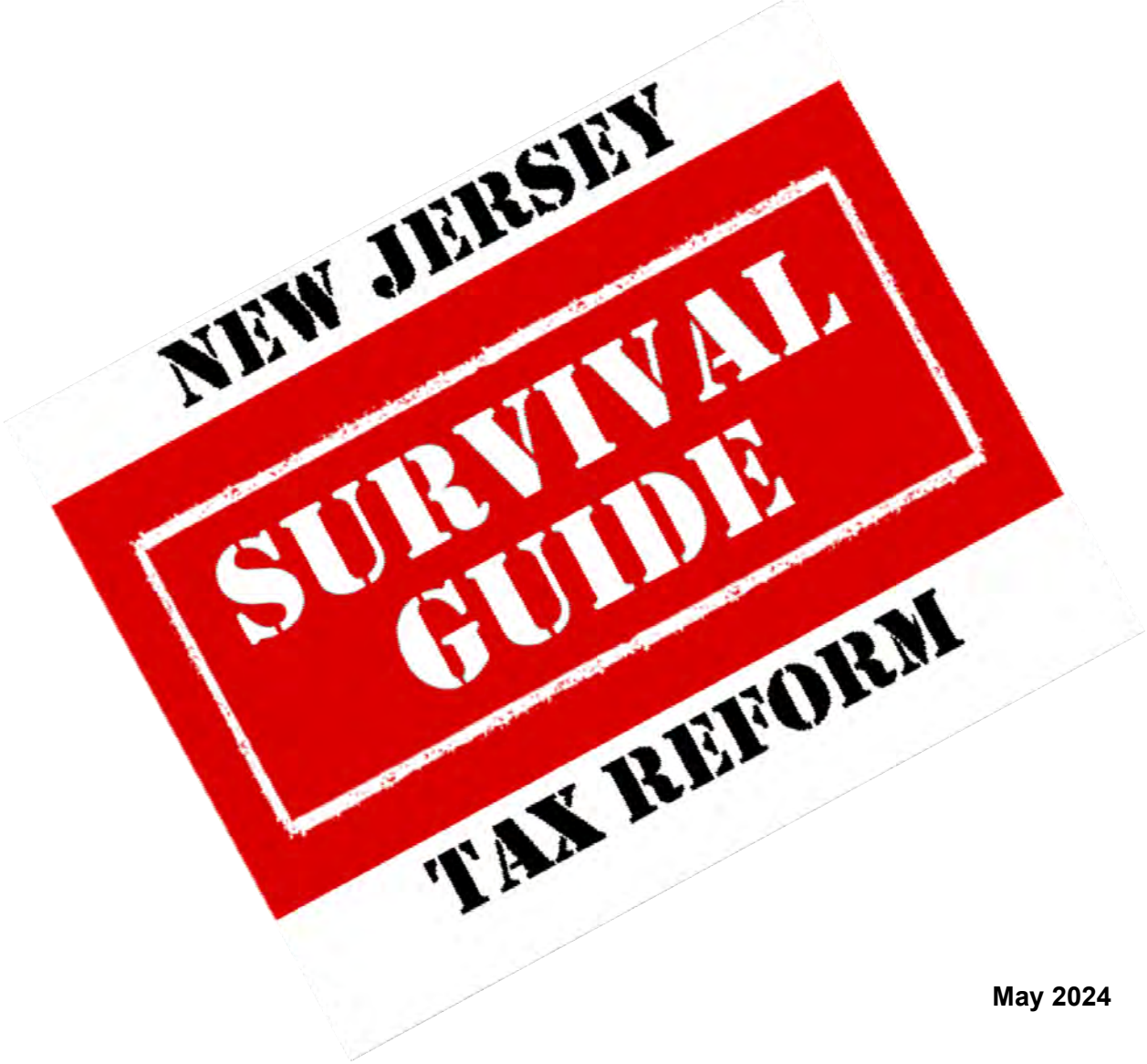

May 2024

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Tab 1

NJ's Recent CBT Amendments P.L. 2023, c. 96

Q&A with Alan Kline, Counsel to Director and Leader of Division of Taxation's CBT Working Group

August 9, 2023

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Introductions and Overview

- Combination administration and framework
- Tax base and tax attributes
- Apportionment

Combination—Background

- Effective date
- Group members and timing of elections:
  - ✓ Affiliate subject to CBT
  - ✓ Common ownership under I.R.C. § 318
  - ✓ Unitary business
- Computing combined tax base
- Apportionment—single sales fraction

Computing Tax Due

- Post-apportioned tax base: “taxable net income”
  - ✓ NOL deduction and dividend exclusion
  - ✓ Non-operational (non-business) income
- Multiply by tax rate and apply tax credits
- Combined group treated as single taxpayer beginning in 2020

Background on P.L. 2023, c.96

1. Impetus for new legislation?
2. Impact of P.L. 2023, c. 96 on typical taxpayer?
3. Legislative process:
   a. Explain bill introduction.
   b. Division's role?
4. Reaction of taxpayers to P.L. 2023, c. 96?
5. Impact of P.L. 2023, c. 96 on yearly budget?

Administrative Questions

1. Additional Division guidance coming?
2. Timeframe for regulations?
3. Due date of CBT-100 returns:
   a. When is the 2022 return due?
   b. Do taxpayers now receive an automatic extension upon a federal extension request?
4. Does NJ still have a surtax after the 2023 privilege period?

Nexus

1. Does the new bright-line nexus rule represent a change of policy?
2. If a corporation's only connection to NJ is that it derives receipts from NJ sources but is below the bright-line thresholds, will the Division assert nexus?

Group Composition: Foreign Affiliates

1. For the worldwide election, is treaty-protected income included in the tax base?
2. If treaty-protected income is included in the tax base, are the associated receipts in the receipts factor?
3. For the water's edge group, if an overseas affiliate has nexus with NJ, but does not have any income that is effectively connected with the U.S., is that overseas affiliate in the combined group?

Group Composition: REITs, RICs, Invest. Cos.

1. The definitions for captive REITs, RICs, and investments companies are slightly different. Was this intentional?

Captive REITs	Captive RICs	Captive Invest. Cos.
. . . [M]ore than 50 [%] of the voting stock is owned or controlled, directly or indirectly, by a single entity.	. . . [M]ore than 50 [%] of the voting stock is owned or controlled, directly or indirectly, by a single corporation.	. . . [M]ore than 50 [%] of the voting stock is owned or controlled, directly or indirectly, by a single corporation.

Group Composition: Miscellaneous

1. New "unitary business" definition. How does the new provision differ from the old provision?
2. Under the new legislation, is there any instance where related-party interest or intangible expense would be required to be added back?

ENI and Tax Base

1. Under the new legislation, can a taxpayer now claim a net deferred tax liability deduction (NDTL)?
2. Is the amount of the NDTL fixed in accordance with the amount the taxpayer reported to the Division on Form DT-1?
3. Can a taxpayer amend its Form DT-1?
4. Can the Division adjust the deduction on a taxpayer's Form DT-1?

Interest & R&D Deductions

1. How does New Jersey treat the interest deduction limitation for purposes of I.R.C. § 163(j)?
2. Does New Jersey allow an R&D deduction for the same year in which a taxpayer claims a research credit?

Dividends

1. Is GILTI now considered a dividend and thus eligible for a DRD
2. Are taxpayers still entitled to an IRC § 250 deduction for GILTI and FDII?
3. Is the DRD taken prior to the NOL deductions such that dividends no longer absorb NOLs?
4. Is there a way to qualify for an exception ot the 5% dividend expense addback? What if a taxpayer shows that its actual expenses are less than 5%?

NOLs

1. For privilege periods ending on and after July 31, 2023, can taxpayers share PNOLs with other members of the combined group?
2. A taxpayer's NOL carryovers can now be adjusted in certain circumstances even if the loss year is beyond the limitations period for assessment or refund. Is this provision effectively a repeal of *R.O.P. Aviation*?

Allocation Factor

1. As amended, how are NJ-source receipts of P.L. 86-272 protected members reflected in the allocation factor?
2. Is the 25:50:25 Rule still available for service receipts?
3. For combined groups whose ENI is more than 50% derived from transporting freight, can you explain the computation of the ton miles factor?
4. Are airlines still entitled to use -6.3?

Convenience of Employer

1. How will the new Convivence of the Employer test be applied to CN residents?
2. When can taxpayers expect the Division to issue guidance or regulations?
3. Given the 1/1/23 effective date, are employers required to amend withholding returns?
4. Is there any consequence for not filing amended returns?

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For additional information and materials about our New Jersey practice, please visit: www.reedsmith.com/njtax.

Tab 2

New Jersey Corporation Business Tax Act
Current through New Jersey 220th Second Annual Session
L. 2023, c. 171 and J.R. 15

January 24, 2024

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

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

History

L. 1945, c. 162, p. 563, ~~§~~ 1.

N.J.S.A. 54:10A-2. Payment of annual ~~F~~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.

History

L. 1945, c. 162, ~~p. 563,~~ § 2~~.~~; ~~A~~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-3. ~~Exempt c~~Corporations exempt

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,~~[1]1933, or agricultural cooperative associations incorporated or domesticated under or subject to chapter 13 of Title 4 of the Revised Statutes[2] 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.[3] 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.

History

L. 1945, c. 162, ~~p. 564,~~ § 3~~.~~; ~~A~~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.~~, retroactive to Jan. 1, 1998; 2002, c. 40, § 2, eff. July 2, 2002; ~~L.~~2017, c. 297, § 20, ~~eff. Jan.~~effective January 16, 2018.

N.J.S.A. 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~~%~~ percent 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~~%~~ percent 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) With respect to privilege periods ending before July 31, 2023, ~~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).

AWith respect to privilege periods ending before July 31, 2023, 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.

AWith respect to privilege periods ending before July 31, 2023, 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. § 199A).

(K)

(i) For privilege periods beginning after December 31, 2017 and ending before July 31, 2022, the interest

deduction limitation in subsection (j) of section 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 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).

(ii) For privilege periods beginning after December 31, 2017 and ending on and after July 31, 2022, the interest deduction limitation in subsection (j) of section 163 of the Internal Revenue Code (26 U.S.C. § 163), shall apply to a combined group as though the combined group filed a federal consolidated return; provided, however, for the purposes of applying the limitation in subsection (j) of section 163 of the Internal Revenue Code (26 U.S.C. § 163), with regard to affiliates that were members of the federal consolidated return but were not members of the combined group included on the New Jersey combined return, the combined group and the affiliates will also be treated as having filed one federal consolidated return.

(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)

(~~5~~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 and ending before July 31, 2023, 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.

(iv) For privilege periods ending on and after July 31, 2023, entire net income shall exclude 100 percent of dividends and deemed dividends that 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 percent 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.

(F) For privilege periods ending on and after July 31, 2023:

(i) The exclusion provided by this paragraph (5) shall be deducted from entire net income after the State modifications that increase federal entire net income but before the other State modifications that reduce entire net income and before the allocation of entire net income to this State.

(ii) In computing the total amount of the dividends and deemed dividends excluded by this paragraph (5) for privilege periods ending on and after July 31, 2023, the amount of dividends and deemed dividends excluded shall be reduced by the amount of the expenses and deductions that are attributable to those dividends and deemed dividends. For purposes of this paragraph (5), expenses and deductions related to dividends shall equal five percent of all dividends and deemed dividends received by a taxpayer during an income year.

(G) For privilege periods ending on and after July 31, 2023, for the purposes of this paragraph (5) and for subsection d. of section 18 of P.L.2018, c.48 (C.54:10A-4.6), the income amounts required to be included in federal taxable income pursuant to 26 U.S.C. § 951A, shall be considered a dividend.

(6)

(A) Net operating loss deduction. For privilege periods ending before July 31, 2019, ~~T~~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~~.~~; provided, however, for privilege periods beginning on and after January 1, 2022, a deduction for research and experimental expenditures shall be allowed during the same privilege period for which a credit is claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), notwithstanding the timing schedule required by the federal Internal Revenue Code of 1986, 26 U.S.C. § 174, for the deduction of specified research and experimental expenditures.

(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)

(i) Beginning with the combined group's first privilege period 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, according to the schedule provided by subsubparagraphs (ii) and (iii) of this subparagraph (E). 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.

(ii) For group privilege periods beginning on and after January 1, 2023, but before January 1, 2030, the combined group may deduct one percent 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, during a group privilege period. 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.

(iii) For group privilege periods beginning on and after January 1, 2030, the combined group may deduct up to five percent of any remaining unused amount of the deduction during the group privilege period, until the group privilege

period in which the total deduction amount has been fully utilized. 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 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.

(17)

(A) In the case of a taxpayer that is a cannabis licensee, there shall be allowed as a deduction an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed because cannabis is a controlled substance under federal law, and income shall be determined without regard to section 280E of the Internal Revenue Code (26 U.S.C. § 280E) for cannabis licensees.

(B) In the case of a taxpayer that is a cannabis licensee, there shall be allowed as a deduction an amount equal to any expenditure that would qualify as a specified research or experimental expenditure pursuant to section 174 of the Internal Revenue Code but is disallowed as a deduction for federal tax purposes because cannabis is a controlled substance under federal law. Any expenditure that is claimed as a deduction pursuant to this subparagraph may also be claimed as a qualified research expense for purposes of the credit allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24).

