assets (property not held by the member for sale to customers in the regular course of business), either within or outside New Jersey, should be included in the numerator and the denominator based on the net gain recognized and not on gross selling

prices. If the member's business is the buying and selling of real estate or the buying and selling of securities for trading purposes, gross receipts from the sale of such assets should be included in the numerator and the denominator of the receipts fraction.

**Note:** The amount of dividends (deemed and/or paid dividends) excluded from entire net income pursuant to N.J.S.A. 54:10A-4(k)(5), are not included in the numerator or denominator of the receipts fraction. However, the dividend (deemed and/or paid dividends) values that are not excluded **are** included in the numerator or denominator.

**FYI**

Schedule J must be completed **after** calculating the DIVIDEND EXCLUSION line on the respective parts of Schedule R but **before** calculating the line for ALLOCATED DIVIDEND EXCLUSION.

#### Member's Allocation Factor

*Water's-Edge and World-Wide Group Basis Returns (Line 11).*

Divide the member's column of **line 8** by the group denominator from **line 10** and enter the result. When computing the allocation factor in Schedule J, division must be carried to six (6) decimal places, e.g., 0.123456.

*Affiliated Group Basis Returns (Line 9).* Divide the member's column of **line 6** by the group denominator from **line 8** and enter the result. When computing the allocation factor in Schedule J, division must be carried to six (6) decimal places, e.g., 0.123456.

#### Sourcing GILTI and FDII for Combined Groups

##### Water's-Edge Group Basis or Affiliated Group Basis Returns

**– No CFCs included.** Members must include the net GILTI (i.e., the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and net FDII income (i.e., the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) amounts in the numerator (if applicable) and the group denominator of the allocation factor on Schedule J pursuant to N.J.S.A. 54:10A-4.7. The GILTI income and FDII income and the corresponding I.R.C. § 250(a) deductions must be reported on Schedule A. Do not include the underlying receipts of the controlled foreign corporation generating the GILTI in the numerator or group denominator since the controlled foreign corporations were not included as members of the combined return.

##### Water's-Edge Group Basis or World-Wide Group Basis Returns – With CFCs included as members.

Members must include the CFC's receipts (net of the I.R.C. § 250(a) deduction for GILTI) in the numerator (if applicable) and the group denominator pursuant to N.J.S.A. 54:10A-4.7. The GILTI income is excluded from the combined group's entire net income, as described in [TB-88](#), *Combined Groups: Exclusion of Double Inclusion of GILTI and Treatment of Related Party Addbacks*, and the GILTI must be excluded in the allocation factor. This is to prevent the double taxation and double counting of the income and receipts derived from the same source since the CFC's income is already included in the combined group's entire net income. The combined group must include the net FDII income (i.e., the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) amount in the numerator (if applicable) and the group denominator of the allocation factor on Schedule J, pursuant to N.J.S.A. 54:10A-4.7. The GILTI income, CFC income, and FDII income and the corresponding I.R.C. § 250(a) deductions must be reported on Schedule A as part of the combined group's entire net income.

See [TB-92\(R\)](#), *Sourcing IRC § 951A (GILTI) and IRC § 250 (FDII)*, for more information.

## Airline and Transportation Companies

Airlines have special sourcing rules pursuant to N.J.S.A. 54:10A-6.3, which states: "Notwithstanding the provisions of section 6 of P.L. 1945, c.162 (C.54:10A-6), the sales fraction for the transportation revenues of a taxpayer that is an airline shall be determined as the ratio of revenue miles in this State divided by total revenue miles; provided however, that if a taxpayer that is an airline is engaged in the transportation of passengers, the transportation of freight, or the rental of aircraft, the ratio under this section shall be determined by means of an average of a passenger revenue mile fraction, freight revenue mile fraction, and rental revenue mile fraction weighted to reflect the taxpayer's relative gross receipts from passenger transportation, freight transportation, and rentals." See also N.J.S.A. 54:10A-6.3; N.J.A.C. 18:7-8.1; and N.J.A.C. 18:7-8.10.

Transportation companies have special sourcing rules for combined groups pursuant to N.J.S.A. 54:10A-4.7.b, which states: "All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies if 50 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground."

## Allocation Methods for Combined Returns

The two methods available to allocate the income of a combined group are "Joyce" and "Finnigan." These allocation methods derive their names from California Franchise Tax Board cases. These methods are differentiated by their determination of the allocation factor. Under either method, the allocation factor attributes included in the denominator are the same. The denominator includes all of the combined group's total factors, regardless of nexus.

**The Joyce method** includes all of the New Jersey allocation factor attributes in the numerator that were derived from members that have nexus with New Jersey. **The Finnigan method** includes all New Jersey allocation factor attributes in the numerator that were derived from all of the members of the combined group, regardless of whether a member has nexus with New Jersey.

The allocation method is tied to the combined return filing method that the managerial member uses to file the combined return. The Water's-Edge Group Basis and World-Wide Group Basis returns follow Joyce method pursuant to N.J.S.A. 54:10A-4.7, and filers must complete Part I of Schedule J.

**Note:** A member of a combined group can have nexus with New Jersey by deriving receipts from New Jersey or from any other factors pursuant to N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.11. The member can have nexus as part of the unitary business of the combined group or it may have nexus independently. If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection.

Affiliated Group Basis returns follow Finnigan method as statutorily prescribed by N.J.S.A. 54:10A-4.11.c, and filers must complete Part II of Schedule J.

**Note:** Pursuant to N.J.S.A. 54:10A-4.6, when an item of income is restored to a member, such restoration must be reflected in both the member's numerator (if applicable) and the group denominator. Intercompany eliminations and adjustments are reflected in column (b).

## Schedule L

### Allocation of New Jersey Corporation Business Tax for Banking and Financial Corporation Members Among New Jersey Municipalities

**Office Location in New Jersey** – List all offices maintained by the member in this State by indicating the exact taxing district (municipality) and county.

**Note:** The mailing address of an office is not necessarily the taxing district.

**Deposit Balances or Receipts** – Banking corporations must use the deposit balances. Financial corporations use the receipts allocable to such location.

**Percentages** – The percentage indicated is based on the individual deposit balances for banking corporations or receipts for financial corporations divided by total deposit balances in New Jersey, or total receipts in New Jersey, respectively.

Member's totals are the sum of the individual taxing district amounts and percentages. Total percentage reported must equal 100%. Also, each individual computation should be carried to six decimal places.

## Schedule P-1

### Partnership Investment Analysis

#### Part I – Partnership Information

Itemize the investment in each partnership, limited liability company, and any other entity that is treated for federal tax purposes as a partnership. List the name, the federal identification number, and the date and state where organized for each partnership. Also, check the type of ownership (general or limited), the tax accounting method used to reflect your share of partnership activity on this return (flow through method or separate accounting), and whether or not the partnership has nexus in New Jersey. Itemize in column 7 the amount of tax payments made on behalf of the member by partnership entities. Carry the total amount of taxes paid on behalf of members to page 1, line 10. Include a copy of Schedule NJK-1 from Form NJ-1065. Any single-member limited liability company must be included on this schedule.

#### Part II – Separate Accounting of Nonunitary Partnership Income

Members that use a Separate Tax Accounting Method on nonunitary partnership investments must complete Part II to compute the appropriate amount of tax. Pursuant to N.J.S.A. 54:10A-6, members must enter a single sales factor allocation in column 3. Do not use three-factor allocation (property, payroll, and sales) from the partnership return (Form NJ-1065).

## Schedule PC

### Per Capita Licensed Professional Fee

Professional Corporations (PC) formed under N.J.S.A. 14A:17-1 et seq. or any similar laws of a possession or territory of the U.S.,

a state, or political subdivision thereof, are liable for a fee on Licensed Professionals.

Examples of licensed professionals are: certified public accountants, architects, optometrists, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentist, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropractists, veterinarians and, subject to the Rules of the Supreme Court, attorneys at law (N.J.S.A. 14A:17-3).

The fee is assessed provided there are more than two professionals in the PC. The fee is assessed on professionals that are owners, shareholders, and/or employees of the Professional Corporation. The number of professionals should be calculated using a quarterly average. The fee for each resident and nonresident professional with physical nexus with New Jersey is \$150. The fee for each nonresident professional without physical nexus with New Jersey is \$150 multiplied by the allocation factor of the corporation. The fee is limited to \$250,000 per year.

In the event of a period shorter than a year, the fee and limit may be prorated by months. A fraction of a month is deemed to be a month.

Check the box on the Members and Affiliates Schedule to indicate this is a Professional Corporation for applicable members.

Line 4 – Installment Payment: A 50% prepayment towards the subsequent year's fee is required with the current year's return.

Line 8 – Credit: Amount to be credited towards next year's fee. **This fee is not eligible for refund.**

## Schedule R Dividend Exclusion

**FYI** Intercompany dividends (and deemed dividends) between members of the combined group that were eliminated/excluded above Schedule A, Part II, line 20 are not eligible for the dividend exclusion and are not to be included in the computation on Schedule R. Only dividends and deemed dividends that are a part of the unitary business of the combined group that were received from subsidiaries that were not included as members of the same New Jersey combined return are eligible for the exclusion. Water's-edge and world-wide basis filers see Schedule X for more information.

For privilege periods ending on and after July 31, 2019, the dividend exclusion is a post allocation exclusion.

Dividends from all sources must be included in Schedule A. However, members may exclude from entire net income 95% of dividends from qualified subsidiaries, if such dividends were included in the member's gross income on Schedule A and not eliminated.

**FYI** The I.R.C. § 965(a) amounts must be included on Schedule R and Schedule RT, if applicable, and on Schedule A, Part I, line 27.

Members cannot include the following as part of the dividend exclusion:

- Money market fund or REIT income;

- GILTI or FDII (this is not considered income from dividends or deemed dividends for New Jersey purposes); or
- The portion of I.R.C. § 78 gross-up deducted on line 15, Part II, Schedule A.

A qualified subsidiary is defined as ownership by the member of at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock, except non-voting stock which is limited and preferred as to dividends. With respect to other dividends, the exclusion is limited to 50% of such dividends included in the member's gross income on Schedule A, provided the member owns at least 50% of voting stock and 50% of the total number of shares of all other classes of stock.

If the member received tiered dividends from a tiered subsidiary that filed and paid tax in excess of the minimum tax to New Jersey on those same dividends, do not include these dividends on Schedule R. The tiered dividend exclusion from certain subsidiaries is calculated separately on Schedule RT. See Schedule RT below for more information.

**FYI** New Jersey follows the federal ownership attribution rule changes under I.R.C. § 958(b) and I.R.C. § 318 that broadened the federal attribution rules that were retroactive to January 1, 2017, in addition to the already broad Corporation Business Tax attribution rules.

**For a combined group whose privilege period for this return began before January 1, 2019**, the calculation is done in Part I and Part II of Schedule R. Part II of Schedule R is used for calculating the 5% of dividend income received by a member from a 80% or greater owned subsidiary that is includable in entire net income and is subject to a special statutory allocation factor, which is the lower of the three-privilege period average allocation factor of the 2014 through 2016 allocation factors filed by the member on their tax returns or 3.5%. If one of those returns was a short-year return, the allocation from that year will count for the special three-year average allocation formula. If the member has filed fewer than three periods, take the average of the periods being reported. All allocation factors must be carried out to 6 decimal places.

**For a combined group whose privilege period for this return began on or after January 1, 2019**, the calculation is done in Part III of Schedule R. The special allocation does not apply for privilege periods beginning on and after January 1, 2019. See N.J.S.A. 54:10A-4(k)(5), N.J.S.A. 54:10A-4(u), N.J.S.A. 54:10A-4(v), and N.J.S.A. 54:10A-4(w) for more information.

**Schedule RT – Tiered Subsidiary Dividend Exclusion:** Members may exclude dividends received from a subsidiary that has filed a tax return and paid New Jersey Corporation Business Tax on the dividends received from other subsidiaries to the extent such dividends were included in the subsidiary's allocated entire net income. The tax the subsidiary paid on the dividends must have exceeded the minimum tax, unless the subsidiary also used its New Jersey tax credits. The total excludable tiered subsidiary amounts reported on Schedule RT are used on Schedule R or Part II of Schedule A, if applicable, to calculate the allocated tiered dividend deductible against allocated entire net income. See Schedule RT for more information. The schedule is available on the Division's [website](#).

**Note:** See N.J.S.A. 54:10A-4(k)(5)(C).



**FYI**

The I.R.C. § 965(a) amounts must be included on Schedule R and Schedule RT, if applicable, and on Schedule A, Part I, line 27.

**Schedule PT – Previously Taxed Dividends:** If a member had subsidiary dividend income that was reported in a previous privilege period for New Jersey Corporation Business Tax purposes **and** for which the member paid greater than the New Jersey minimum tax in that privilege period **and** those same dividends are included in entire net income this privilege period, complete Schedule PT in conjunction with Schedule R. See Schedule PT for more information. The schedule is available on the Division's [website](#).

## Schedule S

### Depreciation and Safe Harbor Leasing

This schedule must be completed for each member and a copy of a completed federal Depreciation Schedule, Form 4562 must be included with the return. Schedule S provides for adjustments to depreciation and certain safe harbor leasing transactions.

**FYI**

New Jersey has decoupled from I.R.C. §168(k) bonus depreciation and I.R.C. § 179 expensing provisions. See N.J.S.A. 54:10A-4(k)(12) and N.J.S.A. 54:10A-4(k)(13). Adjustments must be made accordingly.

**Line 1 through Line 6** – These lines detail the depreciation deduction reflected in the Computation of Entire Net Income (Schedule A, Part I) into several categories. In most circumstances, the information can be found on federal Form 4562.

**Line 13** – New Jersey conforms to I.R.C. § 179 as in effect on December 31, 2002, and the maximum amount that may be expensed is \$25,000. See N.J.S.A. 54:10A-4(k)(13) for more information.

**Line 16 and Line 17** – New Jersey has decoupled from the federal tax code provisions on cost recovery or depreciation and is statutorily tied to the federal depreciation laws that were in effect as of December 31, 2001.

**Line 18** – Deduct any income included in the return with respect to property solely as a result of an I.R.C. § 168(f)(8) election.

**Line 19** – Deduct any depreciation amount that would have been allowable under the Internal Revenue Code on December 31, 1980, had there been no safe harbor lease election.

**Line 20** – Gain or loss on property sold or exchanged is the amount properly to be recognized in the determination of federal taxable income. However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the federal Internal Revenue Code, there shall be allowed as a deduction any excess, or there must be restored as an item of income, any deficiency of depreciation disallowed at lines 9, 10, 11, 13, or 14 over related depreciation claimed on that property at lines 16, 17, or 21. A statutory merger or consolidation shall not constitute a disposal of recovery property.

## Form 500U

### Prior Net Operating Loss Conversion Carryover (PNOL) and Post Allocation Net Operating Loss (NOL) Deductions

Prior Net Operating Losses (PNOLs) are losses that were generated in privilege periods ending **prior** to July 31, 2019. In order to use these losses, the unused, unexpired amounts must be converted to a post allocation basis. This conversion is done on Form 500U-P. PNOLs can only be carried forward for the 20 privilege periods following the period of the initial loss. See [TB-95](#), *Net Operating Losses and Combined Groups*, for more information.

Post Allocation Net Operating Losses (NOLs) are losses that were generated in privilege periods ending on or after July 31, 2019. These losses occur on a post allocation basis.

#### Discharge of Indebtedness

If a member has a discharge of indebtedness amount that is excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of I.R.C. section 108, adjustments need to be made to the member's PNOLs, NOLs, and/or post allocation net operating loss carryovers. Since the discharge of indebtedness amount is not an allocated amount, the member must multiply the discharge of indebtedness amount by its current year allocation factor (member's numerator over the group's denominator) before making any adjustment to the net operating losses or net operating loss carryovers.

The members must first reduce their PNOLs by the allocated discharge of indebtedness amount. If the allocated discharge of indebtedness amount exceeds all of a member's PNOLs and the member has post allocation net operating loss carryovers, the member must also reduce the post allocation net operating loss carryovers by the remaining balance. If, after reducing their post allocation net operating loss carryovers by the discharge of indebtedness amount, there are still post allocation net operating loss carryovers available, the taxable member may then reduce their allocated entire net income by the remaining post allocation net operating loss carryover.

Members must keep accurate books and records to keep track of the various PNOLs and NOLs.

#### Section A – Computation of Prior Net Operating Losses (PNOL) Deduction

This section is only applicable if a member has loss carryovers from periods ending **prior** to July 31, 2019. Only complete this section if the total combined group allocated entire net income/ (loss) before net operating loss deductions and dividend exclusion on Schedule A, Part II, line 22, column(a) is positive (i.e., income).

To calculate a prior net operating loss conversion carryover, a member must first calculate its pre-allocated net operating losses for each preceding privilege period using Form 500U-P.

**Note:** PNOLs expire 20 privilege periods after the loss was originally generated. **PNOLs cannot be shared.**

Line 1 – Enter the total amount reported on Form 500U-P, Part II, line 21 for each member.

Line 2 – Enter the amount of PNOLs reported on line 1 that was deducted in a previous year.



Line 3 – Enter the amount of PNOLs reported on line 1 that has expired.

Line 4 – Enter the amount of PNOLs reported on line 1 that was used on the current period Schedule X. Not applicable to affiliated group basis returns.

Line 5 – Enter the amount excluded from Federal Taxable Income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of Internal Revenue Code (26 U.S.C. s.108) in the current year. If the amount is greater than the PNOLs reported on line 1 (less lines 2, 3, and 4), carry the remainder to Section B, line 5.

Line 6 – Subtract the amounts reported on lines 2 through 5 from the amount on line 1. This is the total amount of PNOLs available for deduction in the current year. If the amount is less than zero, enter zero.

Line 7 – Enter the amount from Schedule A, Part II, line 22 from the member's column. Do not use column (a). If the amount is less than zero, enter zero.

Line 8 – Enter the lesser of lines 6 or 7, this is the current period PNOL deduction. Enter this amount on Schedule A, Part II, line 23. The amount reported on Schedule A, Part II, line 23 cannot exceed the amount reported on Schedule A, Part II, line 22.

#### Section B – Post Allocation Net Operating Losses (NOL)

This section is only applicable to loss carryovers from periods ending **on and after** July 31, 2019. Only complete this section if the total combined group amount reported on Schedule A, Part II, line 24, column (a) is positive (i.e., income).

Section B is used to calculate the amount of the New Jersey post allocation net operating loss carryover. There are two types of post allocation net operating loss carryovers:

- Combined group post allocation NOLs (these are losses that were generated by the current combined group) and
- Separate return post allocation NOLs (these are losses that were generated outside the current combined group)

The post allocation net operating loss deduction is subtracted from allocated entire net income after the member uses all of its PNOLs.

Certain taxable members may be eligible to share their post allocation net operating losses. See Form 500U-S for more information

An affiliated group election is an election to deem **all** of the activities as one single business. As such, line 4 is not applicable.

**Note:** A post allocation net operating loss can be carried forward for 20 privilege periods.

Line 1 – Enter the total amount reported on Form 500U-PA, Part II, line 21 for each member.

Line 2 – Enter the amount of NOLs reported on line 1 that was deducted in a previous period or was shared with another taxable member in a **previous** period.

Line 3 – Enter the amount of NOLs reported on line 1 that has previously expired.

Line 4 – Enter the amount of the separate return NOLs reported on line 1 that was used on the current period Schedule X. Not applicable to affiliated group basis returns.

Line 5 – Enter the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of Internal Revenue Code (26 U.S.C. s.108) in the current year. If the member reported an amount in Section A, line 5 of Form 500U, only enter the excess here. (Section A, line 1 minus lines 2, 3, 4, and 5.)

Line 6 – Subtract the amounts reported on lines 2 through 5 from the amount on line 1. This is the total amount of NOLs available for deduction in the current year. If the amount is less than zero, enter zero.

Line 7 – Enter the amount from Form 500U-S, Section A, line 4. This is the amount that was shared with other taxable members in the current year. Taxable members can only share the combined group post allocation net operating losses with other taxable members that were part of the same combined group in the period in which the loss was generated.

Line 8 – Enter the amount from Form 500U-S, Section B, line 4. This is the amount that was received from other taxable members in the **current** year. Taxable members can only share the combined group post allocation net operating losses with other taxable members that were part of the same combined group in the period in which the loss was generated.

Line 9 – Net lines 6, 7, and 8. If the amount reported on line 6 is positive (NOL deduction available), subtract the amount reported on line 7 and add the amount on line 8. If the amount reported on line 6 is zero, add the amount on line 8. If there is any excess of discharge of indebtedness, subtract that amount from the received portion of NOLs reported on line 8.

Line 10 – Enter the amount from Schedule A, Part II, line 24 from the member's column. Do not use column (a). If the amount is less than zero, enter zero.

Line 11 – Enter the lesser of lines 9 or 10, this is the current period NOL deduction. Enter this amount on Schedule A, Part II, line 25. The amount cannot exceed the amount reported on Schedule A, Part II, line 24.

**Note:** A taxable member that leaves a New Jersey combined group must take their share of the combined group post allocation net operating loss carryover. The combined group cannot continue to use that member's portion of the loss.



Losses generated on Schedule X cannot be shared or used by the group. These losses can only be used on Schedule X.

## Form 500U-P

Any unused, unexpired net operating losses that were generated in privilege periods ending prior to July 31, 2019, must be converted to a post-allocated basis. These loss carryovers can only be carried forward for the 20 privilege periods following the period of the initial loss.

### Part I – Allocation Factor

Enter the allocation factor for the last privilege period ending prior to July 31, 2019. This amount is taken from that period's Schedule J for each member.

### Part II – Prior Net Operating Loss

Line (a) – Enter the date the privilege period ended. All periods must end **before** July 31, 2019.

Line (b) – Enter the net operating loss for each period. Enter the entire loss for the period. Amounts that have been used in previous periods or that are expired are reported in Section A on lines 2 and 3. The converted losses can only be carried forward for the 20 privilege periods following the period of the initial loss.

**Note:** For privilege periods ending after June 30, 2014, the loss reported each year must not include any amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of Internal Revenue Code (26 U.S.C. s.108).

Line (c) – Multiply the amount on line (b) by the reported allocation factor reported in Part I.

Line 21 – Enter the total converted prior net operating loss carryovers. Add lines 1c through 20c. This is the amount that is carried to Form 500U, Section A, line 1.

## Form 500U-PA

### Part I

Enter the date on which the member entered the group.

### Part II – Net Operating Loss

Line (a) – Enter the date the privilege period ended. All periods must end **on or after** July 31, 2019.

Line (b) – Enter the net operating loss for each period. Enter the entire loss for the period. Do not net with previously deducted or expired amounts. Amounts that have been previously deducted or that are expired must be reported in Form 500U, Section B on lines 2 and 3. The converted losses can only be carried forward for the 20 privilege periods following the period of the initial loss.

**Note:** For privilege periods ending after June 30, 2014, the loss reported each year must not include any amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of Internal Revenue Code (26 U.S.C. s.108).

Line 21 – Enter the total post allocation net operating loss carryover. Add lines 1b through 20b. This is the amount that is carried to Form 500U, Section B, line 1.

## Form 500U-S

If a loss was generated on a previously filed combined return, the taxable members that were included on that return are each allotted a portion of the loss. Taxable members can use their portion of these combined group post allocation net operating loss (NOL) carryovers, or they can share their portion with other taxable members that were part of the same combined group in the period in which the loss was generated. See [TB-95](#), Net Operating Losses and Combined Groups, for more information.

**Note:** Separate return post allocation net operating loss carryovers and NOLs **generated** on Schedule X are not shareable.

### Section A – Calculation of the Allowable Shared NOL Deduction

Line 1 – Enter the amount from Form 500U, Section B, line 6.

Line 2 – Enter the amount from Schedule A, Part II, line 24 from the member's column. Do not use column (a).

Line 3 – Subtract line 2 from line 1. If the amount is zero or less, enter zero. This is the amount of NOLs that is available to share with other taxable members.

Line 4 – Enter the amount of NOLs that has been shared in the current year with other taxable members.

### Section B – Calculation of the Allowable NOL Deduction Received From Another Taxable Member

Line 1 – Enter the amount from Schedule A, Part II, line 24 from the member's column. Do not use column (a).

Line 2 – Enter the post allocation net operating loss carryovers calculated on Form 500U, Section B, line 6.

Line 3 – Subtract line 2 from line 1. If the amount is zero or less, enter zero. This is the taxable member's allocated entire net income after post allocation net operating losses and is the **maximum** amount of NOLs that may be received from other taxable members.

Line 4 – Enter the amount of NOLs received from other taxable members in the current privilege period.

### Section C – Shared/Received NOL Deduction Information

Line 1 – Enter the total amount of NOLs shared with other taxable members. Provide a rider that breaks out the amount of shared NOL by each taxable member.

Line 2 – Enter the total amount of NOLs received from other taxable members. Provide a rider that breaks out the amount of received NOL by each taxable member.

## Additional Forms and Instructions

Most of the forms and schedules needed to complete the return are included with Form CBT-100U. However, there are several stand alone forms and schedules that can be obtained on the Division's [website](#). This includes:

- Schedule A-7: Gross Income Test for Financial Businesses (Form CBT-100U Filers ONLY)
- Schedule G-2: Claim for Exceptions to Disallowed Interest and Intangible Expenses and Costs
- Schedule I: Certificate of Inactivity (Form CB -100U Filers ONLY)
- Schedule N: Nexus – Immune Activity Declaration and the [Nexus Questionnaire](#)
- Schedule O: Nonoperational Activity
- Schedule PT: Dividend Exclusion for Certain Previously Taxed Dividends
- Schedule RT: Allocated Tiered Subsidiary Dividend Exclusion

- Schedule X: Member's Taxable Income From Sources Other Than the Unitary Business of the Combined Group (Form CBT-100U Filers ONLY)
- Form 300: Urban Enterprise Zone Employees Tax Credit
- Form 301: Urban Enterprise Zone Investment Tax Credit
- Form 302: Redevelopment Authority Project Tax Credit
- Form 304: New Jobs Investment Tax Credit
- Form 305: Manufacturing Equipment and Employment Investment Tax Credit
- Form 306: Research and Development Tax Credit
- Form 311: Neighborhood Revitalization State Tax Credit
- Form 312: Effluent Equipment Tax Credit
- Form 313: Economic Recovery Tax Credit
- Form 315: AMA Tax Credit
- Form 316: Business Retention and Relocation Tax Credit
- Form 317: Sheltered Workshop Tax Credit
- Form 318: Film Production Tax Credit
- Form 319: Urban Transit Hub Tax Credit
- Form 320: Grow New Jersey Tax Credit
- Form 321: Angel Investor Tax Credit
- Form 322: Wind Tax Credit
- Form 323: Residential Economic Redevelopment and Growth Tax Credit
- Form 324: Business Employment Incentive Program Tax Credit
- Form 325: Public Infrastructure Tax Credit
- Form 327: Film and Digital Media Tax Credit

# CAUTION

These forms are for **reference only**.  
**DO NOT** mail to the Division of Taxation.

Form CBT-100 and all related forms and schedules **must** be filed electronically. See “Electronic Filing Mandate” in the CBT-100 instructions for more information.

Before submitting this return electronically, the combined group must have a registered managerial member. See [Mandatory Registration of a Combined Group by Managerial Member](#) for more information.

**2020  
CBT-100U**

**DO NOT MAIL THIS FORM**

2020 – CBT-100U – Page 1

**New Jersey Corporation Business Tax Unitary Return  
For Tax Years Ending On or After July 31, 2020, Through June 30, 2021**

Tax year beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_, \_\_\_\_\_

Unitary ID Number <b>NU</b>			Managerial Member's FEIN		
Unitary Group Name			Managerial Member Name		
Mailing Address			Mailing Address		
City	State	ZIP Code	City	State	ZIP Code
Check if this is an amended return <input type="checkbox"/>			Business Contact Name _____		
Check applicable filing method (see instructions)			Email _____		
Default <input type="checkbox"/> Water's-Edge Election <input type="checkbox"/> Affiliated Group <input type="checkbox"/> World-Wide Election Period _____ of 6			Phone Number (_____) _____		

1. Total Amount of Tax of Combined Group – Enter amount from line 5, column (a) of Schedule A, Part III.....	1.	XXXXXXXXXXXXXXXXXXXXXX
2. Total Tax Credits Used by Combined Group – Enter amount from line 6, column (a) of Schedule A, Part III (see instructions) .....	2.	XXXXXXXXXXXXXXXXXXXXXX
3. TOTAL COMBINED GROUP CBT TAX LIABILITY – Enter amount from line 7, column (a) of Schedule A, Part III.....	3.	XXXXXXXXXXXXXXXXXXXXXX
4. Total surtax on taxable net income of Combined Group Members – Enter amount from line 8, column (a) of Schedule A, Part III (see instructions) .....	4.	XXXXXXXXXXXXXXXXXXXXXX
5. Total Combined Group Tax Due – Enter amount from line 9b, col. (a) of Schedule A, Part III (see instructions) ..	5.	XXXXXXXXXXXXXXXXXXXXXX
6. Reserved for future use.....	6.	
7. Professional Corporation Fees (from combined group column of Schedule PC, line 9).....	7.	XXXXXXXXXXXXXXXXXXXXXX
8. TOTAL TAX AND PROFESSIONAL CORPORATION FEES – Add lines 5 and 7 .....	8.	XXXXXXXXXXXXXXXXXXXXXX
9. Payments and Credits (from Schedule E, line 4).....	9.	XXXXXXXXXXXXXXXXXXXXXX
10. Payments made by partnerships on behalf of member (include copies of all NJK-1s).....	10.	XXXXXXXXXXXXXXXXXXXXXX
11. a. Total Refundable Tax Credits to applicable members that earned the credits .....	11a.	XXXXXXXXXXXXXXXXXXXXXX
b. Total Refundable Tax Credit to be refunded to individual members .....	11b.	XXXXXXXXXXXXXXXXXXXXXX
c. Balance of Refundable Tax Credit to be applied to the group .....	11c.	XXXXXXXXXXXXXXXXXXXXXX
12. Total Payments and Credits – Add lines 9, 10, and 11c .....	12.	XXXXXXXXXXXXXXXXXXXXXX
13. Balance of Tax Due – If line 12 is less than line 8, subtract line 12 from line 8 .....	13.	XXXXXXXXXXXXXXXXXXXXXX
14. Penalty and Interest Due (see instructions) .....	14.	XXXXXXXXXXXXXXXXXXXXXX
15. Total Balance Due – Add line 13 and line 14 .....	15.	XXXXXXXXXXXXXXXXXXXXXX
16. Amount Overpaid – If line 12 is greater than the sum of lines 8 and 14, subtract lines 8 and 14 from line 12.	16.	XXXXXXXXXXXXXXXXXXXXXX
17. Amount of line 16 to be Refunded .....	17.	XXXXXXXXXXXXXXXXXXXXXX
18. Amount of line 16 to be Credited to 2021 Tax Return .....	18.	XXXXXXXXXXXXXXXXXXXXXX

<b>SIGNATURE AND VERIFICATION</b> (See Instructions)	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules, forms, and statements, and to the best of my knowledge and belief, it is true, correct, and complete. If prepared by a person other than the managerial member, this declaration is based on all information of which the preparer has any knowledge.			
	(Date)	(Signature of Duly Authorized Officer of Managerial Member)		(Title)
	(Date)	(Signature of Individual Preparing Return)	(Address)	(Preparer's ID Number)
	(Name of Tax Preparer's Employer)		(Address)	(Employer's ID Number)

**Members and Affiliates Schedule — List all members of the combined group**

	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>
Member Name		
Member FEIN		
Member's NJ Corporation Number		
Date Member Joined Combined Group		
Date Member Left Combined Group		
State/Territory or Country of Incorporation		
Location of the actual seat of management or control of the corporation		
Federal Business Activity Code		
Type of business		
Principal products handled		
Date Authorized to do Business in New Jersey		
<b>If the answer to any of the following questions for a member is "yes," check the box in the appropriate member column.</b>		
1. Is member inactive? If yes, complete Schedule I.	<input type="checkbox"/>	<input type="checkbox"/>
2. Does member have nexus with New Jersey?	<input type="checkbox"/>	<input type="checkbox"/>
3. a. Is only a portion of the business included in the combined group entire net income? If yes, complete lines 3b and 3c.	<input type="checkbox"/>	<input type="checkbox"/>
b. Is the partially included member also included as a member of another New Jersey combined return?	<input type="checkbox"/>	<input type="checkbox"/>
c. Is the member reporting income on Schedule X that was excluded on line 1b of Schedule A, Part I? (water's-edge and world-wide returns only)	<input type="checkbox"/>	<input type="checkbox"/>
4. Is member a banking corporation?	<input type="checkbox"/>	<input type="checkbox"/>
5. Is member a financial corporation? (See instructions.)	<input type="checkbox"/>	<input type="checkbox"/>
6. Is this corporation a Professional Corporation (PC) formed pursuant to N.J.S.A. 14A:17-1 et seq. or any similar law from a possession or territory of the United States, a state, or political subdivision thereof?	<input type="checkbox"/>	<input type="checkbox"/>
7. Is member a federal 1120-S filer?	<input type="checkbox"/>	<input type="checkbox"/>
8. Has member made a New Jersey S Corporation Election?	<input type="checkbox"/>	<input type="checkbox"/>
9. Does member own any Qualified Subchapter S Subsidiaries?	<input type="checkbox"/>	<input type="checkbox"/>
10. Is member a combinable captive insurance company?	<input type="checkbox"/>	<input type="checkbox"/>
11. Is member a partner in a partnership?	<input type="checkbox"/>	<input type="checkbox"/>
12. Is member an owner of a disregarded entity?	<input type="checkbox"/>	<input type="checkbox"/>
13. Is member a licensee under the Casino Control Act?	<input type="checkbox"/>	<input type="checkbox"/>
14. Does member own or lease real or tangible property in New Jersey?	<input type="checkbox"/>	<input type="checkbox"/>
15. Does member have payroll in New Jersey?	<input type="checkbox"/>	<input type="checkbox"/>
16. Has member taken any uncertain tax positions when filing this return or their federal tax return? If yes, include a rider detailing the information. For more information, see the <a href="#">instructions for federal Schedule UTP</a> .	<input type="checkbox"/>	<input type="checkbox"/>

**Annual General Questionnaire (See Instructions)**Unitary ID Number **NU**

1. a. Enter total number of members in the group ..... a. XXXXXXXXXXXXXXXX  
 b. Enter number of taxable group members ..... b. XXXXXXXXXXXXXXXX  
 c. Enter number of nontaxable group members ..... c. XXXXXXXXXXXXXXXX  
 d. Enter number of related parties or affiliates that are not included in the combined return ..... d. XXXXXXXXXXXXXXXX

2. Did any member own beneficially, or control, a majority of the stock of any corporation not included as a member of the combined group or did the same interests own beneficially, or control, a majority of the stock of any other corporation not included as a member of the combined group? If yes, provide a rider indicating the name and FEIN of the controlled corporation, the name and FEIN of the controlling/parent corporation, and the percentage of stock owned or controlled. Yes ☐ No ☐

Questions 3a and 3b must be answered by corporations with a controlling interest in certain commercial property.

3. a. During the period covered by the return, did any member acquire or dispose of, directly or indirectly, a controlling interest in certain commercial property? If yes, answer question 3b. Yes ☐ No ☐  
 b. Was the CITT-1, *Controlling Interest Transfer Tax*, or CITT-1E, *Statement of Waiver of Transfer Tax*, filed with the Division of Taxation? If yes, provide information and include a copy of the CITT-1 or CITT-1E filed. If no, provide a rider indicating the name and FEIN of the transferee, the name and FEIN of the transferor, and the assessed value of the property. Yes ☐ No ☐

4. Did any member receive any deemed repatriation dividends reported under IRC §965 from a subsidiary in the member's federal tax year 2017 or 2018 for which the member files a New Jersey 2017, 2018, or 2019 tax return? If yes, provide a rider indicating the name and FEIN of the subsidiary, the amount of deemed repatriation dividends, and indicate on which year's New Jersey return the income was included. Yes ☐ No ☐

5. Is income from sources outside the United States included in entire net income on Schedule A? If yes, provide such items of gross income, the source, the deductions, and the amount of foreign taxes paid. Enter on Schedule A, Part II, line 10, the difference between the net of such income and the amount of foreign taxes paid not previously deducted (include a rider). Yes ☐ No ☐ NA ☐

6. Is 50% or more of the group's income derived from transportation of freight by air or ground? (Airlines and transportation companies, see instructions) Yes ☐ No ☐



## Schedule A

**Calculation of New Jersey Taxable Net Income (See instructions)**  
**Every Member Must Complete Parts I, II, and III of This Schedule**
**PART I – Computation of Entire Net Income** (All data must match the federal return that was filed or that would have been filed.)

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU	NU	NU
Member FEIN	NU	NU	NU		
Member Name					
Tax Year Beginning Date					
Tax Year Ending Date					
<b>Income</b>					
1. a. Gross receipts or sales everywhere	1a. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Less: returns and allowances	1b. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
c. Balance – Subtract line 1b from line 1a	1c. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
2. Less: Cost of goods sold (from Schedule A-2, line 8) (include copy of federal 1125-A)	2. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
3. Gross profit – Subtract line 2 from line 1c	3. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
4. a. Dividends	4a. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Gross Foreign Derived Intangible Income (see instructions) (include copy of federal Form 8993)	4b. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
c. Gross Global Intangible Low-Taxed Income (see instructions) (include copy of federal Form 8992)	4c. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
5. Interest	5. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
6. Gross rents	6. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
7. Gross royalties	7. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
8. Capital gain net income (include a copy of federal Schedule D)	8. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
9. Net gain or (loss) (from federal Form 4797, include a copy)	9. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
10. Other income (see instructions) (include schedule(s))	10. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
11. <b>Total Income</b> – Add lines 3 through 10	11. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
<b>Deductions</b>					
12. Compensation of officers (from Schedule F) (include copy of federal 1125-E)	12. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
13. Salaries and wages (less employment credits)	13. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
14. Repairs (Do not include capital expenditures)	14. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
15. Bad debts	15. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
16. Rents	16. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
17. Taxes and licenses	17. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
18. Interest (see instructions)	18. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
19. Charitable contributions (see instructions)	19. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
20. Depreciation (from federal Form 4562, include a copy) less depreciation claimed elsewhere on return	20. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
21. Depletion	21. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
22. Advertising	22. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
23. Pension, profit-sharing plans, etc.	23. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
24. Employee benefit programs	24. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
25. Reserved for future use	25. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
26. Other deductions (attach schedule)	26. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
27. <b>Total Deductions</b> - Add lines 12 through 26	27. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
28. Taxable income before federal net operating loss deductions and federal special deductions – Subtract line 27 from line 11 (Must agree with line 28, page 1 of the federal Form 1120, or the appropriate line of any other federal corporate return) (See instructions)	28. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX



**PART II – New Jersey Modifications to Entire Net Income**

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
1. a. Taxable income/(loss) from Schedule A, Part I, line 28 .....	1a. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Income included in line 1a from Separate Activities not includible in the combined group entire net income (water's-edge and world-wide returns only) (see instructions) .....	1b. XXXXXXXXXXXXXXXX			XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
c. Taxable income/(loss) of combined group – Subtract line 1b from line 1a .....	1c. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
<b>Additions</b>					
2. Income of a non-U.S. corporation member not included in line 1.....	2. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
3. Other federally exempt income not included in line 1 (see instructions) .....	3. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
4. Interest on federal, state, municipal, and other obligations not included in line 1 (see instructions) .....	4. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
5. New Jersey State and other states taxes deducted in line 1 (see instructions) .....	5. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
6. Related party interest addback (from Schedule G, Part I) .....	6. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
7. Related party intangible expenses and costs addback (from Schedule G, Part II) (see instructions) .....	7. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
8. Reserved for future use .....	8.				
9. Depreciation modification being added to income (from Schedule S) .....	9. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
10. Other additions. Explain on separate rider (see instructions).....	10. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
11. Taxable income/(loss) with additions – Add line 1c through line 10.....	11. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
<b>Deductions</b>					
12. Depreciation modification being subtracted from income (from Schedule S) .....	12. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
13. Previously Taxed Dividends (from Schedule PT) .....	13. XXXXXXXXXXXXXXXX		XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
14. a. Enter the I.R.C. § 250(a) deduction amount allowed federally for GILTI if GILTI income is included in line 1c above .....	14a. XXXXXXXXXXXXXXXX		XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Enter the I.R.C. § 250(a) deduction amount allowed federally for FDII if FDII income is included on line 1c above.....	14b. XXXXXXXXXXXXXXXX		XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
c. Net GILTI previously taxed by New Jersey not deducted or excluded elsewhere .....	14c. XXXXXXXXXXXXXXXX		XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
15. I.R.C. § 78 Gross-up included in line 1 (do not include dividends that were excluded/ deducted elsewhere) .....	15. XXXXXXXXXXXXXXXX		XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
16. Reserved for future use .....	16.				
17. a. Elimination of nonoperational activity (from Schedule O, Part I) .....	17a. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Elimination of nonunitary partnership income/loss (from Schedule P-1, Part II, line 4) .....	17b. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
18. Other deductions. Explain on separate rider (see instructions).....	18. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
19. Total deductions – Add line 12 through line 18 .....	19. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX

**PART II – New Jersey Modifications to Entire Net Income — continued**

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
<b>Taxable Net Income/(Loss) Calculation</b>					
20. Entire Net Income/(Loss) Subtotal – Subtract line 19 from line 11 .....	20. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
21. Group allocation factor (from Schedule J, line 9) .....	21. XXXXXXXXXXXXXXXX				
22. Allocated entire net income/(loss) before any net operating loss deductions and dividend exclusion – Multiply the group entire net income on line 20, column (a) by the group allocation factor on line 21 (if zero or less, enter zero on line 28).....	22. XXXXXXXXXXXXXXXX				
23. Net operating loss deduction (from Form 500U, Section C, line 3) (amount entered cannot be more than amount on line 22) .....	23. XXXXXXXXXXXXXXXX				
24. Allocated entire net income before allocated dividend exclusion – Subtract line 23 from line 22 (If zero or less, enter zero here and on line 28) .....	24. XXXXXXXXXXXXXXXX				
25. Allocated Dividend Exclusion (from Schedule R) (see instructions) (amount entered cannot be more than amount on line 24) .....	25. XXXXXXXXXXXXXXXX				
26. Allocated entire net income subtotal – Subtract line 25 from line 24 .....	26. XXXXXXXXXXXXXXXX				
27. a. I.B.F. Exclusion.....	27a. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Allocated I.B.F. Exclusion – Multiply line 27a, column (a), by the group allocation factor (line 21).....	27b. XXXXXXXXXXXXXXXX				
28. <b>Combined Group Taxable Net Income/(Loss) – Subtract line 27b from line 26</b>	28. XXXXXXXXXXXXXXXX				

**PART III – Calculation of Tax Credits, Minimum Tax and Surtax, and Group Tax**

1. Combined Group Taxable Net Income/(Loss) from Schedule A, Part II, line 28.	1. XXXXXXXXXXXXXXXX				
2. Member's Taxable Net Income from Separate Activities (from Schedule X)(If the taxable net income from Part I of Schedule X is zero or less, enter zero) .....	2. XXXXXXXXXXXXXXXX			XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
3. a. New Jersey nonoperational income from Schedule O, Part III.....	3a. XXXXXXXXXXXXXXXX			XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Nonunitary partnership income (from Schedule P-1, Part II, line 5) .....	3b. XXXXXXXXXXXXXXXX			XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
4. Tax Base – Add lines 1, 2, 3a, and 3b. ....	4. XXXXXXXXXXXXXXXX				
5. Amount of Tax – For the combined group, multiply line 4, column (a) by the applicable tax rate (see instructions) .....	5. XXXXXXXXXXXXXXXX				
6. Tax Credits (from Schedule A-3, Part I, line 28).....	6. XXXXXXXXXXXXXXXX				
7. CBT TAX LIABILITY – Subtract line 6 from line 5.....	7. XXXXXXXXXXXXXXXX				
8. Total surtax of combined group (from combined group column of Schedule A-5, Part II, line 5) .....	8. XXXXXXXXXXXXXXXX				
9. a. Multiply \$2,000 by the number of taxable members and enter the result.....	9a. XXXXXXXXXXXXXXXX				
b. Tax Due – Add line 8 to the greater of line 7 or line 9a.....	9b. XXXXXXXXXXXXXXXX				

Schedule A-2

Cost of Goods Sold (See Instructions)

All data must match amounts reported on federal Form 1125-A of the federal pro forma or federal return, whichever is applicable.

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU	NU	NU
Member FEIN	NU	NU	NU		
Member Name					
1. Inventory at beginning of year .....	1. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
2. Purchases.....	2. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
3. Cost of labor .....	3. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
4. Additional section 263A costs.....	4. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
5. Other costs (include schedule) .....	5. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
6. Total – Add lines 1 through 5.....	6. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
7. Inventory at end of year.....	7. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
8. Cost of goods sold – Subtract line 7 from line 6. Include here and on Schedule A, Part I, line 2 .....	8. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX

REFERENTIAL ONLY

## Schedule A-3

## Summary of Tax Credits (See Instructions)

	Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU
Member FEIN	NU		
Member Name			

**PART I – Credits Used Against Liability**

1. New Jobs Investment Tax Credit from Form 304 .....	1.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
2. Angel Investor Tax Credit from Form 321 .....	2.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
3. Business Employment Incentive Program Tax Credit from Form 324 .....	3.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
4.       a) Urban Enterprise Zone Employee Tax Credit from EITHER/       Form 300 OR       b) Urban Enterprise Zone Investment Tax Credit from Form 301 .....	4.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
5. Redevelopment Authority Project Tax Credit from Form 302 .....	5.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
6. Manufacturing Equipment and Employment Investment Tax Credit from Form 305 .....	6.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
7. Research and Development Tax Credit from Form 306 .....	7.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
8. Neighborhood Revitalization State Tax Credit from Form 311 .....	8.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
9. Effluent Equipment Tax Credit from Form 312 .....	9.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
10. Economic Recovery Tax Credit from Form 313 .....	10.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
11. AMA Tax Credit from Form 315 .....	11.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
12. Business Retention and Relocation Tax Credit from Form 316 .....	12.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
13. Sheltered Workshop Tax Credit from Form 317 .....	13.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
14. Film Production Tax Credit from Form 318 .....	14.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
15. Urban Transit Hub Tax Credit from Form 319 .....	15.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
16. Grow NJ Tax Credit from Form 320 .....	16.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
17. Wind Energy Facility Tax Credit from Form 322 .....	17.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
18. Residential Economic Redevelopment and Growth Tax Credit from Form 323 .....	18.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
19. Public Infrastructure Tax Credit from Form 325 .....	19.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
20. Reserved for future use .....	20.			
21. Film and Digital Media Tax Credit from Form 327 .....	21.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
22. Tax Credit for Employers of Employees With Impairments from Form 328 .....	22.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
23. Pass-Through Business Alternative Income Tax Credit from Form 329 .....	23.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
24. Apprenticeship Program Tax Credit from Form 330 .....	24.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
25. Tax Credit for Employer of Organ/Bone Marrow Donor from Form 331 .....	25.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
26. Tiered Subsidiary Dividend Pyramid Tax Credit from Form 332 .....	26.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
27. Other Tax Credit (see instructions) .....	27.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
28. Total tax credits – Add lines 1 through 27. Include here and on Schedule A, Part III, line 6 .....	28.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX

**PART II – Refundable Tax Credits**

1. Refundable portion of New Jobs Investment Tax Credit from Form 304 .....	1.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
2. Refundable portion of Angel Investor Tax Credit from Form 321 .....	2.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
3. Refundable portion of Business Employment Incentive Program Tax Credit from Form 324 .....	3.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
4. Other Tax Credit to be refunded .....	4.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
5. Total Refundable Tax Credit to be refunded to individual members. Enter here and on page 1, line 11b .....	5.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
6. Balance of Refundable Tax Credit to be applied to the group. Enter here and on page 1, line 11c .....	6.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX

## Schedule A-4 Summary Schedule (See Instructions) .

	Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU
Member FEIN	NU		
Member Name			
<b>PNOL Deduction Carryover</b>			
1. Form 500U, Section A, line 6 minus line 8b (for group) or line 6 minus line 8a (for members).....	1. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
<b>Post Allocation NOL Carryover</b>			
2. Form 500U, Section B, line 6 minus lines 10 and 12 of the member's column.....	2. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
<b>Interest and Intangible Costs and Expenses</b>			
3. Schedule G, Part I, line b.....	3. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
4. Schedule G, Part II, line b.....	4. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
<b>Schedule J Information</b>			
5. Reserved for future use.....	5. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
6. Reserved for future use.....	6. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
7. Reserved for future use.....	7. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
8. Schedule J, line 6c.....	8. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
9. Schedule J, line 7c.....	9. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
10. Schedule J, line 9.....	10. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
<b>Net Operational Income Information</b>			
11. Schedule O, Part III, line 31.....	11. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
<b>Dividend Exclusion Information</b>			
12. Schedule R, line 6.....	12. XXXXXXXXXXXXXXXX		
13. Schedule R, line 8.....	13. XXXXXXXXXXXXXXXX		
14. Schedule R, line 10.....	14. XXXXXXXXXXXXXXXX		

## Schedule A-5

## Computation of Group and Member Surtax

	Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU
Member FEIN	NU		
Member Name			

**PART I – Combined Group Surtax**

1. Combined Group Taxable Net Income (see instructions).....	1.	XXXXXXXXXXXXXXXXXX		
2. Surtax on combined group taxable net income – Multiply line 1 by the applicable surtax rate (see instructions).	2.	XXXXXXXXXXXXXXXXXX		
3. Pass-Through Business Alternative Income Tax Credit from Form 329, line 23b (see instructions)(amount entered cannot be more than amount on line 2).....	3.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
4. Balance of combined group surtax – Subtract line 3 from line 2.....	4.	XXXXXXXXXXXXXXXXXX		

**PART II – Member's Surtax**

1. a. Balance of combined group surtax (from Part I, line 4) .....	1a.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Divide line 1a by the group allocation factor from the combined group column of Schedule J, line 9 .....	1b.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
c. Member's share of combined group surtax – Multiply line 1b of the member's column by member's allocation factor from Schedule J, line 9 .....	1c.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
2. a. Member's Taxable Net Income from Separate Activities (from Schedule X)(If zero or less, enter zero) .....	2a.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Surtax on member's independent taxable net income – Multiply line 2a of the member by the applicable surtax rate (see instructions).....	2b.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
3. Total member's surtax – Add line 1c and line 2b .....	3.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
4. Pass-Through Business Alternative Income Tax Credit from Form 329, line 32d (see instructions)(amount entered cannot be more than amount on line 3).....	4.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
5. Total surtax – Subtract combined group column of line 4 from combined group column of line 3. Enter here and on Schedule A, Part III, line 8 .....	5.	XXXXXXXXXXXXXXXXXX		

## Schedule B

Schedule B is optional unless the combined group composition is different than that of the federal consolidated return group. See instructions.

	(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU	NU	NU
Member FEIN	NU	NU	NU		
Member Name					

**PART I – Beginning of the Year****Assets**

1. Cash .....	1.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
2. Trade notes and accounts receivable .....	2.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
a. Reserve for bad debts .....	2a.	(XXXXXXXXXXXXXX)	XXXXXXXXXXXXXX	(XXXXXXXXXXXXXX)	(XXXXXXXXXXXXXX)	(XXXXXXXXXXXXXX)
3. Loans to stockholders/affiliates .....	3.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
4. Stock of subsidiaries .....	4.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
5. Corporate stocks .....	5.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
6. Bonds, mortgages, and notes .....	6.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
7. New Jersey state and local government obligations .....	7.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
8. All other government obligations .....	8.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
9. Patents and copyrights .....	9.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
10. Deferred charges .....	10.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
11. Goodwill .....	11.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
12. All other intangible personal property (itemize) .....	12.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
13. <i>Total intangible personal property</i> (total lines 1 to 12) .....	13.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
14. Land .....	14.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
15. Buildings and other improvements .....	15.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
a. Less accumulated depreciation .....	15a.	(XXXXXXXXXXXXXX)	XXXXXXXXXXXXXX	(XXXXXXXXXXXXXX)	(XXXXXXXXXXXXXX)	(XXXXXXXXXXXXXX)
16. Machinery and equipment .....	16.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
a. Less accumulated depreciation .....	16a.	(XXXXXXXXXXXXXX)	XXXXXXXXXXXXXX	(XXXXXXXXXXXXXX)	(XXXXXXXXXXXXXX)	(XXXXXXXXXXXXXX)
17. Inventories .....	17.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
18. All other tangible personal property (net) (itemize on rider) .....	18.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
19. <i>Total real and tangible personal property</i> (total lines 14 to 18) .....	19.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
20. Total assets (add lines 13 and 19) .....	20.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX

**Liabilities and Stockholder's Equity**

21. Accounts payable .....	21.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
22. Mortgages, notes, bonds payable in less than 1 year (include schedule) .....	22.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
23. Other current liabilities (include schedule) .....	23.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX

Assets	
1. Cash	100
2. Accounts receivable	200
3. Inventory	300
4. Property, plant, and equipment	400
5. Intangible assets	500
6. Other assets	600
<b>Total Assets</b>	<b>2,100</b>

1. Cash .....	1.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
2. Trade notes and accounts receivable.....	2.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
a. Reserve for bad debts .....	2a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
3. Loans to stockholders/affiliates .....	3.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
4. Stock of subsidiaries.....	4.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
5. Corporate stocks .....	5.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
6. Bonds, mortgages, and notes.....	6.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
7. New Jersey state and local government obligations .....	7.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
8. All other government obligations .....	8.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
9. Patents and copyrights .....	9.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
10. Deferred charges.....	10.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
11. Goodwill.....	11.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
12. All other intangible personal property (itemize).....	12.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
13. Total intangible personal property (total lines 1 to 12).....	13.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
14. Land.....	14.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
15. Buildings and other improvements .....	15.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
a. Less accumulated depreciation .....	15a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
16. Machinery and equipment .....	16.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
a. Less accumulated depreciation .....	16a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
17. Inventories .....	17.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX



		(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
18. All other tangible personal property (net) (itemize on rider) .....	18.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
19. Total real and tangible personal property (total lines 14 to 18).....	19.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
20. Total assets (add lines 13 and 19).....	20.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
<b>Liabilities and Stockholder's Equity</b>						
21. Accounts payable .....	21.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
22. Mortgages, notes, bonds payable in less than 1 year (include schedule) .....	22.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
23. Other current liabilities (include schedule).....	23.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
24. Loans from stockholders/affiliates .....	24.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
25. Mortgages, notes, bonds payable in 1 year or more (include schedule) .....	25.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
26. Other liabilities (include schedule) .....	26.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
27. Capital stock: (a) Preferred stock .....	27a.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
(b) Common stock .....	27b.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
28. Paid-in or capital surplus .....	28.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
29. Retained earnings – appropriated (include schedule) .....	29.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
30. Retained earnings – unappropriated .....	30.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
31. Adjustments to shareholders' equity (include schedule).....	31.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
32. Less cost of treasury stock .....	32.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
33. Total liabilities and stockholder's equity (total lines 21 to 32) .....	33.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX

**Schedule C****Reconciliation of Income/(Loss) per Books With Income per Return**

Schedules C and C-1 are optional if Schedules M-1, M-2, or M-3 from the federal return are included with Form CBT-100U. See instructions.

	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>
Member FEIN		
Member Name		
1. Net income/(loss) per books.....	1. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
2. Federal income tax per books.....	2. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
3. Excess of capital losses over capital gains.....	3. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
4. Income subject to tax not recorded on books this year (itemize for each member) _____ _____	4. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
5. Expenses recorded on books this year not deducted on this return (itemize for each member) (a) Depreciation \$ _____ (b) Contributions Carryover \$ _____ (c) Other (itemize) \$ _____ _____	5. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
6. Total of lines 1 through 5.....	6. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
7. Income recorded on books this year not included on this return (itemize for each member) (a) Tax-exempt interest \$ _____ (b) _____ (c) _____	7. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
8. Deductions on this tax return not charged against book income this year (itemize for each member) (a) Depreciation \$ _____ (b) Contributions Carryover \$ _____	8. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
9. Total of lines 7 and 8.....	9. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
10. Income (Schedule A, Part I, line 28) – line 6 less 9.....	10. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX

**Schedule C-1****Analysis of Unappropriated Retained Earnings per Books (See Instructions)**

Schedules C and C-1 are optional if Schedules M-1, M-2, or M-3 from the federal return are included with Form CBT-100U. See instructions.

	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>
Member FEIN		
Member Name		
1. Balance at beginning of year.....	1. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
2. Net income/(loss) per books.....	2. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
3. Other increases (itemize) _____ _____	3. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
4. Total of lines 1, 2, and 3.....	4. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
5. Distributions (a) Cash \$ _____ (b) Stock \$ _____ (c) Property \$ _____	5. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
6. Other decreases (itemize) _____ _____	6. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
7. Total of lines 5 and 6.....	7. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
8. Balance end of year – line 4 less 7.....	8. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX

**Schedule CG****Reconciliation With Consolidated Group****Section A – Federal Consolidated Group**

1. List the entities included in the federal consolidated return(s). List the corporation(s) name, federal employer identification number (FEIN), and the amount on line 28.

	Name	FEIN	Form 1120, Line 28
a.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
b.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
c.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
d.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
e.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
f.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
2. Total.....			XXXXXXXXXXXXXXXXXXXXXXXXXXXX

**Section B – Members Included in the New Jersey Combined Group Not Reported in Section A**

3. List any members included in the New Jersey combined group not included in Section A.

	Name	FEIN	Taxable Income*
a.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
b.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
c.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
d.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
e.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
f.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
4. Total.....			XXXXXXXXXXXXXXXXXXXXXXXXXXXX

\* Taxable income before federal net operating loss deductions and federal special deductions (Must agree with line 28, page 1 of the unconsolidated federal Form 1120, or the appropriate line of any other federal corporate return that was filed or would have been filed)

**Section C – Members Reported in Section A Not Included in the New Jersey Combined Group**

5. List any member from Section A that are not part of the New Jersey combined group.

	Name	FEIN	Form 1120, Line 28
a.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
b.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
c.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
d.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
e.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
f.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
6. Total.....			XXXXXXXXXXXXXXXXXXXXXXXXXXXX

**Section D – Adjustments to Federal Taxable Income**

7. Other additions/subtractions to federal taxable income (include rider)

	Name	FEIN	Adjustments to Federal Taxable Income
a.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
b.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
c.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
d.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
e.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
f.			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
8. Total.....			XXXXXXXXXXXXXXXXXXXXXXXXXXXX
9. Total lines 2, 4, 6, and 8 (must reconcile to Schedule A, Part II, line 1c, column (a)) .....			XXXXXXXXXXXXXXXXXXXXXXXXXXXX

## Schedule E

## Summary of Estimated Payments and Credits Submitted by Individual Group

## Members to be Credited to the Group

See instructions before completing this schedule.

	Group Combined	Managerial Member (1)	Member 2...	
Unitary ID Number	NU	NU	NU	
Member FEIN	NU			
Member Name				
1. (a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(a) Estimate or payment amount submitted.....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
(b) Date submitted .....		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	
2. Overpayment to be credited from 2019 return.....			XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
3. Total amount of member's credit to be applied to the group .....			XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
4. Total amount of credit to be applied to the group. Include here and on page 1, line 9.....		XXXXXXXXXXXXXX		

## Schedule F

## Corporate Officers – General Information and Compensation (See Instructions)

Data must match amounts reported on federal Form 1125-E of the federal pro forma or federal return, whichever is applicable.

### Managerial Member (1)

Unitary ID Number **NU**

Member FEIN

Member Name

(a) Name of Officer	(b) Social Security Number	(c) Percent of Time Devoted to Business	Percentage of Corporation Stock Owned		(f) Amount of Compensation
			(d) Common	(e) Preferred	
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
1. Total compensation of officers.....					XXXXXXXXXXXXXXXXXXXX
2. Less: Compensation of officers claimed elsewhere on the return.....					XXXXXXXXXXXXXXXXXXXX
3 Balance of compensation of officers (include here and on Schedule A, Part I, line 12).....					XXXXXXXXXXXXXXXXXXXX

**Member 2...**

Unitary ID Number **NU**

Member FEIN

Member Name

(a) Name of Officer	(b) Social Security Number	(c) Percent of Time Devoted to Business	Percentage of Corporation Stock Owned		(f) Amount of Compensation
			(d) Common	(e) Preferred	
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXXX
1. Total compensation of officers.....					XXXXXXXXXXXXXXXXXXXX
2. Less: Compensation of officers claimed elsewhere on the return.....					XXXXXXXXXXXXXXXXXXXX
3. Balance of compensation of officers (include here and on Schedule A, Part I, line 12).....					XXXXXXXXXXXXXXXXXXXX

## Schedule G

### Managerial Member (1)

Unitary ID Number **NU**

Member FEIN

Member Name

### PART I – Interest (See Instructions)

1. Was interest paid, accrued, or incurred to a related member(s) not included in the combined group deducted from entire net income?

☐ Yes. Fill out the following schedule. ☐ No.

Name of Related Member	Federal ID Number	Relationship to Member	Amounts
			XXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXX
a. Total amount of interest deducted .....			XXXXXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions).....			(XXXXXXXXXXXXXXXXXXXX)
c. Related Party Interest Expenses Disallowed for New Jersey purposes (include here and in the member's column of Schedule A, Part II, line 6) .....			XXXXXXXXXXXXXXXXXXXX

### PART II – Interest Expenses and Costs and Intangible Expenses and Costs (See Instructions)

1. Were intangible expenses and costs, including intangible interest expenses and costs, paid, accrued or incurred to related members not included in the combined group, deducted from entire net income? ☐ Yes. Fill out the following schedule. ☐ No.

Name of Related Member	Federal ID Number	Relationship to Member	Type of Intangible Expense Deducted	Amounts
				XXXXXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXXXXX
a. Total amount of intangible expenses and costs deducted .....				XXXXXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions).....				(XXXXXXXXXXXXXXXXXXXX)
c. Related Party Intangible Expenses and Costs Disallowed for New Jersey purposes (include here and in the member's column of Schedule A, Part II, line 7) .....				XXXXXXXXXXXXXXXXXXXX

### Member 2...

Unitary ID Number **NU**

Member FEIN

Member Name

### PART I – Interest (See Instructions)

1. Was interest paid, accrued, or incurred to a related member(s) not included in the combined group deducted from entire net income?

☐ Yes. Fill out the following schedule. ☐ No.

Name of Related Member	Federal ID Number	Relationship to Member	Amounts
			XXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXX
a. Total amount of interest deducted .....			XXXXXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions).....			(XXXXXXXXXXXXXXXXXXXX)
c. Related Party Interest Expenses Disallowed for New Jersey purposes (include here and in the member's column of Schedule A, Part II, line 6) .....			XXXXXXXXXXXXXXXXXXXX

### PART II – Interest Expenses and Costs and Intangible Expenses and Costs (See Instructions)

1. Were intangible expenses and costs, including intangible interest expenses and costs, paid, accrued or incurred to related members not included in the combined group, deducted from entire net income? ☐ Yes. Fill out the following schedule. ☐ No.

Name of Related Member	Federal ID Number	Relationship to Member	Type of Intangible Expense Deducted	Amounts
				XXXXXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXXXXX
a. Total amount of intangible expenses and costs deducted .....				XXXXXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions).....				(XXXXXXXXXXXXXXXXXXXX)
c. Related Party Intangible Expenses and Costs Disallowed for New Jersey purposes (include here and in the member's column of Schedule A, Part II, line 7) .....				XXXXXXXXXXXXXXXXXXXX

**Schedule H****Taxes (See Instructions)**

Include all taxes paid or accrued during the accounting period wherever deducted on Schedule A.

**Managerial Member (1)**Unitary ID Number **NU**

Member FEIN

Member Name

	(a) Corporation Franchise Business Taxes	(b) Corporation Business/ Occupancy Taxes	(c) Property Taxes	(d) U.C.C. or Payroll Taxes	(e) Other Taxes/ Licenses (include schedule)	(f) Total
1. New Jersey Taxes	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
2. Other States & U.S. Possessions	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
3. City and Local Taxes	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
4. Taxes Paid to Foreign Countries*	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
5. Total	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
6. Combine lines 5(a) and 5(b)		XXXXXXXXXXXX				
7. Sales & Use Taxes Paid by a Utility Vendor (see instr.)		XXXXXXXXXXXX				
8. Add lines 6 and 7		XXXXXXXXXXXX				
9. Federal Taxes				XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
10. Total (Combine line 5 and line 9)	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX

\* Include on line 4 taxes paid or accrued to any foreign country, state, province, territory, or subdivision thereof.

**Member 2...**Unitary ID Number **NU**

Member FEIN

Member Name

	(a) Corporation Franchise Business Taxes	(b) Corporation Business/ Occupancy Taxes	(c) Property Taxes	(d) U.C.C. or Payroll Taxes	(e) Other Taxes/ Licenses (include schedule)	(f) Total
1. New Jersey Taxes	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
2. Other States & U.S. Possessions	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
3. City and Local Taxes	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
4. Taxes Paid to Foreign Countries*	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
5. Total	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
6. Combine lines 5(a) and 5(b)		XXXXXXXXXXXX				
7. Sales & Use Taxes Paid by a Utility Vendor (see instr.)		XXXXXXXXXXXX				
8. Add lines 6 and 7		XXXXXXXXXXXX				
9. Federal Taxes				XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX
10. Total (Combine line 5 and line 9)	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX	XXXXXXXXXXXX

\* Include on line 4 taxes paid or accrued to any foreign country, state, province, territory, or subdivision thereof.

## Schedule J Computation of Group and Members' Allocation Factors (See Instructions)

Each member, regardless of entire net income reported on Schedule A, Part II, line 20 must complete Schedule J.

**For tax years ending on and after July 31, 2019, services are sourced based on market sourcing not cost of performance.**

**NOTE:** Airlines and transportation companies, see instructions.

	Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU
Member FEIN	NU		

### NOTE: Water's-Edge and World-Wide Returns

- If only a portion of a member's operations are part of a unitary business, only the income, attributes, and allocation factors related to said portion should be included in the calculation of the combined group's tax. The remaining portion of a member's business operations may be subject to tax separately from the combined group. See instructions.
- For a member that has New Jersey receipts but does not have nexus with New Jersey, enter zero on line 6c of the member's column and include a rider with an explanation.

### Affiliated Group Return

By making an Affiliated Group Election, all of the activities of all of the members are deemed to be the activities of the group. Include all receipts.

Receipts		Group Combined	Managerial Member (1)	Member 2...
1. From sales of tangible personal property shipped to points within NJ ..	1.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
2. From services if the benefit of the service is received in New Jersey..	2.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
3. From rentals of property situated in New Jersey .....	3.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
4. From royalties for the use in NJ of patents, copyrights, and trademarks..	4.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
5. All other business receipts earned in New Jersey (see instructions).....	5.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
6. a. Total New Jersey receipts (total of lines 1 through 5) .....	6a.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
b. Intercompany eliminations.....	6b.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
c. Net New Jersey receipts – Subtract line 6b from line 6a .....	6c.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
7. a. Total receipts from all sales, services, rentals, royalties, and other business transactions everywhere .....	7a.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
b. Intercompany eliminations.....	7b.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
c. Net receipts from everywhere – Subtract line 7b from line 7a.....	7c.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
8. Group Denominator (enter amount from combined group column of line 7c) .....	8.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
9. Allocation Factor (line 6c divided by line 8). Carry the fraction to six decimal places. Do not express as a percent. Enter the allocation factor from the combined group column onto Schedule A, Part II, line 21, column (a) and the combined group column of Schedule R, line 11 ....	9.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX

**NOTE:** Include the GILTI and the receipts attributable to the FDII, net of the respective allowable IRC §250(a) deductions, in the allocation factor. The net amount of GILTI (i.e., the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and the net FDII (i.e., the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) amounts are included in the numerator (if applicable) and the denominator.



### Managerial Member (1)

Member Name

**Member 2...**

Member Name

Office Locations in New Jersey		Deposit Balances or Receipts	Percentages
Taxing District	County		
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
		XXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXX
Member's Total Deposit Balances or Receipts.....		XXXXXXXXXXXXXXXXXXXXXXX	
Member's Total Percentages.....			XXXXXXXXXXXXXXXXXXXXXXX

# Schedule P-1 Partnership Investment Analysis (See Instructions)

## Managerial Member (1)

Unitary ID Number **NU**

Member FEIN

Member Name

### PART I – Partnership Information

(1) Partnership, LLC, or Other Entity Information		(2) Date and State where Organized	(3) Percentage of Ownership	(4)		(5) Tax Accounting Method		(6) New Jersey Nexus		(7) Tax Payments Made on Behalf of Member by Partnerships
Name	Federal ID Number			Limited Partner	General Partner	Flow Through	Separate Accounting*	Yes	No	
										XXXXXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXXXXX

Enter total of column 7 here and on page 1, line 10 ..... XXXXXXXXXXXXXXXXXXXX

\*Taxpayers using a separate accounting method must complete Part II.

### PART II – Separate Accounting of Nonunitary Partnership Income

(1) Nonunitary Partnership's Federal ID Number	(2) Distributive Share of Income/Loss from Nonunitary Partnership	(3) Partnership's Allocation Factor (see instructions)	(4) Taxpayer's Share of Income Allocated to New Jersey (Multiply Column 2 by Column 3)
1.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
2.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
3.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
4.	Total column 2. Enter amount here and Schedule A, Part II, line 17b .....		XXXXXXXXXXXXXXXXXXXX
5.	Total column 4. Enter amount here and Schedule A, Part III, line 3b .....		XXXXXXXXXXXXXXXXXXXX

If additional space is needed, include a rider.

## Member 2...

Unitary ID Number **NU**

Member FEIN

Member Name

### PART I – Partnership Information

(1) Partnership, LLC, or Other Entity Information		(2) Date and State where Organized	(3) Percentage of Ownership	(4)		(5) Tax Accounting Method		(6) New Jersey Nexus		(7) Tax Payments Made on Behalf of Member by Partnerships
Name	Federal ID Number			Limited Partner	General Partner	Flow Through	Separate Accounting*	Yes	No	
										XXXXXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXXXXX

Enter total of column 7 here and on page 1, line 10 ..... XXXXXXXXXXXXXXXXXXXX

\*Taxpayers using a separate accounting method must complete Part II.

### PART II – Separate Accounting of Nonunitary Partnership Income

(1) Nonunitary Partnership's Federal ID Number	(2) Distributive Share of Income/Loss from Nonunitary Partnership	(3) Partnership's Allocation Factor (see instructions)	(4) Taxpayer's Share of Income Allocated to New Jersey (Multiply Column 2 by Column 3)
1.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
2.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
3.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
4.	Total column 2. Enter amount here and Schedule A, Part II, line 17b .....		XXXXXXXXXXXXXXXXXXXX
5.	Total column 4. Enter amount here and Schedule A, Part III, line 3b .....		XXXXXXXXXXXXXXXXXXXX

If additional space is needed, include a rider.

## Schedule PC

## Per Capita Licensed Professional Fee (See instructions)

## Read the Instructions Before Completing This Form

	Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU
Member FEIN	NU		
Member Name			
How many licensed professionals are owners, shareholders, and/or employees from this Professional Corporation (PC) as of the first day of the privilege period?		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX

\* Include a rider providing the names, addresses, and FID or SSN of the licensed professionals in the PC. If there are more than 2 licensed professionals, complete the remainder of Schedule PC. See instructions for examples of licensed professionals.

1. a. Enter number of resident and nonresident professionals with physical nexus with New Jersey .....	1a.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
b. Multiply line 1a by \$150 .....	1b.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
2. a. Enter number of nonresident professionals without physical nexus with New Jersey .....	2a.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
b. Multiply line 2a by \$150 and multiply the result by the allocation factor of the PC .....	2b.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
3. Total Fee Due – Add line 1b and line 2b .....	3.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
4. Installment Payment – 50% of line 3 .....	4.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
5. Total Fee Due (line 3 plus line 4) .....	5.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
6. Less prior year 50% installment payment and credit (if applicable) .....	6.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
7. Balance of Fee Due (line 5 minus line 6). .....	7.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
8. Credit to next year's Professional Corporation Fee. If line 7 is less than zero, enter the amount here .....	8.		XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
9. Total Professional Corporation Fees. If the result is zero or more, include the amount here and on page 1, line 7 of Form CBT-100U .....	9.	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX

# Schedule R Dividend Exclusion (See instructions)

	Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU	NU
Member FEIN	NU		
Member Name			
1. a. Enter the total dividends and deemed dividends reported and not eliminated on Schedule A .....	1a. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Previously taxed dividends – Enter amount from Schedule PT, Section D, line 3 .....	1b. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
2. Dividends eligible for dividend exclusion – Subtract line 1b from line 1a	2. XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
3. a. Enter amount from 80% or more owned domestic subsidiaries .....	3a. XXXXXXXXXXXXXXXX		
b. Enter amount from 80% or more owned foreign subsidiaries.....	3b. XXXXXXXXXXXXXXXX		
c. Total dividend income from 80% or more owned subsidiaries – Add line 3a and line 3b .....	3c. XXXXXXXXXXXXXXXX		
4. Multiply line 3c by .95 .....	4. XXXXXXXXXXXXXXXX		
5. Subtract line 3c from the combined group column of line 2.....	5. XXXXXXXXXXXXXXXX		
6. Dividend income from investments where member owns less than 50% of voting stock and less than 50% of all other classes of stock that were not already excluded as previously taxed dividends (include here and on Schedule A-4, line 12) .....	6. XXXXXXXXXXXXXXXX		
7. Subtract line 6 from line 5.....	7. XXXXXXXXXXXXXXXX		
8. Multiply line 7 by 50% (include here and on Schedule A-4, line 13).....	8. XXXXXXXXXXXXXXXX		
9. Reserved for future use .....	9.		
10. DIVIDEND EXCLUSION: Add line 4 and 8 (include here and on Schedule A-4, line 14) .....	10. XXXXXXXXXXXXXXXX		
11. Group allocation factor (from Schedule J, line 9).....	11. XXXXXXXXXXXXXXXX		
12. ALLOCATED DIVIDEND EXCLUSION: Multiply line 10 by line 11 (include here and on Schedule A, Part II, line 25, column (a)).....	12. XXXXXXXXXXXXXXXX		

## Schedule S

## Depreciation and Safe Harbor Leasing

	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>
Member FEIN		
Member Name		
1. IRC § 179 Deduction .....	1. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
2. Special Depreciation Allowance – for qualified property placed in service during the tax year .....	2. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
3. MACRS.....	3. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
4. ACRS.....	4. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
5. Other Depreciation .....	5. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
6. Listed Property .....	6. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
7. Total depreciation claimed in arriving at Schedule A, Part II, line 1c .....	7. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
<b>Include Federal Form 4562 and Federal Depreciation Worksheet</b>		
Modification at Schedule A, Part II, line 9 or line 12 – Depreciation and Certain Safe Harbor Lease Transactions		
<b>Additions</b>		
8. Amounts from lines 3, 4, 5, and 6 above .....	8. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
9. Special Depreciation Allowance from line 2 above .....	9. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
10. Distributive share of the special depreciation allowance from a partnership.....	10. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
11. Distributive share of ACRS, MACRS, and other depreciation from a partnership.....	11. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
12. Deductions on federal return resulting from an election made pursuant to IRC § 168(f)8 exclusive of elections made with respect to mass commuting vehicles		
(a) Interest .....	12a. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Rent.....	12b. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Amortization of Transactional Costs.....	12c. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(d) Other Deductions .....	12d. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
13. IRC § 179 depreciation in excess of New Jersey allowable deduction .....	13. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
14. Other additions (include an explanation/reconciliation).....	14. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
15. Total lines 8 through 14 .....	15. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
<b>Deductions</b>		
16. New Jersey depreciation (see instruction).....	16. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
17. Recomputed depreciation attributable to distributive share of recovery property from a partnership .....	17. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
18. Any income included in the return with respect to property solely as a result of an IRC § 168(f)(s) election.....	18. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
19. The lessee/user should enter the amount of depreciation that would have been allowable under the Internal Revenue Code on December 31, 1980, had there been no safe harbor lease election .....	19. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
20. Excess of accumulated ACRS, MACRS, or bonus depreciation over accumulated New Jersey depreciation on physical disposal of recovery property (include computations) .....	20. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
21. Other deductions (include an explanation/reconciliation).....	21. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
22. Total lines 16 through 21 .....	22. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
23. <b>ADJUSTMENT</b> – Subtract line 22 from line 15 (If line 23 is positive, enter at Schedule A, Part II, line 9. If line 23 is negative, enter as a positive number at Schedule A, Part II, line 12).....	23. XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX

## Form 500U

**Computation of Prior Net Operating Loss Conversion Carryover (PNOL) and Post Allocation Net Operating Loss (NOL) Deductions**

	Group Combined	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>	<b>NU</b>
Member FEIN	<b>NU</b>		
Member Name			

**Section A – Computation of Prior Net Operating Losses (PNOL) Deduction** from periods ending PRIOR to July 31, 2019

Complete the section only if the Allocated Entire Net Income/(Loss) from Schedule A, Part II, line 22, column (a) is positive (income).