(C) For purposes of this paragraph, "licensee" means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

(18) For privilege periods ending on and after July 31, 2022:

(A) Notwithstanding subparagraph (A) of paragraph (2) of this subsection or any other law or treaty to the contrary, for a corporation that is incorporated or formed in a foreign nation with a comprehensive tax treaty with the United States, and that is not a member of a world-wide group combined return filed

pursuant to subsection b. of section 23 of P.L.2018, c.48 (C.54:10A-4.11), entire net income shall not include an item of income or loss excluded or exempted from federal taxable income under the terms of the treaty, and no other deduction, exclusion, or elimination shall be permitted for an item of income or loss excluded by this paragraph.

(B) For a non-U.S. corporation that files a federal tax return and is not a member of a combined group filing a New Jersey combined return on a world-wide basis pursuant to subsection b. of section 23 of P.L.2018, c.48 (C.54:10A-4.11), the non-U.S. corporation shall only include its income or loss included in federal taxable income, which shall be limited to only the non-U.S. corporation's effectively connected income or loss, as modified by the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), and the items of expense and the allocation factor receipts attributable to such items of income or loss.

(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~~that has elected to be an "S corporation" pursuant to section 1361 of the federal Internal Revenue Code of 1986, 26 U.S.C. ~~s.~~§ 1361, for the taxable year.

(p) "New Jersey S corporation" means a ~~corporation~~taxpayer that ~~is an S corporation; which~~ has made a valid election to be an S corporation for federal tax purposes, and that has not made a valid election pursuant to subsection d. of section ~~3~~20 of P.L.~~1993~~2022, 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~~133 (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. For privilege periods ending on and after July 31, 2023, for the purpose of computing taxable net income for a current privilege period, the amount of the prior net operating loss conversion carryover shall be subtracted from entire net income allocated to this State, after the application of paragraphs (4) and (5) of subsection (k) of this section against current privilege period income when the entire net income allocated to this State for the privilege period is greater than zero.

(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. For privilege periods ending before July 31, 2023, 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. For privilege periods ending on and after July 31, 2023, the portion of the loss that 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, after the application of paragraphs (4) and (5) of subsection (k) of this section allocated to this State; provided, however, for the purpose of computing taxable net income for the privilege period, the net operating loss carryover shall only be subtracted from entire net income allocated to this State when the entire net income allocated to this State is greater than zero.

(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 for privilege periods ending before July 31, 2023, computed without the exclusions in paragraphs (4) and (5) of subsection (k) of this section, and for privilege periods ending on and after July 31, 2023, computed after the application of 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. § 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; provided, however, for privilege periods ending on and after July 31, 2023, when subtracting any net operating losses calculated pursuant to subsection (v) of this section or the combined group net operating losses calculated pursuant to subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6), the limitation set forth in paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. § 172(a)(2)) shall apply, except that August 1, 2023 is substituted for the reference to January 1, 2018 in subparagraph (A) of paragraph (2) of subsection a. of Internal Revenue Code Section 172 (26 U.S.C. § 172), and July 31, 2023 is substituted for the reference to December 31, 2017 in subparagraph (B) of paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. § 172). For privilege periods ending on and after July 31, 2023, for a combined group, before subtracting the prior net operating loss conversion carryforwards and subtracting the net operating losses of the combined group when computing the total taxable net income, the combined group shall first add together the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group, and then subtract the prior net operating loss conversion carryforwards and then the net operating losses.

(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. § 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. § 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. § 1504, except that the term "common parent corporation" as used in section 1504 of the federal Internal Revenue Code, 26 U.S.C. § 1504, shall mean any person, as defined in section 7701 of the federal Internal Revenue Code, 26 U.S.C. § 7701, and references to "at least 80%" in section 1504 of the federal Internal Revenue Code, 26 U.S.C. § 1504, shall be read as "50% or more." Section 1504 of the federal Internal Revenue Code, 26 U.S.C. § 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. § 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. § 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.2020, c.118 (C.54:10A-5.46 et al.).

(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, for privilege periods ending before July 31, 2023, 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. For privilege periods ending on and after July 31, 2023, "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, or 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.

(hh) "Captive investment company" shall mean, for privilege periods ending on and after July 31, 2023, an investment company that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than an investment company, that is not exempt from federal income tax. For purposes of this subsection, a captive investment company shall not include any captive investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion.

For privilege periods ending on and after July 31, 2023, any voting stock in an investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code, shall not be taken into account for purposes of determining whether an investment company is a captive regulated investment company.

For privilege periods ending on and after July 31, 2023, a captive investment company shall be taxed in the same manner as a C corporation, and subsection d. of section 5 of P.L. 1945, c. 162 (C. 54:10A-5) shall not apply. A captive investment company shall not be permitted to claim any deductions or expenses that were permitted for federal purposes, solely as a result of the entity being an investment company, when computing federal taxable net income. A captive investment company shall be a member of a

combined group and shall be included as a member on the combined return.

(ii) "Captive real estate investment trust" shall mean, for privilege periods ending on and after July 31, 2023, a real estate investment trust that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the Internal Revenue Code, is not exempt from federal income tax, and is not a real estate investment trust. For purposes of this subsection, a captive real estate investment trust shall not include any captive real estate investment trust of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion.

For privilege periods ending on and after July 23, 2023, any voting stock in a real estate investment trust that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code (26 U.S.C. § 817), shall not be taken into account for purposes of determining whether a real estate investment trust is a captive real estate investment trust. For purposes of this subsection, an association taxable as a corporation shall not include any listed Australian property trust or any qualified foreign entity.

For privilege periods ending on and after July 31, 2023, a captive real estate investment trust shall be taxed in the same manner as a C corporation, and subsection d. of section 5 of P.L.1945, c.162 (C.54:10A-5) shall not apply. A captive real estate investment trust shall not be permitted to claim any deductions or expenses that were permitted for federal purposes, solely as a result of the entity being a real estate investment trust, when computing federal taxable net income. A captive real estate investment trust shall be a member of a combined group and shall be included as a member on the combined return.

As used in this subsection:

"Australian property trust" means an Australian unit trust that is registered as a managed investment scheme under the Australian Corporations Act, and in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market; or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests of shares of the trust.

"Qualified foreign entity" means a corporation, trust, association, or partnership that is organized outside the laws of the United States and that satisfies the following criteria:

(1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined at subparagraph (B) of paragraph (5) of subsection (c) of section 856 of the Internal Revenue Code (26 U.S.C. § 856), including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States Government securities;

(2) The entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;

(3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;

(4) No more than 10 percent of the voting power or value in the entity is held directly, indirectly, or constructively by a single entity or individual, or the shares or certificates of beneficial interests of the entity are regularly traded on an established securities market; and

(5) The entity is organized in a country that has a tax treaty with the United States.

(jj) "Captive regulated investment company" shall mean, for privilege periods ending on and after July 31, 2023, a regulated investment company that is not regularly traded on an established securities market, and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than a regulated investment company, that is not exempt from federal income tax. For purposes of this subsection, a captive regulated investment company shall not include any captive regulated investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion.

For privilege periods ending on and after July 31, 2023, any voting stock in a regulated investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code (26 U.S.C. § 817), shall not be taken into account for purposes of determining whether a regulated investment company is a captive regulated investment company.

For privilege periods ending on and after July 31, 2023, a captive regulated investment company shall be taxed in the same manner as a C corporation and subsection d. of section 5 of P.L.1945, c.162 (C.54:10A-5) shall not apply. A captive real estate investment company shall not be permitted to claim any deductions or expenses that were permitted for federal purposes, solely as a result of the entity being a regulated investment company, when computing federal taxable net income. A captive regulated investment company shall be a member of a combined group and shall be included as a member on the combined return.

(kk) "World-wide basis" and "world-wide group" shall mean, for privilege periods ending on and after July 31, 2022, for the purposes of sections 18 through 23 of P.L.2018, c.48 (C.54:10A-4.6 through C.54:10A-4.11) and for the purposes of combined reporting in general under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), that the combined group shall include all of the members of the combined group, wherever located or formed. For privilege periods ending on and after July 31, 2022, the combined group shall include all of the income and attributes of those members regardless of how or whether those members file federal returns or report or include their income in federal taxable income for federal purposes, and without regard to any exemption or exclusion from federal taxable income under the terms of a tax treaty; provided, however, any deductions that are allowed under the federal Internal Revenue Code that are also allowable under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), that would apply to a U.S. corporation, but that a non-U.S. corporation is prohibited from claiming for federal corporation income tax purposes because the corporation's income was not included in federal taxable income for any reason or because the corporation is a non-U.S. corporation, shall be allowed for the non-U.S. corporation members of the combined group for New Jersey corporation business tax purposes as though those non-U.S. corporation members were U.S. corporations.

History

L. 1945, c. 162, ~~p. 564,~~ § 4.~~;~~ ~~A~~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.~~eff. Jan. 10, 1996; 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.~~, retroactive to Jan. 1, 1998; 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.~~effective January 16, 2018; 2018, c. 48, § 3, effective July 1, 2018; 2018, c. 131, § 2, effective October 4, 2018; 2020, c. 118, § 3, effective November 4, 2020; 2022, c. 133, §

19, effective December 22, 2022; 2023, c. 50, § 1, effective May 8, 2023; 2023, c. 96, § 1, effective July 3, 2023.

N.J.S.A. 54:10A-4.1. ~~Transitional energy facility assessment tax~~TEFA 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).

History

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

N.J.S.A. 54:10A-4.2. ~~Emerging technology or biotechnology companies;~~Attachment of certificate to return for 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. 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.

History

L. 1997, c. 334, § 2~~, eff. Jan. 12, 1998.~~; ~~A~~amended ~~by L.~~1999, c. 140, § 3, eff. June 28, 1999~~.~~; 2020, c. 118, § 4, effective November 4, 2020.

N.J.S.A. 54:10A-4.3. ~~Carryforward of the~~Carryover of net operating loss ~~deduction; extension~~for certain taxpayers

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.

History

L. 1997, c. 350, § 1~~, eff. Jan. 15, 1998.~~; ~~A~~amended ~~by L.~~2002, c. 40, § 4, eff. July 2, 2002.

N.J.S.A. 54:10A-4.4. ~~Computing e~~Entire net income~~; adjustments; exceptions~~ and related member transactions; definitions [Repealed]

~~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% 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% 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% 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.

History

L. 2002, c. 40, § 5, eff. July 2, 2002; amended by 2018, c. 48, § 4, effective July 1, 2018; 2018, c. 131, § 3, effective October 4, 2018; repealed by 2023, c. 96, § 14, effective July 3, 2023.

N.J.S.A. 54:10A-4.5. Carryover of net operating loss for privilege period as deduction; exceptions

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. § 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. § 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.).

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 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.).

History

L. 2002, c. 40, § 27, eff. July 2, 2002; amended by 2018, c. 48, § 25, effective July 1, 2018; 2020, c. 118, § 5, effective November 4, 2020.

N.J.S.A. 54:10A-4.6. Determination, entire net income, member, combined group

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.

(1) 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.

(2) For privilege periods ending on and after July 31, 2022:

(a) Notwithstanding any law or treaty to the contrary, and regardless of the combined return filing method other than a world-wide group combined return, for a member that is incorporated or formed in a foreign nation with a comprehensive tax treaty with the United States, entire net income shall not include an item of income or loss excluded or exempted from federal taxable income under the terms of the treaty, and no other deduction, exclusion, or elimination will be permitted for an item of income or loss excluded or exempted by this paragraph.

(b) For a corporation that is not incorporated in the United States, and that is a member of a water's-edge group or affiliated group for purposes of filing a combined return, the member shall only include in entire net income the following: in the case of a member that files a federal tax return, the member shall only include the member's effectively connected income or loss reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.); and in the case of a member that does not file a federal tax return but that has United States source income or loss, the member shall only include that United States source income or loss, as modified by the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to the extent that United States source income or loss would otherwise be effectively connected income or loss if the member would have been conducting a business that is effectively connected to the United States.

For the purpose of determining what income or loss to include in entire net income pursuant to this paragraph, the member shall take into account only the items of expense and allocation factor receipts attributable to that income or loss.

c.

(1)

(a) For privilege periods ending before July 31, 2023, 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.

(b) For privilege periods ending on and after July 31, 2023, 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, and the unitary partnership shall not be liable for the portion of the payment imposed pursuant to section 12 of P.L.2002, c.40 (C.54:10A-15.11) that is directly, or indirectly in the case of a tiered partnership, attributable to that member.

(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. § 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. § 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) For privilege periods ending before July 31, 2023, a 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. For privilege periods ending on and after July 31, 2023, the remaining balance of prior net operating loss conversion carryover deductions of the members of the combined group shall be pooled together and shall be allowed to offset the entire net income allocated to this State of either: the combined group for which the corporation is a member; or the corporation that created the prior net operating loss conversion carryover, provided that the corporation departs the combined group before the corporation's respective prior net operating loss conversion carryover has been completely used.

~~b. For purposes of computing its entire net income under~~**(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)~~, 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.~~ shall be applied against the entire net income allocated to this State

before the net operating loss carryover computed under subsection h. of this section.