1. Prior Net Operating Loss Conversion Carryover (PNOL) – Enter the amount from Form 500U-P, Part II, line 21 .....	1.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
2. Enter the portion of line 1 previously deducted (see instructions) .....	2.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
3. Enter the portion of line 1 that expired.....	3.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
4. Enter the portion of line 1 that is used on current period Schedule X ..	4.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
5. Enter any discharge of indebtedness excluded from federal taxable income in the current tax period pursuant to subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC § 108*.....	5.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
6. PNOL available in the current tax year – Subtract lines 2, 3, 4, and 5 from line 1 (if zero or less, enter zero) .....	6.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
7. a. Enter the amount from Schedule A, Part II, line 20, column (a) .....	7a.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Multiply line 7a by the member's allocation factor from Schedule J, line 9, and enter the result .....	7b.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
8. a. <b>Current tax year's PNOL deduction</b> – Enter the lesser of line 6 or line 7b here and on line 8 of Section B.....	8a.	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
b. Group Total – Enter the total of line 8a member columns here and on line 1 of Section C .....	8b.	XXXXXXXXXXXXXXXXXX	

\* If the allocated discharge of indebtedness exceeds the amount of PNOL that is available and the member has post allocation net operating loss carry-over in Form 500U Section B, carry the remaining balance to line 5 of Section B (see instructions).



**Form 500U-P Prior Net Operating Loss Carryovers (PNOL) For Tax Periods Ending PRIOR TO July 31, 2019**

	Managerial Member (1)	Member 2...
Unitary ID Number	<b>NU</b>	<b>NU</b>
Member FEIN		
Member Name		

**PART I**

Allocation Factor For The Last Tax Period Ending Prior to July 31, 2019 (from Schedule J) from last separate return .....	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
---------------------------------------------------------------------------------------------------------------------------	----------------------	----------------------

**PART II**

1. (a) Tax Period Ending .....	1a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	1b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 1b by the allocation factor in Part I.....	1c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
2. (a) Tax Period Ending .....	2a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	2b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 2b by the allocation factor in Part I.....	2c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
3. (a) Tax Period Ending .....	3a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	3b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 3b by the allocation factor in Part I.....	3c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
4. (a) Tax Period Ending .....	4a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	4b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 4b by the allocation factor in Part I.....	4c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
5. (a) Tax Period Ending .....	5a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	5b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 5b by the allocation factor in Part I.....	5c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
6. (a) Tax Period Ending .....	6a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	6b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 6b by the allocation factor in Part I.....	6c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
7. (a) Tax Period Ending .....	7a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	7b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 7b by the allocation factor in Part I.....	7c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
8. (a) Tax Period Ending .....	8a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	8b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 8b by the allocation factor in Part I.....	8c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
9. (a) Tax Period Ending .....	9a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	9b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 9b by the allocation factor in Part I.....	9c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
10. (a) Tax Period Ending .....	10a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	10b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 10b by the allocation factor in Part I.....	10c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX



		Managerial Member (1)	Member 2...
11. (a) Tax Period Ending .....	11a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	11b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 11b by the allocation factor in Part I.....	11c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
12. (a) Tax Period Ending .....	12a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	12b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 12b by the allocation factor in Part I.....	12c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
13. (a) Tax Period Ending .....	13a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	13b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 13b by the allocation factor in Part I.....	13c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
14. (a) Tax Period Ending .....	14a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	14b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 14b by the allocation factor in Part I.....	14c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
15. (a) Tax Period Ending .....	15a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	15b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 15b by the allocation factor in Part I.....	15c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
16. (a) Tax Period Ending .....	16a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	16b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 16b by the allocation factor in Part I.....	16c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
17. (a) Tax Period Ending .....	17a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	17b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 17b by the allocation factor in Part I.....	17c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
18. (a) Tax Period Ending .....	18a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	18b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 18b by the allocation factor in Part I.....	18c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
19. (a) Tax Period Ending .....	19a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	19b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 19b by the allocation factor in Part I.....	19c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
20. (a) Tax Period Ending .....	20a.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss.....	20b.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 20b by the allocation factor in Part I.....	20c.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX
21. Total Converted Prior Net Operating Losses.....	21.	XXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXX

## Form 500U-PA

## Post Allocation Net Operating Loss Carryovers (NOL) For Tax Periods Ending ON AND AFTER July 31, 2019

Taxable members can only share the combined group allocated NOL with other taxable members of the combined group in periods they were both members of the same combined group.

	Managerial Member (1)	Member 2...
Unitary ID Number	NU	NU
Member FEIN		
Member Name		

**PART I**

Enter the date on which the member entered the group .....

**PART II**

1. (a) Tax Period Ending .....	1a.		
(b) Post Allocation Net Operating Loss.....	1b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
2. (a) Tax Year Ending .....	2a.		
(b) Post Allocation Net Operating Loss.....	2b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
3. (a) Tax Period Ending .....	3a.		
(b) Post Allocation Net Operating Loss.....	3b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
4. (a) Tax Period Ending .....	4a.		
(b) Post Allocation Net Operating Loss.....	4b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
5. (a) Tax Period Ending .....	5a.		
(b) Post Allocation Net Operating Loss.....	5b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
6. (a) Tax Period Ending .....	6a.		
(b) Post Allocation Net Operating Loss.....	6b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
7. (a) Tax Period Ending .....	7a.		
(b) Post Allocation Net Operating Loss.....	7b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
8. (a) Tax Period Ending .....	8a.		
(b) Post Allocation Net Operating Loss.....	8b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
9. (a) Tax Period Ending .....	9a.		
(b) Post Allocation Net Operating Loss.....	9b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
10. (a) Tax Period Ending .....	10a.		
(b) Post Allocation Net Operating Loss.....	10b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
11. (a) Tax Period Ending .....	11a.		
(b) Post Allocation Net Operating Loss.....	11b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
12. (a) Tax Period Ending .....	12a.		
(b) Post Allocation Net Operating Loss.....	12b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
13. (a) Tax Period Ending .....	13a.		
(b) Post Allocation Net Operating Loss.....	13b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
14. (a) Tax Period Ending .....	14a.		
(b) Post Allocation Net Operating Loss.....	14b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
15. (a) Tax Period Ending .....	15a.		
(b) Post Allocation Net Operating Loss.....	15b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
16. (a) Tax Period Ending .....	16a.		
(b) Post Allocation Net Operating Loss.....	16b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
17. (a) Tax Period Ending .....	17a.		
(b) Post Allocation Net Operating Loss.....	17b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
18. (a) Tax Period Ending .....	18a.		
(b) Post Allocation Net Operating Loss.....	18b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
19. (a) Tax Period Ending .....	19a.		
(b) Post Allocation Net Operating Loss.....	19b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
20. (a) Tax Period Ending .....	20a.		
(b) Post Allocation Net Operating Loss.....	20b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
21. Total Post Allocation Net Operating Losses.....	21.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX

**Notice: CBT Standardized Return for Certain Filers**

The creation of a new simplified standardized return for combined groups, banking corporations, financial business corporations, and separate return filers designed to replace the CBT-100U, BFC-1, and CBT-100 is underway. However, due to the combination of significant changes to Corporation Business Tax reporting and administration over the last several years, coupled with technical challenges, implementation of the new form is now expected to be effective starting with the 2022 tax year. The divisions of Taxation, and Revenue and Enterprise Services, are committed to providing the best, modernized, and standardized return for these entities with privilege periods ending on or after July 31, 2022.



**State of New Jersey**  
DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION

Dear Taxpayer,

2020 has been a challenging year for all of us both in our personal and professional lives. I want to assure you that the Division has been hard at work in our efforts to help taxpayers overcome any compliance challenges they're facing in these unprecedented times.

Our Administration worked together with stakeholders and the legislature on a series of technical corrections, clarifications, and changes in legislation affecting the Corporation Business Tax Act. This collaboration resulted in legislation that was signed into law on November 4, 2020 (P.L. 2020, c. 118). A list of changes from this law is detailed in [TB-97](#), which I encourage you to review.

As you file your return, look for the "New for 2020" graphic throughout the instructions, which highlights many of this year's tax changes. I'd also like to take this opportunity to highlight a few items of particular importance.

- **Combined Group as a Taxpayer.** For privilege periods ending on and after July 31, 2020, a combined group is treated as one taxpayer for purposes of paragraph (1) of subsection (c) of section 5 of P.L. 1945, c. 162 (C.54:10A-5) and section 1 of P.L. 2018, c. 48 (C.54:10A-5.41) for the income derived from the unitary business.
- **Due Date.** The original due date of the Corporation Business Tax returns is now 30 days after the due date of the federal return. For administrative purposes, the Division will use the 15th day of the month following the federal due date unless that results in a less than 30-day filing window. However, the due dates for estimated payments are unaffected by the law. Taxpayers that are required to make estimated payments must still submit such payments on or before the 15th day of the fourth, sixth, ninth, and 12th months.
- **Copy of Federal Return Mandatory.** Taxpayers must include a copy of their federal return and any pertinent extracts of the federal return as part of a full and complete New Jersey return.
- **Surtax.** The surtax was extended through December 31, 2023, at the rate of 2.5% on all filers with allocated taxable net income over \$1 million. As originally enacted, the surtax was scheduled to decrease from 2.5% to 1.5% for privilege periods beginning on or after January 1, 2020, and expire for privilege periods beginning on or after January 1, 2022. There will not be penalties or interest assessed on underpayments resulting from the retroactive application of the increased surtax.
- **Net Operating Losses.** For tax years beginning on and after January 1, 2020, the federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers apply to the New Jersey net operating loss carryover provisions to the extent they are consistent with the provisions of the New Jersey Corporation Business Tax Act. If the New Jersey and federal provisions differ, the New Jersey Corporation Business Tax Act provisions govern. New Jersey generally follows the federal rules governing mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business. New Jersey also follows any other provision of the federal rules that limits or reduces federal net operating losses and federal net operating loss carryovers.
- **Dividend Exclusion.** The dividend exclusion now treats the combined group as one taxpayer. In addition, the tiered dividend exclusion, previously calculated on Schedule RT, has been replaced with a Tiered Subsidiary Dividend Pyramid Tax Credit.
- **Filing Methods.** Chapter 118 clarified and simplified the definition of an affiliated group for purposes of the affiliated group combined return election method. As a result, there is a one-time exception to prospectively change to the combined group's filing method.
- **New Jersey Research and Development (R&D) Credit.** For tax year 2020, the qualified research expenditures used for the federal qualified small business R&D payroll tax credit expenditures apply to the New Jersey R&D tax credit.
- **I.B.F. Deduction.** If a combined group includes a qualified taxable member, the combined group can deduct any income amounts eligible for the deduction under [N.J.S.A. 54:10A-4\(k\)\(4\)](#) that were not eliminated.

Looking ahead, I want to make sure you are aware that this is the last year Form CBT-100 will exist in this format. Under P.L. 2020, c. 118, the Division has been mandated to create a new and simplified standardized return for privilege periods ending on and after July 31, 2021.

Lastly, I would like to remind you that the Division is enforcing the 2016 mandate that all corporations must electronically file all their returns. This includes Forms CBT-100U, CBT-200-T, and CBT-150. Payments must also be made electronically.

If you have questions about filing your return, please visit our [website](#). I know times are still hard for many of us, but the experiences of this past year give me hope for better times and new opportunities ahead

Sincerely,

John Ficara  
Acting Director  
Division of Taxation

# CBT-100U

## State of New Jersey

### Division of Taxation

### Corporation Business Tax

## Instructions for Corporation Business Tax Unitary Return (Form CBT-100U – 2020)

### Electronic Filing Mandate

All Corporation Business Tax returns and payments must be made electronically. This mandate includes all returns, estimated payments, extensions, and vouchers. Visit [www.state.nj.us/treasury/taxation/payments-notice.shtml](http://www.state.nj.us/treasury/taxation/payments-notice.shtml) or check with your software provider to see if they support any or all of these filings.

**Note:** Form CBT-100U must be filed electronically even if one or more members of the combined group is a banking corporation or financial business corporation.

**FYI**

The law mandates the creation of a simplified standardized return for privilege periods ending on and after July 31, 2021. This is the last year that Form CBT-100U will exist in this format. It will be replaced with the new standardized return next year.

### Before You Begin

*Read all instructions carefully before completing returns.*

**NEW FOR  
2020**

**Include a complete copy of the federal Form 1120 (or any other federal corporate return) that was filed with the federal government for** (or on behalf of) each member of the combined group, and include all related forms and schedules that were filed as part of the **full and complete** federal return of the member. For more information, see [TB-98](#), *Federal Return and the Forms and Schedules to Include with the Corporation Business Tax Return Pursuant to P.L. 2020, C. 118*.

### Managerial Member Responsibilities

The managerial member acts as the agent on behalf of the combined group. The managerial member is required to address all tax matters including, but not limited to: filing and amending tax returns, filing extensions, and making estimated tax payments and/or any tax liability payment on behalf of its taxable members. The managerial member is also responsible for responding to notices and assessments for its combined group. ([N.J.S.A. 54:10A-4.10](#))

The managerial member of the combined group must register the group in order to file the combined return. Information on managerial member registration is available on the Division's [website](#).

### Personal Liability of Officers and Directors

Even though the managerial member is responsible for making payments on behalf of the combined group, each taxable member is jointly and severally liable for the tax due. In addition, any officer or director of any corporation who shall distribute or cause to be distributed any assets in dissolution or liquidation to the stockholders without having first paid all corporation franchise taxes, fees, penalties, and interest imposed on said

corporation, in accordance with [N.J.S.A. 14A:6-12](#), [N.J.S.A. 54:50-18](#) and other applicable provisions of law, shall be personally liable for said unpaid taxes, fees, penalties, and interest. Compliance with [N.J.S.A. 54:50-13](#) is also required in the case of certain mergers, consolidations, and dissolutions.

### Distortion of Net Income

The Director is authorized to adjust and redetermine items of gross receipts and expenses as may be necessary to make a fair and reasonable determination of tax payable under the Corporation Business Tax Act. For details regarding the conditions under which this authority may be exercised, see regulation [N.J.A.C. 18:7-5.10](#).

### Accounting Method

The return must be completed using the same method of accounting, cash, accrual or other basis, that was used on the federal income tax return. If a federal income tax return was not filed, use the same accounting method that would have been used if a federal return was filed.

**Note:** Members that only use I.F.R.S. as their method of accounting can use I.F.R.S. when reporting their income; however, the member must include a rider noting the potential differences, if any, from the rest of the group.

### Riders

If space is insufficient, include riders as PDFs in the same form as the original printed sheets. The riders must be numbered and clearly list the schedule(s) and line(s) of each corresponding rider item.

### Federal/State Tax Agreement

The New Jersey Division of Taxation and the Internal Revenue Service participate in a federal/State program for the mutual exchange of tax information to verify the accuracy and consistency of information reported on federal and New Jersey tax returns.

### Mandatory Combined Reporting

For group privilege periods ending on and after July 31, 2019, members that are part of a combined group must file a combined New Jersey return, Form CBT-100U. **Combined returns are mandatory, not elective.**

### Definitions

**Combined group** is a group of companies that have common ownership and are engaged in a unitary business, and at least one company is subject to tax under this chapter. It includes all business entities except as provided for under any section of the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (C.54:10A-1 et seq.). See [N.J.S.A. 54:10A-4\(z\)](#).

**NEW FOR  
2020**

For privilege periods ending on and after July 31, 2020, a combined group is treated as one taxpayer for purposes of paragraph (1) of subsection (c) of

section 5 of P.L.1945, c.162 (C.54:10A-5) and section 1 of P.L. 2018, c.48 (C.54:10A-5.41) for the income derived from the unitary business.

**Note:** Pursuant to N.J.S.A. 54:10A-4(h) a combined group is a taxpayer for the purposes of the Corporation Business Tax Act.

**Common ownership** means that more than 50% of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or noncorporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with section 318 of the federal Internal Revenue Code, 26 U.S.C. s.318. See: N.J.S.A. 54:10A-4(aa). The Division interprets N.J.S.A. 54:10A-4(aa) to mean that all of the ownership rules, including the beneficial and constructive ownership rules of I.R.C. section 318 apply since the definition of common ownership states that the control can be direct or indirect.

**Managerial member** is the common parent corporation if that corporation is a taxable member. If the common parent corporation is not a taxable member, the group must select a taxable member to be its managerial member or, at the discretion of the Director or upon failure of the combined group to select its managerial member, the Director will designate a taxable member of the combined group as managerial member.

**Member** is a business entity that is a part of a combined group, unless otherwise excluded. See "Corporations Required to File" for more information.

**Taxable member** is a member that is subject to tax pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.). See N.J.S.A. 54:10A-4(ff).

**Nontaxable member** is a member that is not subject to tax. See N.J.S.A. 54:10A-4(ee).

**Unitary business** is a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts. A unitary business shall be construed to the broadest extent permitted under the Constitution of the United States. See N.J.S.A. 54:10A-4(gg) and [TB-93](#), *The Unitary Business Principle and Combined Returns*, for more information and the full definition of a unitary business for the purposes of combined reporting.

## Combined Return Filing Methods

A combined return is a filing method for a group of business entities in a unitary business. Determining the combined group members involves imposing certain statutory limitations, which affect the treatment of income, allocation factors, and tax attributes. This decision is commonly referred to as "world-wide vs. water's-edge." As an alternative, there is an option to file the New Jersey combined return as an "affiliated group" as defined by statute. Information is available in [TB-89\(R\)](#), *Combined Group Filing Methods*.

**FYI**

P.L. 2020, c.118, included several changes impacting combined groups for privilege periods ending on and after July 31, 2019, and in future privilege periods. These changes may impact taxpayers' decisions on their combined return filing method option. As a result of the law change, the Division of Taxation is providing a one-time exception to prospectively allow a change to the combined group's filing methods. If a combined group chooses to select a different filing method on the 2020 CBT-100U, the method selected on the 2019 CBT-100U will not be binding for subsequent years, and the method selected on the **2020 CBT-100U, will be considered the start of the binding period for the purposes of N.J.S.A. 54:10A-4.11(b).**

**Mandatory Default Water's-Edge Group Basis** returns include only entities with significant business operations within the United States, with several inclusions and exceptions. **This is the mandatory default filing method. Combined reporting is not elective.** See N.J.S.A. 54:10A-4.8; N.J.S.A. 54:10A-4.10; N.J.S.A. 54:10A-4.11; and [TB-89\(R\)](#) for more information on the entities that are statutorily required to be included.

**Elective World-Wide Group Election.** When making a world-wide group election, the combined group must include all of the income, attributes, and allocation factors of all of the worldwide business entities that are members of the unitary combined group, regardless of whether such members filed a federal tax return or whether such members filed a federal consolidated return(s).

**Elective Affiliated Group Election.** For the purposes of the affiliated group election, "affiliated group" is defined pursuant to N.J.S.A. 54:10A-4(x). Only business entities that are U.S. domestic corporations (as defined in N.J.S.A. 54:10A-4(x)) for the purposes of the definition can be included in the affiliated group return. Non-U.S. corporations that do not file a federal return cannot be included in a New Jersey affiliated group combined return.

**Note:** In most cases, the New Jersey affiliated group combined return constitutes the multinational corporation's entire U.S. footprint.

The sole U.S. domestic corporation in a world-wide combined group cannot make the affiliated group election on its own. In this situation, the combined group must file a water's-edge or world-wide group combined return.

An affiliated group election by the U.S. domestic corporations does not relieve the non-U.S. corporations of their New Jersey Corporation Business Tax liability. Thus, a non-U.S. corporation organized outside the United States that does not file a federal return, but has nexus with New Jersey, must still file a separate New Jersey Corporation Business Tax return.

## Allocation Methods for Combined Returns

The two methods available to allocate the income of a combined group are "Joyce" and "Finnigan." These methods are differentiated by their determination of the allocation factor. Under either method, the allocation factor attributes included in the denominator are the same. The denominator includes all of the combined group's total factors, regardless of nexus. See Schedule J instructions for more information.



## Nexus

Each member that has nexus with New Jersey is subject to the \$2,000 minimum tax. A member of a combined group has nexus if the member meets the standards of N.J.S.A. 54:10A-2 as either part of the unitary business of the combined group or independent of the combined group. If a member does not have nexus with New Jersey, the member is not subject to the minimum tax. If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey can claim P.L. 86-272 protection.

**Note:** A taxpayer that is not in a unitary business relationship with a combined group must file a separate return if the taxpayer has nexus with New Jersey and the managerial member of the combined return does not make the election to file the affiliated group combined return.

## Corporations Required to File

If one member of a combined group has nexus, the combined group must file a New Jersey combined return.

In general, every corporation existing under the laws of the State of New Jersey is required to file a Corporation Business Tax return.

A foreign corporation has nexus if that foreign corporation:

1. Holds a general certificate of authority to do business in this State issued by the Secretary of State; or
2. Holds a certificate, license, or other authorization issued by any other department or agency of this State, authorizing the company to engage in corporate activity within this State; or
3. Derives income from this State; or
4. Employs or owns capital in this State; or
5. Employs or owns property in this State; or
6. Maintains an office in this State.

Foreign corporations see N.J.A.C. 18:7-1.6; N.J.A.C. 18:7-1.8; N.J.A.C. 18:7-1.9; N.J.A.C. 18:7-1.10; N.J.A.C. 18:7-1.11; N.J.A.C. 18:7-1.14 and TB-79(R), *Nexus for Corporation Business Tax*, for more information on nexus.

A foreign corporation that is a partner of a New Jersey partnership is deemed subject to tax in the State and must file a return.

**Corporations Claiming P.L. 86-272.** Foreign corporations that meet the filing requirements and whose income is immune from tax pursuant to Public Law 86-272, must complete Schedule N, Nexus – Immune Activity Declaration, and all of the schedules from the CBT-100U. In addition, the member must include a copy of the Nexus Questionnaire. P.L. 86-272 filers are not subject to the surtax imposed by N.J.S.A. 54:10A-5.41.

**Note:** If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, **no** member that has nexus with New Jersey can claim P.L. 86-272 protection.

**New Corporations.** Every New Jersey corporation acquires a taxable status beginning 1) on the date of its incorporation, or 2) on the first day of the month following its incorporation if so stated in its certificate of incorporation. Every corporation that incorporates, qualifies or otherwise acquires a taxable status in New Jersey must file a Corporation Business Tax return.

**S Corporations.** Federal S corporations that have **not** elected and been authorized to be New Jersey S corporations must complete this return as though no election had been made under I.R.C. § 1362. A copy of Form 1120-S as filed must be submitted. Lines 1 through 28 in Part I, Schedule A of the CBT-100U must be completed.

**New Jersey S Corporations.** New Jersey S corporations that **elect** to be included as a member on the combined return will be taxed in the same manner as the other members of the combined group. A copy of Form 1120-S as filed must be submitted. Lines 1 through 28 in Part I, Schedule A of the CBT-100U must be completed.

**Domestic International Sales Corporations (DISC).** A DISC must complete this return as though no election had been made under Sections 992-999 of the Internal Revenue Code. A DISC must complete all applicable schedules on the return.

**Combinable Captive Insurance Companies.** Combinable captive insurance companies are no longer exempt from the Corporation Business Tax.

**Note:** A regular captive insurance company that does not meet the definition of a *combinable captive insurance company* in N.J.S.A. 54:10A-4(y) is still exempt from the Corporation Business Tax.

**Foreign Sales Corporations (FSC).** An FSC must complete this return as though no election had been made under Sections 922-927 of the Internal Revenue Code. FSCs must complete all applicable schedules on the return. Under Section 5, P.L. 106-519, no corporation may elect to be an FSC after September 30, 2000.

**Financial Business Corporations.** Corporations that qualify as financial businesses, those that derive 75% of their gross income from the financial activities enumerated at N.J.A.C. 18:7-1.16(a)1 through (a)7, must use Schedule A-7 as a worksheet and keep with their records. It does not need to be included with the return. Schedule A-7 is available on the Division's [website](#). The combined return must be filed electronically even if one or more members of the combined group is a financial business corporation.

**Banking Corporations.** A banking corporation filing as part of a combined group that uses a fiscal year basis must align its privilege period with the combined group. For more information, see TB-91, *Banking Corporations and Combined Returns*. The combined return must be filed electronically even if one or more members of the combined group is a banking corporation.

**Professional Corporations.** Corporations formed under N.J.S.A. 14A:17-1 et seq. or any similar laws of a possession or territory of the U.S., a state, or political subdivision thereof, must complete Schedule PC. Examples of licensed professionals include certified public accountants, architects, optometrists, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, veterinarians, and attorneys.

**Inactive Corporations.** Inactive corporations that, during the period covered by the return, did not conduct any business, did not have any income, receipts or expenses, and did not own

any assets must complete Schedule I – Certificate of Inactivity in addition to page 1, the Members and Affiliates Schedule, the Annual General Questionnaire, and Schedules A, A-2, A-3, and A-4. Payment for the related minimum tax liability and the installment payment (if applicable) must be submitted electronically.

**Portion of a Company's Operations That are Nonunitary With This Combined Group.** There are instances when a portion of a member's business operations are independent of the unitary business activity of the combined group. Only the income, attributes, and allocation factors related to the portion of a company's operations that are part of a unitary business of the combined group are included in the calculation of the combined group's entire net income and allocation factor. The remaining portion of a member's business operations may be subject to tax separately from the combined group if such member individually conducts business in New Jersey or with another combined group (if it is engaged in a unitary business with that combined group that also conducts business in New Jersey and files a CBT-100U).

**Note:** Schedule X will be used to calculate the New Jersey taxable net income of that separate activity income that must be reported in Part III of Schedule A of the CBT-100U. See Schedule X instructions for more information.

A combined group member with business operations that are independent of the unitary business activity of the combined group must report such income on Schedule X. Schedule X must be submitted with the combined return.

See "Additional Forms and Instructions" for details on obtaining Schedule X.

**Former Member of Combined Group.** A taxpayer that was a member of a combined group filing a New Jersey combined return for part of the group privilege period and subsequently departs the combined group to file on a separate entity basis must report the income for months subsequent to departing the combined group on a separate return (Form CBT-100) unless the member joined a second combined group that files a New Jersey combined return. The taxpayer filing a separate return would not report the income on CBT-100 for the months the member was part of the combined group. Likewise, a taxpayer that joined a second combined group that files a New Jersey combined return would only report on the second group's return the income for the months the member was part of the second combined group. If determining what amount of income is attributable to the portions of the 12-month period are for the periods before and after departing a combined group, the taxpayer must prorate their income/losses and receipts.

**Note:** For a taxpayer that is a member of a combined group filing a New Jersey combined return and that member properly dissolved and received tax clearance during the group privilege period, the income and tax liabilities of that member for the part of the group privilege period the member existed prior to dissolution must be reported on the combined return.

### Included and Excluded Entity Types

Not all business entities are included in a combined group. The lists below provide information on which entities are or are not included. Additional information is available in [TB-86\(R\)](#), *Included and Excluded Business Entities in a Combined Group*

*and the Minimum Tax of a Taxpayer that is a Member of a Combined Group.*

### Included Entity Types

- U.S. Corporations
- Foreign Corporations
- Casino Licensees
- Banking Corporations
- Financial Corporations
- Limited Liability Companies (unless treated as partnerships or disregarded entities for federal purposes)
- Foreign Limited Liability Companies (unless treated as partnerships or disregarded entities for federal purposes)
- Federal S Corporations (that have not made a New Jersey S Corporation election)
- New Jersey S Corporations (that have elected to be included in the combined group)
- Combinable Captive Insurance Companies
- Qualified Subchapter S Subsidiaries (that have not made a New Jersey S Corporation election)
- New Jersey Qualified Subchapter S Subsidiaries (that elected to be included in the combined group)
- Professional Corporations
- Any other business entities however and/or wherever incorporated or formed that are treated as corporations for federal purposes except when excluded by statute or as described below

### Casino Licensees

Pursuant to the Casino Control Act, any business conducted by an individual, partnership, or corporation or any other entity, or any combination thereof, holding a license in New Jersey is required to file a consolidated return. A consolidated return is similar to an affiliated group combined return. See [N.J.S.A. 5:12-148](#). All Casino licensees are taxable members. The affiliated businesses that are unitary with the casino licensees must also be included when completing CBT-100U.

### Disregarded Entities

A business entity that is treated as a disregarded entity for federal income tax purposes is also treated as a disregarded entity for New Jersey Corporation Business Tax purposes pursuant to [N.J.S.A. 42:2C-92](#). Disregarded entities also include legal partnerships that are disregarded entities for federal purposes. A disregarded entity is not itself a member of a combined group. However, the tax attributes of a disregarded entity are reported by a member of a combined group when the member owns the disregarded entity. The attributes of a disregarded entity owned by a member of a combined group are included in the income and allocation factor of that member as well as the combined group. In making a determination of which members are included in a water's-edge combined group pursuant to [N.J.S.A. 54:10A-4.11](#), the disregarded entity's attributes shall be used by the member that owns the disregarded entity. A disregarded entity is **not** subject to the \$2,000 minimum tax as a member of a combined group because a disregarded entity is not a member of the combined group. However, if a disregarded entity is part of a unitary business of a combined group, the owner of the disregarded entity will be a member of the combined group and must be included as part of the combined group except as otherwise excluded.



## Entities that File as Partnerships for Federal Purposes

Partnerships, limited partnerships, or limited liability companies treated as partnerships for federal purposes are business entities that can be unitary with a combined group. However, these entities are not members of a combined group for New Jersey Corporation Business Tax purposes. Their income flows through to the corporate partners that are members of the combined group. Partnerships, limited partnerships, and limited liability companies that are treated as partnerships for federal purposes are **not** subject to the \$2,000 minimum tax as members of a combined group because they are not members of the combined group. However, Form NJ-CBT-1065 must still be filed.

## Excluded Entity Types

- New Jersey S Corporations that do not elect inclusion in the combined group
- New Jersey Qualified Subchapter S Subsidiaries that do not elect inclusion in the combined group
- Captive Insurance Companies that do not meet the definition of a Combinable Captive Insurance Company as defined in N.J.S.A. 54:10A-4(y)
- All other insurance companies that are not Combinable Captive Insurance Companies
- Corporations exempt from the Corporation Business Tax under N.J.S.A. 54:10A-3
- Corporations that are regulated, in whole or in part, by the Federal Energy Regulatory Commission, the New Jersey Board of Public Utilities, or similar regulatory body of another state, with respect to rates charged to customers for electric or gas services and water and wastewater services
- Real Estate Investment Trusts
- Regulated Investment Companies
- Investment Companies

**A taxpayer that has nexus with New Jersey that is excluded from the New Jersey combined return must file a separate return.**

## When to File

### 2020 Accounting Periods and Due Dates

The 2020 Corporation Business Tax return should only be used for accounting periods ending on and after July 31, 2020, through June 30, 2021.

**NEW FOR 2020** For privilege periods ending on and after July 31, 2020, the due date for all Corporation Business Tax returns and payments except estimated payments is 30 days after the original due date of the federal corporate income tax return. If the due date falls on a weekend or a legal holiday, the return and payment are due on the following business day. Use the following schedule for 2020 CBT-100U forms and payments:

If accounting period ends on:	July 31, 2020	Aug. 31, 2020	Sept. 30, 2020	Oct. 31, 2020	Nov. 30, 2020	Dec. 31, 2020
Due date for filing is:	Dec. 15, 2020	Jan. 15, 2021	Feb. 15, 2021	Mar. 15, 2021	Apr. 15, 2021	May 15, 2021
If accounting period ends on:	Jan. 31, 2021	Feb. 28, 2021	Mar. 31, 2021	Apr. 30, 2021	May 31, 2021	June 30, 2021
Due date for filing is:	June 15, 2021	July 15, 2021	Aug. 15, 2021	Sept. 15, 2021	Oct. 15, 2021	Nov. 15, 2021

**Note:** The start of the 2020 filing season was delayed due to changes to the Corporation Business Tax statutes. Information on affected due dates is available on the Division of Taxation's [website](#).

A New Jersey combined return must be filed for the accounting period (calendar or fiscal, as applicable) of the managerial member of the combined group, or part of the period, beginning on the date the combined group acquired a taxable status in New Jersey regardless of whether it had any assets or conducted any business activities. All accounting periods must end on the last day of the month, except that the managerial member may use the same 52-53 week accounting year that is used for federal income tax purposes.

The combined group's reporting period for the New Jersey combined return is the same tax period that the managerial member uses for federal purposes. Generally, this is the same privilege period as the federal consolidated return since in most instances the managerial member is one of the members included in the federal consolidated return. Any members that operate under a different return period must file a short-period return to align their privilege periods with the group's privilege period. This is done either on Form CBT-100 (separate filers) or Form BFC-1 (Banking Corporations). Affected members must also fiscalize or annualize their income and attributes reported as part of the combined group. See N.J.S.A. 54:10A-4.10.c and N.J.S.A. 54:10A-4.8.b.

## Extension of Time to File

The Tentative Return and Application for Extension of Time to File, Form CBT-200-T, must be filed and paid [electronically](#). You can also check with your software provider to see if the software you use supports filing of extensions.

Combined groups filing Form CBT-100U will automatically receive a six-month extension only if they have paid at least 90% of the tax liability and timely filed Form CBT-200-T.

An extension of time is granted only to file the New Jersey combined return. There is no extension of time to pay the tax due. The Division will notify you only if we deny your extension request, but not until after you actually file your return. Penalties and interest are imposed whenever tax is paid after the original due date.

**Note:** An extension payment must include any applicable professional corporation (PC) fees and/or installment payments. See the online application for more information.

## How to Pay

The managerial member acts as the agent on behalf of the combined group and is responsible for making payments on behalf of the group.

To make payments electronically, go to the Division of Taxation's [website](#). Managerial members who do not have access to the internet can call the Division's Customer Service Center at (609) 292-6400.

If registered, payments can also be made by Electronic Funds Transfer (EFT). For information or to enroll in the program, visit the Division of Revenue and Enterprise Services' website at [www.nj.gov/treasury/revenue/eff1.shtml](http://www.nj.gov/treasury/revenue/eff1.shtml), call (609) 984-9830, fax (609) 292-1777, or write to NJ Division of Revenue and

**Note:** Managerial members that are required to remit payments by EFT can satisfy the EFT requirement by making e-check or credit card payments.

## Penalties and Interest

**Each taxable member is jointly and severally liable for any penalties and interest assessed.** See N.J.S.A. 54:10A-4.8 and N.J.S.A. 54:10A-4.10.

**Insufficiency Penalty.** If the amount paid with the Tentative Return, Form CBT-200-T, is less than 90% of the tax liability computed on Form CBT-100U, or in the case of a combined group with a preceding return covering a full 12-month period that is less than the amount of the tax computed at the rates applicable to the current accounting year but on the basis of the facts shown and the law applicable to the preceding accounting year, the combined group may be liable for a penalty of 5% per month or part of a month not to exceed 25% of the amount of underpayment from the original due date to the date of actual payment.

**Late Filing Penalty.** 5% per month or part of a month on the amount of underpayment not to exceed 25% of that underpayment, except if no return has been filed within 30 days of the date on which the first notice of delinquency in filing the return was sent, the penalty will accrue at 5% per month or part of a month of the total tax liability not to exceed 25% of such tax liability. Also, a penalty of \$100 for each month the return is delinquent may be imposed.

**Late Payment Penalty.** 5% of the balance of tax due paid after the due date for filing the return may be imposed.

**Interest.** 3% above the average predominant prime rate for every month or part of a month the tax is unpaid, compounded annually. At the end of each calendar year, any tax, penalties, and interest remaining due will become part of the balance on which interest will be charged. The interest rates assessed by the Division of Taxation are published [online](#).

**Note:** The average predominant prime rate is the rate as determined by the Board of Governors of the Federal Reserve System, quoted by commercial banks to large businesses on December 1st of the calendar year immediately preceding the calendar year in which payment was due or as redetermined by the Director in accordance with N.J.S.A. 54:48-2.

**Collection Fees.** In addition, if the tax bill is sent to our collection agency, a referral cost recovery fee of 10.7% of any tax, penalty, and interest due will be added to the liability in accordance with N.J.S.A. 54:49-12.3. If a certificate of debt is issued for the outstanding liability, a fee for the cost of collection of the tax may also be imposed.

**Underpayment of Estimated Tax.** To calculate the amount of interest for the underpayment of estimated tax, complete either Form CBT-160-A or Form CBT-160-B. If the combined group qualifies for any of the exceptions to the imposition of interest for any of the installment payments, Part II must be completed and submitted with the return as evidence of such exception.

For 2020 **only**, no interest or penalties are due on an underpayment that results from an additional tax liability created by the provisions of P.L. 2020, c.118.

**Civil Fraud.** If any part of an assessment is due to civil fraud, there shall be added to the tax an amount equal to 50% of the assessment in accordance with N.J.S.A. 54:49-9.1.

**Transacting Business Without a Certificate of Authority.** In addition to any other liabilities imposed by law, a foreign corporation that transacts business in this State without a certificate of authority shall forfeit to the State a penalty of not less than \$200, nor more than \$1,000 for each calendar year, not more than 5 years prior thereto, in which it shall have transacted business in this State without a certificate of authority. N.J.S.A. 14A:13-11(3).

## Amended Returns

All CBT-100U amended returns must be submitted electronically.

**Final Determination of Net Income by Federal Government.** Any change or correction made by the Internal Revenue Service to the federal taxable income must be reported to the Division within 90 days.

## Page 1 Line-by-Line Instructions

Enter the unitary ID number, unitary group name, and complete mailing address in the space provided on the return. Also provide the managerial member's FEIN, name, complete mailing address, and contact information.