(3) For privilege periods ending before July 31, 2023, 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. For privilege periods ending on and after July 31, 2023, the director shall provide regulations establishing rules on pooling members' prior net operating loss conversion carryovers and tracing members' prior net operating loss conversion carryovers in the event a member departs the combined group before the member's prior net operating loss conversion carryovers are completely used.

(4) For privilege periods ending before the members of a combined group pool their prior net operating loss conversion carryovers for usage by the combined group, a member of the 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 combined group or by a member of the 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)

~~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; 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~~**(a)** 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), but ending before July 31, 2023, 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 ~~8~~4 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.~~4).

(b) For privilege periods ending on and after July 31, 2023, if the computation of a combined group's entire net income allocated to this State results in a net operating loss, a combined 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)

(a) 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), but ending before July 31, 2023, 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.

(b) Where a combined group has a net operating loss carryover derived from a loss incurred by the combined group in a privilege period ending on or after July 31, 2023, then the combined group may use the net operating loss carryover. Any amount of net operating loss carryover that is deducted by the combined group shall reduce the amount of net operating loss carryover that may be carried over by the combined group.

(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 for privilege periods ending before July 31, 2023. For privilege periods ending on and after July 31, 2023, such carryover may (a) be pooled with the combined group net operating loss carryover for use by the combined group or (b) be used by the taxable member that generated the carryover for that member's activities that are independent of the unitary business of the combined group; provided, however, the combined group and the members of the combined group shall use tracing protocols for all net operating loss carryovers, as may be prescribed by regulations promulgated by the director.

(4) A net operating loss carryover or, for privilege periods ending on and after July 31, 2023, a combined group 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.

(6) For privilege periods ending on and after July 31, 2023, each taxable member of a combined group shall track that member's proportionate share of any combined group net operating loss carryovers used.

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) ~~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.~~ 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) 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.~~

(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.2020, c.118)

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. § 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.

~~e~~**o.** ~~Nothing in this section shall be construed to limit or negate the director's authority to make adjustments under~~ For purposes of the deduction allowed in paragraph (~~3~~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 ~~8~~4 of P.L.1945, c.162 (C.54:10A-~~8), or~~ 4) if such income was already eliminated pursuant to other subsections of this section ~~10~~.

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.

History

L. 2018, c. 48, § 18, effective July 1, 2018; amended by 2018, c. 131, § 4, effective October 4, 2018; 2020, c. 118, § 6, effective November 4, 2020; 2023, c. 96, § 2, effective July 3, 2023.

N.J.S.A. 54:10A-4.7. Allocation factor, taxable members, combined group

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-~~10).~~-6 through 54:10A-8); provided however:

a. (Deleted by amendment, P.L.2023, c.96)

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.

e. In computing the numerator and denominator of the allocation factor of the combined group, the combined group, as one taxpayer, shall take into account all unitary receipts of all members of the combined group.

History

L.~~2002~~ 2018, c. ~~40~~48, § ~~5~~19, ~~eff. July 2, 2002.~~effective July 1, 2018; amended by 2023, c. 96, § 3, effective July 3, 2023.

N.J.S.A. 54:10A-4.8. Combined unitary tax return filed by combined group

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.

History

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

N.J.S.A. 54:10A-4.9. Use of alternative minimum assessment credit

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.

History

L. 2018, c. 48, § 21, effective July 1, 2018; amended by 2020, c. 118, § 7, effective November 4, 2020.

N.J.S.A. 54:10A-4.10. Determination, managerial member

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 the current privilege period and five 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 regard 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.

History

L. 2018, c. 48, § 22, effective July 1, 2018; amended by 2018, c. 131, § 5, effective October 4, 2018; 2020, c. 118, § 8, effective November 4, 2020; 2023, c. 96, § 4, effective July 3, 2023.

N.J.S.A. 54:10A-4.11. Determination, combined group, world-wide, 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 incorporated or formed under the laws of a foreign nation, 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) (Deleted by amendment, P.L.2023, c.96)

(5) any member, wherever incorporated or formed, that is not included in paragraphs (1) through (3) of this subsection, if that member has effectively connected income or loss within the meaning of the federal Internal Revenue Code, as modified by the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.). For any member that is included pursuant to this paragraph, the member shall be included in the combined group only to the extent of its effectively connected income or loss, taking into account items of expense and allocation factors associated with the effectively connected income or loss.

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.

History

L. 2018, c. 48, § 23, effective July 1, 2018; amended by 2023, c. 96, § 5, effective July 3, 2023.

N.J.S.A. 54:10A-4.12. Conditions for waiver of penalties, interest

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.

History

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

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

History

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

N.J.S.A. 54:10A-4.14. 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.).

History

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

N.J.S.A. 54:10A-4.15. Permitted deductions for computing entire net income [Repealed]

History

L. 2018, c. 131, § 1, effective October 4, 2018; repealed by 2023, c. 96, § 14, effective July 3, 2023.

N.J.S.A. 54:10A-4.16. Corporation, receipts, sources within New Jersey, substantial nexus, Corporation Business Tax Act

a. Notwithstanding ~~any~~the provisions of ~~subsection (k)~~the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) or any other law, rule, or regulation to the contrary, for the purposes of section 42 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 or of any other jurisdiction.-2), a corporation deriving receipts from sources within this State shall be deemed to have substantial nexus and is subject to the taxes imposed under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) if the corporation meets either of the following criteria:

(1) The corporation derives receipts from sources within this State, pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.45:10A-10), in excess of $100,000 during the corporation's fiscal or calendar year; or

(2) The corporation has 200 or more separate transactions delivered to customers in this State during the corporation's fiscal or calendar year. For the purposes of this paragraph, for any transaction that is a service transaction, "delivered to a customer" shall mean where the benefit is received within the meaning of paragraph (4) of subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6).

b. This section shall not preclude a corporation from having nexus with this State if the corporation's exercise of its franchise in this State is otherwise sufficient to give this State jurisdiction to impose taxes pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), as consistent with the provisions of the United States Constitution, the New Jersey Constitution, and the statutes of the United States and of the State of New Jersey. This section shall not preclude a corporation from owing the statutory minimum tax provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5) if a corporation has nexus with this State and is otherwise protected from tax based on income pursuant to 15 U.S.C. ss.381-384.

History

L.~~2002~~ 2023, c. ~~40~~96, § ~~27~~6, ~~eff.~~effective July ~~2~~3, ~~2002~~2023.

N.J.S.A. 54:10A-5. ~~Amount of f~~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,~~1 6 [C.54:10A-6], 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 Periods Beginning on or after:	The Percentage of the Rate to be Imposed Shall be:
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, § 2.)

(c)

(1) For a taxpayer that is not a New Jersey S corporation, 3 ~~1/4~~¼% of its entire net income or such portion thereof as may be allocable to this State as provided in sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-8) 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~~¼%; 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~~½%; 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~~½%; 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~~½% 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~~½%.

For privilege periods beginning on or after the effective date of P.L.2018, c.48, the tax rate shall be applied against the net income.

(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~~8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-~~10~~-8) 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).

(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~~8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-~~10).~~-8). For privilege periods beginning on or after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), 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.~~[2]250. For privilege periods beginning on or after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), the tax rate shall be applied against taxable net income.

(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 In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
1994	$50	$100
1995	$100	$200
1996	$150	$200
1997	$200	$200
1998	$200	$200
1999	$200	$200
2000	$200	$200
2001	$210	$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:

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	$500
$100,000 or more but less than $250,000	$750
$250,000 or more but less than $500,000	$1,000
$500,000 or more but less than $1,000,000	$1,500
$1,000,000 or more	$2,000

and for privilege periods beginning in calendar year 2012 and thereafter the minimum tax for corporations that are 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	$375
$100,000 or more but less than $250,000	$562.50
$250,000 or more but less than $500,000	$750
$500,000 or more but less than $1,000,000	$1,125
$1,000,000 or more	$1,500

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.

(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)

History

L. 1945, c. 162, ~~p. 566,~~ § 5~~.~~; ~~A~~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.; 2018, c. 48, § 5, effective July 1, 2018; 2018, c. 131, § 6, effective October 4, 2018; 2020, c. 118, § 9, effective November 4, 2020.

N.J.S.A. 54:10A-5a. Definitions relative to Aalternative minimum assessment for privilege periods[Repealed]

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.L.1945, 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:

History

L. 2002, c. 40, § 7, eff. July 2, 2002; repealed by 2018, c. 48, § 32.

N.J.S.A. 54:10A-5b. Credit for air carrier, certain circumstances

(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.

c. 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.

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.

(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.

(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 allowed by paragraph (1) of this subsection against the tax computed An air carrier, within the meaning given that term pursuant to 49 U.S.C. § 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 57 of P.L.1945 2002, c. 16240 (C. 54:10A-5), for a privilege period for which the tax pursuant to that section exceeds the alternative minimum assessment computed-5a) for the privilege period pursuant to this sectionin 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 shall not reduce the amount of tax otherwise due to less thanunder this section against the alternative minimum assessment as computed pursuant to this section for thefor a privilege period, shall not reduce the amount of tax shall not exceed 50% of the alternative minimum assessment otherwise due by more than 50%, and shall not reduce the amount of tax otherwise due belowalternative minimum assessment 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).

History

L. 2002, c. 40, § 729, eff. July 2, 2002.

N.J.S.A. 54:10A-5.1~~, 54:10A-5.2~~. Expired

N.J.S.A. 54:10A~~-5.1, 54:10A~~-5.2. Expired

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

N.J.S.A. 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."

History

L. 1993, c. 170, § 1.

N.J.S.A. 54:10A-5.5. Definitions relative to new jobs investment tax credit

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;~~:~~ 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.

History

L. 1993, c. 170, § 2~~.~~; ~~A~~amended ~~by L.~~2002, c. 40, § 18, eff. July 2, 2002.

N.J.S.A. 54:10A-5.6. Determination of ~~amount of~~taxpayer 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~~[1]5 of this act, in "property purchased for business relocation or expansion" by the taxpayer's new jobs factor determined under section ~~6~~[2]6 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.

History

L. 1993, c. 170, § 3~~.~~; ~~A~~amended ~~by L.~~2002, c. 40, § 19, eff. July 2, 2002.

N.J.S.A. 54:10A-5.7. Determination of ~~A~~aggregate annual credit allowed

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~~[1]3 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,~~[2]162, 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.

History

L. 1993, c. 170, § 4.

N.J.S.A. 54:10A-5.8. ~~Determination of q~~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:

$M02,40,20$DGJThe applicable$GIf property has a:$Jpercentage is:$Q3 year recovery period$Y35%$Qfive year recovery period$Y70%$Qseven year or more recovery period$Y100%$X

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.

History

L. 1993, c. 170, § 5.

N.J.S.A. 54:10A-5.9. New jobs factor~~; employee positions attributable to the qualified investment; corporation business tax returns~~ to determine amount of credit allowed

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,~~[1]162, 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;[2] 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.[3]

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.

History

L. 1993, c. 170, § 6~~.~~; ~~A~~amended ~~by L.~~2002, c. 40, § 20, eff. July 2, 2002.

N.J.S.A. 54:10A-5.10. ~~Forfeiture of unused portion of~~Changes affecting 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;[1]~~-~~ 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.~~[2]162. 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,[3]~~-~~ 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,[4]~~-~~ 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.

History

L. 1993, c. 170, § 7.

N.J.S.A. 54:10A-5.11. ~~Treatment of business~~Disposal of property ~~as disposed of; criteria for determination~~; treatment under act

a.

~~a.~~ **(1)** Property of a small or mid-size business taxpayer shall not be treated as disposed of under section ~~7~~[1]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 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.

History

L. 1993, c. 170, § 8~~.~~; ~~A~~amended ~~by L.~~2002, c. 40, § 21, eff. July 2, 2002.

N.J.S.A. 54:10A-5.12. ~~Recordkeeping requirements~~Maintenance of records

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.

History

L. 1993, c. 170, § 9.

N.J.S.A. 54:10A-5.13. ~~Burden of proof on taxpayer to establish e~~Entitlement to credit~~; timely application required; penalty~~ established by taxpayer

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.

History

L. 1993, c. 170, § 10.

N.J.S.A. 54:10A-5.14. ~~Annual r~~Report~~s; contents~~ to Governor, Legislature

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.

History

L. 1993, c. 170, § 11.

N.J.S.A. 54:10A-5.15. Provision of ~~Q~~quarterly employment reports~~; copies provided to division of taxation; use of reports limited to administration of 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.

History

L. 1993, c. 170, § 12.

N.J.S.A. 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."

History

L. 1993, c. 171, § 1.

N.J.S.A. 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.

History

L. 1993, c. 171, § 2.~~;~~ ~~A~~amended ~~by L.~~2001, c. 399, § 1, eff. Jan. 8, 2002~~, retroactive to Jan. 1, 2002~~.

N.J.S.A. 54:10A-5.18. ~~Tax credit; calculation of allowable credit; carry-over of allowable~~ Taxpayer credit

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.

History

L. 1993, c. 171, § 3~~.~~; ~~A~~amended ~~by L.~~2004, c. 65, § 25, eff. June 30, 2004.

N.J.S.A. 54:10A-5.19. Computation of ~~T~~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,~~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), 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.

History

L. 1993, c. 171, § 4.

N.J.S.A. 54:10A-5.20. ~~Recordkeeping requirements; burden of proof on taxpayer to establish eligibility for tax credit~~Maintenance of records

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.

History

L. 1993, c. 171, § 5.

N.J.S.A. 54:10A-5.21. ~~Annual~~Required 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.

History

L. 1993, c. 171, § 6.

N.J.S.A. 54:10A-5.22. Election ~~to become~~as a New Jersey S corporation~~; form of election; consent to jurisdictional requirements; revocation of election~~

a. (Deleted by amendment P.L.2022, c.133)

~~a~~**b.** A ~~corporation may elect, in accordance with the provisions of this section, to be a~~ New Jersey S ~~c~~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.~~

and each ~~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~~ 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 opted out of or 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. Notwithstanding any law or regulation to the contrary, any S corporation may elect not to be taxed as a New Jersey S corporation. This election shall have the consent of 100 percent of the shareholders of the S corporation on the date on which the election is made. An election to opt out under this subsection may be made for any taxable year at any time during the preceding taxable year or at any time on or before the due date or extended due date of the S corporation's tax return. An election to opt out made pursuant to this subsection shall be effective for the taxable year for which the election is made and for each succeeding taxable year until revoked. An election to opt out made pursuant to this subsection may be revoked if shareholders holding more than 50 percent of the shares of stock of the S corporation on the date on which the revocation is made consent to the revocation and such revocation shall be effective on the first day of the taxable year if made on or before the fifteenth day of the third month thereof; if the revocation is made after such date, the revocation shall be effective for the following taxable year, unless the shareholders revoke the revocation before December 31 of the current year. An election to opt out or revocation made pursuant to this subsection shall be made in a form and manner prescribed by the director. Any S corporation doing business in New Jersey, or having or exercising its franchise in New Jersey, or deriving receipts, engaging in contracts, or employing or owning capital or property in New Jersey, or registered to do business in New Jersey, that does not make this election to opt out will be taxed as a New Jersey S corporation.

~~d~~**e.** 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.~~shall report any change in its shareholders or their share of ownership to the Director of the Division of Taxation in a form and manner determined by the director.

History

L. 1993, c. 173, § 3.~~;~~ amended by 2019, c. 320, § 6, effective January 13, 2020; 2022, c. 133, § 20, effective December 22, 2022.

N.J.S.A. 54:10A-5.22a. Regulatory requirements, granting retroactive election, authorization

The Directors of the Divisions of Revenue and Enterprise Services and Taxation, when determining whether to grant retroactive election of S corporation status, shall liberally construe regulatory requirements in favor of the corporation and shall have the discretion to authorize retroactive S corporation status in circumstances in which a taxpayer may not be capable of meeting all regulatory requirements for such retroactive election through no fault of the taxpayer.

History

L. 2022, c. 133, § 24, effective December 22, 2022.

N.J.S.A. 54:10A-5.23. Requirements for New Jersey S corporation~~s; requirements regarding non-initial shareholders~~

a. ~~With respect to each of its shareholders that is not an initial~~ Each shareholder~~,~~ of 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), in a form and manner determined by the director.

c. A New Jersey S corporation shall ~~M~~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.

History

L. 1993, c. 173, § 4~~.~~; amended by 2019, c. 320, § 7, effective January 13, 2020; 2022, c. 133, § 21, effective December 22, 2022.

N.J.S.A. 54:10A-5.24. ~~Tax~~Taxpayer credit for ~~qualified~~certain research ~~expenses; amount of allowable credit~~activities

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~~.~~

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. § 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. § 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. § 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.

History

L. 1993, c. 175, § 1~~.~~; ~~A~~amended ~~by L.~~2011, c. 83, § 1, eff. June 30, 2011~~.~~; 2018, c. 48, § 6, effective July 1, 2018; 2020, c. 118, § 10, effective November 4, 2020.

N.J.S.A. 54:10A-5.24a. ~~Emerging or biotechnology companies;~~Attachment of certificate to return for research and development tax credit carryover~~s~~

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.).

History

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

N.J.S.A. 54:10A-5.24b. ~~Carryforward of the research and development~~Carryover of R & D tax credit~~; extension~~ for certain taxpayers

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.

History

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

N.J.S.A. 54:10A-5.25. Installment payments of estimated ~~C~~corporation business tax~~es required from~~for certain ~~entities subject to~~ public utilit~~y~~ies ~~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.

History

L. 1997, c. 162, § 3~~, eff. Jan. 1, 1997.~~; ~~A~~amended ~~by L.~~1998, c. 114, § 3, eff. Oct. 28, 1998, retroactive to Jan. 1, 1998.

N.J.S.A. 54:10A-5.26. ~~Amount of corporation business tax due~~Determination of taxpayer's liability.

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.

History

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

N.J.S.A. 54:10A-5.27. ~~Privilege periods; liability~~Consequences of failure to distribute required Energy Tax receipts property tax relief.

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.

History

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

N.J.S.A. 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."

History

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

N.J.S.A. 54:10A-5.29. Definitions relatingve to New Jersey Angel Investor Tax Credit Actemergency businesses

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 heldhand- 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.

"Diverse entrepreneur" means a New Jersey based business that meets the criteria for a minority business or female business set forth in section 3 of P.L.1983, c.482 (C.52:32-19).

"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 based 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.

"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 investment" also means the non-refundable transfer of cash or irrevocable contractual commitment to a qualified venture fund.

"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.

"Qualified venture fund" means a venture fund required by contract to invest a minimum of 50 percent of its funds in New Jersey based businesses that the authority, in its sole discretion, based upon the qualified venture fund's investment history, if any, its private placement memorandum and other relevant information, has determined has the capacity to make the minimum investment.

"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, digestor 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.

"Venture fund" means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in, which the investment is made. Venture firm may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture firm.

"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.

The definitions of "advanced computing," "advanced materials," "biotechnology," "carbon footprint reduction technology," "electronic device technology," "information technology," "life sciences," "medical device technology," "mobile communications technology," "New Jersey emerging technology business," "pilot scale manufacturing," and "renewable energy technology" may be modified by regulation to conform to definitions in other programs administered by the authority.

History

L. 1997, c. 349, § 2, eff. Jan. 15, 1998~~.~~; ~~A~~amended ~~by L.~~2013, c. 14, § 2, eff. Jan. 25, 2013; ~~L.~~2017, c. 40, § 1, ~~eff.~~effective May 1, 2017~~.~~, 2020, c. 156, § 117, effective January 7, 2021.

N.J.S.A. 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 allowed to taxpayers~~Taxpayer allowed credit

a.

~~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 ~~10~~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, ~~up to a maximum allowed credit of~~or in a qualified venture fund; 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 ~~tax year~~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, or in a qualified venture fund, if the New Jersey emerging technology business is either located in a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1, or a low-income community as defined in subparagraph (e) of 26 U.S.C. § 45D or 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.) and, in the case of a qualified venture fund, if the qualified venture fund commits by contract to invest 50 percent of its funds in diverse entrepreneurs.

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; provisions for recapture in the event a taxpayer receives a credit on the basis of its commitment to transfer cash to a qualified venture fund and it does not fund its commitment; 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~~35,000,000 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.

History

L. 1997, c. 349, § 3, eff. Jan. 15, 1998~~.~~; ~~A~~amended ~~by L.~~2013, c. 14, § 3, eff. Jan. 25, 2013; ~~L.~~2017, c. 40, § 2, ~~eff.~~effective May 1, 2017~~.~~; 2019, c. 145, § 2, effective June 30, 2019; 2020, c. 156, § 118, effective January 7, 2021.

N.J.S.A. 54:10A-5.31. Tax ~~C~~credit ~~against tax~~ for ~~certain~~ purchase~~s in a privilege period~~of effluent treatment, conveyance equipment

a.

~~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)[1] 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.

History

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

N.J.S.A. 54:10A-5.32. Temporary regulations for effluent treatment tax credit

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.

History

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

N.J.S.A. 54:10A-5.33. ~~Allowance of t~~Tax credit for remediation ~~costs~~ of contaminated site~~s~~

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.

History

L. 2003, c. 296, § 1, eff. Jan. 14, 2004.

N.J.S.A. 54:10A-5.34. Eligibility ~~requirements~~ for tax credit~~s~~

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.

History

L. 2003, c. 296, § 2~~,~~. eff. Jan. 14, 2004.

N.J.S.A. 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.

History

L. 2003, c. 296, § 3~~,~~. eff. Jan. 14, 2004.

N.J.S.A. 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.

History

L. 2003, c. 296, § 4~~,~~. eff. Jan. 14, 2004.

N.J.S.A. 54:10A-5.37. Performance evaluation review committee; report~~ing 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.

History

L. 2003, c. 296, § 5~~,~~. eff. Jan. 14, 2004.

N.J.S.A. 54:10A-5.38. Tax credit for employment of certain handicapped persons

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.

History

L. 2005, c. 318, § 1, eff. Jan. 12, 2006.

N.J.S.A. 54:10A-5.39. Corporation business tax credit for ~~qualified~~certain film production, digital media content expenses; ~~tax credit transfer certificate;~~ definitions [Repealed]

History

L. 2005, c. 345, § 1; amended 2007, c. 257, § 1, eff. Jan. 11, 2008; repealed by 2018, c. 56, § 5, effective July 3, 2018.

N.J.S.A. 54:10A-5.39a. Certain tax credits prohibited [Repealed]

History

L. 2010, c. 20, § 2, eff. June 29, 2010; repealed by 2018, c. 56, § 5, effective July 3, 2018.

N.J.S.A. 54:10A-5.39b. Credit against tax imposed, qualified film production expenses

a.

~~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~~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 percent~~, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a privilege period commencing ~~after the effective date of P.L.2005, c. 345,~~[1] on or after July 1, 2018 but before July 1, 2039, provided that:

(~~1~~a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer ~~will be~~are incurred for services performed, and goods ~~used or consumed in New Jersey, and~~ purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production;

(~~2~~b) principal photography of the film commences within ~~150~~180 days ~~after~~from the ~~approval~~date of the original 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, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 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 for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b.

(1) A taxpayer, upon approval of an application to the 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: 30 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

(b) at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

(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 complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

~~b. A taxpayer, upon application to the Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority, shall be allowed a credit~~**(2)** Notwithstanding the provisions of paragraph (1) of subsection b. 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 ~~up~~equal to ~~20~~35 percent~~, as determined by the authority~~ of the qualified digital media content production expenses of the taxpayer during a privilege period ~~commencing after the effective date of P.L.2007, c. 257, provided that at least $2,000,000 of the total digital media content production expenses of the taxpayer will be~~that are incurred for services performed and ~~goods used or consumed in New Jersey and at least a significant percentage, as determined by the authority, of the qualified digital media content production expenses of the taxpayer will include wages and salaries paid to one or more new full-time 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 made pursuant to this subsection, the authority shall consider the number of new full-time positions created by the taxpayer as well as the quality of the full-time positions created, including but not limited to the salaries and benefits provided to new full-time employees. The authority, in consultation with the Division of Taxation, shall establish rules for the recapture of all, or a portion of, the grant of tax pursuant to this subsection in the event the taxpayer fails to maintain the new full-time positions that were included in calculating the qualified digital media content production expenses of the taxpayer.~~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 ~~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~~payments, credits, deductions, and adjustments allowed 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~~. The priority in which allowed pursuant to this section and any other shall be taken shall be as determined by the Director of the Division of Taxation~~ (C.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~~authority and the ~~authority~~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.~~2005~~2018, c.~~345~~56 (C.54A:~~4-12~~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) to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040, 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. In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), 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) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, 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. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), 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) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, 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. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production

facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

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 have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed 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 this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category 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 for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(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 $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 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.

Notwithstanding any provision of this paragraph 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.

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. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. 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. A single report with attachments deemed necessary by the authority shall be submitted electronically. 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 authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. 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, to an independent contractor, or to a homeowner for the use of a personal residence 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.

~~e~~**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.

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"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.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"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, talk show, competition or variety show filmed before a live audience, 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., regardless of whether the individual is a resident or nonresident taxpayer, 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.

"Incurred in New Jersey" means, for any application submitted after the effective date [July 3, 2018] of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date [July 2, 2021] of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service.

Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey or the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection g. of this section.

"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.

"New Jersey film-lease partner facility" means:

(1)

(a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or

operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey and who will shoot at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. § 101 et seq.).

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental

authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf such that the designated New Jersey studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. § 101 et seq.). No more than three film production companies may be designated as a New Jersey studio partner.

"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 ~~of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories and the cost of rental of facilities and equipment.~~ for 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, lighting, 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. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection g. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "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, except as follows:

(1) for a New Jersey studio partner that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $60,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses.

"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.~~

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.) 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 4 of P.L.1945, c.162 (C.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.

History

L. 2018, c. 56, § 1, effective July 3, 2018; amended by 2019, c. 506, § 1, effective January 21, 2020; 2020, c. 156, § 110, effective January 7, 2021; 2021, c. 160, § 58, effective July 2, 2021; 2021, c. 367, § 1, effective January 12, 2022; 2023, c. 97, § 5, effective July 6, 2023.

N.J.S.A. 54:10A-5.40. Imposition of surtax on 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.