Check the box if this is an amended return.

Check the box to indicate which filing method is being used. A New Jersey combined return will default to a water's-edge group, unless the managerial member makes a world-wide or affiliated group election (N.J.S.A. 54:10A-4.11). The election must be made on a timely filed original combined return in the privilege period it becomes effective. The world-wide group election and affiliated group election cannot be made at the same time, and the managerial member can only choose one election. The elections are binding for the privilege period of the election plus five subsequent privilege periods. If filing on an affiliated group or world-wide basis, indicate the number of years into the election period of the combined group.

### FYI

P.L. 2020, c.118, included several changes impacting combined groups for privilege periods ending on and after July 31, 2019, and in future privilege periods. These changes may impact taxpayers' decisions on their combined return filing method option. As a result of the law change, the Division of Taxation is providing a one-time exception to prospectively allow a change to the combined group's filing methods. If a combined group chooses to select a different filing method on the 2020 CBT-100U, the method selected on the 2019 CBT-100U will not be binding for subsequent years, and the method selected on the **2020 CBT-100U, will be considered the start of the binding period for the purposes of N.J.S.A. 54:10A-4.11(b)**.

### Line 1 – Total Tax of Combined Group

Enter amount from line 5, column (a) of Schedule A, Part III.

**Line 2 – Total Tax Credits Used by Combined Group**

Enter amount from line 6, column (a) of Schedule A, Part III.

**Line 3 – Total Combined Group CBT Tax Liability**

Enter amount from line 7, column (a) of Schedule A, Part III.

**Line 4 – Total Surtax of Combined Group Members**

Enter amount from line 8, column (a) of Schedule A, Part III.

**Line 5 – Total Combined Group Tax Due**

Enter amount from line 9b, column (a) of Schedule A, Part III.

**Line 7 – Professional Corporation Fees**

Enter amount from the combined group column of Schedule PC, line 9.

**Line 8 – Total Tax and Professional Corporation Fees**

Enter the total of lines 5 and 7.

**Line 9 – Payments and Credits**

Enter amount from Schedule E, line 4.

**Line 10 – Payments Made by Partnerships**

Include the total payments made by partnerships on behalf of the members. Total the amounts reported in column 7 of Schedule P-1, Part I for all members. Submit copies of the NJK-1s or K-1s (as applicable) reflecting payments made by each partnership entity.

**Line 11a – Total Refundable Tax Credits**

Add the amounts from Schedule A-3, Part II, line 5 and Schedule A-3, Part II, line 6 and enter the total.

**Line 11b – Total Refundable Tax Credits Refunded to Members**

Enter the amount from Schedule A-3, Part II, line 5. This amount will be refunded to the managerial member, which is responsible for distributing to the appropriate group members.

**Line 11c – Total Refundable Tax Credits Applied to Group**

Enter the amount from Schedule A-3, Part II, line 6.

**Line 12 – Total Payments and Credits**

Add lines 9, 10, and 11c and enter the result.

**Amount Due or Overpayment – Lines 13–18**

Compare lines 12 and 8.

- If line 12 is less than line 8, you have a balance due. Complete lines 13, 14, and 15.
- If line 12 is more than line 8, you have an overpayment. Complete line 14 (if applicable) and lines 16 through 18.

**Line 13 – Balance of Tax Due**

Subtract line 12 from 8 and enter the difference.

**Line 14 – Penalty and Interest Due**

Include any penalties and interest. See "Penalties and Interest" for information.

**Note:** If the group has an overpayment or no tax liability and has calculated penalties and interest due, such amounts must be added to the balance due line or subtracted from the overpayment.

**Line 15 – Total Balance Due**

Enter the total of line 13 and line 14.

**Line 16 – Amount Overpaid**

Subtract the sum of line 8 and line 14 (if applicable) from the amount on line 12.

**Line 17 – Refund**

Enter the amount of the overpayment to be refunded. This amount will be refunded to the managerial member.

**Line 18 – Credit to 2021**

Enter the amount of the overpayment that you want to credit to the 2021 combined group tax liability.

**Signature**

Each return must be signed by an officer of the managerial member who is authorized to attest to the truth of the statements contained therein. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of all of the members of the combined group.

**Tax preparers** who fail to sign the return or provide their assigned tax identification number shall be liable for a \$25 penalty for each such failure. If the tax preparer is not self-employed, the name of the tax preparer's employer and the employer's tax identification number should also be provided. In the case of a corporation in liquidation or in the hands of a receiver or trustee, certification shall be made by the person responsible for the conduct of the affairs of such corporation.

**Members and Affiliates Schedule**

Enter the requested information for each member of the combined group. This schedule is used, in part, to add and remove members from the group. Any members included on this schedule that were not included on the last CBT-100U that was filed will be added to the group. Likewise, any member that was included on the last CBT-100U but is not included on this schedule will be removed from the group. All members that were part of the group for any part of the tax period must be included on this schedule.

**Annual General Questionnaire**

Answer all questions on this schedule for each member. If necessary, include a rider detailing the requested information.

**Schedule A**

The managerial member must complete this schedule for each member.

**Intercompany Eliminations**

Enter member's amounts in the member's column. In column (c), enter the total amounts of all members prior to intercompany eliminations and adjustments. In column (b), enter the intercompany eliminations and adjustments. In column (a) enter the total amounts for the combined group after intercompany eliminations and adjustments.

**Income of the Combined Group**

The relevant portions of N.J.S.A. 54:10A-4.6 require the income of the members derived from the unitary business of the combined group to include what was reported for federal purposes (federal taxable income before federal net operating losses and federal special deductions) modified for New Jersey modifications (additions and subtractions) required by the



Corporation Business Tax Act. See N.J.S.A. 54:10A-4(k). For a member of the combined group that is a non-U.S. corporation, N.J.S.A. 54:10A-4.6.b requires all of the income be included even if the entity did not file a federal return. In instances where the other members of the combined group filed a federal form 5471 with the IRS reporting the non-U.S. members income, the form 5471 may be used if the non-U.S. member did not file Form 1120-F. However, the copy of the Form 5471 that was filed with the federal government must be included with the combined return. The member's income and tax attribute data from Form 5471 must be entered in Part I of Schedule A in that member's column as though the taxpayer filed a federal return, and in Part II, line 2, enter the amount of income that would not be in federal taxable income. If a non-U.S. corporation did not file federal Form 1120-F or was not reported on federal Form 5471, it must complete an 1120-F reporting its income and tax attributes as though the entity filed a federal return. For New Jersey purposes, on Schedule A, in Part I and Part II, the non-U.S. corporation will make the additions and deductions. **All data must match the federal return that was filed or that would have been filed.**

**Note:** Members that only use I.F.R.S. as their method of accounting can use I.F.R.S. when reporting their income; however, the member must include a rider noting the potential differences, if any, from the rest of the group.

## Federal Consolidated Return Principles

Combined returns are not necessarily the same as a consolidated return, although they are similar. The principles set forth in the Treasury regulations promulgated under Section 1502 of the Internal Revenue Code **generally** apply to the extent consistent with the New Jersey Corporation Business Tax Act and the unitary business principle to a combined group filing a New Jersey combined return. See N.J.S.A. 54:10A-4.6(h). **However**, for purposes of the New Jersey Corporation Business Tax Act, the starting point for taxable income is entire net income before net operating losses and special deductions with several modifications for additions and deductions. See N.J.S.A. 54:10A-4.6.e; N.J.S.A. 54:10A-4(k); N.J.S.A. 54:10A-4(bb); and *MCI Communication Services, Inc. v. Director Division of Taxation*, Docket No. 013905-2010, (Tax Court of New Jersey 2015); affirmed 2018 N.J. Super. Unpub. LEXIS 1401; cert. denied 195 A.3d 528 (October 18, 2018).

For the purposes of applying I.R.C. § 163(j) and N.J.S.A. 54:10A-4(k)(2)(K), the members included in a New Jersey combined return will be treated in the same manner as though they filed a single federal consolidated return. This is true regardless of whether the members of the New Jersey combined return are on one federal consolidated return. See TB-87, Initial Guidance for Corporation Business Tax Filers and the IRC § 163(j) Limitation, for more information.

**Note:** For the purposes of I.R.C. § 163(j), New Jersey follows the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

To the extent consistent with the Corporation Business Tax Act (1945), the federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers apply to the New Jersey net operating loss carryover provisions under N.J.S.A. 54:10A-4.6(h) as though the combined group filed a federal consolidated return, regardless of how the members of the combined group filed for federal purposes. See N.J.S.A. 54:10A-4.6(m) and N.J.S.A. 54:10A-4.5.

## Intercompany Dividend Elimination

N.J.S.A. 54:10A-4.6 allows a 100% intercompany dividend elimination for dividends and deemed dividends between members of the combined group included on the same New Jersey combined return. This elimination is a pre-allocation elimination that occurs in column (b) of Schedule A, Part I or on Schedule A, Part II (above line 21). Dividends and deemed dividends from subsidiaries that are not included as members of the combined group are not eligible for this elimination, but may be eligible for the dividend exclusion in Schedule R if those dividends and deemed dividends received from the excluded subsidiaries are part of the unitary business of the combined group.

## Part I – Computation of Entire Net Income Lines 4b and 4c – FDII and GILTI

The **gross** I.R.C. § 951A and the **gross** I.R.C. § 250(b) amounts included in income for federal purposes must be included for New Jersey purposes. Enter the **gross** I.R.C. § 951A (GILTI) and/or the **gross** I.R.C. § 250(b) (FDII) amounts. **Do not enter negative amounts on line 4b or 4c of Schedule A, Part I.** Include a copy of federal Forms 8993 and 8992 that were completed and submitted with federal Form 1120. **Do not enter the net numbers.** The I.R.C. § 250(a) deductions are taken in Schedule A Part II since the I.R.C. § 250(a) deductions permitted by N.J.S.A. 54:10A-4.15 are special deductions taken below line 28 for federal purposes (and are to be taken below in Part II, and **not** in Part I).

A combined group may include the controlled foreign corporations (CFC) that generated Global Intangible Low Tax Income (GILTI) included in other members' entire net income. Members of a combined group that are incorporated under the laws of a foreign nation must include all world-wide income regardless of whether it is included as income for federal purposes. If the CFCs are included as members in the combined return, the GILTI income that is attributable to those CFCs should be eliminated on Schedule A in column (b) rather than on an additional special schedule.

**Note:** Only GILTI amounts that are directly attributable to the CFC combined group members that are included in the same New Jersey combined return can be excluded. GILTI that is not attributable to any of the members of the same New Jersey combined return cannot be eliminated in column (b) of Schedule A.

**FYI**

To avoid double reporting the income on Schedule A, Part I, members must reduce the amounts reported on any other lines by the amount of the FDII and GILTI included on lines 4b and 4c.

**Amounts on lines 4b and 4c cannot be negative.**

## Line 8 and Line 9

Include a rider or schedules showing the same information shown on federal Form 1120, Schedule D and/or Form 4797. Gains and losses resulting from the disposition of property where an I.R.C. § 179 expense deduction was passed through to S corporation shareholders are not reported on federal Form 4797, and should be reported on Schedule A, Part I, line 10. If a sale of shares of stock or partnership interest resulted in a taxable transfer of a controlling interest in certain commercial real property under N.J.S.A. 54:15C-1, indicate so on a rider.

**Line 28 – Taxable income before federal net operating loss deductions and federal special deductions**

The amount on line 28 must agree with line 28, page 1, of the federal Form 1120 or the appropriate line of any other federal corporate return that was filed or would have been filed by the member.

**FYI**

The managerial member must include a copy of the federal returns and any forms or schedules that accompanied the returns that were filed with the Internal Revenue Service. Failure to include the forms and schedules will result in an incomplete New Jersey Corporation Business Tax return and the taxpayer may be assessed penalties and interest for noncompliance.

**Part II – Modifications to Entire Net Income Additions****Line 1a – Taxable income/(loss)**

Enter the amount from Schedule A, Part I, line 28.

**Line 1b – Separate activity income**

Enter the amount of entire net income that is not derived from the unitary business of the combined group. Also enter this amount on Schedule X, Part I, line 1. See “Portion of a Company’s Operations That are Nonunitary With This Combined Group” for more information.

**Line 1c – Taxable income/(loss) of combined group**

Subtract line 1b from line 1a and enter the result. The amount in column (a) represents the entire net income attributable to the unitary business of the combined group before New Jersey additions and subtractions.

**Note:** The amount reported in column (a) on line 1c must match the amount reported on Schedule CG, line 9.

**Line 2 – Income of non-U.S. group members**

Enter the income attributable to the unitary business of the combined group of the members that were organized in a foreign nation, if such income was not included on line 1c.

**Line 3 – Other federally exempt income**

All income that was exempt for federal income tax purposes under any provision of the Internal Revenue Code or any federal law must be added back. If such amounts were not added back on any other line of Schedule A, include such amounts on line 3 and include a rider detailing such amounts and such provisions of the Internal Revenue Code. See N.J.S.A. 54:10A-4(k)(2)(A).

**Note:** Items of income excluded from federal taxable net income pursuant to U.S. tax treaties with the following countries are not required to be added back: India, Canada, Japan, Germany, Mexico, and the United Kingdom. This list of countries is not all-inclusive. For information on a specific treaty country, contact the Division of Taxation.

**Line 4 – Interest on federal, state, municipal, and other obligations**

Include any interest income that was not taxable for federal income tax purposes and was not included in taxable net income reported on line 1c.

**Line 5 – New Jersey State and other states taxes**

Enter the total taxes paid or accrued to the United States, a possession or territory of the United States, a state, a political

subdivision thereof, or the District of Columbia, or to any foreign country, state, province, territory or subdivisions thereof, on or measured by profits or income, business presence or business activity, including any foreign withholding tax taken as a deduction in Part I of Schedule A and reflected in line 28. For additional information, see TB-80, Addback of Other States’ Taxes, and the Schedule H instructions.

**Line 6 – Related party interest addback**

Enter the total amount of interest deducted on Schedule A that was paid to related members that were not included as members of this combined return and reported on Schedule G, Part I. See Schedule G instructions for more information.

**Line 7 – Related party intangible expenses and costs addback**

Enter the total amount of intangible expenses and costs deducted on Schedule A that was paid to related members not included as members of this combined return and reported on Schedule G, Part II. See Schedule G instructions for more information.

**Line 9 – Depreciation modification being added to income**

Enter the depreciation and other adjustments being added to income if Schedule S, line 23, is a positive number. See Schedule S instructions for more information.

**Line 10 – Other additions**

Report any other additions to income for which a place has not been provided somewhere else on the return. This includes, but is not limited to:

- Gross income, less deductions and expenses in connection with such income, from sources outside the United States, not included in federal taxable income;
- I.R.C. § 199A amounts that were deducted for federal purposes;
- Any deductions for research and experimental expenditures, to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and experimental expenditures are also used to compute a federal credit claimed pursuant to I.R.C. § 41.

**Note:** Items of income excluded from federal taxable net income pursuant to U.S. tax treaties with the following countries are not required to be added back: India, Canada, Japan, Germany, Mexico, and the United Kingdom. This list of countries is not all-inclusive. For information on a specific treaty country, contact the Division of Taxation.

Include separate riders explaining any items reported.

**Line 11 – Taxable income/(loss) with additions**

Add line 1c through line 10 and enter the total.

**Deductions****Line 12 – Depreciation modification being subtracted from income**

Enter the depreciation and other adjustments being subtracted from income if Schedule S, line 23 is a negative number. Enter this amount on line 12 as a positive number. See Schedule S instructions for more information.

**Line 13 – Previously Taxed Dividends**

If line 1 includes any dividends that were previously taxed for New Jersey purposes, complete Schedule PT and Schedule R to determine the amount that can be deducted. Include only dividends that were taxed in a prior privilege period by New Jersey. Do not include any federal previously taxed income that was not taxed by New Jersey. Schedule PT is available on the Division's [website](#).

**Lines 14(a)–14(b) – I.R.C. § 250(a) Deduction**

If lines 4b and 4c of Schedule A, Part I include GILTI and/or FDII amounts, enter the amount of the deduction allowable and taken for federal purposes under I.R.C. § 250(a) on the appropriate line. The amounts claimed must match the amounts reported on federal Form 8993 (federal Form 8993 must be submitted).

**Note:** If the GILTI income (or portion thereof) or FDII income (or portion thereof) amounts were excluded from the tax base or exempt from taxation by this State, no deduction or portion of the deduction can be taken for the amount of income that was excluded or exempt from taxation. See N.J.S.A. 54:10A-4.15.

**Line 14c – Net GILTI previously taxed by New Jersey**

Enter the amount of net GILTI previously taxed by New Jersey not deducted or excluded elsewhere on the return. Attach a rider detailing the amount of GILTI that was previously taxed and the years in which the tax was paid.

**Line 15 – I.R.C. § 78 Gross-Up**

The portion of any I.R.C. § 78 gross-up included in dividend income on line 4 of Schedule A, Part I, that is not excluded/ deducted from taxable net income elsewhere may be treated as a deduction. This line cannot include the amount deducted under the I.R.C. § 250(a) deduction. Include a copy of federal foreign tax credit, Form 1118.

**Note:** I.R.C. § 78 gross-up amounts cannot be included in the dividend exclusion calculation on Schedule R or Form 332, which is the form used to calculate the Tiered Subsidiary Dividend Pyramid Tax Credit. In addition, if any portion of the Section 78 amount is included in the member's Section 250 deduction, the amount being deducted on line 15 must be reduced accordingly.

**Line 17a – Nonoperational Activity**

Enter the net effect of the elimination of nonoperational activity from Schedule O, Part I, line 36. Schedule O is available on the Division's [website](#).

**Note:** Members cannot net nonoperational losses against operational income.

**Line 17b – Nonunitary Partnership Income**

Enter the net effect of the elimination of nonunitary partnership income and expenses from Schedule P-1, Part II, line 4.

**Note:** Members cannot net nonunitary partnership losses against operational income.

**Line 18 – Other deductions**

Report any other deduction adjustments for which a place has not been provided somewhere else on the return. Include a rider detailing the information.

**Line 19 – Total Deductions**

Add lines 12 through 18 and enter the total.

**Line 20 – Entire Net Income/(Loss) Subtotal**

Subtract line 19 from line 11 and enter the result.

**FYI**

If column (a) of line 20 is positive, all of the members will have entire net income derived from the unitary business of the combined group. Conversely, if column (a) of line 20 is negative, all of the members will have a combined group net operating loss derived from the unitary business of the combined group. The members will determine their share of the combined group net operating loss by using the member's current year allocation factor calculated from Schedule J. This amount becomes the member's post allocation net operating loss for the current period available for carryover into future privilege periods.

**Line 21 – Group Allocation Factor from Schedule J**

Enter the group allocation factor from Schedule J.

**Line 22 – Allocated entire net income/(loss) before net operating loss deductions and dividend exclusion**

Multiply the group entire net income on line 20, column (a) by the group allocation factor on line 21 and enter the result.

**If the amount is zero or less,** this is the current year combined group net operating loss that can be carried forward as a post allocation net operating loss (NOL) deduction to a succeeding tax period pursuant to N.J.S.A. 54:10A-4(v) and N.J.S.A. 54:10A-4.6.h. Skip lines 23 through 26 and enter zero on line 28.

**Line 23 – Net operating loss (NOL) deduction**

Enter the amount from Form 500U, Section C, line 3. Do not enter more than the amount on line 22. See Form 500U instructions.

**Line 24 – Allocated entire net income before allocated dividend exclusion**

Subtract line 23 from line 22 and enter the result. If the amount is zero or less, enter zero here and on line 28.

**Line 25 – Allocated dividend exclusion**

Enter the amount from Schedule R, line 12. Do not enter more than the amount on line 24. See Schedule R instructions for more information.

Pursuant to N.J.S.A. 54:10A-4(k)(5), N.J.S.A. 54:10A-4(u), N.J.S.A. 54:10A-4(v), and N.J.S.A. 54:10A-4(w), the dividend exclusion is now an allocated exclusion.

**Line 26 – Allocated entire net income subtotal**

Subtract lines 25 from line 24 and enter the result.

**Line 27a – I.B.F. exclusion**

If a combined group includes a taxable member that is a banking corporation with an international banking facility as defined by N.J.S.A. 54:10A-4(n), the combined group is eligible to deduct such income amounts that were not eliminated (so that the entire combined group is treated as one banking corporation). The income must have otherwise been eligible for the I.B.F. deduction under N.J.S.A. 54:10A-4(k)(4) and is an allocated amount. See N.J.S.A. 54:10A-4.6(o).

**Note:** Income that was eliminated above line 27a is not eligible for the I.B.F. exclusion.

**Line 27b – Allocated I.B.F. exclusion**

Multiply the amount on line 27a, column (a) by the group allocation factor from line 21 and enter the result.

**Line 28 – Combined group taxable net income/(loss)**

Subtract line 27b from line 26 and enter the result.

**Part III – Calculation of Tax Credits, Minimum Tax and Surtax, and Group Tax**

**NEW FOR 2020** For privilege periods ending on and after July 31, 2020, a combined group will be treated as one taxpayer for purposes of paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) and section 1 of P.L. 2018, c.48 (C.54:10A-5.41) for the income derived from the unitary business. However, the portion of income that is attributable to a member that is a public utility exempt from the surtax shall not be included when computing the surtax due.

**Line 1 – Combined group taxable net income/(loss)**

Enter the amount from Schedule A, Part II, line 28.

**Line 2 – Member's taxable net income from separate activities**

If the member completed Schedule X, include the taxable net income from Part I of Schedule X on this line. If the amount is zero or less, enter zero. See Schedule X instructions for more information.

**Line 3a – New Jersey nonoperational income**

Enter the amount from Schedule O, Part III. See Schedule O for more information. The schedule is available on the Division's [website](#).

**Note:** Nonoperational losses cannot be netted against operational income.

**Line 3b – Nonunitary partnership income**

Enter the amount from Schedule P-1, Part II, line 5. See Schedule P-1 instructions for more information.

**Note:** Nonunitary partnership losses cannot be netted against operational income.

**Line 4 – Tax base**

Add lines 1 through 3b in column (a) and enter the total.

**Line 5 – Amount of tax**

For the combined group, multiply the amount on line 4 by the applicable tax rate. The tax rate is imposed at the group level.

- If line 4 is greater than \$100,000, the tax rate is 9% (.09).
- If line 4 is greater than \$50,000 and less than or equal to \$100,000, the tax rate is 7.5% (.075). Tax periods of less than 12 months qualify for the 7.5% rate if the prorated entire net income does not exceed \$8,333 per month.
- If line 4 is \$50,000 or less, the tax rate is 6.5% (.065). Tax periods of less than 12 months qualify for the 6.5% rate if the prorated entire net income does not exceed \$4,166 per month.

Also enter this amount on page 1, line 1.

**Line 6 – Tax credits**

Enter the amount from Schedule A-3, Part I, line 28. Also enter this amount on page 1, line 2. Include the applicable credit

form(s) with the return. See Schedule A-3 instructions for more information.

**Line 7 – CBT tax liability**

Subtract line 6 from line 5 and enter the result. Also enter this amount on page 1, line 3.

**Line 8 – Total surtax of combined group**

Enter the amount from Schedule A-5, Part II, line 5. Also enter this amount on page 1, line 4.

**Line 9a – Aggregate minimum tax of combined group**

Multiply the number of taxable group members by \$2,000 and enter the result.

**Line 9b – Tax due**

Add the surtax calculated on line 8 to the greater of line 7 or line 9a. Also enter this amount on page 1, line 5.

**Note:** If a tax credit can be applied to 100% of the tax liability, add the surtax (if applicable) to any remaining liability not exhausted on the credit form and enter the amount on line 9b.

## Schedule A-2

### Cost of Goods Sold

Enter member's amounts in the member's column. In column (c), enter the total amounts of all members prior to intercompany eliminations and adjustments. In column (b), enter the intercompany eliminations and adjustments. In column (a), enter the total amounts for the combined group after intercompany eliminations and adjustments.

The amounts reported on this schedule must be the same as the amounts reported on Form 1125-A.

## Schedule A-3

### Summary of Tax Credits

This schedule must be completed if any tax credits are being claimed for the current tax period. There are various tax credits with a variety of limitations. Each tax credit has its own limitations and carryovers.

In general, tax credits are earned by the member of the combined group and are shareable among combined group members. However, members are not *required* to share their credits. See [N.J.S.A. 54:10A-4.6.i](#) and [TB-90, Tax Credits and Combined Returns](#). See the instructions of the applicable credit form(s) for more information.

Any tax credit(s) claimed on this schedule must be documented with a valid New Jersey Corporation Business Tax Credit form and must be included with the tax return. See "Additional Forms and Instructions" for a list of available credit forms and for instructions on obtaining them. If a member is claiming a valid tax credit that is allowable in accordance with the New Jersey Corporation Business Tax Act for which a place has not been provided somewhere else on the schedule, report the amount on line 27 of Schedule A-3, Part I.

**Part I – Tax Credits Used Against Liability**

On line 28, enter the total credits from all members in the combined group column. This amount must equal the amount reported on Schedule A, Part III, line 6. Amounts to be entered



for each member are calculated on the credit forms. See the specific New Jersey Corporation Business Tax Credit form for information about each credit.

**Note:** Most tax credits cannot reduce the tax liability below the minimum tax. However, there are rare instances where it can. Follow the instructions on the credit form regarding how and where to record the information to ensure the credit is properly offsetting the tax liability.

## Part II – Refundable Tax Credits

If a credit form for a member calculates an amount to be refunded, enter the refundable portion on the appropriate line for that member. On line 5, enter the total for all members in the combined group column. This amount must equal the amount reported on page 1, line 11b. On line 6, enter the total for all members in the combined group column. This amount must equal the amount reported on page 1, line 11c.

## Schedule A-4

### Summary Schedule

This schedule must be completed for each member. Report the information on each line of Schedule A-4 from the return schedules indicated.

## Schedule A-5

### Computation of Group and Member Surtax

**NEW FOR 2020** For privilege periods beginning on or after January 1, 2020, a combined group or an affiliated group is a taxpayer for purposes of the surtax; therefore, the surtax is calculated at the group level. If Schedule A, Part III, line 1, column (a) is more than \$1,000,000, the group is subject to the surtax.

### Part I – Combined Group Surtax

The combined group surtax portion of this schedule is used to calculate the surtax imposed on the combined group. Part I is also used to apply the shareable portion of the Pass-Through Business Alternative Income Tax credit, which is calculated on Form 329. The credit is only shareable if the pass-through entity is unitary with both the member and the combined group. See [N.J.S.A. 54:10A-5.43\(c\)](#)

#### Line 1 – Combined group taxable net income/(loss)

Enter the amount from Schedule A, Part II, line 28. Public utilities are not subject to the surtax. If an includable public utility (i.e., a public utility that is not excluded under [N.J.S.A. 54:10A-4.6\(k\)](#)) is a member of the combined group, the portion of the taxable net income attributable to that public utility must be excluded. Subtract the public utility's portion of Schedule A, Part II, line 28 before entering an amount on Schedule A-5, Part I, line 1.

#### Line 2 – Surtax on combined group taxable net income

Multiply line 1 by the surtax rate. The rate is 2.5% for tax years beginning on or after January 1, 2018, through December 31, 2023. See [Surtax](#) for more information.

#### Line 3 – Pass-Through Business Alternative Income Tax Credit

Enter the amount from Form 329, line 23b. Do not enter more than the amount of surtax on line 2. Include the applicable credit form(s) with the return. See Schedule A-3 instructions for more information.

## Part II – Member's Surtax

The member's surtax portion of this schedule is used to calculate the remaining portion of the group's surtax after the shareable portion of the Pass-Through Business Alternative Income Tax credit is applied. The remaining portion of the combined group surtax is apportioned to each member and then added to any amount of surtax that a member may have from activities independent of the group. The nonshareable portion of the Pass-Through Business Alternative Income Tax credit then is applied against this amount. The Pass-Through Business Alternative Income Tax credit is nonshareable if the pass through entity is unitary with the member but not the combined group. See [N.J.S.A. 54:10A-5.43\(d\)](#)

### Line 1a–1c – Calculating member's share of combined group surtax

Divide the balance of combined group surtax by the group allocation factor, then multiply the result by the member's allocation factor to arrive at the member's share of the combined group surtax.

### Line 2a–2b – Calculating surtax on member's independent taxable net income

Multiply the member's taxable net income from separate activities from Schedule X by the surtax rate. The rate is 2.5% for tax years beginning on or after January 1, 2018, through December 31, 2023. See [Surtax](#) for more information.

### Line 4 – Pass-Through Business Alternative Income Tax Credit

Enter the amount from Form 329, line 32d. Do not enter more than the amount of surtax on line 3. Include the applicable credit form(s) with the return. See Schedule A-3 instructions for more information.

### Line 5 – Total surtax

Subtract the amount on line 4 in the combined group column from the amount on line 3 in the combined group column and enter the result. This is the total surtax for the combined group. Enter this amount on Schedule A, Part III, line 8.

## Schedule B

### Balance Sheet

Schedule B is optional unless the combined group composition is different than that of the federal consolidated return group. The amounts reported must be the same as the beginning-of-year and end-of-year figures shown on the member's books. Where applicable, data must match amounts reported on Schedule L of the federal return. If not, explain and reconcile on a rider. If the member is included in a consolidated federal income tax return, this schedule must be completed by the member on its own separate basis. The total of the members is entered in column (c). Eliminations and adjustments are made in column (b) and the consolidated amount after eliminations and adjustments is reported in column (a).

## Schedule C and Schedule C-1

### Reconciliation of Income per Books

### with Income per Return AND Analysis of

### Unappropriated Retained Earnings per Books

Schedules C and C-1 are optional if Schedules M-1, M-2, or M-3 from the federal return are included with Form CBT-100U. The copies must be legible and each page must include the member's name and tax identification number.



If member files federal Schedule M-3, New Jersey Schedule C must still be filed, and a copy of federal Schedule M-3 must be included with the member's New Jersey combined return.

## Schedule CG

### Reconciliation With Consolidated Group

Schedule CG is used to reconcile taxable income of the federal consolidated group to the taxable income of the members reported on the New Jersey CBT-100U. Any differences between members of the consolidated group and members on the New Jersey combined return must be reconciled on this schedule. Furthermore, differences between federal taxable income and taxable income/(loss) of combined group as reported on Schedule A, Part II, line 1(c) must be reconciled here.

**Note:** If filing under the affiliated group election, the New Jersey combined group must match the members reported in Section A.

### Section A – Federal Consolidated Group

List the entities included in the federal consolidated return(s). List the corporation name, federal employer identification number (FEIN), and the amount on line 28 of the federal Form 1120 or the appropriate line of any other federal corporate return that was filed. The entities listed must match the entities reported on the federal Form 851.

### Section B – Members Included in the New Jersey Combined Group Not Reported in Section A

List any members included in the New Jersey combined group (CBT-100U) not included in Section A. Any member of the New Jersey CBT-100U that is not reported in Section A (federal consolidated group) must be reported in this section.

### Section C – Members Reported in Section A Not Included in the New Jersey Combined Group

List any entity from Section A that is not part of the New Jersey combined group. Any member of the federal consolidated group that is reported in Section A and is not a member of the CBT-100U must be reported in Section C. **Members in this section will not be part of the New Jersey combined return.**

### Section D – Adjustments to Federal Taxable Income

Any adjustment to federal taxable income must be reported in this section. Include a rider detailing each adjustment and the reason for the adjustment.

## Schedule E

### Summary of Estimated Payments and Credits

Complete this schedule to reconcile any overpayments from previously filed returns or estimated payments that were made. The amount and the date on which the estimated payment was submitted must be an exact match in order for the Division to transfer the funds from the member's account to the managerial member's account.

All future estimated payments must be made by the managerial member, not the individual members.

## Schedule F

### Corporate Officers – General Information and Compensation

Provide all applicable information for each corporate officer regardless of whether compensation was received. The data reported on Schedule F must match amounts reported on federal Form 1125-E.

## Schedule G

### Interest

If the member is claiming an exception to the disallowance of the expense reported in Part I or Part II of Schedule G, the member must complete and include Schedule G-2. The schedule is available on the Division's [website](#).

Intercompany transactions between members of the combined group are eliminated/adjusted on Schedule A, Part I or Part II and are exempt from the related party addbacks pursuant to N.J.S.A. 54:10A-4(k)(2)(i) and N.J.S.A. 54:10A-4.4. Report those amounts on the respective line of column (b) on Schedule A. Do not report these amounts on Schedule G.

**Note:** Treaty exceptions have been limited pursuant to P.L. 2018, c. 48. There are additional requirements to meet the treaty exceptions that are reported for the purposes of Part I and Part II of Schedule G. See the instructions for Schedule G-2 for more information.

For definitions, see N.J.S.A. 54:10A-4(k)(2)(i) and N.J.S.A. 54:10A-4.4.

### Part I – Interest

Interest paid, accrued, or incurred to related members that was deducted in calculating taxable net income on Schedule A, Part I, line 28, must be reported on Schedule G, Part I. Enter the total of such interest expense on Schedule A, Part II, line 6.

Do not include interest expenses and costs that were deducted directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange, or disposition of intangible property in Part I of Schedule G.

### Part II – Interest expenses and costs and intangible expenses and costs

Interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with one or more related members that were deducted in calculating taxable net income on Schedule A, Part I, line 28, must be reported on Schedule G, Part II. Enter the total of such intangible expenses and costs on Schedule A, Part II, line 7.

## Schedule H

### Taxes

Itemize all taxes that were in any way deducted in arriving at taxable net income, whether reflected in Schedule A, Part I at line 2 (Cost of goods sold and/or operations), line 17 (Taxes), line 26 (Other deductions) or anywhere else on Schedule A.

If the member is an includable public utility corporation (i.e., a public utility that is not excluded from the combined group per

N.J.S.A. 54:10A-4.6(k)(2)), enter the sales tax paid by the utility vendor.

## Schedule J

### Computation of Group and Members' Allocation Factors

Enter each member's amount in the member's column. All members must complete this schedule to calculate the allocation factor.

Only activities related to operational activity are to be used in computing the general allocation factors. If the member has nonoperational activity, see Schedule O. If the member has nonunitary partnership income, see Schedule P-1.

**FYI**

In computing the allocation factor for the members and the combined group as a whole, intercompany receipts are eliminated.

#### Lines 1–5 – Receipts Fraction

Receipts from sales of tangible personal property are allocated to New Jersey if the goods are shipped to points within New Jersey. Receipts from the sale of goods are allocable to New Jersey if shipped to a New Jersey or a non-New Jersey customer where possession is transferred in New Jersey. Receipts from the sale of goods shipped to a taxpayer from outside New Jersey to a New Jersey customer by a common carrier are allocable to New Jersey. Receipts from the sale of goods shipped from outside New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside New Jersey are not allocable to New Jersey. Receipts from the following are allocable to New Jersey: services performed if the benefit of the service is received in New Jersey; rentals from property situated in New Jersey; royalties from the use in New Jersey of patents, copyrights, and trademarks; all other business receipts earned in New Jersey.

**FYI**

Services are sourced based on market sourcing, not cost of performance. See N.J.A.C. 18:7-8.10A.

**Receipts From Sales of Capital Assets.** Receipts from sales of capital assets (property not held by the member for sale to customers in the regular course of business), either within or outside New Jersey, should be included in the numerator and the denominator based on the net gain recognized and not on gross selling prices. If the member's business is the buying and selling of real estate or the buying and selling of securities for trading purposes, gross receipts from the sale of such assets should be included in the numerator and the denominator of the receipts fraction.

**Note:** The amount of dividends (deemed and/or paid dividends) excluded from entire net income pursuant to N.J.S.A. 54:10A-4(k)(5), are not included in the numerator or denominator of the receipts fraction. However, the dividend (deemed and/or paid dividends) values that are not excluded **are** included in the numerator or denominator.

**FYI**

Schedule J must be completed **after** calculating the Dividend Exclusion line on the respective parts of Schedule R but **before** calculating the line for the Allocated Dividend Exclusion. The amount from the Dividend Exclusion line from Schedule R is the amount to use when calculating the dividends and deemed dividends excluded from the numerator and/or denominator for the purposes of completing Schedule J.

#### Line 9 – Allocation Factor

Divide **line 6c** by the group denominator from **line 8** and enter the result. When computing the allocation factor on Schedule J, division must be carried to six (6) decimal places, e.g., 0.123456.

**Note:** Eliminations and adjustments are made before calculating the Allocation Factor, and the Allocation Factor must be calculated using post-elimination and adjustment numbers.

#### Sourcing GILTI and FDII for Combined Groups

##### Water's-Edge Group Basis or Affiliated Group Basis Returns – No CFCs included.

Members must include the net GILTI (i.e., the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and net FDII income (i.e., the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) amounts in the numerator (if applicable) and the group denominator of the allocation factor on Schedule J pursuant to N.J.S.A. 54:10A-4.7. The GILTI income and FDII income and the corresponding I.R.C. § 250(a) deductions must be reported on Schedule A. Do not include the underlying receipts of the controlled foreign corporation generating the GILTI in the numerator or group denominator since the controlled foreign corporations were not included as members of the combined return.

##### Water's-Edge Group Basis or World-Wide Group Basis

**Returns – With CFCs included as members.** Members must include the CFC's receipts (net of the I.R.C. § 250(a) deduction for GILTI) in the numerator (if applicable) and the group denominator pursuant to N.J.S.A. 54:10A-4.7. The GILTI income is excluded from the combined group's entire net income, as described in TB-88, Combined Groups: Exclusion of Double Inclusion of GILTI and Treatment of Related Party Addbacks, and the GILTI must be excluded in the allocation factor. This is to prevent the double taxation and double counting of the income and receipts derived from the same source since the CFC's income is already included in the combined group's entire net income. The combined group must include the net FDII income (i.e., the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) amount in the numerator (if applicable) and the group denominator of the allocation factor on Schedule J, pursuant to N.J.S.A. 54:10A-4.7. The GILTI income, CFC income, and FDII income and the corresponding I.R.C. § 250(a) deductions must be reported on Schedule A as part of the combined group's entire net income.

See TB-92(R), Sourcing IRC § 951A (GILTI) and IRC § 250 (FDII), for more information.

#### Airlines

Airlines have special sourcing rules pursuant to N.J.S.A. 54:10A-6.3, which states: "Notwithstanding the provisions of section 6 of P.L.1945, c.162 (C.54:10A-6), the sales fraction for the transportation revenues of a taxpayer that is an airline shall be determined as the ratio of revenue miles in this State divided by total revenue miles; provided however, that if a

taxpayer that is an airline is engaged in the transportation of passengers, the transportation of freight, or the rental of aircraft, the ratio under this section shall be determined by means of an average of a passenger revenue mile fraction, freight revenue mile fraction, and rental revenue mile fraction weighted to reflect the taxpayer's relative gross receipts from passenger transportation, freight transportation, and rentals." See also N.J.S.A. 54:10A-6.3; N.J.A.C. 18:7-8.1; N.J.A.C. 18:7-8.10; and N.J.A.C. 18:7-8.10A.

#### **Transportation Companies**

Transportation companies have special sourcing rules for combined groups pursuant to N.J.S.A. 54:10A-4.7.b, which states: "All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies if 50% or more of the combined group's entire net income is derived from the transportation of freight by air or ground." If the combined group meets the qualifications of N.J.S.A. 54:10A-4.7.b, attach a rider and enter the applicable amounts on line 9 of Schedule J.

#### **Allocation Methods for Combined Returns**

The two methods available to allocate the income of a combined group are "Joyce" and "Finnigan." These allocation methods derive their names from California Franchise Tax Board cases. These methods are differentiated by their determination of the allocation factor. Under either method, the allocation factor attributes included in the denominator are the same. The denominator includes all of the combined group's total factors, regardless of nexus.

**The Joyce method** includes all of the New Jersey allocation factor attributes in the numerator that were derived from members that have nexus with New Jersey. **The Finnigan method** includes all New Jersey allocation factor attributes in the numerator that were derived from all of the members of the combined group, regardless of whether a member has nexus with New Jersey.

The allocation method is tied to the combined return filing method that the managerial member uses to file the combined return. The Water's-Edge Group Basis and World-Wide Group Basis returns follow Joyce method pursuant to N.J.S.A. 54:10A-4.7.

**Note:** A member of a combined group can have nexus with New Jersey by deriving receipts from New Jersey or from any other factors pursuant to N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.11. The member can have nexus as part of the unitary business of the combined group or it may have nexus independently. If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection.

Affiliated Group Basis returns follow Finnigan method as statutorily prescribed by N.J.S.A. 54:10A-4.11.c.

**Note:** Pursuant to N.J.S.A. 54:10A-4.6, when an item of income is restored to a member, such restoration must be reflected in both the member's numerator (if applicable) and the group denominator.

## **Schedule L**

### **Allocation of New Jersey Corporation Business Tax for Banking and Financial Corporation Members Among New Jersey Municipalities**

**Office Location in New Jersey** – List all offices maintained by the member in this State by indicating the exact taxing district (municipality) and county.

**Note:** The mailing address of an office is not necessarily the taxing district.

**Deposit Balances or Receipts** – Banking corporations must use the deposit balances. Financial corporations use the receipts allocable to such location.

**Percentages** – The percentage indicated is based on the individual deposit balances for banking corporations or receipts for financial corporations divided by total deposit balances in New Jersey, or total receipts in New Jersey, respectively.

Member's totals are the sum of the individual taxing district amounts and percentages. Total percentage reported must equal 100%. Also, each individual computation should be carried to six decimal places.

## **Schedule P-1**

### **Partnership Investment Analysis**

#### **Part I – Partnership Information**

Itemize the investment in each partnership, limited liability company, and any other entity that is treated for federal tax purposes as a partnership. List the name, the federal identification number, and the date and state where organized for each partnership. Also, check the type of ownership (general or limited), the tax accounting method used to reflect your share of partnership activity on this return (flow through method or separate accounting), and whether or not the partnership has nexus in New Jersey. Itemize in column 7 the amount of tax payments made on behalf of the member by partnership entities. Carry the total amount of taxes paid on behalf of members to page 1, line 10. Include a copy of Schedule NJK-1 from Form NJ-1065. Any single-member limited liability company must be included on this schedule.

#### **Part II – Separate Accounting of Nonunitary Partnership Income**

Members that use a Separate Tax Accounting Method on nonunitary partnership investments must complete Part II to compute the appropriate amount of tax. Pursuant to N.J.S.A. 54:10A-6, members must enter a single sales factor allocation in column 3. Do not use three-factor allocation (property, payroll, and sales) from the partnership return (Form NJ-1065).

## **Schedule PC**

### **Per Capita Licensed Professional Fee**

Professional corporations (PC) formed under N.J.S.A. 14A:17-1 et seq. or any similar laws of a possession or territory of the U.S., a state, or political subdivision thereof, are liable for a fee on licensed professionals.

Examples of licensed professionals are: certified public accountants, architects, optometrists, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentist, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, veterinarians and, subject to the Rules of the Supreme Court, attorneys at law (N.J.S.A. 14A:17-3).

The fee is assessed provided there are more than two professionals in the PC. The fee is assessed on professionals that are owners, shareholders, and/or employees of the professional corporation. The number of professionals should be calculated using a quarterly average. The fee for each resident and nonresident professional with physical nexus with New Jersey is \$150. The fee for each nonresident professional without physical nexus with New Jersey is \$150 multiplied by the allocation factor of the corporation. The fee is limited to \$250,000 per year.

In the event of a period shorter than a year, the fee and limit may be prorated by months. A fraction of a month is deemed to be a month.

Check the box on the Members and Affiliates Schedule to indicate this is a professional corporation for applicable members.

**Line 4 – Installment Payment:** A 50% prepayment towards the subsequent year's fee is required with the current year's return.

**Line 8 – Credit:** Amount to be credited towards next year's fee. **This fee is not eligible for refund.**

## Schedule R Dividend Exclusion

**FYI**

Intercompany dividends (and deemed dividends) between members of the combined group that were eliminated/excluded above Schedule A, Part II, line 20 are not eligible for the dividend exclusion and are not to be included in the computation on Schedule R. Only dividends and deemed dividends that are a part of the unitary business of the combined group that were received from subsidiaries that were not included as members of the same New Jersey combined return are eligible for the exclusion. Water's-edge and world-wide basis filers, see Schedule X for more information.

**NEW FOR 2020**

For privilege periods ending on and after July 31, 2020, for purposes of the dividend exclusion, the members of a combined group filing a New Jersey combined return are treated as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group. See N.J.S.A. 54:10A-4(k)(5)(E).

For privilege periods ending on and after July 31, 2019, the dividend exclusion is a post allocation exclusion.

Dividends from all sources must be included in Schedule A. However, taxpayers may exclude from entire net income 95% of dividends from qualified subsidiaries, if such dividends were included in the taxpayer's gross income on Schedule A and not eliminated.

Taxpayers cannot include the following as part of the dividend exclusion:

- Money market fund or REIT income;
- GILTI or FDII (this is not considered income from dividends or deemed dividends for New Jersey Corporation Business Tax purposes); or
- The portion of I.R.C. § 78 gross-up deducted on line 15, Part II, Schedule A.

A qualified subsidiary is defined as ownership by the taxpayer of at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock, except non-voting stock which is limited and preferred as to dividends. With respect to other dividends, the exclusion is limited to 50% of such dividends included in the taxpayer's gross income on Schedule A, provided the taxpayer owns at least 50% of voting stock and 50% of the total number of shares of all other classes of stock.

A 95% dividend exclusion will be granted for dividends that are included in entire net income from an 80% or greater owned subsidiary. If the taxpayer owns 50%, but less than 80% of a subsidiary, they are entitled to a 50% exclusion. Any subsidiary that is owned less than 50% is not entitled to a dividend exclusion. See N.J.S.A. 54:10A-4(k)(5), N.J.S.A. 54:10A-4(u), N.J.S.A. 54:10A-4(v), and N.J.S.A. 54:10A-4(w) for more information.

If the taxpayer received tiered dividends from a tiered subsidiary that filed and paid tax to New Jersey on those same dividends, do not include these dividends on Schedule R.

**NEW FOR 2020**

The tiered dividend exclusion has been phased out and replaced with the Tiered Subsidiary Dividend Pyramid Tax Credit on Form 332. The tiered dividends from certain subsidiaries may be eligible for a tax credit, which is calculated separately on Form 332. See Form 332 for more information. This form is available on the Division's [website](#).

**FYI**

New Jersey follows the federal ownership attribution rule changes under I.R.C. § 958(b) and I.R.C. § 318 that broadened the federal attribution rules that were retroactive to January 1, 2017, in addition to the already broad Corporation Business Tax attribution rules.

**Schedule PT – Previously Taxed Dividends:** If a taxpayer had subsidiary dividend income that was reported in a previous privilege period for New Jersey Corporation Business Tax purposes **and** for which the taxpayer paid greater than the New Jersey minimum tax in that privilege period **and** those same dividends are included in entire net income this privilege period, complete Schedule PT in conjunction with Schedule R. See Schedule PT for more information. The schedule is available on the Division's [website](#).

## Schedule S Depreciation and Safe Harbor Leasing

This schedule must be completed for each member and a copy of a completed federal Depreciation Schedule, Form 4562 must be included with the return. Schedule S provides for adjustments to depreciation and certain safe harbor leasing transactions.



**FYI**

New Jersey has decoupled from I.R.C. § 168(k) bonus depreciation and I.R.C. § 179 expensing provisions. See N.J.S.A. 54:10A-4(k)(12) and N.J.S.A. 54:10A-4(k)(13). Adjustments must be made accordingly.

**Line 1 through Line 6** – These lines detail the depreciation deduction reflected in the Computation of Entire Net Income (Schedule A, Part I) into several categories. In most circumstances, the information can be found on federal Form 4562.

**Line 13** – New Jersey conforms to I.R.C. § 179 as in effect on December 31, 2002, and the maximum amount that may be expensed is \$25,000. See N.J.S.A. 54:10A-4(k)(13) for more information.

**Line 16 and Line 17** – New Jersey has decoupled from the federal tax code provisions on cost recovery or depreciation and is statutorily tied to the federal depreciation laws that were in effect as of December 31, 2001.

**Line 18** – Deduct any income included in the return with respect to property solely as a result of an I.R.C. § 168(f)(8) election.

**Line 19** – Deduct any depreciation amount that would have been allowable under the Internal Revenue Code on December 31, 1980, had there been no safe harbor lease election.

**Line 20** – Gain or loss on property sold or exchanged is the amount properly to be recognized in the determination of federal taxable income. However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the federal Internal Revenue Code, there shall be allowed as a deduction any excess, or there must be restored as an item of income, any deficiency of depreciation disallowed at lines 9, 10, 11, 13, or 14 over related depreciation claimed on that property at lines 16, 17, or 21. A statutory merger or consolidation shall not constitute a disposal of recovery property.

## Form 500U

### Prior Net Operating Loss Conversion Carryover (PNOL) and Post Allocation Net Operating Loss (NOL) Deductions

Prior Net Operating Losses (PNOLs) are losses that were generated in privilege periods ending **prior** to July 31, 2019. To use these losses, the unused, unexpired amounts must be converted to a post allocation basis. This conversion is done on Form 500U-P. PNOLs can only be carried forward for the 20 privilege periods following the period of the initial loss. See [TB-95, Net Operating Losses and Combined Groups](#), for more information.

**FYI**

PNOLs must be deducted from allocated entire net income before any NOLs can be deducted.

Post Allocation Net Operating Losses (NOLs) are losses that were generated in privilege periods ending on or after July 31, 2019. These losses occur on a post allocation basis.

For New Jersey Corporation Business Tax purposes, net operating losses and net operating loss carryovers have a 20-year carryover period and can only be carried forward. **No carry-backs are allowed.**

**NEW FOR 2020**

For tax years beginning on and after January 1, 2020, the federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers apply to the New Jersey net operating loss carryover provisions to the extent they are consistent with the provisions of the New Jersey Corporation Business Tax Act. If the New Jersey and federal provisions differ, the New Jersey Corporation Business Tax Act provisions govern. New Jersey generally follows the federal rules governing mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business. New Jersey also follows any other provision of the federal rules that limits or reduces federal net operating losses and federal net operating loss carryovers. See N.J.S.A. 54:10A-4.6(m) and N.J.S.A. 54:10A-4.5(c).

### Discharge of Indebtedness

If a member has a discharge of indebtedness amount that is excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of I.R.C. section 108, adjustments need to be made to the member's PNOLs, NOLs, and/or post allocation net operating loss carryovers. Since the discharge of indebtedness amount is not an allocated amount, the member must multiply the discharge of indebtedness amount by its current year allocation factor (member's numerator over the group's denominator) before making any adjustment to the net operating losses or net operating loss carryovers.

The members must first reduce their PNOLs by the allocated discharge of indebtedness amount. If the allocated discharge of indebtedness amount exceeds all of a member's PNOLs and the member has post allocation net operating loss carryovers, the member must also reduce the post allocation net operating loss carryovers by the remaining balance. If, after reducing their post allocation net operating loss carryovers by the discharge of indebtedness amount, there are still post allocation net operating loss carryovers available, the taxable member may then reduce their allocated entire net income by the remaining post allocation net operating loss carryover.

Members must keep accurate books and records to keep track of the various PNOLs and NOLs.

### Section A – Computation of Prior Net Operating Losses (PNOL) Deduction

This section is only applicable if a member has loss carryovers from periods ending **prior** to July 31, 2019. Only complete this section if the total combined group allocated entire net income/(loss) before net operating loss deductions and dividend exclusion on Schedule A, Part II, line 22 is positive (i.e., income).

To calculate a prior net operating loss conversion carryover, a member must first calculate its pre-allocated net operating losses for each preceding privilege period using Form 500U-P.

**Note:** PNOLs expire 20 privilege periods after the loss was originally generated. **PNOLs cannot be shared.**

**Line 1** – Enter the total amount reported on Form 500U-P, Part II, line 21 for each member.

**Line 2** – Enter the amount of PNOLs reported on line 1 that was deducted in a previous year.

**Line 3** – Enter the amount of PNOLs reported on line 1 that has expired.

**Line 4** – Enter the amount of PNOLs reported on line 1 that was used on the current period Schedule X. An affiliated group election is an election to deem **all** of the activities as one single business. As such, line 4 is not applicable to affiliated group basis returns.

**Line 5** – Enter the amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of Internal Revenue Code (26 U.S.C. s.108) in the current year. If the amount is greater than the PNOLs reported on line 1 (less lines 2, 3, and 4), carry the remainder to Section B, line 5.

**Line 6** – Subtract the amounts reported on lines 2 through 5 from the amount on line 1. This is the total amount of PNOLs available for deduction in the current year. If the amount is zero or less, enter zero.

**Line 7a** – Enter the amount from Schedule A, Part II, line 20, column (a). If the amount is less than zero, enter zero.

**Line 7b** – Multiply line 7a by the member's allocation factor from Schedule J, line 9.

**Line 8a** – Enter the lesser of lines 6 or 7b. This is the current period PNOL deduction. Also enter this amount on line 8 of Section B.

**Line 8b** – Total the member columns and enter the result in the combined group column. Also enter this amount on line 1 of Section C.

#### **Section B – Post Allocation Net Operating Losses (NOL)**

This section is only applicable to loss carryovers from periods ending **on and after** July 31, 2019. Only complete this section if the total combined group allocated entire net income/(loss) before net operating loss deductions and dividend exclusion on Schedule A, Part II, line 22 is positive (i.e., income).

Section B is used to calculate the amount of the New Jersey post allocation net operating loss carryover. There are two types of post allocation net operating loss carryovers:

- Combined group post allocation NOLs (these are losses that were generated by the current combined group) and
- Separate return post allocation NOLs (these are losses that were generated outside the current combined group)

The post allocation net operating loss deduction is subtracted from allocated entire net income after the member uses all of its PNOLs.

Certain taxable members may be eligible to share their post allocation net operating losses. If a loss was generated on a previously filed combined return, the taxable members that were included on that return are each allotted a portion of the loss. Taxable members can use their portion of these combined group post allocation net operating loss (NOL) carryovers, or they can share their portion with other taxable members that were part of the same combined group in the period in which

the loss was generated. See [TB-95](#), *Net Operating Losses and Combined Groups*, for more information.

**Note:** Separate return post allocation net operating loss carryovers and NOLs **generated** on Schedule X are not shareable.

**Line 1** – Enter the total amount reported on Form 500U-PA, Part II, line 21 for each member.

**Line 2** – Enter the amount of NOLs reported on line 1 that was deducted in a previous period or was shared with another taxable member in a **previous** period.

**Line 3** – Enter the amount of NOLs reported on line 1 that has previously expired.

**Line 4** – Enter the amount of the separate return NOLs reported on line 1 that was used on the current period Schedule X. An affiliated group election is an election to deem **all** of the activities as one single business. As such, line 4 is not applicable to affiliated group basis returns.

**Line 5** – Enter the amount of any adjustments required under provisions of the federal Internal Revenue Code. New Jersey generally follows the federal rules governing mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business. New Jersey also follows any other provision of the federal rules that limits or reduces federal net operating losses and federal net operating loss carryovers. See [N.J.S.A. 54:10A-4.5\(c\)](#) for more information. If the member reported an amount in Section A, line 5 of Form 500U, only enter the excess here. (Section A, line 1 minus lines 2, 3, 4, and 5.)

**Line 6** – Subtract the amounts reported on lines 2 through 5 from the amount on line 1. This is the total amount of NOLs available for deduction in the current year. If the amount is less than zero, enter zero.

**Line 7a** – Enter the amount from Schedule A, Part II, line 20, column (a). If the amount is less than zero, enter zero.

**Line 7b** – Multiply line 7a by the member's allocation factor from Schedule J, line 9.

**Line 8** – Enter the amount from Section A, line 8a.

**Line 9** – Subtract line 8 from line 7b and enter the result.

**Line 10** – Enter the lesser of lines 6 or 9.

**Line 11** – Subtract line 10 from line 6. This is the amount of NOLs available to share with other taxable members.

**Line 12** – Enter the amount of NOLs shared with other taxable members in the current year. This amount cannot exceed the amount on line 11. Taxable members can only share the combined group post allocation net operating losses with other taxable members that were part of the same combined group in the period in which the loss was generated. Provide a rider that breaks out the amount of shared NOL by each taxable member.

**Line 13** – Enter the amount of NOLs received from other taxable members in the current year. This amount cannot exceed the amount on line 9 less line 10. Taxable members can only receive the combined group post allocation net operating

losses from other taxable members that were part of the same combined group in the period in which the loss was generated. Provide a rider that breaks out the amount of received NOL by each taxable member.

**Line 14** – Add line 10 and line 13 and enter the total. The amount cannot exceed the amount on line 9. This is the current period NOL deduction. Enter the total of the members' amounts in the combined group column and on line 2 of Section C.

**Note:** A taxable member that leaves a New Jersey combined group must take their share of the combined group post allocation net operating loss carryover. The combined group cannot continue to use that member's portion of the loss.

**FYI**

Losses generated on Schedule X cannot be shared or used by the group. These losses can only be used on Schedule X.

## Form 500U-P

Any unused, unexpired net operating losses that were generated in privilege periods ending prior to July 31, 2019, must be converted to a post-allocated basis. These loss carryovers can only be carried forward for the 20 privilege periods following the period of the initial loss. Complete Worksheet 500U-P the first year in which the conversion is calculated. Worksheet 500U-P should continue to be included for each year in which the taxpayer has PNOLs.

### Part I – Allocation Factor

Enter the allocation factor for the last privilege period ending prior to July 31, 2019. This amount is taken from that period's Schedule J for each member.

### Part II – Prior Net Operating Loss

**Line (a)** – Enter the date the privilege period ended. All periods must end **before** July 31, 2019.

**Line (b)** – Enter the net operating loss for each period. Enter the entire loss for the period. Amounts that have been used in previous periods or that are expired are reported in Section A on lines 2 and 3. The converted losses can only be carried forward for the 20 privilege periods following the period of the initial loss.

**Note:** For privilege periods ending after June 30, 2014, the loss reported each year must not include any amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of Internal Revenue Code (26 U.S.C. s.108).

**Line (c)** – Multiply the amount on line (b) by the reported allocation factor reported in Part I.

**Line 21** – Enter the total converted prior net operating loss carryovers. Add lines 1c through 20c. This is the amount that is carried to Form 500U, Section A, line 1.

## Form 500U-PA

### Part I

Enter the date on which the member entered the group.

### Part II – Net Operating Loss

**Line (a)** – Enter the date the privilege period ended. All periods must end **on or after** July 31, 2019.

**Line (b)** – Enter the net operating loss for each period. Enter the entire loss for the period. Do not net with previously deducted or expired amounts. Amounts that have been previously deducted or that are expired must be reported on Form 500U, Section B on lines 2 and 3. The converted losses can only be carried forward for the 20 privilege periods following the period of the initial loss.

**Note:** For privilege periods ending after June 30, 2014, the loss reported each year must not include any amount excluded from federal taxable income under subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of Internal Revenue Code (26 U.S.C. s.108).

**Line 21** – Enter the total post allocation net operating loss carryover. Add lines 1b through 20b. This is the amount that is carried to Form 500U, Section B, line 1.

## Additional Forms and Instructions

Most of the forms and schedules needed to complete the return are included with Form CBT-100U. However, there are several stand alone forms and schedules that can be obtained on the Division's [website](#). This includes:

- Schedule A-7: Gross Income Test for Financial Businesses (Form CBT-100U Filers ONLY)
- Schedule G-2: Claim for Exceptions to Disallowed Interest and Intangible Expenses and Costs
- Schedule I: Certificate of Inactivity (Form CBT-100U Filers ONLY)
- Schedule N: Nexus – Immune Activity Declaration and the [Nexus Questionnaire](#)
- Schedule O: Nonoperational Activity
- Schedule PT: Dividend Exclusion for Certain Previously Taxed Dividends
- Schedule X: Member's Taxable Income From Sources Other Than the Unitary Business of the Combined Group (Form CBT-100U Filers ONLY)
- Form 300: Urban Enterprise Zone Employees Tax Credit
- Form 301: Urban Enterprise Zone Investment Tax Credit
- Form 302: Redevelopment Authority Project Tax Credit
- Form 304: New Jobs Investment Tax Credit
- Form 305: Manufacturing Equipment and Employment Investment Tax Credit
- Form 306: Research and Development Tax Credit
- Form 311: Neighborhood Revitalization State Tax Credit
- Form 312: Effluent Equipment Tax Credit
- Form 313: Economic Recovery Tax Credit
- Form 315: AMA Tax Credit
- Form 316: Business Retention and Relocation Tax Credit
- Form 317: Sheltered Workshop Tax Credit
- Form 318: Film Production Tax Credit

- Form 319: Urban Transit Hub Tax Credit
- Form 320: Grow New Jersey Tax Credit
- Form 321: Angel Investor Tax Credit
- Form 322: Wind Tax Credit
- Form 323: Residential Economic Redevelopment and Growth Tax Credit
- Form 324: Business Employment Incentive Program Tax Credit
- Form 325: Public Infrastructure Tax Credit
- Form 327: Film and Digital Media Tax Credit
- Form 328: Tax Credit for Employers of Employees With Impairments
- Form 329: Pass-Through Business Alternative Income Tax Credit
- Form 330: Apprenticeship Program Tax Credit
- Form 331: Tax Credit for Employer of Organ/Bone Marrow Donor
- Form 332: Tiered Subsidiary Dividend Pyramid Tax Credit
- Form 333: Tax Credit for Investing in a Qualified Facility and Hiring Employees to Manufacture Personal Protective Equipment



## OUTLOOK 2016

### ☐ **ENABLE AUTOMATIC EMAIL SPELL-CHECK**

- 1) From **Outlook**, select **File > Options > Mail**.
- 2) Tick ***Always check spelling before sending*** box.
- 3) Click **OK**.

### ☐ **CUSTOMIZE AND ENABLE OUTLOOK SIGNATURE**

- 1) Click **New Mail**.
- 2) From the **Message** tab, click **Signature** pull down menu.
- 3) Select **Signatures**.
- 4) From the **New messages** drop down menu select the desired signature.
- 5) Note: If your personal information is not populated, enter your **name, title, email address, phone number** and **fax number**.
- 6) Click **OK**

### ☐ **CHANGE LOCATION OF OUTLOOK READING PANE**

By default, the Reading Pane displays on the right side of your mailbox. If desired, you can move it to the bottom, or turn it off entirely.

- 1) From **Outlook** select **View > Reading Pane > Right, Bottom, or Off**.

### ☐ **REMOVE MESSAGE HEADER FROM PREVIEW**

By default, the message header information (From, Subject, Received date, etc...) will show on 1 line when there is enough horizontal space. This will give your message list a table like view also known as the Single-Line Layout. This can be removed and/or customized by selecting:

- 2) From **Outlook** click **View**.
- 3) Click **Message Preview**.
- 4) From the menu select **Off, 1 Line, 2 Lines, or 3 Lines**.

### ☐ **ALTER HOW EMAILS ARE GROUPED**

By default, emails are automatically grouped by date. This can be removed by selecting:

- 1) From **Outlook** click **View**.
- 2) Click **Change View**.
- 3) From the menu select **Compact**.

### ☐ **MARK Emails as Read When Viewed in Reading Pane**

By default, emails are not marked as being Read when viewed in the Reading Pane. To change the setting so they are marked as read about being

viewed in the Reading Pane for a few seconds:

- 1) From **Outlook** select **File > Mail > Reading Pane**.
- 2) Tick ***Mark items as read when viewed in the Reading Pane***.
- 3) Enter the desired amount of seconds Outlook should wait before marking the item Read.
- 4) Click **OK**,

### ☐ **CHANGE Default Email Fonts**

If desired, you can change the default font used when composing and replying to email messages.

- 1) From **Outlook**, select **File > Options > Mail > Stationary**.
- 2) Click **New mail messages Font...**
- 3) Select desired font, font style, size, and color.
- 4) Note: If desired, repeat steps 2 through 3 for other categories.
- 5) Click **OK**.
- 6) Click **OK** again.

### ☐ **Restore Mailbox Permissions**

Any Outlook permissions and/or delegate rights (i.e. allowing others access to your Inbox, Calendar, and/or Contacts - and/or allowing others to send email messages on your behalf) that were in place before will need to be restored.

- 1) From **Outlook**, select **File > Account Settings**.
- 2) Click **Email** tab.
- 3) Select your mailbox, click **Change**.
- 4) Click **More Settings**.
- 5) Select the **Advanced** tab.
- 6) Click **Add**.
- 7) In Type Name or Select from List field, enter surname of person to whom folder access should be granted.
- 8) Select desired person in list.
- 9) Click **OK** twice.
- 10) Click **Next**.
- 11) Click **Finish**.
- 12) Click **Close**.

### ☐ **ADD FOLDERS TO 'FAVORITES'**

- 1) From **Outlook's Navigation Pane**, right-click desired folder and select **Show in Favorites**.
  - 2) If desired, drag folder to a higher location within the **Favorite** section.
  - 3) If desired, repeat for additional folders.
- ✓ **Note: Favorites are only visible in Mail View.**

## DIGITAL FILE

### ☐ **CHANGE DEFAULT NAME OF DOCUMENTS EXPORTED FROM DIGITAL FILE FROM DOCUMENT NUMBER TO DOCUMENT NAME**

- 1) From **Outlook** click any Digital File folder, select **iManage tab > General Options**.
- 2) Select **Advanced** tab.
- 3) Click **Options** button.
- 4) Tick the **Use description for export** field.

- 5) Click **OK** twice.

### ☐ **RE-ADD COLUMNS TO DIGITAL FILE VIEW**

If you have previously added columns to the **Digital File** view folder views, you will need to re-add them:

- 1) From within **Outlook**, select a Digital File folder then click on the **View** tab.
- 2) Click **Change View**.

# DAY ONE CHECKLIST

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| 3) While hovering over the FileSite view to be modified, right-click anywhere and select <b>View Settings</b> from the menu.<br>4) Click <b>Columns...</b><br>5) In the <b>Field Chooser</b> box, click the drop-down arrow and select <b>iManage fields</b> . | 6) Select the desired column (e.g., <b>Comments</b> or <b>Practice Group</b> ) from the <b>Field Chooser</b> box and click <b>Add -&gt;</b> .<br>7) If desired, resize the column by sliding the left or right edge of the column header.<br>8) Click <b>OK</b> twice. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## WORD 2016

### ☐ WORD'S AUTOCORRECT SETTINGS

- 1) From **Microsoft Word**, if no document is open, open a new blank document.
- 2) Select **File** tab > **Proofing** > **AutoCorrect Options**.
- 3) Make desired changes.
- 4) When finished, click **OK**.

### ☐ RECREATE AUTOTEXT

- 1) Type, or select the text that you want to store as a reusable Autotext.
- 2) Select **Insert** tab > **Quick Parts** > **AutoText** > **Save Selection to AutoText Gallery**.  
 ✓ *Note: The keyboard short cut for this is ALT+F3.*
- 3) When the Create New Building Block window opens, type in information about your AutoText

entry (ideally something easily identifiable) in the **Name** field.

- 4) Click **OK**.

✓ *Note: To insert the Autotext, type the Autotext Name and hit F3 on your keyboard.*

### ☐ TRACK CHANGES SETTINGS

- 1) From **Microsoft Word**, if no document is open, open a new blank document.
- 2) Select **Review** tab > **Show Markup**.
- 3) Select desired setting from the pulldown menu.

### ☐ TEMPLATE DEFAULT SETTINGS

- 1) From **Microsoft Word**, if no document is open, open a new blank document.
- 2) Select **Forms** tab > **Settings** > **Forms Assistant Settings**.
- 3) Set your **Office location** and desired preferences from the pulldown menus.
- 4) Click **Continue**.

## PRINTER & DISPLAY SETTINGS


### ☐ SET DEFAULT PRINTER

- 1) Click **Start** > **RS Applications** > **Printers-View**.
- 2) Right-click desired printer and select **Set as Default Printer**.  
 ✓ *Note: If the desired printer is not on your list, see Add Printer section.*
- 3) Right-click desired printer and select **Set as default printer**.
- 4) Close the window using the **X** in the top right corner.

### ☐ ADD PRINTER

- 1) Click **Start** > **RS Applications** > **Printers-Add**.
- 2) In **Name** field, enter 3-letter location code where the printer resides and click **Find Now** button (Exceptions: New York should enter **NY**).
- 3) Double-click printer (or, right-click printer and select **Connect**).
- 4) Close the window using the **X** in the top right corner.


### ☐ SET PRINTING TO DOUBLE-SIDED

- 1) Click **Start** > **RS Applications** > **Printers-View**.
- 2) Double-click your **Default Printer**. 
- 3) Select **Printer** > **Printing Preferences** > **Finishing**.
- 4) Tick the box **Print on both sides**. Click **OK**.

### ☐ CHANGE SIZE OF ITEMS ON SCREEN

If the items on your screen are either too large or too small, you might want to adjust your settings.



#### **Option: Change Screen Resolution**

- 1) Click **Citrix** center menu  > **Preferences** > **Resolution**.
- 2) Click the desired setting.
- 3) Click **OK**.

#### **Option 4: Change Taskbar**

- 1) Right-click empty area of taskbar and select **Settings**.
- 2) Make any desired changes.
- 3) Close the window using the **X** in the top right corner.

### ☐ IMPORT FAVORITES TO GOOGLE CHROME

- 1) Click **Start** > **Google Chrome**. 
- 2) Click the **More** menu option. 
- 3) Click **Bookmarks** > **Import Bookmarks and settings**.
- 4) Microsoft Internet Explorer is the selected default.  
 ✓ *Note: If your favorites/bookmarks were saved in a different browsers, you can select it from the pull down menu.*
- 5) Tick the box for **Favorites and Bookmarks**.
- 6) Click **Import**.  
 ✓ *Note: To show bookmarks bar, slide the button to the on position. When active, it will turn blue.*
- 7) Click **Done**.



STATE OF NEW JERSEY  
DIVISION OF TAXATION  
**NOTICE OF BUSINESS ACTIVITIES REPORT**  
**by a FOREIGN CORPORATION**  
(Incorporated other than in New Jersey)  
(P.L. 1973, c. 171)

FOR CALENDAR YEAR \_\_\_\_\_

or taxable year beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_

**DUE DATE:** File on or before the fifteenth day of the fourth month after the close of the calendar or fiscal year.

Name	Federal Identification No.
Address (Number and Street or Rural Route)	State of Incorporation
City, Town or Post Office and State	Zip Code
	Date of Incorporation

Principal Type of Business \_\_\_\_\_

Location of Principal Office \_\_\_\_\_

Offices and Other Places of Business in New Jersey:

Location

Nature of Activity

Officers, Employees, Agents and Representatives in New Jersey (attach fully descriptive duty statement for each officer and each class of employee, agent or representative)

Title

Number of Persons

**GENERAL INFORMATION**

1. Chapter 171 Laws of 1973 (N.J.S.A. 14A:13-14, et seq.) provides that every foreign corporation except corporations exempt pursuant to paragraph 2, must file a Notice of Business Activities Report on Form CBA-1 if:

- (a) Such corporation has not obtained a certificate of authority to do business in New Jersey and is not "doing business" in this State in the traditional franchise tax sense, but, nevertheless, is deriving income from sources within this State; or is engaged in any type of activity or interrelationships within this State.
- (b) Such corporation disclaims liability for the Corporation Business Tax and any obligation to obtain a certificate of authority to do business in this State.

2. A foreign corporation is exempt from the requirement of filing a Notice of Business Activities Report if:

- (a) By the end of its accounting period for the preceding calendar or fiscal year it had received a certificate of authority to do business in New Jersey issued by the Division of Revenue;  
*or*
- (b) Files a timely return under the Corporation Business Tax Act for such calendar or fiscal year.

**NOTE:** The failure of a foreign corporation to file a timely report may prevent the use of the courts in this State for all contracts executed and all causes of action that arose at any time prior to the end of the last accounting period for which the corporation failed to file a required timely report.

**ANSWER ALL QUESTIONS ON THIS FORM**

Corporate Name \_\_\_\_\_

Federal ID# \_\_\_\_\_ F/Y/E \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Answer All Questions (See Instructions for Explanations):**

**DID THIS CORPORATION, now or ever, conduct any of the following activities in New Jersey:**

If "YES" insert first date (month and year) in yes box.

If "NO" insert "X" in no box

	YES Month/Year	NO X
1. Conduct any type of activity or engage in any interrelationships within New Jersey? .....	<input type="text"/>	<input type="text"/>
2. Derive Income from sources located in New Jersey? If yes, specify: Type _____ Approximate amount \$ _____ .....	<input type="text"/>	<input type="text"/>
3. Solicit sales in New Jersey? If yes, specify: <input type="checkbox"/> For product <input type="checkbox"/> By In-State Reps., etc. <input type="checkbox"/> Internet or Electronic Means <input type="checkbox"/> For services <input type="checkbox"/> By mail or phone only .. .....	<input type="text"/>	<input type="text"/>
4. If you have in-state solicitation of product is sales acceptance and/or approval: <input type="checkbox"/> By salesman at New Jersey customer <input type="checkbox"/> At corporate office located outside of New Jersey .....	<input type="text"/>	<input type="text"/>
5. If you have in-state salespeople with in-home offices in New Jersey, do you reimburse them for the expense of maintaining such space in their home? If yes, submit copies of vouchers .....	<input type="text"/>	<input type="text"/>
6. Own, rent or lease any type of property located in New Jersey either for your own or other use? .....	<input type="text"/>	<input type="text"/>
7. Do you license the use of intangible rights to clients located in New Jersey? .....	<input type="text"/>	<input type="text"/>
8. Provide any type of continuous maintenance program(s) which is/are performed in New Jersey by this entity or by any sub-contractor or independent contractor? .....	<input type="text"/>	<input type="text"/>
9. Deliver goods to points in New Jersey? <input type="checkbox"/> Your own trucks <input type="checkbox"/> Common Carrier If delivered in your own truck, do you assist in set-up, installation or pick up of damages, returned or replaced goods? .....	<input type="text"/>	<input type="text"/>
10. Perform any type of service in New Jersey, not related to solicitation of sales? .....	<input type="text"/>	<input type="text"/>
11. Do you own or lease any vehicles which are registered in New Jersey? If yes, are they assigned to: <input type="checkbox"/> Salespeople only <input type="checkbox"/> Salespeople and others <input type="checkbox"/> Others .....	<input type="text"/>	<input type="text"/>
12. Is this corporation deriving income as a partner/member of any Partnership or LLC located or doing business in New Jersey? If yes, describe this corporation's involvement: _____	<input type="text"/>	<input type="text"/>

In conclusion, is this corporation otherwise subject to tax under either the Corporation Business Tax Act (N.J.S.A. 54:10A-1, et seq.) .....

or

have any obligation to obtain a certificate of authority to do business in this State. (as qualified and issued by the Division of Revenue, Commercial Recording Bureau .....

☐ YES      ☐ NO

☐ YES      ☐ NO

**CERTIFICATION OF AN AUTHORIZED OFFICER OF THE CORPORATION**

I hereby certify that this report, including any attachments, is to the best of my knowledge and belief, a true, correct and complete report.

<b>SUBMIT COMPLETED FORM TO:</b> NJ DIVISION OF TAXATION OFFICE AUDIT BRANCH 50 BARRACK STREET PO Box 269 TRENTON, NJ 08695-0269
-------------------------------------------------------------------------------------------------------------------------------------------------

Signature of Officer

Title

Date

**CORPORATION BUSINESS ACTIVITIES REPORTING ACT**  
**INSTRUCTIONS (by Question)**

- (1) Includes the maintenance of an office or other place of business; maintenance of personnel, including the presence of employees, agents, representatives or independent contractors in connection with the corporation's business, even though not regularly stationed in New Jersey.
- (2) Receive payments from persons, business, etc. located in New Jersey regardless of any other connection with New Jersey.
- (3) Have customers located in New Jersey from which you derive sales receipts. You must indicate whether for product or services and whether solicitation is physically in-state.
- (4) Does the salesman have this authority or are orders required to be approved at the corporation's office out of state.
- (5) Examples of expenses include (but are not limited to) mortgage or rent, electricity, gas, oil, telephone, other utilities, travel and entertainment. Please include copies of appropriate expense vouchers.
- (6) Examples of corporate property include (but are not limited to) real estate, inventories, office equipment, office space, storage space, other equipment, etc. that is used by the corporation or that is rented, leased, etc. to others, in which the corporation retains title.
- (7) Examples include (but are not limited to) software licensing agreements with end users in New Jersey; the use of patents, trademarks, logos, goodwill, or any other items that result in the payment of royalties and the location of franchises in New Jersey.
- (8) Is there a contractual obligation to perform continuing maintenance services? You must submit copies of said agreements.
- (9) If you deliver goods (that you sell), does the corporation, at point of delivery, perform any other services that go beyond merely unloading of goods, merchandise or inventory, such as set-up, installation, moving, etc. or picking up damaged, returned or replaced goods?
- (10) Services include: repairs, maintenance, construction, installation, supervision, consulting, technical assistance, training, collection of accounts, taking inventory, maintaining displays, conducting meetings/seminars (for other than sales personnel), transport of the goods of others, etc.
- (11) If there are corporate owned or leased vehicles in New Jersey, answer accordingly.
- (12) This must be answered if the corporation has a partnership interest in a partnership or LLC doing business or located in New Jersey. In addition, submit a rider detailing the partnership or LLC name and mailing address as well as same for all other partners.