History

L. 2006, c. 38, § 1, eff. July 8, 2006; amended 2009, c. 72, § 1, eff. June 29, 2009.

N.J.S.A. 54:10A-5.41. Assessment, payment of surtax

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, 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 federal Internal Revenue Code of 1986 (26 U.S.C. § 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 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 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.

History

L. 2018, c. 48, § 1, effective July 1, 2018; amended by 2018, c. 131, § 7, effective October 4, 2018; 2020, c. 95, § 1, effective September 29, 2020.

N.J.S.A. 54:10A-5.42. Credit against corporation business tax

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 of credit issued for that 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 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, 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).

History

L. 2019, c. 32, § 8, effective February 4, 2019.

N.J.S.A. 54:10A-5.43. Tax credit for certain corporate member

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 refundable 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 c. of section 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 3 of P.L.2019, c.320 (C.54A:12-3) 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).

a. For each pass-through entity of which the corporate member is a member, the amount of the 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, including a New Jersey S Corporation.

"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, including a New Jersey S Corporation.

History

L. 2019, c. 320, § 11, effective January 13, 2020; amended by 2021, c. 419, § 4, effective January 1, 2022.

N.J.S.A. 54:10A-5.44. Credit against tax imposed pursuant to C.54:10A-5

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): (1) in amount 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 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 that provides greater opportunities for workers in key industries.

b. 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 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 director. The amount of the 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).

~~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-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.~~**c.** The value of ~~, including~~ tax credits ~~allowed through the granting of tax credit transfer certificates,~~ approved by the ~~director~~department and the ~~authority~~director pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.~~2005~~2019, c. ~~345~~417 (C.54A:~~4-12~~4-19) shall not exceed a cumulative total of $~~10,000,000 in any~~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 ~~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.~~2005~~2019, c.~~345~~417 (C.54A:~~4-12~~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 ~~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 certificate~~ on the first day of the next succeeding fiscal year in which tax credits ~~and tax credit transfer certificates~~allowed under subsection a. of this section and subsection a. of section 2 of P.L.~~2005~~2019, c.~~345~~417 (C.54A:~~4-12~~4-19) are not in excess of the amount of credits available. ~~The value of , including tax 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 against the tax imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5). If the total amount of 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 exceeds the amount of available in that year, then taxpayers who have first applied for and have not been allowed a 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 certificate on the first day of the next succeeding fiscal year in which tax and tax credit transfer certificates under subsection b. of this section are not in excess of the amount of available. The Executive Director 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.~~

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 apprenticable trade, and: (1) registered by the Office of 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 P.L.2019, c.417 (C.54:10A-5.44 et al.).

"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.

History

L. 2019, c. 417, § 1, effective January 21, 2020.

N.J.S.A. 54:10A-5.45. Tax credit for employer of employee who donates organ, bone marrow

a. A taxpayer that employs a person who missed time from work because the person donated one or more of the person's human organs, or a part thereof, or bone marrow to another human for human organ transplantation, 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 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 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 under section 5 of P.L.1945, c.162 (C.54:10A-5). 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, 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.

History

L. 2019, c. 444, § 6, effective May 20, 2020.

N.J.S.A. 54:10A-5.46. Credit against certain tax

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.

For purposes of this section, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer.

~~g.~~ For ~~the~~ purposes of ~~determining eligibility for or the amount of any grant of tax pursuant to this section, the authority shall not include any job that is included in the calculation of a business employment incentive grant pursuant to the provisions~~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.~~1996~~1945, c.~~26~~162 (C.~~34~~54:~~1B-124 et al.~~10A-4), or ~~a business retention and relocation grant pursuant to~~, for a combined group filing a combined return, but for subsections g. and h. of section 18 of P.L.~~1996~~2018, c.~~25~~48 (C.~~34:1B-112 et seq.~~54:10A-4.6).

The credit allowed by this section shall be claimed in a form and manner prescribed by the director on a timely filed corporation business tax return.

~~L.2005, c. 345, § 1, eff. Jan. 12, 2006. Amended by L.2007, c. 257, § 1, eff. Jan. 11, 2008.~~

History

L. 2020, c. 118, § 15, effective November 4, 2020.

N.J.S.A. 54:10A-5.38. Tax credit for employment of certain persons with disabilities-5.47. Credit against tax; definitions

a. A For privilege periods ending in 2020, 2021, and 2022, a taxpayer, upon approval of an application to the authority, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in anthe amount equal to 20% of the salary and wages paid byof $10,000 for each qualifying full-time job involved in the manufacture of personal protective equipment in a qualified facility in which the taxpayer made a capital investment 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. The minimum capital investment in a qualified facility required to be eligible for a credit under this section shall be as follows:

(1) for the rehabilitation, improvement, fit-out, or retrofit of an existing premises in Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County, a minimum investment of $10 per square foot of gross leasable area;

(2) for the rehabilitation, improvement, fit-out, or retrofit of an existing premises in counties in the State not listed in paragraph (1) of this subsection, a minimum investment of $20 per square foot of gross leasable area;

(3) for the new construction of a premises in Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County, a minimum investment of $100 per square foot of gross leasable area; or

(4) for the new construction of a premises in counties in the State not listed in paragraph (3) of this subsection, a minimum investment of $120 per square foot of gross leasable area.

c. The minimum number of new or retained qualifying full-time jobs required to be eligible for a credit under this section shall be as follows:

(1) for a qualified facility in Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County, a minimum of five new or 15 retained qualifying full-time jobs; or

(2) for a qualified facility in counties in the State not listed in paragraph (1) of this subsection, a minimum of ten new or 25 retained qualifying full-time jobs.

d. In addition to the amount of credit allowed pursuant to subsection a. of this section, a taxpayer shall be allowed the following tax credits for privilege periods ending in 2020, 2021, and 2022:

(1) $1,000 per qualifying full-time job in the privilege period at a qualified facility that is a building vacant for not less than seven years in need of rehabilitation with a minimum of 250,000 square feet;

(2) $1,500 per qualifying full-time job in the privilege period at a qualified facility in which the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State; and

(3) $1,000 per qualifying full-time job in the privilege period at a qualified facility in which the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or county college located within the State.

e. The total credit allowed to a taxpayer pursuant to this section during the privilege period shall not exceed $500,000. A taxpayer shall not be eligible for a tax credit under this section for the same qualifying full-time job for which the taxpayer is receiving a tax credit incentive award under the Emerge Program established by sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.).

f. Notwithstanding the minimum tax schedule imposed pursuant to subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5), if the amount of the tax credit allowed exceeds the amount of corporation business tax otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the amount of excess shall be treated as a refundable overpayment except that interest shall not be paid pursuant to section 7 of P.L.1992, c.175 (C.54:49-15.1) on the amount of overpayment attributable to this credit amount. The director shall determine the order

of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law.

g. The combined value of all tax credits approved by the authority and the director pursuant to this section and pursuant to section 2 of P.L.2020, c.156 (C.34:1B-270) shall not exceed $10,000,000 in any State fiscal year to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

h. An application for the tax credit shall be submitted to the authority in a form and manner prescribed by the chief executive officer of the authority. As a condition of receiving tax credits under this section, an applicant shall be required to commit to employing qualifying full-time jobs for which tax credits are awarded under this section for a period of five years.

i. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the chief executive officer of the authority is authorized to adopt immediately upon filing with the Office of Administrative Law such rules and regulations which shall be effective for a period not to exceed 360 days following the date of filing and may thereafter be amended, adopted, or readopted by the chief executive officer of the authority in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.). The chief executive officer of the authority shall consult with the Commissioner of Health related to any specification requirements for what manufactured products are to qualify as personal protective equipment pursuant to this section.

~~b~~**j.** 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.~~

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Director" means Director of the Division of Taxation in the Department of the Treasury;

"Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators, safeguard equipment, and other equipment designed to protect the wearer from the spread of infection or illness as may be modified from time to time by the board of the authority.

"Qualified facility" means a facility that is:

(1) located in a redevelopment area or rehabilitation area as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3);

(2) located in a Smart Growth Area as identified by the Office of Planning Advocacy;

(3) a facility in which the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State;

(4) a facility in which the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or community located within the State; or

(5) a building vacant for not less than seven years in need of rehabilitation with a minimum of 250,000 square feet.

"Qualifying full-time job" means a full-time position in a business in this State which the business has filled with a full-time employee for the manufacturing of personal protective equipment in this State. The employee shall be employed for at least 35 hours a week and shall be paid employee wages at a rate of not less than $15 per hour, or render 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. and is paid employee wages at a rate of not less than $15 per hour. "Qualifying full-time job" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Qualifying full-time job" includes only a position for which the taxpayer provides employee health benefits under a health benefits plan authorized pursuant to State or federal law.

History

L. 2020, c. 156, § 106, effective January 7, 2021; amended by 2021, c. 160, § 50, effective July 2, 2021.

N.J.S.A. 54:10A-5.48. Tax credit for taxpayer's purchase of unit concrete products that utilize carbon footprint-reducing technology

a. A taxpayer who in a privilege period purchases unit concrete products that utilize carbon footprint-reducing technology, which may include permeable pavement, for use in the construction or improvement of any residential dwelling or commercial building, or in the replacement of an impervious surface with permeable pavement, in the State 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 $2.00 per square foot of unit concrete products that utilize carbon footprint-reducing technology, which may include permeable pavement, used in the construction or improvement of any residential dwelling or commercial building, or in the replacement of an impervious surface with permeable pavement. The credit shall be allowed in the privilege period in which the purchase is made. The value of tax credits allowed to a taxpayer pursuant to this section shall not exceed $3,000 for a residential property, and $30,000 for a commercial property in a single privilege period. In order to qualify for the tax credit pursuant to this section, a person shall purchase at least 100 square feet of unit concrete products that utilize carbon footprint-reducing technology, which may include permeable pavement.

~~c.~~**b.** 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 director. The amount of the credit applied ~~under~~pursuant to 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 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~~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~~. The priority in which allowed pursuant to this section and any other shall be taken shall be determined by the Director of the Division of Taxation~~ (C.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.

c. In order to be allowed a tax credit pursuant to subsection a. of this section, a taxpayer who has purchased 100 or more square feet of unit concrete products certified pursuant to section 10 of P.L.2021, c.278 (C.52:27D-141.17) shall attach receipts for the unit concrete products for which the tax credit is claimed and an affidavit that the unit concrete products are or will be used exclusively in the State to any return the taxpayer is required to file under P.L.1945, c.162 (C.54:10A-1 et seq.). A credit shall be initially allowed for the privilege period in which the unit concrete products are purchased, and any unused portion thereof may be carried forward into subsequent privilege periods as provided in subsection b. of this section.

~~L.2005, c. 318, § 1, eff. Jan. 12, 2006.~~

d. 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).

~~**N.J.S.A. 54:10A-5.39a. Temporary suspension of tax credit for certain qualified film production expenses in State FY 2011**~~

~~Notwithstanding the provisions of subsection f. of~~**e.** The value of tax credits allowed by the director pursuant to this section ~~1~~and pursuant to section 5 of P.L.~~2005~~2021, c.~~ 345 (C.54:10A-5.39) or the provisions of any other law, rule, or regulation to the contrary, no , including tax allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of section 1 of P.L.2005, c. 345 and pursuant to section 2 of P.L.2005, c. 345 (C.54A:4-12) shall be allowed in State~~278 (C.54A:4-22) shall not exceed a cumulative total of $20,000,000 in each ~~F~~fiscal ~~Y~~year ~~2011~~ 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.~~,~~ and ~~no , including tax allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection b. of section 1 of P.L.2005, c. 345 (C.54:10A-5.39) shall be allowed in State Fiscal Year 2011 to apply against~~ the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

f. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the director, in consultation with the Department of Environmental Protection, shall adopt, immediately upon filing the proper notice with the Office of Administrative Law, rules and regulations as are necessary to implement the provisions of this section. These rules and regulations shall be in effect for a period not to exceed 365 days after the date of the filing. The rules and regulations shall thereafter be amended, adopted, or readopted in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The director may require the submission of any information the director deems necessary to award a tax credit pursuant to this section.

g. As used in this section:

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Permeable pavement" means a concrete product that allows rainwater to penetrate the pavement and percolate into the supporting soils and includes, but is not limited to, pervious concrete, permeable interlocking concrete pavers, and concrete grid pavers.

"Unit concrete product" means a concrete building product that is fabricated under controlled conditions separate and remote from the intended point of use and is produced in a wet cast or dry cast method in a factory setting and then transported to the location of intended use for installation, including, but not limited to, all concrete pavers, whether permeable or non-permeable, and concrete block. "Unit concrete product" shall not include ready mix concrete, sand, stone, gravel, or bituminous concrete or asphalt.

"Unit concrete product that utilizes carbon footprint-reducing technology" means a unit concrete product that is certified by the Department of Environmental Protection, or any independent third party authorized by the department, pursuant to section 10 of P.L.2021, c.278 (C.52:27D-141.17), as generating at least 50 percent less carbon dioxide emissions in the production and utilization of the unit concrete product than conventional unit concrete products made with ordinary Portland cement. Such products shall also conform with the relevant requirements of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) that incorporate by reference TMS 402/602 Building Code Requirements and Specification for Masonry Structures.