The final two (2) questions dealing with subjectivity to Corporation Tax and the necessity to qualify as a Foreign Corporation are to be answered to the best ability of the respondent.

Please note that the Business Activities Report will be rejected and returned to the corporation as unfiled for the following reasons:

- Calendar or fiscal year has not yet ended
- Report does not include calendar or fiscal year covered
- Report covers a period in excess of one year
- Report has not been signed
- Federal Identification Number is missing
- Form is incomplete (all questions must be answered)

For further information, contact the Office Audit Branch, Nexus Group, phone number (609) 984-5749.

## FORM 306

(12-19)

2019

NEW JERSEY CORPORATION BUSINESS TAX  
RESEARCH AND DEVELOPMENT TAX CREDIT

The previous version of this schedule is available on the Division of Taxation's website (njtaxation.org)

Do not recompute tax credits for privilege periods or tax years beginning  
before January 1, 2018, on this form.

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable <b>NU</b>
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## READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM

**NOTE:** Property and expenditures included in the calculation of the Research and Development Tax Credit are not permitted to be included in the calculation of the Recycling Equipment Tax Credit, the Manufacturing Equipment and Employment Investment Tax Credit, or the New Jobs Investment Tax Credit.

## ATTACH COPY OF FEDERAL FORM 6765 AS FILED WITH THE IRS

<b>RETURN FILING METHOD</b>		
<input type="checkbox"/> The taxpayer is included as a taxable member on a New Jersey combined return.		
<input type="checkbox"/> The taxpayer is a separate return filer. Complete Parts I–VI, as applicable. Do not complete Part VII.		
<b>PART I CREDIT CALCULATION FOR AMOUNTS PAID OR INCURRED TO ENERGY CONSORTIA</b>		
1. Enter certain amounts paid or incurred to energy consortia.....	1.	
<b>PART II CREDIT CALCULATION FOR BASIC RESEARCH PAYMENTS</b>		
2. Enter the basic research payments paid or incurred to qualified organizations.....	2.	
3. Enter the base period amount.....	3.	
4. Subtract line 3 from line 2. If zero or less, enter zero.....	4.	
<b>For New Jersey purposes, you must use the same method that you used to calculate qualified research expense portion of your federal credit.</b>		
1. Did you calculate the qualified research expense portion of your federal credit using the regular credit method?		
<input type="checkbox"/> Yes. Complete Part III.		
<input type="checkbox"/> No. Continue to question 2.		
2. Did you use the alternative simplified credit method to calculate your credit for federal purposes?		
<input type="checkbox"/> Yes. Complete Part IV (do not make any entries in Part III).		
<input type="checkbox"/> No. You must have used one of the two federal calculation methods in order to complete this form.		
<b>PART III CREDIT CALCULATION FOR QUALIFIED RESEARCH EXPENSES</b>		
5. Wages for qualified services (do not include wages used to compute the Federal Jobs Credit).....	5.	
6. Cost of supplies.....	6.	
7. Rental or lease costs of computers.....	7.	
8. Enter the applicable percentage of contract research expenses (see instructions).....	8.	
9. Total qualified research expenses – Add lines 5 through 8.....	9.	
10. Enter fixed-base percentage, but not more than 16%.....	10.	
11. Enter average annual gross receipts.....	11.	
12. Base amount – Multiply line 11 by line 10.....	12.	
13. Subtract line 12 from line 9.....	13.	
14. Enter 50% of line 9.....	14.	
15. Enter the lesser of line 13 or 14. (Skip Part IV and continue with Part V).....	15.	
<b>PART IV CREDIT CALCULATION FOR QUALIFIED RESEARCH EXPENSES (ALTERNATIVE SIMPLIFIED CREDIT METHOD)</b>		
16. Wages for qualified services (do not include wages used to compute the Federal Jobs Credit).....	16.	
17. Cost of supplies.....	17.	
18. Rental or lease costs of computers.....	18.	
19. Enter the applicable percentage of contract research expenses (see instructions).....	19.	
20. Total qualified research expenses. Add lines 16 through 19.....	20.	
21. Enter your total qualified research expenses for the prior 3 privilege periods or tax years. If you had no qualified research expenses in any one of those years, skip lines 22 and 23 and enter the amount from line 20 on line 24.....	21.	
22. Divide line 21 by 6.0.....	22.	
23. Subtract line 22 from line 20. If zero or less, enter zero. Include here and on line 24.....	23.	
24. Enter amount from line 23 or if you skipped lines 22 and 23, enter amount from line 20.....	24.	

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable <b>NU</b>
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<b>PART V TOTAL RESEARCH AND DEVELOPMENT TAX CREDIT</b>		
25a. Enter the amount from line 1 .....	25a.	
25b. Enter the amount from line 4 .....	25b.	
25c. Total – Add lines 25a and 25b .....	25c.	
26. Enter either line 15 or line 24 (whichever method was used for federal purposes).....	26.	
27. Add lines 25c and 26 .....	27.	
28. Multiply line 27 by 10%.....	28.	
29. Research and Development Tax Credit carried forward from prior year (do not recompute) .....	29.	
30. Total credit available – Add lines 28 and 29 .....	30.	

<b>PART VI CALCULATION OF THE ALLOWABLE CREDIT AMOUNT AND CARRYOVER</b>		
31. Enter tax liability from page 1, line 2 of CBT-100, CBT-100S, or BFC-1, or the member's column of Schedule A, Part III, line 5 of CBT-100U .....	31.	
32. Enter the required minimum tax liability as indicated in instruction (b) for Part VI.....	32.	
33. Subtract line 32 from line 31 .....	33.	
34. Tax credits used by taxpayer on current year's return:		
(a) _____		
(b) _____		
(c) _____		
(d) _____		
	Total	34.
35. Subtract line 34 from line 33. If zero or less, enter zero .....	35.	
36. Allowable credit for the current privilege period or tax year. Enter the lesser of line 30 or line 35 here and on Part I, Schedule A-3 of the CBT-100, CBT-100U, CBT-100S, or BFC-1 .....	36.	
<b>Note:</b> Generally, this credit may be carried over for seven (7) years following the credit's privilege period or tax year; however, certain types of research qualify for a fifteen (15) year carryover. See instruction (c) for Part VI.		
37. a) Research and Development Tax Credit carryover (subtract line 36 from line 30) .....	37a.	
<b>Combined return filers, see Part VII before continuing.</b>		
b) Amount of credit shared in current year from Part VII, line 44, if applicable.....	37b.	
c) Amount of credit carryover to following year's return (subtract line 37b from line 37a).....	37c.	

<b>Information for taxpayers who made an election under I.R.C. § 41(h) for the SEPARATE PAYROLL CREDIT UNDER I.R.C. § 3111(f)</b>		
Pursuant to I.R.C. § 41(h)(1), the corporate income tax credit under I.R.C. § 41(a) and the allowable payroll credit under I.R.C. § 41(h)(1) and § 3111(f) are separate and distinct credits. The New Jersey Corporation Business Tax Research and Development Tax Credit is based on the federal corporate income tax credit.		
<b>These expenses may not be used for the New Jersey R&amp;D credit.</b> Do not use these amounts in the above calculation of the New Jersey credit.		
A. Enter the amount of the qualifying research expenses that taxpayer elected to use for the separate federal payroll tax credit. (These expenses may not be used for the New Jersey R&D credit and must not be reported Part I through Part IV above for calculating the New Jersey credit) .....	A.	
B. Enter the amount of the separate federal payroll tax credit that the taxpayer had received for federal purposes	B.	
C. If any amounts included on line A, above, were also used for another New Jersey credit, enter those amounts here .....	C.	

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable <b>NU</b>
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PART VII COMBINED RETURN FILERS SHARING CREDIT		
38. Amount of Research and Development Tax Credit <b>being shared</b> and FEIN of the taxable member of the combined group with which it is being shared (see instructions):.....  <div> <div>_____</div> <div>_____</div> <div>NameFederal ID Number</div> </div>		38.
39. Enter the tax liability of the member with which the credit is being shared from Schedule A, Part III, line 5 of Form CBT-100U .....		39.
40. Minimum tax liability .....		40. 2,000
41. Subtract line 40 from line 39.....		41.
42. Tax credits used by this taxpayer on current year's return: <div> <div>(a) _____</div> <div>(b) _____</div> <div>(c) _____</div> <div>(d) _____</div> <div>_____ Total</div> </div>		42.
43. Subtract line 42 from line 41. If zero or less, enter zero .....		43.
44. Allowable credit shared with this taxable member. Enter the lesser of line 38 or line 43 here and on Part VI, line 37b, and CBT-100U, Schedule A-3, Part I for the member receiving the shared amount .....		44.



## Instructions for Form 306 RESEARCH AND DEVELOPMENT TAX CREDIT

### ITEMS TO NOTE

- There have been major changes to the New Jersey R&D Credit, pursuant to section 6 of P.L. 2018, c. 48, amended by N.J.S.A. 54:10A-5.24. These changes are prospective only. If you are filing a return for a privilege period or tax year beginning prior to January 1, 2018, use the previous version of Form 306, which is available on the Division's website (refer to N.J.A.C. 18:7-3.23 for information on how the credit was previously calculated).
- For privilege periods or tax years beginning on and after January 1, 2018, New Jersey has recoupled to I.R.C. § 41 currently in effect, but only the federal corporate income tax credit. The intent was to allow the new calculation methods (e.g., the alternative simplified credit), to make it easier for a business to qualify for the New Jersey R&D Credit, and to allow amounts paid or incurred to energy consortia in New Jersey to qualify. Previously the New Jersey R&D Credit was based on I.R.C. § 41 in effect on June 30, 1992, which was nonrefundable for federal purposes and not refundable for New Jersey Corporation Business Tax purposes. The New Jersey credit made it clear that despite being coupled to the current federal corporate income tax credit under I.R.C. § 41, any subsequent changes by Congress (e.g., terminating the federal credit or making the federal credit refundable) would not have any impact on the New Jersey credit.
- A credit can be claimed for only those research activities that are performed in New Jersey.
- For privilege periods or tax years ending on and after July 31, 2019, combined group members included on the same New Jersey combined return will follow the federal consolidated control group rules applicable to qualified research expenditures and qualified payments for research performed in New Jersey.
- Section references are to the Internal Revenue Code unless otherwise noted.
- For periods beginning on and after January 1, 2002, any deductions for research and experimental expenditures, to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to section 1 of P.L. 1993, c. 175 (C.54:10A-5.24) unless those research and experimental expenditures are also used to compute a federal credit claimed pursuant to I.R.C. § 41, if applicable, must be added back on Schedule A of the CBT-100, CBT-100U, CBT-100S, or BFC-1 on the line for "Other additions." Refer to the Schedule A instructions of the appropriate return.
- Due to changes to I.R.C. § 41 effective for privilege periods or tax years beginning on and after January 1, 2016, for federal purposes there exists

a separate federal payroll credit that was created under I.R.C. § 3111(f), however the New Jersey R&D Credit is based on the federal corporate income tax credit.

**Note:** The qualified expenses and payments used for the separate federal payroll credit under I.R.C. § 3111(f), may be used for other New Jersey Corporation Business Tax credits.

- The formatting of Form 306 is different than federal Form 6765 because the New Jersey R&D Credit rate is fixed at 10%, instead of variable.

### PURPOSE OF FORM

Use Form 306 to calculate and claim the credit for increasing the research activities of a trade or business. Complete Parts I through VII (as applicable) to compute the research credit.

### QUALIFIED RESEARCH ACTIVITIES

Generally all of the federal rules and methods for the federal corporate income tax R&D Credit apply when computing the New Jersey R&D Credit. However the New Jersey credit is fixed at 10%. The expenses are for research in New Jersey. A taxpayer must use the same method that the taxpayer used for federal purposes and must enclose a copy of the federal Form 6765 as filed with the IRS.

### WHO MUST FILE

A corporation claiming a credit for increasing research activities should complete this form and submit it with the tax return.

A New Jersey S corporation is allowed to claim a credit in connection with increasing research activities to the extent of its New Jersey Corporation Business Tax liability. Pass through of this credit to shareholders is not permitted.

See I.R.C. § 41(f) for special rules related to:

1. Adjustments, if a major portion of a business is acquired or disposed of; and
2. Short tax years.

### CREDIT CARRYOVER

If the research credit cannot be used because of tax liability limitations, it may be carried forward for either 7 or 15 years. See the instructions for Part VI.

**COMBINED RETURN FILERS** – If filing a combined return, the form must be completed by the member that earned (purchased) the credit.

## SPECIFIC INSTRUCTIONS FOR FORM 306

### PART I – CREDIT CALCULATION FOR AMOUNTS PAID OR INCURRED TO ENERGY CONSORTIA

**Line 1** – Enter certain amounts paid or incurred to energy consortia in New Jersey. See I.R.C. § 41.

### PART II – CREDIT CALCULATION FOR BASIC RESEARCH PAYMENTS

**Line 1** – Corporations are eligible for a "basic research" credit if their payments in cash to a qualified university or scientific research organization (under a written contract) exceed a base period amount (based on their general university giving and certain other maintenance-of-effort levels for the three preceding years). Enter payments on line 1. See I.R.C. § 41(e) for details.

**Line 3** – Enter the base period amount, as defined in I.R.C. § 41(e), but not more than the amount on line 1.

### PART III

Complete Part III if you used the regular method to calculate your federal corporate income tax credit. Otherwise, complete Part IV.

### CREDIT CALCULATION FOR QUALIFIED RESEARCH EXPENSES

**Lines 5 through 8** pertain to qualified research expenditures paid or incurred. See I.R.C. § 41.

**NOTE:** Property and expenditures included in the calculation of the Research and Development Tax Credit are not permitted to be included in the calculation of the Recycling Equipment Tax Credit, the Manufacturing Equipment and Employment Investment Tax Credit, or the New Jobs Investment Tax Credit.

**Line 8** – Use the applicable percentage. This is the percentage that would apply for federal purposes based on the amounts paid or incurred for qualified research performed on the taxpayer's behalf in New Jersey. Prepaid tract research expenses are considered paid in the year the research is actually done.

**Line 10** – The fixed base percentage for federal purposes is 16%. Any subsequent change to the federal fixed based percentages will also be reflected here.

### PART IV

Complete Part IV if you used the alternative simplified credit method to calculate your federal corporate income tax credit. Otherwise, use Part III.

### CREDIT CALCULATION FOR QUALIFIED RESEARCH EXPENSES USING THE ALTERNATIVE SIMPLIFIED CREDIT METHOD.

**Line 16 through 20** pertain to qualified research expenditures paid or incurred in New Jersey. See I.R.C. § 41.

**Line 21 through 24** – Use the applicable percentage. This is the percentage that would apply for federal purposes based on the amounts paid or incurred for qualified research performed on the taxpayer's behalf in New Jersey. Prepaid tract research expenses are considered paid in the year the research is actually done.

**PART V – TOTAL RESEARCH AND DEVELOPMENT TAX CREDIT**

This is the portion where the actual credit amount is calculated. Unlike the federal corporate income tax credit, which has percentage rates that vary depending on the credit method, the New Jersey credit is fixed at 10%.

You must report the credit you carried over from prior privilege periods or tax years on line 29. Do not recompute your tax credit for privilege periods or tax years beginning before January 1, 2018, on this form. The previous version of this schedule is available on the Division of Taxation's website ([njtaxation.org](http://njtaxation.org)), which is used to calculate credits using the law that was in effect prior to January 1, 2018.

**PART VI – CALCULATION OF THE ALLOWABLE CREDIT AMOUNT AND CARRYOVER**

- a) Use this portion of the form to calculate the allowable amount of the credit that can be used for the privilege period or tax year.
- b) The minimum tax is assessed based on the New Jersey Gross Receipts as follows:

New Jersey Gross Receipts	CBT-100/ BFC-1	CBT-100U	CBT-100S
Less than \$100,000	\$ 500	\$2,000	\$ 375
\$100,000 or more but less than \$250,000	750	2,000	562
\$250,000 or more but less than \$500,000	1,000	2,000	750
\$500,000 or more but less than \$1,000,000	1,500	2,000	1,000
\$1,000,000 or more	2,000	2,000	1,500

If a taxpayer is filing a separate return and is a member of an affiliate or controlled group that has a total payroll of \$5,000,000 or more for the return period, the minimum tax is \$2,000. Tax periods of less than 12 months are subject to the higher minimum tax if the prorated total payroll exceeds \$416,667 per month.

- c) Although there is a limitation of the amount of credit allowed in any one privilege period or tax year, generally the amount of unused tax credit may be carried forward to each of the seven (7) accounting years following the credit's privilege period or tax year (N.J.S.A. Sec. 54:10A-5.24). A taxpayer that has been allowed a Research and Development Credit for the fiscal or calendar accounting period (privilege period or tax year) in which the qualified research expenses have been incurred, and basic research payments have been made, for research conducted in New Jersey in the field of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology, are allowed to carry over the amount of the privilege period or tax year credit that could not be applied for the privilege period or tax year to each of the 15 privilege period or tax years following the credit's privilege period or tax year. (N.J.S.A. Sec. 54:10A-5.24b).

**I.R.C. § 3111(f) Federal R&D Payroll Credit**

The New Jersey R&D credit is based on the federal corporate income tax credit. Because of changes to the Internal Revenue Code that allowed a separate federal R&D payroll credit for qualified small businesses electing a payroll credit in lieu of a federal corporate income tax credit that was effective for federal privilege periods or tax years beginning on and after January 1, 2016, an informational box has been included for taxpayers to track any expenses that are no longer allowed for the New Jersey R&D credit. This information may be used by the Division of Taxation to determine the impact of the federal payroll tax credit on small businesses and recommend future changes.

**PART VII – Combined Return Filers Sharing Credit**

Taxable members of a combined group may share their tax credits and credit carryovers with other taxable members of the combined group that are included on the same New Jersey combined return. The decision to share (or not share) tax credits or carryovers remains with the taxable member who generated the tax credit or carryover. Tax credits and credit carryovers may be shared among members of the same combined group

regardless of whether such taxable members were part of the same combined group when the tax credit or carryover was generated.

If the taxpayer shared the credit with another taxable member of the combined group, use this portion of the form to track the member with which the credit is being shared, calculate the allowable amount that can be shared, and calculate the amount of the credit that can be carried over for use in future privilege periods or tax years. A shared credit carryover belongs to the member that originally earned or purchased the credit. Generally the amount of unused tax credit may be carried forward to subsequent privilege periods or tax years as detailed in the instruction (c) for Part VI.

**Note:** If the member that owns the credit is sharing a portion of their credit with multiple members, include a copy of this section for each member with which the credit is shared.

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION

**Schedule PT**  
(R. 2/20)

**NEW JERSEY  
CORPORATION  
BUSINESS TAX**



Dividend Exclusion for Certain Previously Taxed Dividends

# Instructions for Schedule PT

## PURPOSE

Schedule PT is a standalone schedule for dividends that were included by the taxpayer in entire net income in one tax year and the taxpayer paid tax on those dividends, and those dividends are again being included in the taxpayers entire net income this year. For example, the taxpayer included deemed dividends in entire net income and paid the corporation business tax in tax year 1 and in tax year 2 the dividends were actually paid out and the taxpayer included the same dividends in entire net income. In order to prevent the same dividends from being taxed twice, Schedule PT was created to allow taxpayers an additional exclusion if the taxpayer provides documentation substantiating that the taxpayers already included those dividends in entire net income and paid tax to New Jersey.

A taxpayer is only allowed this exclusion if the taxpayer filed a corporation business tax return in the previous year(s), the taxpayer had included the dividend in their entire net income and paid tax to New Jersey. If those dividends reduced the taxpayer's Net Operating Losses/Net Operating Loss Carryovers, a rider must be attached that details the amounts. The additional exclusion is only for the amount of dividends actually included in entire net income and is not allowed if the dividends had previously been excluded.

Example: a taxpayer included 50% of deemed dividends from a less than 80% owned subsidiary in entire net income in tax year 1 on their CBT-100 return and paid tax in tax year 1. In tax year 2, the subsidiary paid the dividends on those same amounts to the taxpayer. In tax year 2, the taxpayer would complete Schedule PT and would exclude 100% of those dividends since the taxpayer already paid the Corporation Business Tax on those dividends in tax year 1. The taxpayer must provide supporting documentation showing clear evidence to the satisfaction of the Director that the taxpayer already included those dividends in entire net income and paid more than the minimum tax in a prior tax year. Such supporting documents include a previously filed CBT-100, CBT-100U, or BFC-1, Form CBT-DIV 2017 and CBT-DIV 2017 Supplemental, federal IRC section 965 repatriation statements, etc.

Schedule PT is to be completed before completing Schedule R.

## INSTRUCTIONS FOR PART I

Include the name of the subsidiary(ies) from which the taxpayer received the dividends or deemed dividends in a prior tax year that were included in entire net income and on which tax was paid to New Jersey, but only if those same dividends are being included in entire net income a second time in the current tax year. The taxpayer must substantiate the prior dividend inclusion with valid proof in the form of past years tax returns and the statements evidencing the dividend inclusions. Include only dividends that have been previously taxed by New Jersey. Do not include any federal previously taxed income that was not taxed by New Jersey.

If a taxpayer had dividends that were included in entire net income on a previously filed New Jersey CBT-100, CBT-100U, or BFC-1 and those dividends reduced the taxpayer's Net Operating Losses/Net Operating Loss Carryovers, a rider must be attached that details the amounts. These dividends are considered previously taxed dividends for purposes of this schedule.

Enter the amounts from Schedule PT onto the appropriate lines of Forms CBT-100, CBT-100U, BFC-1, or BFC-1-F. When completing this schedule, BFC-1-F filers must use the lines that correspond to the lines referenced for the BFC-1.

**NOTE:** I.R.C. §951A and I.R.C. §250(b) are not dividends nor are they deemed dividends; they are their own category of income.

# SCHEDULE PT

REV. 9/19

## PREVIOUSLY TAXED DIVIDENDS

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable NU
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**PREVIOUSLY TAXED DIVIDENDS** – Report only dividends received by the TAXPAYER on which the TAXPAYER paid greater than the New Jersey minimum tax in a prior tax year.\*

\* If a taxpayer had dividends that were included in entire net income on a previously filed New Jersey CB -100, CBT-100U, or BFC-1 and those dividends reduced the taxpayer's Net Operating Losses/Net Operating Loss Carryovers, a rider must be attached that details the amounts. These dividends are considered previously taxed dividends for purposes of this schedule, write "NOL rider" in column (3)(b).

### Section A – Total of previously taxed dividends received from an 80% or more owned subsidiary

(1) Subsidiary's Federal ID Number	(2) Name of Subsidiary	(3) Dividends Included in Entire Net Income and Reported on Schedule A				
		(a) Amount of Deemed Dividend	(b) Amount of Tax Paid to New Jersey (if \$2,000* or less, enter 0 in column 3d of that row)	(c) Year Tax Paid to New Jersey	(d) Dividend Distributed as a Paid Dividend	(e) Year of Dividend Distribution

### Section B – Total of previously taxed dividends received from a subsidiary in which you owned at least 50% but less than 80% voting stock

(1) Subsidiary's Federal ID Number	(2) Name of Subsidiary	(3) Dividends Included in Entire Net Income and Reported on Schedule A				
		(a) Amount of Deemed Dividend	(b) Amount of Tax Paid to New Jersey (if \$2,000* or less, enter 0 in column 3d of that row)	(c) Year Tax Paid to New Jersey	(d) Dividend Distributed as a Paid Dividend	(e) Year of Dividend Distribution

### Section C – Total of previously taxed dividends received from a subsidiary in which you own less than 50% voting stock

(1) Subsidiary's Federal ID Number	(2) Name of Subsidiary	(3) Dividends Included in Entire Net Income and Reported on Schedule A				
		(a) Amount of Deemed Dividend	(b) Amount of Tax Paid to New Jersey (if \$2,000* or less, enter 0 in column 3d of that row)	(c) Year Tax Paid to New Jersey	(d) Dividend Distributed as a Paid Dividend	(e) Year of Dividend Distribution

### Section D – Previously taxed dividends

1. Enter the total from Column 3d of Section A (if zero or less, enter zero) .....	1.	
2. Enter the total from Column 3d of Section B (if zero or less, enter zero) .....	2.	
3. Add line 2 and line 1 (include here and on Schedule R, line 2, Part I or III (as applicable) of Forms CBT-100 or BFC-1 or on Schedule R, line 1(b), Part I or III (as applicable) of Form CBT-100U) (if zero or less, enter zero) .....	3.	
4. Enter the total from Column 3d of Section C (if zero or less, enter zero) .....	4.	
5. Add line 3 and line 4 (include here and on line 13, Schedule A, Part II, Form CBT-100 or BFC-1 or CBT-100U, ) (if zero or less, enter zero) .....	5.	

**NOTE:** I.R.C. §951A and I.R.C. §250(b) are not dividends nor are they deemed dividends; they are their own category of income.

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION

**Schedule RT**  
(R. 2/20)

**NEW JERSEY  
CORPORATION  
BUSINESS TAX**



Allocated Tiered Subsidiary  
Dividend Exclusion



## Purpose

Schedule RT is a standalone schedule to be completed and included with a taxpayer's Form CBT-100, CBT-100U, BFC-1, or BFC-1-F. Taxpayers will use this schedule to exclude dividends received from a subsidiary if that subsidiary filed a tax return and paid New Jersey Corporation Business Tax on the dividends it received from other subsidiaries. The dividends must have been included in the subsidiary's allocated entire net income, and the tax the subsidiary paid on the dividends must have exceeded the minimum tax.

New Jersey follows the federal ownership attribution rules.

A tiered subsidiary is a stand-alone entity that operates on another level within a group of subsidiaries that are owned by an entity that operates on the first level, which is owned by an upper-level parent corporation.

Tiered dividends are dividends reported on the subsidiary's CBT-100, CBT-100U, BFC-1, or BFC-1-F as dividend income from the subsidiary that is then issued to the parent company as a dividend.

### For example:

Company A has \$100,000,000 of dividend income from its subsidiary Company B.

Company B has \$80,000,000 of dividend income from subsidiary Company C.

If Company B paid tax on its CBT-100, CBT-100U, BFC-1, or BFC-1-F on the \$80,000,000 and has an allocation factor greater than Company A, Company A can exclude \$80,000,000 from its CBT-100, CBT-100U, BFC-1, or BFC-1F.

**Note:** For taxpayers filing Form CB -100U, dividends and deemed dividends that were already eliminated in column (b) of Part I or Part II of Schedule A do not qualify for the tiered dividend exclusion since these dividends and deemed dividends were already 100% eliminated pursuant to N.J.S.A. 54:10A-4.6.d.

## Part I

Provide the requested information for dividends included in entire net income from investments in which the taxpayer owns 80% or more of the voting stock and all other classes of stock of a subsidiary. Only include itemized dividends if the subsidiary distributing the dividends to the taxpayer filed and paid tax to New Jersey on the dividends. **DO NOT** include dividend income received from a subsidiary if the subsidiary has not filed and paid tax to New Jersey on the dividends.

**Column 2:** Include dividends received from a lower tier subsidiary. Use the amount before any dividend exclusion.

**Column 3:** If an individual row is \$2,000 or less, enter 0 in column 5 of that row. The tax the subsidiary paid on the dividends must have exceeded the minimum tax, unless the subsidiary also used its New Jersey tax credits. If the tax was reduced to less than \$2,000 because of a tax credit, use the actual amount.

**Column 3b:** If the taxpayer's privilege period **began on or after January 1, 2019**, use the current-year allocation factor as reported on Schedule J. If the taxpayer's privilege period **began before January 1, 2019**, use the allocation factor as reported on Schedule R, Part II, Section A, line 1e of the CBT-100 or BFC-1, or Schedule R, Part II, Section A, line 2d of the CBT-100U.

**Column 4:** If the taxpayer's privilege period **began on or after January 1, 2019**, use the current-year allocation factor as reported on Schedule J. If the taxpayer's privilege period **began before January 1, 2019**, use the allocation factor as reported on Schedule R, Part II, Section A, line 1e of the CBT-100 or BFC-1, or Schedule R, Part II, Section A, line 2d of the CBT-100U. This is the lesser of 3.5% or the average of the allocation factors (from Schedule J) for Tax Years 2014, 2015, and 2016. If one of those returns was a short-year return, the allocation from that year will count for the special three-year average allocation formula. If the taxpayer has filed fewer than three periods, take the average of the periods being reported. All allocation factors must be carried out to 6 decimal places.

**Column 5:** Carry the amount from line 1 to Part III. Use the amount from line 2 to complete Schedule R.

## Part II

Provide the requested information for all dividends included in entire net income from investments in which the taxpayer took either the 50% or 0% Dividend Exclusion. **DO NOT** include dividend income received from a subsidiary if the subsidiary has not filed and paid tax to New Jersey on the dividends.

**Column 4:** If an individual row is \$2,000 or less, enter 0 in column 5 of that row. The tax the subsidiary paid on the dividends must have exceeded the minimum tax, unless the subsidiary also used its New Jersey tax credits. If the tax was reduced to less than \$2,000 because of tax credits, use the actual amount.

**Column 5:** Include dividends received from a lower tier subsidiary. Use the amount before any dividend exclusion.

## Part III

Add the amounts and carry the total to Schedule R.

## ALLOCATED TIERED SUBSIDIARY DIVIDEND EXCLUSION

[illegible]

1. Enter the Total of Column 5(a) (include here and on line 1, Part III) .....		
2. Enter the Total of Column 5(b) (include here and on Schedule R, Schedule A, or Part I of Schedule X, as applicable) .....		

Upper Subsidiary's Information		Dividends Received from Lower Tier Subsidiaries		
(1) Name	(2) Federal ID Number	(3) Dividends Received by Parent	(4) Tax Paid by Subsidiary If an individual row is \$2,000* or less, enter 0 in Columns 5 of that row.	(5) Dividends Not Excluded from Upper Subsidiary's Entire Net Income Before Dividend Exclusion

1. Total (include here and on line 2, Part III) .....

1. Enter amount from Part I, line 1 .....	1.	
2. Enter amount from Part II, line 1 .....	2.	
3. Add lines 1 and 2 (include here and on Schedule R).....	3.	

\*The tax the subsidiary paid on the dividends must have exceeded the minimum tax, unless the subsidiary also used its New Jersey tax credits.



## Schedule X

## Member's Taxable Income From Sources Other Than the Unitary Business of the Combined Group

**General Information (Water's-Edge and World-Wide Combined Returns ONLY)**

If only a portion of a company's operations are part of a unitary business, only the income, attributes, and allocation factors related to said portion are included in the calculation of the combined group's entire net income. Do not include the income, attributes, and allocation factors derived from the unitary business of the combined group when completing Schedule X. Note: In lieu of filing a separate return, such a member that individually conducts business in New Jersey for that separate portion of its business operations (and those operations are not part of another combined group) will include Schedule X and report the New Jersey taxable net income of that separate activity income on Part III of Schedule A of the CBT-100U. This is to reduce the compliance requirements and to ensure that a member's tax liabilities, attributes, and credits are computed properly.

**Important:** Nonoperational income and nonunitary partnership income calculated under separate accounting is handled directly on Schedule A, Form CBT-100U.

Unitary ID Number

NU

Member FEIN

Member Name

**PART I – New Jersey Modifications to Entire Net Income**

1. The member's income derived from activities separate from the unitary business of the combined group (from the member's column of Form CBT-100U, line 1b of Part II, Schedule A) (see instructions).....

1.

**Additions for income derived from activities  
separate from the combined group**

2. Income of a foreign corporation not included in line 1.....

2.

3. Other federally exempt income not included in line 1.....

3.

4. Interest on federal, state, municipal, and other obligations not included in line 1 (see instructions).....

4.

5. New Jersey State and other states taxes deducted in line 1 (see instructions).....

5.

6. Related party interest addback (see instructions).....

6.

7. Related party intangible expenses and costs addback (see instructions).....

7.

8. I.R.C. § 965 deductions and exemptions.....

8.

9. Depreciation modification being added to income (see instructions).....

9.

10. Other additions. Explain on separate rider (see instructions).....

10.

11. Taxable income/(loss) with additions – Add line 1 through line 10 and enter the total.....

11.

**Deductions for income derived from activities  
separate from the combined group**

12. Depreciation modification being subtracted from income (see instructions).....

12.

13. Previously Taxed Dividends (from Schedule PT).....

13.

14. (a) Enter the I.R.C. § 250(a) deduction amount allowed federally for GILTI if GILTI is included on line 1.....

14a.

(b) Enter the I.R.C. § 250(a) deduction amount allowed federally for FDII if the FDII is included on line 1.....

14b.

15. I.R.C. § 78 Gross-up included in line 1 (do not include dividends that were excluded/deducted elsewhere).....

15.

16. Reserved for future use.....

16.

17. Reserved for future use.....

17.

18. Other deductions. Explain on separate rider (see instructions).....

18.

19. Total deductions – Add line 12 through line 18 and enter the total.....

19.

### Taxable Net Income/(Loss) Calculation

20. Entire Net Income/(Loss) Subtotal – Subtract line 19 from line 11 .....	20.	
21. Allocation factor from Schedule X, Part II, line 8 (if all receipts were derived from only New Jersey sources, enter 1.000000) .....	21.	
22. Allocated entire net income/(loss) before net operating loss deductions and dividend exclusion – Multiply line 20 by line 21 and enter the result here (if zero or less, enter zero on line 32) (Enter this amount in Part III) .....	22.	
23. Prior year net operating loss (PNOL) deduction (from Schedule X, Part III, Section A, line 8) (Amount entered cannot be more than amount on line 22) .....	23.	
24. Allocated entire net income before post allocation net operating loss deduction – Subtract line 23 from line 22 (If zero or less, enter zero here and on line 32) .....	24.	
25. Post allocation net operating loss (NOL) deduction (from Schedule X, Part III, Section B, line 8) (Amount entered cannot be more than amount on line 24) .....	25.	
26. Allocated entire net income before allocated dividend exclusion – Subtract line 25 from line 24 (If zero or less, enter zero here and on line 32) .....	26.	
27. Allocated Dividend Exclusion (From Schedule X, Part IV) .....	27.	
28. If completing Schedule X, Part IV, Section C, enter amount from Schedule RT, Part I, line 2, if applicable ....	28.	
29. Allocated entire net income subtotal – Subtract lines 27 and 28 from line 26 .....	29.	
30. Allocated dividend income from certain subsidiaries, if applicable (Use Schedule X, Part IV, Section B) .....	30.	
31. (a) I.B.F. Exclusion (see instructions) .....	31a.	
(b) Allocated I.B.F. Exclusion – Multiply line 31a by line 21 .....	31b.	
32. <b>Taxable net income</b> – Add line 29 and line 30 and subtract line 31b. (If this amount is positive, enter on Form CBT-100U, Schedule A, Part III, line 2. If this amount is zero or less, enter zero on Form CBT-100U, Schedule A, Part III, line 2.) .....	32.	
Did the member have any discharge of indebtedness excluded from federal taxable income in the current tax year pursuant to subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC § 108? If yes, see Part III.		Yes <input type="checkbox"/> No <input type="checkbox"/>

#### PART II – Schedule J

Use only the portion of the member's operations that are separate from the unitary business of the combine group. Use only the income, attributes, and allocation factors related to said portion when calculating the allocation factor for Schedule X. If the member does not have receipts outside New Jersey, the allocation factor will be 100% (1.000000).

Services are sourced based on market sourcing not cost of performance.

1. Receipts from sales of tangible personal property shipped to points within New Jersey .....	1.	
2. Receipts from services if the benefit of the service is received in New Jersey .....	2.	
3. Receipts from rentals of property situated in New Jersey .....	3.	
4. Receipts from royalties for the use in New Jersey of patents, copyrights, and trademarks .....	4.	
5. All other business receipts earned in New Jersey .....	5.	
6. Total New Jersey receipts (Total lines 1 through 5) .....	6.	
7. Total receipts from all sales, services, rentals, royalties, and other business transactions everywhere .....	7.	
8. Allocation Factor (Percentage in New Jersey (line 6 divided by line 7). Carry the fraction 6 decimal places. Do not express as a percent. Include here and on Schedule X, Part I, line 21 .....	8.	

**Note:** Include the GILTI and the receipts attributable to the FDII, net of the respective allowable IRC §250(a) deductions, in the allocation factor. The net amount of GILTI (i.e., the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and the net FDII (i.e., the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) amounts are included in the numerator (if applicable) and the denominator.

**PART III – Form 500****Section A – Computation of Prior Net Operating Losses (PNOL) Deduction** from periods ending PRIOR to July 31, 2019

Complete the section only if the Allocated Entire Net Income/(Loss) before net operating loss deductions and dividend exclusion on Schedule X, Part I, line 22 is positive (income).

1. Prior Net Operating Loss Conversion Carryover (PNOL) – Enter the total from Form 500U-P, Part II, line 21 (as filed in 2018 or 2019) .....	1.
2. Enter the portion of line 1 previously deducted (see instructions) .....	2.
3. Enter the portion of line 1 that expired .....	3.
4. Enter the portion of line 1 that is used on Form 500U .....	4.
5. Enter any discharge of indebtedness excluded from federal taxable income in the current tax period pursuant to subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC § 108* .....	5.
6. PNOL available in the current tax year – Subtract lines 2, 3, 4, and 5 from line 1 (if zero or less, enter zero) .....	6.
7. Enter the allocated net income from Schedule X, Part I, line 22 .....	7.
8. <b>Current tax year's PNOL deduction</b> – Enter the lesser of line 6 or line 7 here and on Schedule X, Part I, line 23 .....	8.

\* If the allocated discharge of indebtedness exceeds the amount of PNOL that is available and the member has post allocation net operating loss carryover in Form 500U Section B, carry the remaining balance to line 6 of Section B.

**Section B – Separate Activity Post Allocation Net Operating Losses (NOLs) For Tax Years Ending ON AND AFTER July 31, 2019**

1. Allocated Net Operating Loss Carryover – See instructions.	
a. Return Period Ending .....	1a.
b. Return Period Ending .....	1b.
c. Return Period Ending .....	1c.
d. Return Period Ending .....	1d.
e. Return Period Ending .....	1e.
f. Return Period Ending .....	1f.
g. Return Period Ending .....	1g.
h. Return Period Ending .....	1h.
i. Return Period Ending .....	1i.
j. Return Period Ending .....	1j.
2. Total Post Allocation Net Operating Losses (NOLs) – Add lines 1a through 1j .....	2.
3. Enter the portion of line 2 previously deducted .....	3.
4. Enter the portion of line 2 that expired (after 20 privilege periods) .....	4.
5. Enter the portion of separate return NOLs from line 1 that is used on Form 500U (see instructions)	5.
6. Enter any discharge of indebtedness excluded from federal taxable income in the current tax period pursuant to subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC § 108* .....	6.
7. Post Allocation Net Operating Loss available – Subtract lines 3, 4, 5, and 6 from line 2 .....	7.
8. Enter allocated entire net income before post allocation net operating loss deduction from Schedule X, Part I, line 24 .....	8.
9. <b>Current tax year's Post Allocation NOL deduction</b> – Enter the lesser of line 7 or line 8 here and on Schedule X, Part I, line 25 .....	9.

\* If the member has any allocated discharge of indebtedness that was not used in Part III, Section A, enter the balance.

**Note:** Combined group post allocation net operating losses cannot be deducted from a member's income that was derived from activities independent of the combined group. The member **cannot** share the separate return NOL carryovers with other members of the combined group, nor can the member share its NOLs from separate activities independent of the group. Separate activity NOLs from Schedule X **cannot** be used as a deduction on CBT-100U, Schedule A. See N.J.S.A. 54:10A-4.6.h.

**PART IV – Schedule R**

Is this return for a tax year beginning before January 1, 2019?

☐ Yes. Complete Sections A and B. ☐ No. Complete Section C.**Section A Dividend Exclusion – For Tax Years Beginning Before January 1, 2019**

1. Enter the total dividends and deemed dividends reported on Schedule X, Part I, line 1 .....	1.
2. Enter amount from Schedule PT, Section D, line 3 .....	2.
3. Dividends eligible for dividend exclusion – Subtract line 2 from line 1 .....	3.
4. Dividend income included on line 1 from 80% or more owned subsidiaries.....	4.
5. Subtract line 4 from line 3.....	5.
6. Dividend income included on line 1 from investments where member owns less than 50% of voting stock and less than 50% of all other classes of stock (do not include amounts subtracted on line 2).....	6.
7. Subtract line 6 from line 5.....	7.
8. Multiply line 7 by 50%.....	8.
9. Enter the amount from Schedule RT, Part III, line 3 (if applicable).....	9.
10. DIVIDEND EXCLUSION: Add lines 4, 8, and 9.....	10.
11. Allocation factor from current Schedule X, Part II (if all receipts are derived from only NJ sources, enter 1.000000).....	11.
12. ALLOCATED DIVIDEND EXCLUSION: Multiply line 10 by line 11 (include here and on Schedule X, Part I, line 27)	12.

**Section B 80% or More Owned Subsidiary Dividends Subject to Special Allocation – For Tax Years Beginning Before January 1, 2019**

<b>B-1</b>	
1. Special Allocation Factor	
(a) Enter the allocation factor previously reported on the 2014 Schedule J .....	1a.
(b) Enter the allocation factor previously reported on the 2015 Schedule J .....	1b.
(c) Enter the allocation factor previously reported on the 2016 Schedule J .....	1c.
(d) Average allocation (see instructions) .....	1d.
(e) Enter the lesser of the average allocation (line 1d) or 3.5% .....	1e.
2. Enter amount from Schedule X, Part I, line 29 .....	2.
3. Is the line 2 amount zero or a negative number? <input type="checkbox"/> Yes. Complete Section B-3. <input type="checkbox"/> No. Complete Section B-2.	

**B-2 (Complete only if Schedule X, Part IV, Section B-1, line 2 is a positive number)**

1. Dividend income included on line 1 from 80% or more owned subsidiaries.....	1.
2. Enter the amount from Schedule RT, Part III, line 3 (if applicable).....	2.
3. Subtract line 2 from line 1 (if zero or less, enter zero) .....	3.
4. Multiply line 3 by 5% (0.05) .....	4.
5. Special allocation factor – enter amount from Schedule X, Part IV, Section B-1, line 1(e) .....	5.
6. Allocated dividends – multiply line 4 by line 5 .....	6.
7. Enter the amount from Schedule RT, Part I, line 2, if applicable .....	7.
8. Subtract line 7 from line 6 (include here and on Schedule X, Part I, line 30 ONLY if greater than zero).....	8.

**B-3 (Complete only if Schedule X, Part IV, Section B-1, line 2 is a negative number)**

1. Dividend income included on line 1 from 80% or more owned subsidiaries.....	1.
2. Enter amount from Schedule RT, Part III, line 3, if applicable .....	2.
3. Subtract line 2 from line 1 (if zero or less, enter zero) .....	3.
4. Multiply line 3 by 5% (0.05) .....	4.
5. Multiply line 4 by allocation factor from current Schedule X, Part II .....	5.
6. Enter amount from Schedule X, Part IV, Section A, line 12.....	6.
7. Enter amount from Schedule X, Part I, line 26 (if zero or a negative number, enter zero).....	7.
8. Subtract line 7 from line 6.....	8.
9. Subtract line 8 from line 5 (if zero or less, enter zero) .....	9.
10. Special allocation factor – enter amount from Schedule X, Part IV, Section B-1, line 1(e) .....	10.
11. Multiply line 9 by line 10 .....	11.
12. Allocated dividends – divide line 11 by allocation factor from Schedule X, Part II.....	12.
13. Enter the amount from Schedule RT, Part I, line 2, if applicable .....	13.
14. Subtract line 13 from line 12 (include here and on Schedule X, Part I, line 30 ONLY if greater than zero).....	14.

**Section C Dividend Exclusion – For Tax Years Beginning on and After January 1, 2019**

1. Enter the total dividends and deemed dividends reported on Schedule X, Part I, line 1 .....	1.	
2. Enter amount from Schedule PT, Section D, line 3 .....	2.	
3. Dividends eligible for dividend exclusion – Subtract line 2 from line 1 .....	3.	
4. Dividend income included on line 1 from 80% or more owned subsidiaries.....	4.	
5. Multiply line 4 by .95.....	5.	
6. Subtract line 4 from line 3.....	6.	
7. Dividend income from investments where member owns less than 50% of voting stock and less than 50% of all other classes of stock (do not include amounts subtracted on line 2) .....	7.	
8. Subtract line 7 from line 6.....	8.	
9. Multiply line 8 by 50%.....	9.	
10. Enter the amount from Schedule RT, Part III, line 3 (if applicable).....	10.	
11. DIVIDEND EXCLUSION: Add lines 5, 9, and 10.....	11.	
12. Allocation factor from current Schedule X, Part II (if all receipts are derived from only NJ sources, enter 1.000000).....	12.	
13. ALLOCATED DIVIDEND EXCLUSION: Multiply line 11 by line 12 (include here and on Schedule X, Part I, line 27)	13.	

# Schedule X Instructions

If only a portion of a company's operations are part of a unitary business, only the income, attributes, and allocation factors related to said portion are included in the calculation of the combined group's entire net income. Do not include the income, attributes, and allocation factors derived from the unitary business of the combined group when completing Schedule X. In lieu of filing a separate return, such partially included member that individually conducts business in New Jersey for that separate portion of its business operations (and those operations are not part of another combined group) will include Schedule X and report the New Jersey taxable net income of that separate activity income on Part III of Schedule A of the CBT-100U. This is to reduce the compliance requirements and to ensure that a member's tax liabilities, attributes, and credits are computed properly.

**Note:** Such activities and income may be unitary to the member, but not unitary to the combined group filing a New Jersey combined return.

## Part I

On Part I, line 1, report the income from the CBT-100U, Schedule A, Part II, line 1b. In making the New Jersey state additions and deductions, only take into account the items derived from the portion of income and attributes derived from the member's activities that are separate from that of the combined group.

When completing Part I, lines 5, 6, 7, 9, or 12, use the schedules from the CBT-100 as worksheets and retain for the member's books and records or if Division of Taxation has questions.

Foreign corporations must include their income that was not included for federal purposes on Part I, line 2.

GILTI and FDII derived from a combined group member's independent business operations. If the income from those operations is the GILTI income or FDII income, that income must be reported on Schedule X in the same manner.

**Line 4 – Interest on federal, state, municipal, and other obligations.** Include any interest income that was not taxable for federal income tax purposes and was not included in taxable net income reported on line 1.

**Line 10 – Other additions.** Report any other additions to income for which a place has not been provided somewhere else on the return. This includes, but is not limited to:

- I.R.C. § 199 or § 199A amounts that were deducted for federal purposes;
- Net of I.R.C. § 965(a) amount and any I.R.C. § 965(c) deduction or other federally exempt I.R.C. § 965 amounts reported on Part I, line 8;
- Any deductions for research and experimental expenditures, to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to section 1 of P.L. 1993, c. 175 (C.54:10A-5.24) unless those research and experimental expenditures are also used to compute a federal credit claimed pursuant to I.R.C. § 41.

**Lines 14(a)–14(b) – I.R.C. § 250(a) deduction.** If line 1 of Part I of Schedule X includes GILTI and/or FDII amounts, enter the amount of the deduction allowable and taken for federal

purposes under I.R.C. § 250(a) on the appropriate line. The amounts claimed must match the amounts reported on federal Form 8993 (federal Form 8993 must be submitted).

**Note:** If the GILTI income (or portion thereof) or FDII income (or portion thereof) amounts were excluded from the tax base or exempt from taxation by this State, no deduction or portion of the deduction can be taken for the amount of income that was excluded or exempt from taxation. See: N.J.S.A. 54:10A-4.15.

**Line 15 – I.R.C. § 78 gross-up.** The portion of any I.R.C. § 78 gross-up included in dividend income on line 1 of Part I that is not excluded/deducted from taxable net income elsewhere may be treated as a deduction. This line cannot include the amount deducted under the I.R.C. § 250(a) deduction. Include a copy of federal foreign tax credit, Form 1118.

**Note:** I.R.C. § 78 gross-up amounts cannot be included in the dividend exclusion calculation on Schedule R or Schedule RT. In addition, if any portion of the Section 78 amount is included in the member's Section 250 deduction, the amount being deducted on line 15 must be reduced accordingly.

**Line 18 – Other deductions.** Report any other deduction adjustments for which a place has not been provided somewhere else on this schedule. Include a rider detailing the information.

**Line 20 – Entire net income/(loss) subtotal.** Subtract line 19 from line 11.

**Line 21 – Allocation factor.** Enter the allocation factor from Schedule X, Part II.

**Line 22 – Allocated entire net income/(loss) before net operating loss deductions and dividend exclusion.** Multiply line 20 by line 21 and enter the result. If zero or less, enter zero on line 22 and line 32. If line 22 is a negative amount (i.e., a loss) this is the member's separate activity post-allocation net operating loss that the member can use as a separate activity post-allocation net operating loss carryover in future privilege periods on Schedule X. This separate activity net operating loss/loss carryover cannot be used to reduce the member's share of allocated combined group entire net income, and is not sharable with the other members of the combined group. Enter this amount in Part III Section B for use in future privilege periods on Schedule X or if the member subsequently leaves the group on a separate return.

Members that complete Schedule X cannot net the amounts from Schedule X, Part I, line 22 against the member's share of current year combined group allocated entire net income/net operating loss on Schedule A, Part II, line 22.

If line 22 is positive, the member may use their PNOLs on line 23 or their separate return post allocation NOLs (these are losses that were generated outside the current combined group) and separate activity NOLs (these are losses that were generated when the member is part of the current combined group where Schedule X, Part I, line 22 is negative) on line 25.

**Line 23 – Prior-year net operating loss (PNOL) deduction.** Any unused and unexpired net operating loss carryovers that were calculated on a pre-allocation basis (net operation losses from privilege periods ending prior to July 31, 2019) must be



converted to an allocated prior net operating loss conversion carryover (PNOL) before they can be used. If the member does not have any unused, unexpired prior net operating loss conversion carryovers, skip to line 24.

**Line 24 – Allocated entire net income before post allocation net operating loss deduction.** Subtract line 23 from line 22 and enter the result.

- If the amount is zero or less, skip lines 25 through 31 and enter zero on line 32.
- If the amount is a positive number, continue to line 25.

**Line 25 – Post allocation net operating loss (NOL) deduction.** Members with net operating losses generated in privilege periods ending on and after July 31, 2019, can use such losses as a post allocation net operating loss deduction.

**Line 26 – Allocated entire net income before allocated dividend exclusion.** Subtract line 25 from line 24 and enter the result. If the amount is zero or less, enter zero here and on line 32.

**Line 27 – Allocated dividend exclusion.** Dividends and deemed dividends that were excluded from the computation of the combined group entire net income on Schedule A, Part II, line 1b may be eligible for the dividend exclusion on Schedule X. Use Schedule X, Part IV to calculate the amount to enter on Schedule X, Part I, line 27. If the tax period covered by the return began before January 1, 2019, use the amount from Schedule X, Part IV, Section A, line 12. If the tax period began on or after January 1, 2019, use the amount from Schedule X, Part IV, Section C, line 13.

**Line 28.** If completing Schedule X, Part IV, Section C, enter amount from Schedule RT, Part I, line 2, if applicable. Otherwise, enter zero. See Schedule RT instructions for information.

**Line 29 – Allocated entire net income subtotal.** Subtract lines 27 and 28 from line 26 and enter the result.

**Line 30 – Allocated dividend income from certain subsidiaries.** If completing Schedule X, Part IV, Sections A and B, enter the amount reported in Schedule X, Part IV, Section B-2 or B-3. Otherwise, enter zero. See Schedule X, Part IV instructions for information.

**Line 31a – I.B.F. exclusion.** A banking corporation that is operating as an International Banking Facility may exclude the eligible net income of the I.B.F. from its entire net income. If a member of the combined group is a banking corporation, enter the amount on this line. For privilege periods ending on and after July 31, 2019, this amount is an allocated amount.

**Note:** If the member claimed the IBF exclusion on the CBT-100U, the IBF exclusion cannot be taken on Schedule X unless it relates to a portion of the member's independent operations. A rider **must** be included to explain and substantiate why this portion is not unitary to the combined group.

**Line 32 – Taxable net income.** Add line 29 and line 30 and subtract line 31b. (If this amount is positive, enter on Form CBT-100U, Schedule A, Part III, line 2. If this amount is zero or less, enter zero on Form CBT-100U, Schedule A, Part III, line 2.

**Note:** The taxable net income from Schedule X and the Member's Share of Combined Group Taxable Net Income/

(Loss) from CBT-100U, Schedule A, Part III, is the member's total taxable net income.

## Part II

Use only the portion of the member's operations that are separate from the unitary business of the combined group and only the income, attributes, and receipts related to said portion when calculating the allocation factor for Schedule X, Part II. See the Instructions for Schedule J, Form CBT-100 when completing Schedule X.

**GILTI and FDII.** Include the GILTI and the receipts attributable to the FDII, net of the respective allowable IRC §250(a) deductions, in the allocation factor. The net amount of GILTI (i.e., the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and the net FDII (i.e., the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) amounts are included in the numerator (if applicable) and the denominator. Do not include the underlying receipts of the controlled foreign corporation generating the GILTI in the numerator or denominator. See [TB-92\(R\)](#), *Sourcing IRC § 951A (GILTI) and IRC §250 (FDII)*, for more information.

## Part III

When completing Part III, a member may use their PNOLs to reduce their allocated entire net income on Schedule X. Conversely, if Schedule X, Part I, line 22 is a negative amount (i.e., a loss), this is the member's separate activity post-allocation net operating loss that the member can use as a separate activity post-allocation net operating loss carryover in future privilege periods on Schedule X. This separate activity net operating loss/loss carryover cannot be used to reduce the member's share of allocated combined group entire net income and is not sharable with the other members of the combined group. See [TB-95](#), *Net Operating Losses and Combined Groups*, for more information.

### Section A – Computation of prior net operating losses (PNOL) deduction from periods ending PRIOR to July 31, 2019

Complete the section only if the Allocated Entire Net Income/ (Loss) before net operating loss deductions and dividend exclusion on Schedule X, Part I, line 22 is positive (income).

**Line 1 – Prior net operating loss conversion carryover (PNOL).** Enter the total from Form 500U-P, Part II, line 21 (as filed in 2018 or 2019)

**Line 2 – PNOL previously deducted.** Enter the portion of line 1 deducted.

**Line 3 – Expired PNOL.** Enter the portion of line 1 that expired.

**Line 4 – PNOL used on Form 500U.** Enter the portion of line 1 that is used on Form 500U.

**Note:** Section A of Form 500U and Part III of Schedule X are used to track the member's PNOL deduction usage. If the member is claiming an amount on either form, accurate books and records must be maintained to prevent the double use of the same PNOLs. See [TB-95](#), *Net Operating Losses and Combined Groups*, for more information.

**Line 5 – Discharge of indebtedness.** Enter any discharge of indebtedness excluded from federal taxable income in the current tax period pursuant to subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC § 108\*.

**Line 6 – Available PNOL.** Subtract lines 2, 3, 4, and 5 from line 1 (if zero or less, enter zero).

**Line 7 – Allocated net income.** Enter the amount from Schedule X, Part I, line 22.

**Line 8 – Current tax year's PNOL deduction.** Enter the lesser of line 6 or line 7 here and on Schedule X, Part I, line 23.

## Section B

This section only applies to loss carryovers from periods ending on and after July 31, 2019. Only complete this section if the amount reported on Schedule X, Part I, line 24 is positive (i.e., income).

Section B is used to calculate the amount of the New Jersey post allocation net operating loss carryover. There are two types of post allocation net operating loss carryovers that can be deducted in this section:

- The member's post allocation NOLs from activities independent of the combined group on previous year Schedule X, Part I (in privilege periods the member was included as part of the combined group filing a New Jersey combined return); and
- Separate return post allocation NOLs (losses that were generated outside the current combined group).

The post allocation net operating loss deduction is subtracted from allocated entire net income after the member uses all of its PNOLs.

**Note:** A post allocation net operating loss can be carried forward for 20 privilege periods.

Section B is to be used if either the member had separate return post-allocation net operating loss carryovers they wish to use if the member's Schedule X Part I, line 24 is a positive number. Note: On the 2019 returns this section would not apply as it is the first year that there could be post-allocation net operating losses

If Schedule X, Part I, line 24 is zero or a negative amount (i.e., a loss), the post-allocation net operating loss carryovers cannot be used as a deduction.

**FYI**

Losses generated on Schedule X cannot be shared or used by the group. These losses can only be used on Schedule X. Conversely, the member's portion of the combined group net operating losses cannot be used on Schedule X. See N.J.S.A. 54:10A-4.6(h)

**Line 1 – Allocated net operating loss carryover.** Enter the amounts of post-allocation net operating losses either from separate return years or the post-allocation net operating losses derived from activities that are independent of the unitary business of the combined group that was reported on previous year Schedule X.

**Line 2 – Total post allocation net operating losses (NOLs).** Add lines 1a through 1j.

**Line 3 – NOLs previously deducted.** Enter the portion of line 2 previously deducted.

**Line 4 – Expired NOLs.** Enter the portion of line 2 that expired (after 20 privilege periods).

**Line 5 – NOLs used on Form 500U.** Enter the portion of separate return NOLs from line 1 that is used on Form 500U.

**Line 6 – Discharge of indebtedness.** Enter any discharge of indebtedness excluded from federal taxable income in the current tax period pursuant to subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of IRC § 108\*.

**Line 7 – Post allocation net operating loss available.** Subtract lines 3, 4, 5, and 6 from line 2.

**Line 8 – Allocated entire net income before post allocation net operating loss deduction.** Enter amount from Schedule X, Part I, line 24.

**Line 9 – Current tax year's post allocation NOL deduction.** Enter the lesser of line 7 or line 8 here and on Schedule X, Part I, line 25.

## Part IV

Dividends from all sources (other than the unitary business of the combined group) must be included in Schedule X, Part I. However, the member may exclude from entire net income 95% of dividends from qualified subsidiaries, if such dividends were included in the member's gross income on Schedule X.

**FYI**

The I.R.C. § 965(a) amounts must be included in Part IV and Schedule RT, if applicable.

Members cannot include the following as part of the dividend exclusion:

- Money market fund or REIT income;
- GILT or FDII (as this is not considered income from dividends or deemed dividends for New Jersey purposes); or
- The portion of I.R.C. § 78 gross-up deducted on Schedule X, Part I, line 15.

A qualified subsidiary is defined as ownership by the member of at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock, except non-voting stock which is limited and preferred as to dividends. With respect to other dividends, the exclusion is limited to 50% of such dividends included in the member's gross income on Schedule X, provided the member owns at least 50% of voting stock and 50% of the total number of shares of all other classes of stock.

The tiered dividend exclusion from certain subsidiaries is calculated separately on Schedule RT. See Schedule RT below for more information.

**FYI**

New Jersey follows the federal ownership attribution rule changes under I.R.C. §958(b) and I.R.C. §318 that broadened the federal attribution rules that were retroactive to January 1, 2017, in addition to the already broad Corporation Business Tax attribution rules.

**For members whose privilege period for this return began before January 1, 2019,** the calculation is done in Part IV, Sections A and B. Part IV, Section A calculates the Allocated Dividend Exclusion at 100%, while 5% dividend income is calculated in Section B. This provides the member with a 95% dividend



exclusion while taxing the remaining 5% at the special allocation factor. All allocation factors must be carried out to 6 decimal places.

Part IV, Section B is divided into three sections. B-1 is used to calculate the special allocation factor, which can be used in either Section B-2 or Section B-3. The special allocation factor will be applied against the 5% of dividend income received by a member from an 80% or greater owned subsidiary if the income is included in entire net income.

Whether the member completes Section B-2 or Section B-3 is determined by the amount reported on Schedule X, Part I, line 29 (Allocated entire net income subtotal). If line 29 is positive (income), the member completes Section B-2. If line 29 is negative (loss), the member completes Section B-3.

The special allocation factor is the lesser of either the three-year average allocation factor for the member's 2014 through 2016 tax years reported on the member's tax returns or 3.5%. If one of those returns was a short-year return, the allocation from that year will count for the special three-year average allocation formula. If the member has filed fewer than three periods, take the average of the periods that were reported.

**Note:** If Section B-3, lines 3, 7, 9, or 14 are zero or less, enter zero in Section B-3 and on Schedule X, Part I, line 30.

**For members whose privilege period for this return began on or after January 1, 2019,** the calculation is done in Part IV, Section C. The special allocation does not apply for privilege periods beginning on and after January 1, 2019. Therefore, a 95% dividend exclusion will be granted for dividends that are included in entire net income from an 80% or greater owned subsidiary. If the member owns 50%, but less than 80% of a subsidiary, they are entitled to a 50% exclusion. Any subsidiary that is owned less than 50% is not entitled to a dividend exclusion. See N.J.S.A. 54:10A-4(k)(5), N.J.S.A. 54:10A-4(u), N.J.S.A. 54:10A-4(v), and N.J.S.A. 54:10A-4(w) for more information.

**Schedule RT – Tiered Subsidiary Dividend Exclusion,** may also apply to members completing Schedule X. See Schedule RT for more information. The schedule is available on the Division's website.

**Note:** See N.J.S.A. 54:10A-4(k)(5)(C).

**Schedule PT – Previously Taxed Dividends,** may also apply to members completing Schedule X. See Schedule PT for more information. The schedule is available on the Division's website.

# Nexus – Immune Activity Declaration

## For Privilege Periods Beginning On or After August 1, 2018

For tax year beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_

CORPORATION NAME

FEDERAL ID NUMBER

### Read the instructions before completing this schedule.

During the period covered by this return, was this corporation:

☐ Yes ☐ No (1) A member of a combined group that files a New Jersey combined return

Did this corporation, during the period covered by this return, perform any of the following activities in New Jersey:

☐ Yes ☐ No (2) Own, lease, or rent any real property in New Jersey?

☐ Yes ☐ No (3) Lease tangible property to others for use in New Jersey?

☐ Yes ☐ No (4) Own or lease, vehicles registered in New Jersey that are provided to people who are not sales people?

☐ Yes ☐ No (5) Own, lease, or rent any type of property located in New Jersey (consignments, inventory, drop shipments, or like transactions)?

☐ Yes ☐ No (6) License the use of any intangible rights from which royalties, licensing fees, etc., are derived from the use of these rights in New Jersey (e.g., without limitations, software licenses, trademarks)?

☐ Yes ☐ No (7) Solicit in New Jersey for services through the use of employees, officers, agents, and/or independent contractors or representatives?

☐ Yes ☐ No (8) Perform any type of service in New Jersey (other than solicitation) such as constructing, erecting, installing, repairing, consulting, training, conducting seminars or meetings, or administering credit investigations through the use of employees, agents, subcontractors, and/or independent contractors or representatives?

☐ Yes ☐ No (9) Provide any technical assistance or expertise that is performed in New Jersey through the use of employees, agents, subcontractors, and/or independent contractors or representatives?

☐ Yes ☐ No (10) Perform any detail work in New Jersey without limitations such as taking inventory, stocking shelves, maintaining displays, arranging delivery through the use of employees, agents, subcontractors, and/or independent contractors or representatives?

☐ Yes ☐ No (11) Carry goods, merchandise, inventory, or other property including samples into New Jersey for direct sale to customers in New Jersey?

☐ Yes ☐ No (12) Pick up and/or replace damaged, returned or repossessed goods from New Jersey customers with company-owned vehicles or through contract carriers?

☐ Yes ☐ No (13) Pick up or deliver to points in New Jersey with company-owned vehicles or through contract carriers for any other company other than itself?

☐ Yes ☐ No (14) Provide any type of maintenance program that is performed in New Jersey by either this entity or an independent contractor?

☐ Yes ☐ No (15) Have sales representatives who have the authority to accept or approve sales orders from customers located in New Jersey in which acceptance/approval takes place in New Jersey and not from an out-of-State location?

☐ Yes ☐ No (16) Have employees, independent contractors, or representatives with in-home offices in New Jersey for which they are reimbursed for expenses other than telephone or travel or have employees working from home telecommuting on a regular basis for the convenience of the taxpayer?

☐ Yes ☐ No (17) Own an interest in either a partnership or LLC doing business in New Jersey? If yes, identify the name and address of the partnership or LLC.

☐ Yes ☐ No (18) Secure deposits for sales or payment for sales and/or deliveries?

- ☐ Yes ☐ No (19) Allow catalog or online sales to be returned or picked up at an in-store location of a related or affiliate company?
- ☐ Yes ☐ No (20) Collect delinquent accounts directly or indirectly or repossess property?
- ☐ Yes ☐ No (21) Maintain a display at a single location for more than two weeks?
- 

### Affirmation of information by an officer/responsible individual

I hereby certify that this schedule, including any accompanying riders, is to the best of my knowledge a true, correct, and complete report.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Questions or inquiries can be directed to the Nexus Audit Group at (609) 984-5749

### Purpose of Schedule

This schedule must be completed annually and be made part of the Corporation Business Tax return (Form CBT-100, CBT-100U, or CBT-100S) filed by any **foreign** corporation seeking to claim immunity from income taxation pursuant to Public Law 86-272, 73 Stat. 555, USC § 381 and pay the minimum tax prescribed under N.J.S.A. 54:10A-5(e). This schedule is not to be filed by corporations incorporated under the laws of the State of New Jersey.

**Note:** The Alternative Minimum Assessment was repealed for tax years beginning on or after August 1, 2018.

**Combined Return Filers.** If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection.

#### Instructions

- 1) If the answer to **any** question is "Yes," the corporation will be required to apportion net income to New Jersey and determine the amount of tax on its New Jersey corporation apportioned income. The corporation will pay this tax or the minimum tax, whichever is greater.
- 2) If the answer to **all** questions are "No," this schedule can be included with the New Jersey Corporation Business Tax return to claim immunity from tax on its net income. The corporation will pay only the minimum tax.

**Corporations using this schedule must complete the New Jersey Corporation Business Tax return in full.**



**New Jersey Corporation Business Tax  
Nonoperational Activity Packet**

**This Packet Contains:**

- Schedule O - Part I Computation of Nonoperational Activity Elimination**
- Schedule O - Part II Nonoperational Asset Declaration and/or Reclassification**
- Schedule O - Part III Computation of Tax Due on Nonoperational Activity**

## Purpose of Packet

The schedules contained in this packet must be completed and made part of the Corporation Business Tax return (Form CBT-100, CBT-100U, CBT-100S, BFC-1, or BFC-1-F) filed by any corporation seeking to treat income, expenses, or assets as nonoperational pursuant to N.J.S.A. 54:10A-6.1 and not subject to apportionment using the business allocation factor.

**Schedule O, Part I** details the items of nonoperational income and expenses and computes the net adjustment required to eliminate the effect of the nonoperational activity on allocable net income.

**Schedule O, Part II** allows corporations to declare nonoperational assets or report the reclassification of assets previously deemed operational.

**Schedule O, Part III** allows the aggregate nonoperational activity to be broken down into separate and discrete activities. If any of these separate activities have nexus with New Jersey, the schedule computes the amount of New Jersey Corporation Business Tax due.

### General Provisions

Pursuant to U.S. Supreme Court decisions, New Jersey has made statutory changes to the New Jersey Corporation Business Tax Act (N.J.S.A. 54:10A-6.1). This legislation recognizes that a Constitutional distinction based on the Due Process and Commerce Clauses exists that restricts states from apportioning income, gains, losses, or expenses from activities that have no rational relationship with this State. The terminology used by New Jersey classifies these activities and/or assets as being either operational or nonoperational.

Generally, activities of a multijurisdictional corporation that are operational in nature are apportioned to a taxing jurisdiction by the use of a business allocation formula. New Jersey uses a single sales factor. Activities that are deemed to be nonoperational are not apportioned by general formula but are specifically assigned to the jurisdiction where the nonoperational activity has nexus.

Where the trade or business of the taxpayer is directed or managed in New Jersey, all nonbusiness income will be specifically assigned to New Jersey to the extent permitted by the United States Constitution.

In all cases, whether assigned to New Jersey or another jurisdiction, nonbusiness income will **not** be subject to allocation.

There is a presumption, which must be overcome by the taxpayer by clear and convincing evidence, that all the activities of a separate corporate entity are operational in nature. It is the intention of the New Jersey Division of Taxation to consider activities to be operational to the maximum extent permitted by the United States Constitution. However, for corporations making nonbusiness or nonoperational claims (or nonunitary claims for taxpayers filing separate returns) to this State, or to other jurisdictions, if it is determined that the nonoperational activity has nexus to New Jersey, the resulting assignment of income may exceed the New Jersey tax liability

that would otherwise have been due had a nonoperational claim not been made.

### Nonoperational Income Explained

Nonoperational income is derived from tangible and intangible property where either the acquisition, management, use, or disposition did not constitute an integral part of the taxpayer's trade or business operations.

Nonoperational assets are not acquired, managed, used, or disposed of in the normal or ordinary course of business. They also do not generate operational expenses or income during their holding period.

In making the operational or nonoperational determination, the Division will classify income as being operational if it meets either the transactional, functional, or operational test.

The **transactional** test will determine whether the acquisition, management, use, or disposition of property is in the regular course of the corporation's trade or business. A transaction or activity can occur in the regular course of business even though the taxpayer has not regularly engaged in such transactions if it is reasonable to conclude that transactions or activities of that type are customary for the kind of business being conducted. The determination of operational income under the transactional test requires not only knowledge of how often the taxpayer's trade or business has engaged in transactions of the type at issue, but also whether such transactions are likely to occur at all in that trade or business.

The **functional** test will determine whether property or activities that do not rise to the level of constituting a trade or business would still be deemed operational if that property from which income and expenses are derived is or was an integral or functional component to or a part of the taxpayer's regular trade or business operations.

Income and expenses derived from activities occurring infrequently, including transactions made in liquidation,

are operational if that property was used in the business operations. The functional test focuses on the function played by the property in the corporation's trade or business, and it applies similarly to tangible as well as intangible property. Income, gains, losses or expenses arising from transactions involving intangible property, for example corporate stock, or an ownership interest in a partnership, is operational in nature if the corporation held that intangible or the underlying property represented as an integral or functional component of its trade or business.

The **operational** test will determine whether intangible property served an operational rather than an investment function. The relevant inquiry focuses on the objective characteristics of the intangible property's acquisition or use and the relation to the corporation's overall activities. This test will include as operational income all other income or gain that the State is not prohibited from taxing by the United States Constitution.

#### **Tax Treatment of Nonoperational Activity**

Expenses are deductible only to the extent that they are connected with operational property or income. Corporate expenses related to nonoperational income are not deductible at all except in terms of assigning and taxing

income from nonoperational activities that have nexus to New Jersey

If property had been classified as operational property in prior periods and is later demonstrated to have been nonoperational and is subsequently disposed of, all expenses, without limitation, deducted in prior periods related to the nonoperational property must be added back and recaptured as income in the tax period of disposition of such property.

If a prior period's income had been classified as serving an operational function and is later demonstrated not to have been serving an operational function, all expenses, without limitation, deducted in prior periods related to such income, must be added back and recaptured in the year when that occurs.

General corporate expenses including administrative, taxes, and interest that cannot be specifically allocated between operational and nonoperational activity shall be assigned to same by the ratio of the average value of assets producing nonoperational income to the average value of the total assets of the corporation.

Only the receipts attributable to operational activity are to be used in computing the allocation factor.

## **Instructions**

**Combined groups** must complete a separate Schedule O for each member claiming nonoperational income.

### **Schedule O – Part I**

1. **Column A** represents Federal Taxable Income before net operating loss and special deductions and must be the same amount as reported on Schedule A, Form CBT-100, CBT-100U, BFC-1, or BFC-1-F. If Form CBT-100S is being filed, the adjustments made to convert S corporation income to C corporation income should be interpolated to the corresponding lines of this schedule.
2. **Column C** represents total operational activity that will be apportioned to all taxing jurisdictions using the business allocation factor. Columns B and C should always total to column A with respect to lines 1 through 28.
3. **Column B** represents total nonoperational income, gains, losses, and attributable expenses **that** are not apportioned but are specifically assigned. The income and expense items must be related to assets declared on Schedule O – Part II.
  - a. **Line 4 through line 11** reflect the revenues, gains or losses generated by nonoperational assets.
  - b. **Line 12 through line 27** reflect the direct and indirect expenses associated with the nonoperational assets. Submit a statement detailing the basis and

the accounting controls employed in assigning direct and indirect expenses to the nonoperational assets.

#### **Example 1 – Direct Expenses**

Corporation A, a manufacturer of shoes, purchased 1,000 shares of stock of Corporation B, a car wash company located outside New Jersey, for \$15,000 as a passive investment that it claims is a nonoperational asset. Corporation A purchased these shares by borrowing \$10,000 at a 9% interest rate, and by utilizing excess funds of \$5,000. The first year's interest was \$900, and the corporation was charged a processing fee of \$250 on the loan. Both the interest expense (\$900) and the processing fee (\$250) are direct expenses of the asset purchased and should be included in the nonoperational column (column B).

#### **Example 2 – Indirect Expenses**

Corporation C has a substantial cash flow to the point that it maintains a separate division to manage and control all of its excess funds (both operational and claimed nonoperational funds). Corporation C must assign the direct expenses associated with the nonoperational assets and apportion the remaining indirect divisional expenses on a reasonable basis (e.g., value of operational assets to nonoperational assets) and apportion part of the corporate overhead on some reasonable basis (e.g., value of the part of the division to the total corporation).



Indirect corporate expenses, including general and administrative expenses, interest expenses, and taxes, shall be assigned to nonoperational assets by the ratio of the average value of assets producing nonoperational income to the average value of the total assets of the corporation.

- c. **Lines 29a and 29b** reflect the financial activity of nonoperational tax-exempt assets and operational tax-exempt assets.
- d. **Line 30a** reflects the net income from nonoperational activities. It is the total of line 28 plus line 29a minus line 29b.
- e. **Line 31** – If nonoperational capital gains are used to offset operational capital losses in determining Federal Taxable Income, the amount of the operational capital loss offset must be subtracted from the total nonoperational income to effect the elimination of the nonoperational activity from entire net income.
- f. **Line 32** – Enter the adjustments required to reflect the elimination of New Jersey adjustments to Federal Taxable Income on nonoperational activity reported originally on lines 29, 30, 31, 32, 33, 35, and 37 of Schedule A.

### Example 3

Corporation D reported dividend income of \$1,000 from various nonsubsidiary companies, of which the corporation claimed that \$300 in dividends from Corporation E is nonoperational income. Since 50% of the \$300 is excluded on line 37, an adjustment subtracting \$150 from nonoperational income is required to eliminate the double exclusion.

- g. **Line 33** – Enter any other adjustments required to properly reflect the elimination of the nonoperational income. Submit a separate rider detailing this amount. Report the federal 250(a) deductions attributed to GILTI and FDII amounts here and on Part III, line 29c.
- h. **Line 34** represents the sum of lines 30(a), 31, 32, and 33 and represents the net adjustments required to eliminate the effect of nonoperational income from entire net income for current period activity. Enter the total on Form CBT-100S, Schedule K or Schedule K Liquidated, Part III, line 1a.
- i. **Line 35** reflects the recapture of prior period deductions when in prior periods property had been classified as operational property and is later demonstrated to have been nonoperational property and is subsequently disposed of, all expenses, without limitation, deducted in prior periods related to the nonoperational property must be added back and recaptured as income in the period of disposition of such property.