History

L. 2021, c. 278, § 4, effective November 8, 2021.

N.J.S.A. 54:10A-5.49. Tax credit, producer, low embodied carbon concrete, carbon capture, utilization, storage technology; requirements, qualifications

a. For privilege periods beginning on or after January 1 next following the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), a taxpayer that is a producer of low embodied carbon concrete or concrete that utilizes carbon capture, utilization, and storage technology and that meets the requirements of this section shall be allowed a credit against the tax due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount as provided in subsection c. of this section.

b. In order to qualify for a tax credit pursuant to subsection a. of this section, a concrete producer shall:

(1) deliver, pursuant to a contract with a State procuring agency or with a private contracting firm that has contracted with the State, low embodied carbon concrete or concrete that incorporates carbon capture, utilization, and storage technology, which concrete is used by a construction or improvement project that requires the purchase of 50 cubic yards or more of concrete; and

(2) submit to the department for review and approval a certified environmental product declaration that provides a global warming potential value for the delivered concrete.

c.

(1) For the delivery of low embodied carbon concrete, a taxpayer may be eligible for a tax credit calculated using the formula provided by the department pursuant to section 3 of P.L.2023, c.4 (C.54:10A-5.50), not to exceed five percent of the costs of the low embodied concrete delivered.

(2) For the delivery of concrete that incorporates carbon capture, utilization, and storage technology, a taxpayer may be eligible for a tax credit calculated using the formula provided by the department pursuant to section 3 of P.L.2023, c.4 (C.54:10A-5.50), not to exceed three percent of the costs of the concrete delivered that incorporates carbon capture, utilization, and storage technology.

(3) A taxpayer delivering concrete that is both low embodied carbon concrete and concrete that incorporates carbon capture, utilization, and storage technology may qualify for both tax credits authorized pursuant to paragraphs (1) and (2) of this subsection, not to exceed eight percent of the costs of the concrete delivered that is low embodied carbon concrete that incorporates carbon capture, utilization, and storage technology.

d. In order to receive the tax credit allowed pursuant to this section, a taxpayer shall submit to the using agency a certification, in a form provided by the department, that includes: (a) a statement of the amount and cost of the low embodied carbon concrete or concrete that incorporates carbon capture, utilization and storage technology that was delivered in accordance with paragraph (1) of subsection b. of this section, with appropriate supporting documentation; (b) the environmental product declaration approved by the department pursuant to paragraph (2) of subsection b. of this section; (c) the amount of the tax credit calculated pursuant to subsection c. of this section; (d) a copy of the contract pursuant to which concrete was delivered; and (e) any other information as determined relevant by the department or requested by the using agency.

e. Upon approval of the certification, the using agency shall notify the director as to the eligibility of the taxpayer for a tax credit in the amount approved by the department and using agency. The director, prior to issuing a tax credit certificate pursuant to this section, may require the submission by the taxpayer of any information the director deems necessary.

f. When filing a tax return that includes a claim for a credit pursuant to this section, the taxpayer who received the credit shall include a copy of the tax credit certificate issued by the director.

g. The order of priority of the application of the 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 director. The amount of the 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 for a privilege period 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 credit shall be valid in the privilege period in which the tax credit certificate is approved and any unused portion thereof may be carried forward into the next seven privilege periods or until depleted, whichever is earlier, after which the tax credit shall expire.

h. The total value of tax credits approved pursuant to P.L.2023, c.4 (C.13:1D-70 et al.) shall not in the aggregate exceed $10 million in any year. The director shall issue tax credit certificates pursuant to this section on a first-come, first-serve basis, except that the director shall not issue tax credit certificates to a single taxpayer pursuant to this section and section 4 of P.L.2023, c.4 (C.54A:4-23) in excess of $1 million in

any privilege period. The director may issue a tax credit certificate to a taxpayer that has previously been allowed a tax credit under this section.

i. A using agency shall, in its sole discretion, determine whether to purchase or use low embodied concrete or concrete that uses carbon capture, utilization, and storage technology in a construction or improvement project. In preparing the specifications for any contract for the purchase of 50 cubic yards or more of concrete, or for any construction or improvement project that requires the use of 50 cubic yards or more of concrete, the procuring agency shall include in the invitation to bid, where relevant, a statement that any response to the invitation that proposes or calls for the use low embodied carbon concrete or concrete that utilizes carbon capture, utilization, and storage technology shall be eligible for a tax credit pursuant to subsection a. of this section. For invitations to bid issued in the first five years after the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), if a using agency makes a determination to purchase or use low embodied carbon concrete or concrete that uses carbon capture, utilization, and storage technology in the construction project, the procuring agency shall include in the invitation to bid a predetermined bid allowance price for the concrete, which shall be used by all bidders in the public bidding process.

j. Nothing in this section shall be construed to exempt any entity from complying with any applicable law, rule, standard, or specification, including, but not limited to, those regarding the use of concrete in construction projects.

k. As used in this section:

"Carbon capture, utilization, and storage technology" means the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

"Department" means the Department of Environmental Protection.

"Director" means Director of the Division of Taxation in the Department of the Treasury.

"Environmental product declaration" means a product-specific Type III environmental product declaration that conforms to ISO Standard 14025, assesses the numeric global warming potential of the product, and allows for environmental impact comparisons between concrete mixes fulfilling the same functions.

"Global warming potential" means the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

"Low embodied carbon concrete" means the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

"Procuring agency" means any State department, authority, or commission having authority to contract for goods or services.

"Using agency" means any State department, authority, or commission that makes a purchase, pursuant to a State contract, of 50 cubic yards or more of concrete or that enters into a contract for a construction or improvement project that requires the use of 50 cubic yards or more of concrete.

History

L.~~2010~~ 2023, c. ~~20~~4, § 2, ~~eff. June 29, 2010.~~effective July 30, 2023.

N.J.S.A. 54:10A-5.50. Tax credit, cost incurred, environmental product declaration analysis, producer, low embodied carbon concrete, carbon capture, utilization, storage technology; requirements, qualifications

a.

(1) For privilege periods beginning on or after January 1 next following the effective date of P.L.2023, c.4 (C.13:1D-70 et al.), a taxpayer that is a producer of concrete, or a producer of a major component of concrete including cement or aggregate, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) to compensate the taxpayer for costs incurred as a result of conducting an environmental product declaration analysis to determine the global warming potential of the concrete or concrete component produced at a production facility that the taxpayer owns or operates.

(2) The amount of the credit authorized pursuant to this section shall not exceed the lesser of: (a) the full cost incurred for an environmental product declaration analysis of a single concrete,

cement, aggregate, or related production facility, or (b) $3,000. A taxpayer may claim the credit authorized pursuant to this section for the cost of completing environmental product declaration analyses at up to eight production facilities owned or operated by the same taxpayer in a single privilege period.

b. In order to receive the tax credit allowed pursuant to this section, the taxpayer shall submit to the department for approval a certification, in the form required by the department, that includes: (1) the costs incurred to complete the environmental product declaration; (2) the amount of the tax credit calculated pursuant to subsection (2) of subsection a. of this section; (3) a copy of the environmental product declaration; and (4) any other information determined to be relevant by the department.

c. Upon approval of the certification, the department shall notify the director as to the eligibility of the taxpayer for a tax credit in the amount approved by the department. The director, prior to issuing a tax credit certificate pursuant to this section, may require the submission by the taxpayer of any information the director deems necessary.

d. When filing a return that includes a claim for a credit pursuant to this section, the taxpayer who received the credit shall include a copy of the tax credit certificate.

e. 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 director. The amount of the 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). 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 forward for seven privilege periods following the privilege period for which the tax credit certificate was issued, after which the tax credit shall expire.

f. The total value of tax credits approved by the department, in consultation with the director, pursuant to P.L.2023, c.4 (C.13:1D-70 et al.) shall not in the aggregate exceed $10 million in any year. The director shall issue tax credits pursuant to this section on a first-come, first-serve basis. The director may issue a tax credit certificate to a taxpayer that has previously been allowed a tax credit under this section. The director, prior to issuing a tax credit certificate pursuant to this section, may require the submission by the taxpayer of any information the director deems necessary.

g. As used in this section:

"Concrete" means structural and non-structural masonry, and pre-cast and ready-mix concrete building products.

"Department" means the Department of Environmental Protection.

"Director" means Director of the Division of Taxation in the Department of the Treasury.

"Environmental product declaration" means a product-specific Type III environmental product declaration that conforms to ISO Standard 14025, assesses the numeric global warming potential of the product, and allows for environmental impact comparisons between concrete mixes fulfilling the same functions.

"Global warming potential" means the same as the term is defined in section 1 of P.L.2023, c.4 (C.13:1D-70).

History

L. 2023, c. 4, § 3, effective July 30, 2023.

N.J.S.A. 54:10A-6. ~~Taxpayer maintaining regular place of business outside State~~Allocation factor

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) services performed within the State,~~

(4) (i) sales of services, 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) *[Contingent Operative Date]*

(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. § 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.

History

L. 1945, c. 162, ~~p. 567,~~ § 6~~.~~; ~~A~~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. Apr~~il~~. 28, 2011~~.~~; 2018, c. 45, § 8, effective July 1, 2018; 2018, c. 48, § 7, effective July 1, 2018.

~~**N.J.S.A. 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 allowed against that liability other than 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 shall be allowed against the surtax liability computed under this section except for for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods.~~

~~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-6.1. "Operational ~~and nonoperational income~~income" defined; related corporate expenses not deductible; conditions; forms; rules

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.

History

L. 1993, c. 173, § 5~~, eff. July 7, 1993.~~; ~~A~~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-6.2. ~~Receipts from the services of a registered securities or commodities broker or dealer, and~~Determination of receipts from ~~asset~~

~~management~~ services~~; services performed within the State~~, alternative minimum assessment; definitions

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.

History

L. 2002, c. 40, § 26, eff. July 2, 2002~~.~~; amended by 2018, c. 48, § 8, effective July 1, 2018.

N.J.S.A. 54:10A-6.3. ~~Taxpayer that is an airline; d~~Determination of sales fraction for ~~transportation revenues~~airline

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.

History

L. 2011, c. 59, § 2, eff. Apr~~il~~. 28, 2011.

N.J.S.A. 54:10A-6.4. Investment management services [Contingent Operative Date]

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. § 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.

History

L. 2018, c. 45, § 9, effective July 1, 2018.

N.J.S.A. 54:10A-6.5. Computation of entire net income

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. § 965).

History

L. 2018, c. 48, § 2, effective July 1, 2018.

N.J.S.A. 54:10A-7. "Compensation of officers and employees within ~~this~~ Sstate" defined

As used in section six (C),[1] 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.

History

L. 1945, c. 162, p. 568, ~~§~~ 7.

N.J.S.A. 54:10A-8. Adjustment of allocation factor

If it shall appear to the commissioner that an allocation factor determined pursuant to section ~~6~~[1]6 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.

History

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.

N.J.S.A. 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, 9-1, 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.

History

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.

N.J.S.A. 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. (Deleted by amendment, P.L.2018, c.48)

~~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 P.L.1945, 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.~~

~~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.~~

History

L. 1945, c. 162, ~~p. 57,~~ § 10~~.~~; ~~A~~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~~.~~; 2018, c. 48, § 9, effective July 1, 2018.

N.J.S.A. 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.

History

L. 1945, c. 162, p. 570, ~~§~~ 11~~.~~; Amended by L. 1947, c. 50, p. 174, ~~§~~ 4.

N.J.S.A. 54:10A-12. Repealed by L. 1973, c. 367, § 8, eff. Jan. 7, 1974

N.J.S.A. 54:10A-13. ~~Change, correction or recomputation of amount of~~Report of changed, corrected 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.

History

L. 1945, c. 162, ~~p. 571,~~ § 13~~.~~; ~~A~~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-14. ~~Copies of income or other tax returns or of statements or registration forms may be demanded; records to be kept; securing~~Director may require taxpayer to submit 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~~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 ~~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~~filing an elective New Jersey combined return or a combined group 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.

History

L. 1945, c. 162, ~~p. 571,~~ § 14.~~;~~ ~~A~~amended ~~by L.~~1949, c. 236, ~~p. 742,~~ § 4; ~~L.~~2002, c. 40, § 11, eff. July 2, 2002.~~;~~ 2018, c. 48, § 10, effective July 1, 2018; 2020, c. 118, § 11, effective November 4, 2020.

N.J.S.A. 54:10A-14.1. ~~Preservation of r~~Records~~;~~ available for inspection~~; destruction~~, examination

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.

History

L. 1987, c. 76, ~~§~~ 49; amended 2018, c. 48, §§ 11, 31, eff. ~~Dec. 9~~July 1, ~~1987~~2018.

N.J.S.A. 54:10A-15. Annual ~~T~~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, but before July 31, 2023, 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 for privilege periods ending on and after July 31, 2023, the due date of the New Jersey return shall be (1) the fifteenth day of the month immediately following the month of the original due date for filing the taxpayer's federal corporate income tax return for such privilege period, or part thereof, or (2) in the case of a taxpayer that received an extension to file for federal tax purposes, the fifteenth day of the month immediately following the month of the extended due date for filing the taxpayer's federal corporate income tax return for such privilege period, or part thereof. 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.