- j. **Line 36** reflects the sum of lines 34 and 35 and is the total adjustment required to eliminate the effect of nonoperational activity from entire net income. The total on this line is carried to Schedule A, Part II, line 17a of Form CBT-100, CBT-100U, BFC-1, or BFC-1-F or Schedule A, Part I, line 37b of Form CBT-100S.

## Schedule O – Part II

1. **Nonoperational assets defined:** Nonoperational assets are assets **not** acquired, managed, used, or disposed of in the normal or ordinary course of business, or that did not generate business expenses or income during their holding period. In determining the operational versus nonoperational asset status, and hence the income and gains, and expenses and losses associated therewith, the corporation shall not recognize as nonoperational any asset that does not meet either the transactional, functional, or operational tests.

## Completing the Form

2. **Line 1 – Prior Years' Net Nonoperational Assets**  
Enter the total original federal basis for all nonoperational assets acquired prior to the current period that the corporation still owns and claims to be nonoperational assets to New Jersey.
3. **Line 2 – Current Year's Nonoperational Assets**
  - a. **Description** – Enter the quantity purchased and the general nature of the asset purchased (e.g., 1 each – machinery, 1 each – building, 100 shares – XYZ, \$2,000 – Bonds, etc.).
  - b. **Date Acquired** – Indicate the date the asset was first acquired. If the asset was acquired in a prior year and its status changed from operational to nonoperational in the current reporting period, then enter as a second date the date such status changed in this reporting period.
  - c. **Federal Basis** – Indicate the **original** federal tax basis used to carry the asset for federal income tax purposes.
  - d. **New Jersey Nexus** – Indicate whether the nonoperational asset has a New Jersey nexus. Answer "YES" where the asset was physically located in New Jersey or where any of the activity related to its purpose, or its management, or its use, or its disposition, took place in whole or in part within this State during any portion of its holding period.
4. **Line 3 – Current Year's Disposition of Nonoperational Assets.** Enter the original federal tax basis of any assets purchased in the current period and disposed of during the current period and included on line 2 of the Schedule O, Part II.

5. **Line 5 – Current Year’s Disposition of Prior Year Purchases.** Enter the original federal tax basis of any prior year purchases disposed of during the current period.

6. **Additional Questions – ALL** questions must be answered. Provide the appropriate responses and, where necessary, provide the additional information requested. If additional space is required, provide supplementary riders.

## Schedule O – Part III

1. Part III details and computes the applicable amounts of New Jersey Corporation Business Tax due on nonoperational activity(ies) that may be wholly or partially taxable by New Jersey.

2. **Lines 1 through 30** separately detail the income and expense items applicable for **each** nonoperational activity. Attach additional schedules as required if the number of activities exceeds two.

3. **Line 31** – Enter the portion of the net operational income for each activity taxable to New Jersey. Detail the methodology and the computation on a separate rider. See instruction 6 below for specific guidelines on the extent nonoperational activity is taxable by New Jersey. Carry the total nonoperational income to Schedule A, Part III of the CBT-100, CBT-100U, BFC-1, or BFC-1-F. Enter the total on Form CBT-100S, Schedule K or Schedule K Liquidated, Part III, line 5.

4. **Line 32** – List all other states, if any, to which each nonoperational activity or income has been taxed. If the income was taxed as part of a combined reporting group as operational income, place an asterisk by that state’s name.

5. Nonoperational income, less attributable expenses, will be taxed by New Jersey when either the activity or property itself has nexus to New Jersey or when the corporation’s principal place of business management or direction is in New Jersey.

a. When the nonoperational activity itself does not have nexus to New Jersey other than by reason of the taxpayer’s principal place of business management being in New Jersey, the nonoperational income related to that activity, less attributable expenses, will be assigned to and taxed in New Jersey using the business allocation factor from the entity’s Schedule J to the extent it is not taxed in other jurisdictions. If 100% of the income is attributable to New Jersey, carry the total income subject to tax to Schedule A, Part III of the CBT-100, CBT-100U, BFC-1, or BFC-1-F and to Schedule O, Part III, line 31.

b. Nonoperational net rents and royalties from real or tangible personal property located in New Jersey for at least a portion of the filing period are 100%

taxable by New Jersey to the extent the asset maintained physical situs in New Jersey.

c. Nonoperational gains and losses from sales or exchanges of real or tangible personal property located in New Jersey during at least part of the filing period or the holding period of the assets are 100% taxable to New Jersey to the extent the asset maintained physical situs in New Jersey.

d. Nonoperational gains and losses from sales or exchanges of intangible property, including capital assets where intangible property is wholly or in part managed, controlled, or accounted for by employees or agents located in New Jersey during at least part of the holding period of the asset are 100% taxable to New Jersey to the extent of the ratio of expenses for the controlling employees or agents in New Jersey to those expenses everywhere.

e. Nonoperational interest and dividends where the underlying investment is wholly or in part researched, managed, controlled, or accounted for by employees or agents located in New Jersey are 100% taxable to New Jersey to the extent of the ratio of expenses of the controlling employees or agents in New Jersey to those expenses everywhere.

f. Nonoperational rents and royalties from patents, copyrights, trademarks, service marks, secret processes, and formulas, franchises and like property are 100% taxable to the extent of the business allocation factor reported to New Jersey by the user of the underlying property for that period.

g. Other nonoperational income constitutionally taxable by New Jersey will be taxed to a reasonable extent based upon the facts and circumstances.

6. Net nonoperational losses cannot be used to offset taxable operational income in current, prior, or future periods.

a. A net loss in any discreet, separate nonoperational activity may not be used to reduce the net income or tax liability of any other discrete, separate, nonoperational activity in current, prior, or future periods.



**For the rare instances that GILTI and FDII could be considered nonoperational income:**

- Include the GILTI and FDII income amounts on Part I, line 4 and Part III, line 4, as applicable
- Report the federal 250 deductions attributed to GILTI and FDII amounts on Part I, line 33 and Part III, line 29c.



**Schedule O – Part I**  
(12-19)

**Computation of Nonoperational Activity Elimination**

	Column A FEDERAL	Column B NONOPERATIONAL	Column C OPERATIONAL
1. Gross receipts _____ Less returns and allowances _____	1.		1.
2. Cost of goods sold and/or operations	2.		2.
3. Gross Profit – Subtract line 2 from line 1	3.		3.
4. Dividends and Inclusions	4.	4.	4.
5. Interest	5.	5.	5.
6. Gross Rents	6.	6.	6.
7. Gross Royalties	7.	7.	7.
8. Net Capital Gain (attach federal Schedule D)	8.	8.	8.
9. Net Gain or (Loss) (attach federal Form 4797)	9.	9.	9.
10. Other Income (attach schedule)	10.	10.	10.
11. TOTAL INCOME – Add lines 3 through 10	11.	11.	11.
12. Compensation of Officers (Schedule F-1	12.	12.	12.
13. Salaries and Wages _____ Less Jobs Credit _____	13.	13.	13.
14. Repairs	14.	14.	14.
15. Bad Debts	15.	15.	15.
16. Rents	16.	16.	16.
17. Taxes (Schedule H)	17.	17.	17.
18. Interest	18.	18.	18.
19. Contributions	19.	19.	19.
20a. Depreciation (attach federal Form 4562)	20a.	20a.	20a.
20b. Less: Depreciation claimed elsewhere	20b.	20b.	20b.
21. Depletion	21.	21.	21.
22. Advertising	22.	22.	22.
23. Pension, profit-sharing plans, etc	23.	23.	23.
24. Employee benefit program	24.	24.	24.
25. Reserved for future use			
26. Other deductions (attach schedule)	26.	26.	26.
27. TOTAL DEDUCTIONS – Add lines 12 through 26	27.	27.	27.
28. Taxable Income before federal net operating loss deductions and federal special deductions (subtract line 27 from line 11)	28.	28.	28.
29a. Interest from federal, state, municipal and other obligations not included in line 11		29a.	29a.
29b. Expenses from Income in line 29 above		29b.	29b.
30a. Column B – Net Nonoperational Income (line 28 plus line 29a minus line 29b)		30a.	
30b. Column C – Net Operational Income (line 28 plus line 29a minus line 29b)			30b.
31. Less: Operational Capital Losses no longer offset by a Nonoperational Capital Gain (see instruction 3e)		31. ( )	31.
32. Net Statutory Adjustments in Nonoperational Activity (see instruction 3f)		32.	32.
33. Other adjustments. Attach rider (see instruction 3g)		33.	33.
34. Net Effect of Current Period Nonoperational Activity (combine lines 30a, 31, 32, and 33). Enter total on Form CBT-100S, Schedule K or Schedule K Liquidated, Part III, line 1a.		34.	34.
35. Recapture of Prior Period Nonoperational Expenses (see instruction 3i)		35.	35.
36. Adjustment required to eliminate effect of Nonoperational Activity (line 34 plus 35). Carry to Schedule A, Part II, line 17a of Form CBT-100, CBT-100U, BFC-1, or BFC-1-F or Schedule A, Part I, line 37b of Form CBT-100S.		36.	36.

**Schedule O – Part II**  
(12-19)

**Nonoperational Asset Declaration and/or Reclassification**

1.	Prior years' net nonoperational assets acquired				1.
2.	Current year's nonoperational assets acquired			N.J. Nexus	
	Description	Date Acquired	Federal Basis	Yes	No
	1.				
	2.				
	3.				
	4.				
	5.				
	6.				
	7.				
	8.				
	9.				
	10.				
	11.				
	13.				
	14.				
	15.				
	Total Current Year Acquisitions		2.		
3.	Current year's disposition of CURRENT year's purchases		3.		
4.	Net current year's acquisitions (line 2 less line 3)				4.
5.	Current year's disposition of PRIOR year's purchases				5.
6.	TOTAL NONOPERATIONAL ASSETS (line 1 plus line 4 minus line 5)				6.

(1) Have you made a claim to any other taxing jurisdiction with respect to currently held assets (whether or not included above) that nonoperational, nonunitary, or nonbusiness income was derived therefrom? ..... ☐ Yes ☐ No

If yes, identify by asset the income, states, and years involved.

a \_\_\_\_\_

b \_\_\_\_\_

c \_\_\_\_\_

(2) Are there or were there liabilities or expenses related to the nonoperational assets declared above? ..... ☐ Yes ☐ No

If yes, specify by asset the expenses and liabilities below for all years since acquisition.

a \_\_\_\_\_

b \_\_\_\_\_

c \_\_\_\_\_

(3) Have assets considered operating in nature in prior periods been reclassified during this reporting period as nonoperating? ..... ☐ Yes ☐ No

If yes, on a separate rider identify all expenses, by year, previously deducted in prior years. The aggregate total of all years' expenses must be recaptured and included in Entire Net Income in this reporting period. (Schedule O – Part I, line 35).

**Schedule O – Part III**  
(12-19)

**Computation of Tax Due on Nonoperational Activity**

	ACTIVITY	ACTIVITY	TOTAL
1. Gross receipts _____ Less returns and allowances _____	1.	1.	1.
2. Cost of goods sold and/or operations	2.	2.	2.
3. Gross Profit – Subtract line 2 from line	3.	3.	3.
4. Dividends and Inclusions	4.	4.	4.
5. Interest	5.	5.	5.
6. Gross Rents	6.	6.	6.
7. Gross Royalties	7.	7.	7.
8. Net Capital Gain (attach federal Schedule D)	8.	8.	8.
9. Net Gain or (Loss) (attach federal Form 4797)	9.	9.	9.
10. Other Income (attach schedule)	10.	10.	10.
11. TOTAL INCOME – Add lines 3 through 10	11.	11.	11.
12. Compensation of Officers (Schedule F-1	12.	12.	12.
13. Salaries and Wages _____ Less Jobs Credit _____	13.	13.	13.
14. Repairs	14.	14.	14.
15. Bad Debts	15.	15.	15.
16. Rents	16.	16.	16.
17. Taxes (Schedule H)	17.	17.	17.
18. Interest	18.	18.	18.
19. Contributions	19.	19.	19.
20a. Depreciation (attach federal Form 4562)	20a.	20a.	20a.
20b. Less: Depreciation claimed elsewhere	20b.	20b.	20b.
21. Depletion	21.	21.	21.
22. Advertising	22.	22.	22.
23. Pension, profit-sharing plans, etc	23.	23.	23.
24. Employee benefit program	24.	24.	24.
25. Reserved for future use			
26. Other deductions (attach schedule)	26.	26.	26.
27. TOTAL DEDUCTIONS – Add lines 12 through 26	27.	27.	27.
28. Net Nonoperational Income before federal net operating loss and federal special deductions (subtract line 27 from line 11)	28.	28.	28.
29a. Interest from federal, state, municipal and other obligations not included above	29a.	29a.	29a.
29b. Expenses from Income in line 29a and not included in line 28 above	29b.	29b.	29b.
29c. Federal 250(a) Deductions	29c.	29c.	29c.
30. Net Current Year's Nonoperational Income (line 28 plus line 29a minus line 29b minus line 29c)	30.	30.	30.
31. NEW JERSEY'S TAXABLE PORTION – Attach sched- ule of computation (see Instruction 5). Carry total to Schedule A, Part III of the CBT-100, CBT-100U, BFC-1, BFC-1-F, or enter total on Form CBT-100S, Schedule K or Schedule K Liquidated, Part III, line 5.	31.	31.	31.
32. Listing of states where Nonoperational Income is being assigned:			



NEW JERSEY DEPARTMENT OF THE TREASURY  
DIVISION OF TAXATION  
NEXUS AUDIT GROUP  
PO BOX 269, TRENTON, NJ 08695-0269  
NEXUS QUESTIONNAIRE

Please answer all questions and provide a detailed explanation when requested. If more room is needed, you may attach separate pages as necessary.

**A: GENERAL INFORMATION**

**1. Identification**

Legal Name \_\_\_\_\_

Business or Trade Name \_\_\_\_\_

Federal Employer ID Number (FEIN) \_\_\_\_\_

New Jersey State Corporation Number \_\_\_\_\_

Fiscal Year End \_\_\_\_\_

**Headquarters/Main Office**

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Web Address \_\_\_\_\_

Contact Person \_\_\_\_\_

Email Address \_\_\_\_\_

Telephone \_\_\_\_\_

FAX \_\_\_\_\_

**2. Type of Business Entity (check one)**

☐

**Corporation:**

State of Corporation \_\_\_\_\_

Date of Corporation \_\_\_\_\_

☐

**Partnership:**

List all Partners, FEIN or Social Security Number, and addresses on a separate attachment.

☐

**Proprietorship:**

List Owner Name and SSN

Owner Name \_\_\_\_\_ SSN \_\_\_\_\_

☐

**Limited Liability:**

List type (e.g. LLC, LLP, Single Member) \_\_\_\_\_

a.) Indicate which form you file with the IRS (e.g. 1120, 1065) \_\_\_\_\_

b.) If you file Form 1065, list all members with FID or SSN and address on a separate attachment.

c.) If you are a Disregarded Entity, list the owner or owners with FEIN or SSN and addresses on a separate attachment.

☐

**Tax Exempt or Non-Profit:** Please attach IRS documentation

**3. List all certificates, registrations, licenses and authorizations issued by any New Jersey State Agency and date issued. Complete even if certificates, etc. have expired or been withdrawn. In such cases indicate ending date. (If none, write none.)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

FEIN: \_\_\_\_\_

4. Did your business, currently, or at any time, have any agents, independent representatives, subcontractors, third parties, etc., who worked on your behalf in New Jersey?

☐ NO

☐ YES. Please state the names and address of all agents, independent representatives, sub-contractors, third parties, etc. who worked on your behalf in New Jersey, on a separate attachment.

5. Provide the address where the books and records of the business are located.

Street \_\_\_\_\_

City, State and Zip \_\_\_\_\_

Contact Person and Phone Number \_\_\_\_\_

If the books and records are located in New Jersey, please provide the date that the location was established. \_\_\_\_\_

6. Provide the address where the actual seat of management and control is located.

Street \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Contact Person and Phone Number \_\_\_\_\_

If located in New Jersey, please provide the date that the location was established. \_\_\_\_\_

7. Is this entity related to any other company (parent, subsidiary, internet seller, etc.) with business activities in New Jersey?

☐ NO

☐ YES; Please provide the complete name and address of each related company, the manner in which it is related and the type of business conducted in New Jersey. Also, if this entity has or had at any time, any activity at any related company's New Jersey address, please describe, in detail, any inter-company transactions. Please provide the information on a separate attachment.

8. Is this entity a partner in a partnership or LLC doing business in or deriving income from New Jersey?

☐ NO

☐ YES; Please provide the name and address of each partnership or LLC and all partners on a separate attachment. Also indicate the date that this entity became a partner, and when the partnership or LLC commenced business in or began deriving income from New Jersey.

9. Status of Business

☐ Active

☐ Dormant, Inactive

☐ Dissolved (*Attach Certificate of Dissolution*)

☐ Non Survivor of Merger (*Please provide the following information on a separate attachment: date of merger, name, address and FEIN of surviving entity.*)

☐ Other (*Please provide details on separate attachment*)

10. Total gross revenue for past years as reported to IRS:

Tax Year \_\_\_\_\_ Gross Revenue \_\_\_\_\_ Tax Year \_\_\_\_\_ Gross Revenue \_\_\_\_\_

Tax Year \_\_\_\_\_ Gross Revenue \_\_\_\_\_ Tax Year \_\_\_\_\_ Gross Revenue \_\_\_\_\_

11. Total gross revenue from New Jersey for past four years:

Tax Year \_\_\_\_\_ NJ Revenue \_\_\_\_\_ Tax Year \_\_\_\_\_ NJ Revenue \_\_\_\_\_

Tax Year \_\_\_\_\_ NJ Revenue \_\_\_\_\_ Tax Year \_\_\_\_\_ NJ Revenue \_\_\_\_\_

Name: _____	FEIN: _____
-------------	-------------

**B: BUSINESS ACTIVITIES**

1. Nature of business activity conducted everywhere: \_\_\_\_\_

a. Federal Business Activity Code: \_\_\_\_\_

2. Nature of business activity conducted in New Jersey: \_\_\_\_\_

3. Did this company NOW or EVER conduct any of the following activities in New Jersey:

If "YES" insert first date (Month and Year) in "YES" box. If "NO" insert "X" in "NO" box.

	YES Month/Year	NO "X"	
a. Do any business or conduct any type of activity in New Jersey?	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	a
b. Derive any type of income from sources located in New Jersey (sales receipts, fees for services, franchise fees, royalties, licensing fees, management fees)? Specify type: _____	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	b
c. Have employees, officers, agents and/or independent representatives working in New Jersey on behalf of the company?	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	c
d. Solicit sales in New Jersey? If yes, check any that apply:	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	d
<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> For tangible personal property  <input type="checkbox"/> For intangible property  <input type="checkbox"/> For services </div> <div> <input type="checkbox"/> By in-state employees, agents, reps., etc.  <input type="checkbox"/> By mail, phone, publication, internet, etc.  <input type="checkbox"/> Other. Explain on a separate attachment </div> </div>			
e. Sell any type of goods, property or services to customers located in New Jersey? if yes, check all that apply:	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	e
<input type="checkbox"/> Tangible personal property to resellers <input type="checkbox"/> Tangible personal property to customers <input type="checkbox"/> Services performed in New Jersey. <input type="checkbox"/> Services performed outside New Jersey.			
f. Does the business have employees, representatives, related entities, agents or independent contractors who perform the following activities in New Jersey:	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	f
<input type="checkbox"/> Make repairs or provide maintenance, service or replace faulty or damaged goods <input type="checkbox"/> Collect current or delinquent accounts. <input type="checkbox"/> Investigate credit worthiness. <input type="checkbox"/> Install, supervise or inspect installation. <input type="checkbox"/> Conduct training. <input type="checkbox"/> Give technical assistance. <input type="checkbox"/> Resolve customer complaints and credit disputes. <input type="checkbox"/> Approve or accept customer orders. <input type="checkbox"/> Repossess property or accept sale returns. <input type="checkbox"/> Secure deposits on sales. <input type="checkbox"/> Pick up or replace damaged or returned property. <input type="checkbox"/> Hire or train personnel. <input type="checkbox"/> Use agency stock checks. <input type="checkbox"/> Have a display at a New Jersey location in excess of 14 days. <input type="checkbox"/> Carry samples for sale or exchange. <input type="checkbox"/> Have goods on consignment.			

Name:	FEIN:
-------	-------

	YES MONTH/YEAR	NO "X"	
g. Lease tangible property to others for use in New Jersey? (If yes, attach a copy of the lease agreement)	<input type="text"/> <input type="text"/>	<input type="text"/>	g
h. License the use of any type of intangible right from which royalties, licensing fees, etc., are derived from the use of these rights in New Jersey. (software licenses, trademarks, etc.)?	<input type="text"/> <input type="text"/>	<input type="text"/>	h
i. Perform any type of service in New Jersey (other than for solicitation of sales) such as constructing, erecting, installing, repairing, consulting, training, conducting seminars or meetings, credit investigations by employees, agents, subcontractors, and/or independent representatives?	<input type="text"/> <input type="text"/>	<input type="text"/>	i
j. Provide any technical assistance or expertise in New Jersey by employees agents, subcontractors, and/or independent representatives?	<input type="text"/> <input type="text"/>	<input type="text"/>	j
k. Perform any detail work by employees, agents, representatives and/or subcontractor, such as taking inventory, stocking shelves, maintaining displays, arranging delivery, etc.?	<input type="text"/> <input type="text"/>	<input type="text"/>	k
l. Carry goods, merchandise, inventory, etc., into New Jersey for sale to customers in New Jersey?	<input type="text"/> <input type="text"/>	<input type="text"/>	l
m. Performs any of the following in New Jersey: Make deliveries, pick-up and/or replacement of goods? <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div><input type="checkbox"/> With Common Carriers (submit name and address)</div> <div><input type="checkbox"/> With company owned vehicles</div> </div> <div style="margin-top: 5px;"><input type="checkbox"/> With Contract Carriers (submit name and address)</div>	<input type="text"/> <input type="text"/>	<input type="text"/>	m
n. Provide any type of maintenance program which is performed in New Jersey by either this entity of a hired independent contractor?	<input type="text"/> <input type="text"/>	<input type="text"/>	n
o. Have employees, independent contractors, and/or other representatives with in-home office in New Jersey for which they are reimbursed for expenses other than telephone or travel?	<input type="text"/> <input type="text"/>	<input type="text"/>	o
p. Have the use of any office or any type of facility in New Jersey (whether owned or leased)?	<input type="text"/> <input type="text"/>	<input type="text"/>	p
q. Have the use of any property located in New Jersey (whether owned or leased)?	<input type="text"/> <input type="text"/>	<input type="text"/>	q
r. Have a telephone listing in New Jersey? If yes, provide phone number and address. _____	<input type="text"/> <input type="text"/>	<input type="text"/>	r
s. Own or lease equipment or vehicles registered in New Jersey, which are provided to employees, agents, representatives, subcontractors, and/or independent contractors. If "yes", please provide full details on separate attachment.	<input type="text"/> <input type="text"/>	<input type="text"/>	s
t. Have any type of property located in New Jersey (whether owned, leased or rented, real estate, consignments, inventory, computer servers, merchandise, display racks etc.)?	<input type="text"/> <input type="text"/>	<input type="text"/>	t
u. Collect and/or remit New Jersey Gross Income Tax withholding from employees at any time?	<input type="text"/> <input type="text"/>	<input type="text"/>	u
v. Collect and/or remit New Jersey Sales Tax at any time?	<input type="text"/> <input type="text"/>	<input type="text"/>	v
w. Does the business enter into agreements with representatives in New Jersey who refers customers to the business by a link on an internet website or otherwise?	<input type="text"/> <input type="text"/>	<input type="text"/>	w
x. Does the business receive income such as interest, fees or annual charges on any loans, credit cards, mortgages, etc. from New Jersey residents?	<input type="text"/> <input type="text"/>	<input type="text"/>	x
y. Does the business make personal loans, car loans, or mortgages to New Jersey residents?	<input type="text"/> <input type="text"/>	<input type="text"/>	y

Name:

FEIN:

z. Does the business purchase or sell mortgage loans secured by real estate in New Jersey?

☐☐

z

aa. Did the business at anytime participate as an exhibitor at a trade show or take orders at a trade show in New Jersey?

☐☐

aa

bb. Is the business related to a company utilizing intangible assets in New Jersey?

☐☐

bb

cc. Does the business own, lease or maintain in-state facilities such as a warehouse or answering service?

☐☐

cc

dd. Does the business perform construction contracts in New Jersey?

☐☐

dd

ee. Does the business perform as a subcontractor in New Jersey?

☐☐

ee

ff. Has the business ever executed contracts in New Jersey?

☐☐

ff

**AFFIRMATION:**I declare, under penalty of perjury, that the information provided in the questionnaire and any attachments is, to the best of my knowledge, true, correct and complete. if prepared by a person other than an officer, partner or owner of the business, this declaration is based on all information on which you have knowledge.

Date \_\_\_\_\_

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

**RETURN TO:**

New Jersey Division of Taxation  
Nexus Audit Group  
PO Box 269  
Trenton, NJ 08695-0269

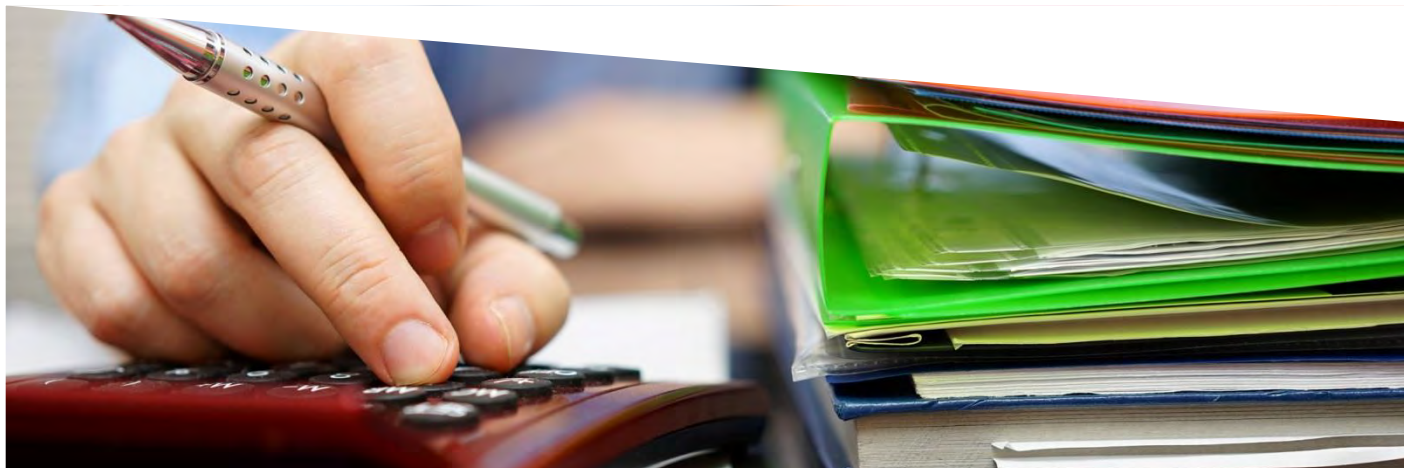
PHONE: 609-984-5749

More information is available on the Division's website at: [www.state.nj.us/treasury/taxation/](http://www.state.nj.us/treasury/taxation/).



# Tab 6





## State Tax Practice

Reed Smith's State Tax Practice has more professionals exclusively focused on state tax issues than any other U.S. law firm. Devoted to the full range of state tax matters, we do more than address individual issues as they arise. Our emphasis is on building strong client relationships, so we work to create comprehensive solutions that enable our clients to focus on moving ahead.

### About Reed Smith

More than 1,700 lawyers, 29 offices throughout Europe, the Middle East, Asia and the United States.

### Accolades

Recommended by *Legal 500* in 2018 for U.S. Tax-Contentious category

Ranked by *Chambers USA* 2018 for Pennsylvania Tax

Named one of the 2016 Tax Practice Groups of the Year by *Law 360*

Reed Smith's state tax lawyers serve clients by leveraging a national platform with deep tax technical and industry experience. Our lawyers have diverse backgrounds, allowing us to understand more about our clients and their needs, and not solely the laws impacting them. This depth and breadth of knowledge impacts how we address client issues – balancing the law against the economic, business, and social environments in which our clients work every day. Our approach has resulted in our representation of more than 10 percent of the Fortune 500 companies in state tax matters, and recognition by tax and business organizations, including *The Wall Street Journal*.

### Fee Flexibility & Cost Savings.

Our practice offers a flexible approach to billing and fees. We have the ability to structure matters based on contingency-based billing, risk-sharing agreements, and other arrangements tailored to meet client needs and internal corporate policies.

### Scope of Services

Our services include not only traditional legal services of audit defense and appeals – litigating from the earliest of administrative levels all the way through to the United States Supreme Court – but also nearly all areas of tax consulting.

**Controversy & Litigation.** Our controversy and litigation work encompasses all states and all taxes, with particular emphasis in income/franchise tax, sales/use tax, real/personal property tax, and gross receipts taxes, such as the Texas Margins Tax and Washington B&O, and Unclaimed Property. We assist clients with state tax controversies at the audit level, and represent clients at all administrative levels, federal and state courts, including the United States Supreme Court. Because we understand that it is more cost effective for clients to conclude a matter as early as possible in the controversy process, we work diligently to achieve favorable settlement. As needed, we will defend clients through all judicial levels until our clients' goals are met.

# State Tax Practice

**Tax Consulting.** Our consulting work mirrors the subject-matter experience of our controversy and litigation work. Our ability to deliver consulting work differentiates our services from many other law firms. Our services include:.

- Performing multistate tax refund reviews
- Modeling multistate impact of changing tax laws and business facts
- Developing and implementing state tax minimization strategies for transactional activity or general tax liabilities
- Conducting and documenting FIN 48 reviews
- Monitoring and advocating legislative, regulatory and other legal developments
- Drafting legislation and regulations
- Identifying, negotiating and implementing credits and incentives
- Developing unclaimed property reporting positions
- Developing compliance programs
- Executing voluntary disclosure initiatives
- Obtaining ad valorem tax exemptions, including through appeal
- Assisting with public relations issues resulting from tax matters

## Highlighted Tax Services

The following services are not representative of all tax consulting, controversy and litigation services provided by Reed Smith's State Tax Practice, and highlight only a few of the services for which our clients engage us:

- **Tax Refund Reviews.** We have a record of success in obtaining significant cash refunds and future tax savings using a contingency-fee structure, so that we take on the risk of failure and our clients incur no fees unless we succeed. Our Refund Review Program is performed for all state income/franchise tax returns, sales/use tax returns, and gross receipts taxes, such as the Texas Margins Tax and Washington B&O. Notwithstanding the ever-vigilant work of taxpayers to correctly report taxes and maximize tax savings for the company, opportunities always remain for tax savings. Our lawyers can identify positions based on case law, administrative policy, or legislative changes that may support a refund of taxes paid.
- **Controversy and Litigation.** Reed Smith's State Tax Group is recognized for its ability to effectively litigate and win controversies. At the same time, we have an efficient approach to case management. For example, we have created a number of taxpayer coalitions to share the costs and burdens of litigation, including one coalition that funded the appeal of a taxpayer with sympathetic facts for the benefit of all taxpayers in the coalition.
- **Mergers, Acquisitions & Transactions.** Our team provides tax counsel for pre-and post-transaction phases of buy or sells transactions, including due diligence assistance with transfer, sales/use, property, employment, and other taxes. We identify structural alternatives to minimize costs or enhance tax savings, and regulatory requirements that may affect closing terms. We also identify opportunities to reduce state tax exposures or obtain refunds, and whether to do so before or after the transaction.
- **Credits & Incentives.** Our team has experience in all phases of the credits-and-incentives life cycle, and is called to discuss C&I issues at national and regional conferences. We have been involved in the identification of credits and incentives, contract negotiations, drafting tax credit agreements to maximize cash benefits and minimize risks – including public reputation risk – and implementing the C&I awards across corporate functions to ensure a successful audit of the award.

# Tab 7



## David J. Gutowski

Partner

David is a lawyer in Reed Smith's State Tax Group and licensed in Pennsylvania and New Jersey. Although he focuses on New Jersey corporate income and sales tax matters, David has handled audits, appeals, and refund reviews in numerous states throughout the country.

David is a registered New Jersey lobbyist and testified before the New Jersey Senate Budget Committee concerning combined reporting. He is active in the New Jersey Business and Industry Association's taxation committee.

David has a biology degree from Franklin and Marshall College and a law degree from Temple University. Before pursuing tax, David worked in a research lab studying Alzheimer's disease and diabetes. He serves on the Board of the Parkinson Council, a non-profit organization that promotes Parkinson's research and patient outreach in the Philadelphia region.



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### Education

Temple University Beasley School of Law,  
2000, J.D., cum laude

Franklin & Marshall College, 1995, B.A.

### Court Admissions

State Supreme Court - New Jersey

State Supreme Court - Pennsylvania

### Professional Admissions

New Jersey

Pennsylvania

### Recent Publications

- 4 January 2019 "Good and bad news for NJ combined filers"  
Co-Author: Matthew L. Setzer
- 12 December 2018 "NJ tax bulletin released: combination and tax reform"  
*Reed Smith Client Alerts*; Co-Author: Matthew L. Setzer
- 12 October 2018 "Sweeping Business Tax Changes Continue In New Jersey"  
*Law360*; Co-Authors: Jonathan E. Maddison, Matthew L. Setzer
- 5 October 2018 "New Jersey amends combined reporting, adopts marketplace facilitator law"  
*Reed Smith Client Alerts*; Co-Authors: Jonathan E. Maddison, Matthew L. Setzer
- 07 September 2018 "Market vs. place-of-performance: recent NJ Tax Court decisions give options to taxpayers"  
*Reed Smith Client Alerts*; Co-Author: Matthew L. Setzer
- 12 July 2018 "NJ Appellate Court Affirms Decision Denying Interest Expense Addback Exception"  
*The Temple 10-Q*; Co-Author: Matthew L. Setzer

### Recent Speaking Engagements

- 25-28 February 2019 COST (Council on State Taxation) Sales Tax Conference & Audit Session, Atlanta, Georgia  
"Telling the Story - Effective Audit Advocacy" "
- 14 August 2018 Council on State Taxation (COST) Indirect State Tax Seminar, Dallas, Texas  
"Survey of Today's Most Important State Indirect Tax Cases – Including Sales Taxation in a Post Wayfair World"
- 7-11 May 2018 Tax Executives Institute, Inc. (TEI) Tax School - Houston Chapter, Houston, Texas  
"Leveraging technology to streamline indirect tax audits and refunds"
- 23-24 January 2018 27th Annual Ohio Tax Conference, Columbus, Ohio  
"Ten Key U.S. Supreme Court State Tax Cases You Should Already Know & Their Relevance in Tax Law Today"

### Recent Quotes

- 7 January 2019 "Combined Group Members May Have New Tax Liability in New Jersey" *Tax Notes*
- 14 December 2018 "Company Allowed to Use 3-Factor Apportionment, New Jersey Court Says" *Tax Notes*
- 12 December 2018 "New Jersey Issues Corporate Tax Guidance; GILTI Questions Remain" *Tax Notes*
- 10 December 2018 "New Jersey Tax Division's Discretion Not 'Boundless,' Tax Court Rules" *Tax Notes*

## Matthew L. Setzer

Associate



Matthew joined the firm's State Tax Group in 2015. He currently focuses his practice on Pennsylvania, and New Jersey Sales and Use and Income Tax issues.

### Philadelphia

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### Education

Villanova University School of Law, 2015, J.D., *Villanova Law Review*, Student Works Editor

Millersville University, 2012, B.A.

### Professional Admissions

Pennsylvania

New Jersey

### Publications

- 4 January 2019 "Good and bad news for NJ combined filers"  
Co-Author: David J. Gutowski
- 12 December 2018 "NJ tax bulletin released: combination and tax reform"  
*Reed Smith Client Alerts*; Co-Author: David J. Gutowski
- 12 October 2018 "Sweeping Business Tax Changes Continue In New Jersey"  
*Law360*; Co-Authors: David J. Gutowski, Jonathan E. Maddison
- 5 October 2018 "New Jersey amends combined reporting, adopts marketplace facilitator law"  
*Reed Smith Client Alerts*; Co-Authors: David J. Gutowski, Jonathan E. Maddison
- 07 September 2018 "Market vs. place-of-performance: recent NJ Tax Court decisions give options to taxpayers"  
*Reed Smith Client Alerts*; Co-Author: David J. Gutowski
- 12 July 2018 "NJ Appellate Court Affirms Decision Denying Interest Expense Addback Exception"  
*The Temple 10-Q*; Co-Author: David J. Gutowski
- 2 July 2018 "NJ adopts combined reporting, market sourcing, and new amnesty program"  
*Reed Smith Client Alerts*; Co-Authors: David J. Gutowski, Kyle O. Sollie
- 20 June 2018 "NJ Legislature Proposes \$800 Million Corporate Tax Increase"  
*Reed Smith Client Alerts*; Co-Author: David J. Gutowski
- 19 June 2018 "NJ Court: Consolidated rules apply to separate-company return"  
*Reed Smith Client Alerts*; Co-Authors: David J. Gutowski, Kyle O. Sollie
- 19 June 2018 "NJ Tax Court finds that partnership not subject to income tax (again)"  
*Reed Smith Client Alerts*; Co-Author: David J. Gutowski
- 17 May 2018 "NJ Appellate Court Affirms Decision Denying Interest Expense Addback Exception"  
*Reed Smith Client Alerts*; Co-Author: David J. Gutowski
- 1 May 2018 "NJ Tax Court Clarifies Scope of Income Tax Addback"  
*Reed Smith Client Alerts*; Co-Author: David J. Gutowski

### Notable Quotes

- 1 February 2019 "New Jersey Appellate Court Affirms Sourcing of Gain to State" *Tax Notes*
- 14 December 2018 "Company Allowed to Use 3-Factor Apportionment, New Jersey Court Says" *Tax Notes*
- 12 December 2018 "New Jersey Issues Corporate Tax Guidance; GILTI Questions Remain" *Tax Notes*
- 12 December 2018 "New Jersey Tax Court Finds Partnership Fee Regs Invalid" *Tax Notes*
- 10 December 2018 "New Jersey Tax Division's Discretion Not 'Boundless,' Tax Court Rules" *Tax Notes*