History

L. 1945, c. 162, ~~p. 571,~~ § 15~~.~~; ~~A~~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~~.~~; 2020, c. 118, § 12, effective November 4, 2020; 2023, c. 96, § 8, effective July 3, 2023.

N.J.S.A. 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:

$M06,10,10,10,10,10,10$D$GWhere$GAccounting$J*5*The % Payment Due On Or Before Fifteenth$GYear$J*5*of Month of Current Accounting Year Is:$GEnded On$Gor After$J1st$J4th$J6th$J9th$J12th$G12/31/80JJ60% PYTJJAET 85%$JBal. ET$G12/31/81$J15% ET$J45% PYTJJAET 85%$JBal. ET$G13/31/82$J15% ET$J45% PYTJJAET 80%$JBal. ET$G12/31/83JJ30% ET$JAET 55%$JAET 80%$J Bal. ET.$X

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.

History

L. 1981, c. 184, ~~§~~ 2, eff. June 19, 1981.

N.J.S.A. 54:10A-15.2. Tax liability under $500; installment payment

a. With respect to its fiscal or calendar accounting years ending on or after December 31, 1980 ~~and thereafter~~, but before July 31, 2023, 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~~%~~ percent, and 50~~%~~ percent 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.

b. With respect to its fiscal or calendar accounting years ending on or after July 31, 2023, any taxpayer with a tax liability of less than $1,500 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 50 percent, which shall be paid at the time of the annual return.

c. For the purposes of subsection b. of this section, for a combined group, the provisions of subsection b. shall apply by taxable member in aggregate for the combined group.

History

L. 1981, c. 184, ~~§~~ 3, eff. June 19, 1981~~.~~; amended by 2023, c. 96, § 9, effective July 3, 2023.

N.J.S.A. 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.

History

L. 1981, c. 184, ~~§~~ 4, eff. June 19, 1981.

N.J.S.A. 54:10A-15.4. Underpayment ~~of installment; additional~~; amount ~~of~~added to 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~~fifth 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.; provided, however, a taxpayer may petition the Director of the Division of Taxation to waive this interest if the taxpayer demonstrates undue hardship, good cause, or any other reason as may be provided for waiving penalties and interest under the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

History

L. 1981, c. 184, § ~~5~~, ~~eff. June 19, 1981.~~; ~~A~~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~~.~~; 2023, c. 96, § 10, effective July 3, 2023.

N.J.S.A. 54:10A-15.5. ~~Telecommunications carriers; installment~~Franchise tax 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.

History

L. 1989, c. 2, § 8~~, eff. Jan. 1, 1990.~~

N.J.S.A. 54:10A-15.6. Provisions concerning certain ~~L~~limited, foreign limited liability companies ~~classified as partnerships; jurisdictional requirements for collection of income tax in records; payment of nonconsenting~~, computation, allocation for 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.

History

L. 2001, c. 136, § 3, eff. June 29, 2001.

N.J.S.A. 54:10A-15.7. Provisions concerning certain ~~L~~limited ~~liability~~, foreign limited partnerships~~; jurisdictional requirements for collection of income tax in records; payment of nonconsenting~~, computation, allocation for 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~~'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.

History

L. 2001, c. 136, § 4, eff. June 29, 2001.

N.J.S.A. 54:10A-15.8. ~~Limited liability companies and limited partnerships;~~ ~~i~~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.

History

L. 2001, c. 136, § 5, eff. June 29, 2001.

N.J.S.A. 54:10A-15.9. ~~Limited l~~Liability ~~companies and limited partnerships; liability~~of taxpayers for privilege periods beginning in ~~2001; no estimated payments due~~CY2001

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.

History

L. 2001, c. 136, § 6, eff. June 29, 2001.

N.J.S.A. 54:10A-15.10. Regulations, forms

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.

History

L. 2001, c. 136, § 7, eff. June 29, 2001.

N.J.S.A. 54:10A-15.11. Tax payment~~s or installment payments for unqualified investment~~by certain partnerships; ~~credit to nonresident partners;~~ definitions

a.

~~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. Entire net income shall not include

additional income that results from any federal partnership audit adjustments made by the Internal Revenue Service under section 6225(a)(1) of the federal Internal Revenue Code (26 U.S.C. § 6225(a)(1)).

(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.

(3) A partnership shall not be required to remit a payment of tax pursuant to paragraph (1) of this subsection for any nonresident that reasonably expects to be refunded the payment on account of a tax credit pursuant to section 5 of P.L.2019, c.320 (C.54A:12-5).

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.

History

L. 2002, c. 40, § 12, eff. July 2, 2002~~.~~; ~~A~~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.; 2021, c. 419, § 5, effective January 1, 2022; 2022, c. 133, § 13, effective December 22, 2022.

N.J.S.A. 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.

History

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-17. ~~Period other than covered by report to federal treasury department or less than 12 calendar months~~Determination of net worth, income; failure to file ~~or make payment~~return

(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 Tax Procedure Law, subtitle 9 of Title 54 of the Revised Statutes.[1] 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.

History

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.; 2018, c. 48, § 12, effective July 1, 2018.

N.J.S.A. 54:10A-18. Forms; certification; S corporation, professional service corporation returns

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.

History

L. 1945, c. 162, ~~p. 572,~~ § 18~~.~~; ~~A~~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-18.1. ~~Air carriers; election to file c~~Consolidated ~~corporate income tax~~ return filed by air carrier [Repealed]

~~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.L.1945, 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.~~

History

L. 2002, c. 40, § 30, eff. July 2, 2002~~.~~; repealed by 2018, c. 48, § 32.

N.J.S.A. 54:10A-19. Extension ~~of time~~for filing returns; interest~~; penalty~~

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.

History

L. 1945, c. 162, ~~p. 572,~~ § 19~~.~~; ~~A~~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-19.1. ~~State Uniform Tax Procedure Law applicable~~Examination of returns, assessment

(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.

History

L. 1947, c. 50, ~~p. 176,~~ § 10~~.~~; ~~A~~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-19.2. Appeal to tax court, claim for refund

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.

History

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-19.3. 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.

History

L. 1947, c. 50, p. 178, ~~§~~ 12.

N.J.S.A. 54:10A-~~20. Injunctive relief as one of remedies for collection~~ 41. Corporation Business Tax Study Commission [Repealed]

~~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, 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.~~

History

L.~~1945~~ 2002, c. ~~162, p. 573, § 20. Amended~~40, § 31, eff. July 2, 2002; repealed by L.~~1953~~ 2010, c. ~~51, p. 914, § 116.~~87, § 48, eff. Nov. 3, 2010.

N.J.S.A. 54:10A-~~21. Foreign~~40. Financial business corporations; ~~revocation of certificate for failure to pay tax; other remedies unimpaired~~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.).

~~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 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.~~

~~L.1945, c. 162, p. 573, § 21.~~

History

~~N.J.S.A. 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.~~

~~L.1945, c. 162, p. 574, § 22.~~

~~N.J.S.A. 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.

L.1945 1975, c. 162, p. 574, § 23.171, 10, eff. Aug. 4, 1975; Amended by L.1947 1978, c. 50, p. 176, § 9.40, 2, eff. June 19, 1978.

N.J.S.A. 54:10A-24. Annual appropriation for free public schools-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.).

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.

L.1945, c. 162, p. 574, § 24. Amended by L.1946, c. 89, p. 309, § 1.

History

N.J.S.A. 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.

L.1945 1975, c. 162, p. 574, § 25.171, 9, eff. Aug. 4, 1975.

N.J.S.A. 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.

L.1945, c. 162, p. 575, § 27.

N.J.S.A. 54:10A-27. Rules and regulations

The commissioner 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.

L.1945, c. 162, p. 575, § 28.

N.J.S.A. 54:10A-28. Effective date-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.

~~This act shall take effect January first, one thousand nine hundred and forty-six, except that the commissioner 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.~~

~~L.1945, c. 162, p. 575, § 29.~~

History

~~N.J.S.A. 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.~~

~~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-30. Release of property from lien for corporation franchise taxes~~

~~The Commissioner 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 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 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 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 and~~

shall contain an accurate description of the property to be released together with such other information as the commissioner may require. Such release shall be given under the seal of the commissioner, and may be recorded in any office in which conveyances of real estate may be recorded.

L.1947, c. 51, p. 181, § 4.

N.J.S.A. 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.

L.1947 1975, c. 51, p. 181, § 5. Amended by L.1953, c. 51, p. 915, § 117.171, 8, eff. Aug. 4, 1975.

N.J.S.A. 54:10A-32. Effective date-37. Banking corporations; nonqualification as investment company or regulated investment company

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).[1]

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)).

History

L.1958 1975, c. 63, p. 199, § 12.170, 9, eff. Aug. 4, 1975.

N.J.S.A. 54:10A-33-36. Banking corporations; collected business corporation and business personal property taxesdefined

As used in this act, "banking corporation" means a bank as defined in section 1 of The Banking Act of 1948, c. 67, and also means a national bank.

History

L. 1975, c. 170, 8, eff. Aug. 4, 1975.

; apportionment; certification; paymentN.J.S.A. 54:10A-35. Banking corporation tax revenues; distribution to municipalities under L.1966, c. 135; prohibition

No part of Tthe taxes collected frompaid by banking corporations pursuant to the Corporation Business Tax Act (P.L.1945, c. 162)[1] and or the Business Personal Property Tax Act (P.L.1966, c. 136)[2] 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.~~ shall be distributed pursuant to P.L.1966, c. 135.

History

L. 1975, c. 170, 6, eff. Aug. 4, 1975.

N.J.S.A. 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 transitionary 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 transitionary short period return, and subsequently file its New Jersey corporation business tax returns on a fiscal year basis. Otherwise, such banking corporations shall file transitionary 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 transitionary 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 transitionary 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 transitionary 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.

History

L.~~1975~~ 2020, c. ~~170~~118, § ~~2~~16, ~~eff. Aug. 4, 1975. Amended by L.1977, c. 142, § 1, eff. June 30, 1977.~~effective November 4, 2020.

N.J.S.A. 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)[1] 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.[2] 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)[3] the following percentage of its base international banking facilities tax liability:

$M02,20,20$D$G1982$Y100%$G1983$Y80%$G1984$Y60%$G1985$Y40%$G1986 $Y 20%$X

History

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.

N.J.S.A. 54:10A-35-33. Banking corporation tax revenues; distribution to municipalities under L.1966, c. 135; prohibitioncorporations; 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) and the Business Personal Property Tax Act (P.L.1966, c. 136) 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.

No part of the taxes paid by banking corporations pursuant to the Corporation Business Tax Act (P.L.1945, c. 162)[1] or the Business Personal Property Tax Act (P.L.1966, c. 136)[2] shall be distributed pursuant to P.L.1966, c. 135.[3]

L.1975, c. 170, § 6, eff. Aug. 4, 1975.

History

N.J.S.A. 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,[1] and also means a national bank.

L.1975, c. 170, § 8, eff. Aug. 4, 1975.

N.J.S.A. 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)).

L.1975, c. 170, § 9, eff. Aug. 4, 1975.

N.J.S.A. 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.

L.Laws 1975, c. 171170, § 82, eff. Aug. 4, 1975.; Amended by L. 1977, c. 142, 1, eff. June 30, 1977.

N.J.S.A. 54:10A-39. Financial business corporations; revenue from taxes; distribution to municipalities; prohibition-31. Limitations; cancellation of taxes barred; rights not affected

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.).

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.

History

L. 1947, c. 51, p. 181, 5; Amended by L. 1953, c. 51, p. 915, 117.

N.J.S.A. 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).

History

L.~~1975~~ 1958, c. ~~171~~63, ~~§ 9~~p. 199, ~~eff~~12. ~~Aug. 4, 1975.~~

N.J.S.A. 54:10A-~~40. Financial business corporations; tax; payment~~30. Release of property from lien

~~During each of the years 1976, 1977, 1978 and 1979, each financial business~~ The 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 ~~shall pay as taxes under~~in accordance with 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.).~~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 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 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 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 director and shall contain an accurate description of the property to be released together with such other information as the director may require. Such release shall be given under the seal of the director, and may be recorded in any office in which conveyances of real estate may be recorded.

History

L. 1947, c. 51, p. 181, 4; amended by 2018, c. 48, § 17, effective July 1, 2018.

N.J.S.A. 54:10A-29. Certificate; $25 per corporation

(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.

History

L. 1947, c. 51, 3; amended by L. 1971, c. 91; 1987, c. 76, 52.

N.J.S.A. 54:10A-28. Effective date

This act shall take effect January first, one thousand nine hundred and forty-six, except that the 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.

History

L.~~1975~~ 1945, c. ~~171, § 10, eff. Aug. 4, 1975.~~162, p. 575, 29; ~~A~~amended by ~~L.1978~~2018, c. ~~40~~48, § ~~2~~16, ~~eff. June 19, 1978.~~effective July 1, 2018.

N.J.S.A. 54:10A~~-41. Repealed by L.2010, c. 87, § 48, eff. Nov. 3, 2010~~-27. Rules, regulations

The 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.

History

L. 1945, c. 162, p. 575, 28; amended by 2018, c. 48, § 15, effective July 1, 2018.

N.J.S.A. 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.

History

L. 1945, c. 162, p. 575, 27.

N.J.S.A. 54:10A~~-41, NJ ST 54:10A-41~~-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.

History

L. 1945, c. 162, p. 574, 25.

N.J.S.A. 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.

History

L. 1945, c. 162, p. 574, 24; Amended by L. 1946, c. 89, p. 309, 1.

N.J.S.A. 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.

History

L. 1945, c. 162, p. 574, 23; Amended by L. 1947, c. 50, p. 176, 9.

N.J.S.A. 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.

History

L. 1945, c. 162, p. 574, 22.

N.J.S.A. 54:10A-21. Failure of foreign corporation to pay tax; revocation of certificate of authority

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 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 director.

History

~~Current with laws through~~ L. 1945, c. 162, p. 573, 21; amended by 2018, c. ~~125 and J.R. No. 10~~48, § 14, effective July 1, 2018.

N.J.S.A. 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 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.

History

L. 1945, c. 162, p. 573, 20; Amended by L. 1953, c. 51, p. 914, 116; 2018, c. 48, § 13, effective July 1, 2018.

~~**CHAPTER 48 Effective Dates**~~

~~An Act concerning taxation, supplementing P.L.1945, c.162, amending various parts of the statutory law , and repealing 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).~~

~~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.~~

~~33. This act shall take effect immediately but section 1 shall be effective for tax years beginning on and after January 1, 2018, sections 2 and 3 are retroactive to January 1, 2017, and the remaining sections shall apply 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 shall apply to tax years beginning on and after January 1, 2019. Section 35 shall be effective for tax years beginning on and after January 1, 2019.~~

~~Approved July 1, 2018.~~

Summary report: Litera Compare for Word 11.3.0.46 Document comparison done on 1/25/2024 7:56:32 AM	
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Intelligent Table Comparison: Active	
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Move To	152
Table Insert	0
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Table moves to	0
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Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	3893

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 GILIT 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.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 5323

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 28, 2023

The Assembly Budget Committee reports favorably and with committee amendments Assembly Bill No. 5323 (1R).

As amended, this bill modifies various provisions of the Corporation Business Tax Act (1945), the "Gross Income Tax Act," and the State Uniform Tax Procedure Law.

Changes to the Corporation Business Tax Act (1945)

The bill's modifications to the Corporation Business Tax Act (1945) include changes to combined reporting, particularly with respect to: certain statutory provisions concerning unitary businesses; the method for calculating the allocation factor of a taxable member of a combined group; the managerial member duration period; the definition of world-wide basis and world-wide group; water's-edge groups and affiliated groups, including the calculation of entire net income for non-U.S. corporations that are members of a water's-edge group or affiliated group; the "captive" versions of investment companies, real estate investment trusts, and regulated investment companies.

The bill also modifies the treatment of certain deductions and carryovers allowed, and certain addbacks required, under the Corporation Business Tax Act (1945), namely: the deductions allowed for net operating losses and prior net operating loss conversion carryovers, the international banking facility deduction, the net deferred liability deduction, the interest deduction limitation and required addback of interest expenses deducted and paid to related members, the deduction for research and experimental expenditures, and the dividend exclusion.

The bill modifies the treatment of global intangible low-taxed income (GILTI) and foreign-derived intangible income (FDII) under the Corporation Business Tax Act (1945) by repealing the deduction currently allowed for GILTI and FDII and by treating GILTI as a dividend subject to the dividend exclusion rules for privilege periods ending on and after July 31, 2023.

The bill adds language clarifying the treatment of the income of non-U.S. corporations that are not members of a world-wide group or a water's-edge group for purposes of the Corporation Business Tax Act (1945).

The bill modifies certain statutory requirements concerning installment payments due under the Corporation Business Tax Act (1945), and changes certain provisions concerning the underpayment of an installment payment.

The bill changes the due date for filing a return under the Corporation Business Tax Act (1945) to: (1) the fifteenth day of the month immediately following the month of the original due date for filing the taxpayer's federal corporate income tax return for the privilege period; or (2) in the case of a taxpayer that received a filing extension for federal tax purposes, the fifteenth day of the month immediately following the month of the extended due date for filing the federal return.

Finally, the bill creates a new section of law under the Corporation Business Tax Act (1945) providing certain criteria for determining whether a corporation has "substantial nexus" with the State and will accordingly be subject to taxation under the act.

Changes to the "New Jersey Gross Income Tax Act"

The bill adds a new section of law to the "New Jersey Gross Income Tax Act" to provide uniform sourcing rules for that act and the Corporation Business Tax Act (1945). Specifically, the bill provides that for taxable years beginning on and after January 1, 2023, a gross income taxpayer's income from a trade, business, partnership, or S corporation will be sourced in a manner consistent with the Corporation Business Tax Act (1945) in certain circumstances. The bill requires any income from salary, wages, tips, fees, commissions, bonuses, and other similar forms of remuneration to be sourced pursuant to the provisions of the "New Jersey Gross Income Tax Act."

Changes to the State Uniform Tax Procedure Law

The bill modifies certain provisions of the State Uniform Tax Procedure Law. First, the bill modifies certain statutory language concerning the late filing penalty and the penalty imposed for failing to file a return electronically. The bill also adds language allowing the director or a taxpayer to make adjustments to net operating losses in privilege periods closed due to the statute of limitations on the assessment of additional taxes. Finally, the bill adds language providing a phase-in for the accrual of any penalties or interest for the underpayment of tax due with respect to any provision of the bill that creates an additional tax liability.

As amended and reported, this bill is identical to Senate Bill No. 3737 (3R).

COMMITTEE AMENDMENTS:

The committee amended the bill to remove provisions that stipulated, for purposes of the Corporation Business Tax Act (1945), the definitions of investment companies, regulated investment companies, and real estate investment trusts, do not include any company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion.

FISCAL IMPACT:

Fiscal information is currently unavailable.

Tab 3

Title 18, Chapter 7 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

N.J.S.A. 54:10A-27 and 54:50-1.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

Effective: February 20, 2024.

See: 56 N.J.R. 431(a).

CHAPTER HISTORICAL NOTE:

Chapter 7, Corporation Business Tax Act, was filed and became effective prior to September 1, 1969.

Subchapter 9, Assets Allocation Factor, was repealed by R.1979 d.45, effective February 6, 1979. See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1984 d.95, effective March 19, 1984. See: 16 N.J.R. 229(a), 16 N.J.R. 746(c).

Subchapter 15, Urban Enterprise Zones Act, was adopted as R.1984 d.496, effective November 5, 1984. See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a).

Subchapter 16, International Banking Facilities, was adopted as R.1984 d.453, effective October 15, 1984. See: 16 N.J.R. 1327(a), 16 N.J.R. 2827(a).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1989 d.196, effective March 14, 1989. See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1994 d.186, effective March 14, 1994, and Subchapter 6, Valuation, was repealed by R.1994 d.186, effective April 18, 1994. See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

Pursuant to Executive Order No. 66(1978), Chapter 7, Corporation Business Tax Act, was readopted as R.1999 d.116, effective March 12, 1999. See: 31 N.J.R. 266(b), 31 N.J.R. 893(a).

Subchapter 17, Partnerships; Subchapter 18, Alternative Minimum Assessment; and Subchapter 19, Filing Fee Payments by Professional Corporations were adopted as special new rules by R.2003 d.135, effective February 27, 2003. Subchapters 17, 18 and 19 were adopted as R.2003 d.370, effective August 22, 2003. See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).

Chapter 7, Corporation Business Tax Act, was readopted as R.2004 d.367, effective September 1, 2004. See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).

Subchapter 20, Treatment of S Corporations, was adopted as new rules by R.2005 d.230, effective July 18, 2005. See: 37 N.J.R. 739(a), 37 N.J.R. 2688(a).

Subchapter 3B, Film Tax Credits, was adopted as new rules and Subchapter 15, Urban Enterprise Zones Act, was recodified as Subchapter 3A by R.2007 d.203, effective July 2, 2007. See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

Subchapter 3B, Film Tax Credits, was renamed Film and Digital Media Tax Credits by R.2009 d.143, effective May 4, 2009. See: 40 N.J.R. 6944(a), 41 N.J.R. 2049(b).

Chapter 7, Corporation Business Tax Act, was readopted as R.2009 d.384, effective November 24, 2009. See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 7, Corporation Business Tax Act, was scheduled to expire on November 24, 2016. See: 43 N.J.R. 1203(a).

Chapter 7, Corporation Business Tax Act, was readopted as R.2017 d.123, effective May 18, 2017. As a part of the readoption, Subchapter 3B, Film and Digital Media Tax Credits, Subchapter 4, Entire Net Worth, and Subchapter 16, International Banking Facilities, were repealed, Subchapter 5, Entire Net Income; Definition, Components and Rules for Computing was renamed Entire Net Income; Definition, Components, and Rules for Computing, and Subchapter 14, Penalties, Miscellaneous, was renamed Tax Clearance, effective June 19, 2017. See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Subchapter 21, Combined Returns, was adopted as new rules by R.2022 d.116, effective September 19, 2022. See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Chapter 7, Corporation Business Tax Act, was readopted, effective February 20, 2024. See: Source and Effective Date.

N.J.A.C. 18:7-1.1 Corporation business tax; general provisions

For all returns where the accounting period begins after June 30, 1986, the tax is measured by the portion of entire net income allocable to New Jersey, subject to the minimum tax described in N.J.A.C. 18:7-3.4(c).

History

HISTORY:

Amended by R.1970 d.121, effective October 5, 1970.

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

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

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

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

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

Added "accounting period before July 1, 1986" to (a). Added "accounting period before April 1, 1983" to (a)1.i and ii. Added (3) to (a). Also added (b).

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

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

N.J.A.C. 18:7-1.2 Total tax self-assessed

The total tax is self-assessed and payable by each taxpayer.

History

HISTORY:

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

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

N.J.A.C. 18:7-1.3 Definition of taxpayer

(a) The term "taxpayer" shall mean any corporation required to report or to pay taxes, interest, or penalties pursuant to this chapter.

(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 pursuant to this chapter; 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) and (z) and N.J.A.C. 18:7-21 for more information.

History

HISTORY:

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

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

Added (c).

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

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

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

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

In (a), substituted ", or" for "on" and substituted "pursuant to this chapter" for "under this Act"; in (b), inserted a comma following "assignee"; in (c), inserted a comma following "interest" and substituted "pursuant to this chapter;" for "under this Act,"; added (d).

N.J.A.C. 18:7-1.4 Definition of corporation

(a) The term "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 and includes any corporation created or organized under the laws of New Jersey and any foreign corporation which is authorized to do business, or is doing business, or employs or owns capital or property or maintains an office in New Jersey in a corporate or organized capacity by virtue of creation or organization under laws of the United States or any state, territory, or possession thereof, the District of Columbia, or any foreign country, or any political subdivision of the foregoing, which provided a medium for the conduct of business or the sharing of its gains.

1. The term includes any other entity classified as a corporation for Federal income tax purposes.

2. The term includes any State or Federally chartered building and loan association or State or Federally chartered savings and loan association.

History

HISTORY:

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

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

In (a), added 1 and 2.

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), inserted a comma following "association" and "territory".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-4(c) as to definition of "corporation".

N.J.A.C. 18:7-1.5 Limited partnership associations subject to the Act

Limited partnership associations formed under N.J.S.A. 42:3-1 are subject to tax under the Act. No new limited partnership associations shall be formed in New Jersey in accordance with N.J.S.A. 42:3-1 et seq. after September 21, 1988.

History

HISTORY:

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

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

N.J.A.C. 18:7-1.6 Subjectivity to tax; how created

(a) Every corporation not expressly exempted is deemed to be subject to tax under the Act and is required to file a return and pay a tax thereunder, provided it falls within any one of the following:

1. Existing under the laws of the State of New Jersey; or

2. If a foreign corporation:

i. Holding a general Certificate of Authority to do business in this State issued by the Division of Revenue and Enterprise Services;

ii. Holding a certificate, license, or other authorization issued by any other State department or agency, authorizing the company to engage in corporate activity within this State;

iii. Doing business in this State;

iv. Employing or owning capital in this State;

v. Employing or owning property in this State;

vi. Maintaining an office in this State;

vii. Deriving receipts from sources within this State; or

viii. Engaging in contacts within this State.

(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) 5 from a location outside New Jersey to customers within New Jersey is subject to tax in New Jersey.

Example 2: A New York corporation delivers furniture into New Jersey by its company-owned truck. The driver collects the payment from the New Jersey customer. The New York corporation is subject to the tax imposed by the Corporation Business Tax Act in New Jersey.

History

HISTORY:

Amended by R.1996 d.518, effective November 4, 1996.

See: 27 N.J.R. 3913(a) , 28 N.J.R. 4795(a) .

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

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

In (a)2, added vii and viii; added (b).

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b) , 49 N.J.R. 1694(a) .

In the introductory paragraph of (a), inserted a comma following "thereunder"; in (a)2i, substituted "Certificate" for "certificate" and "Division of Revenue and Enterprise Services" for "Secretary of State"; in (a)2ii, inserted a comma

following "license"; in (a)2i through (a)2vi, deleted "or" from the end; and in (b) Example2, substituted "company-owned" for "company owned" and "the tax imposed by the Corporation Business Tax Act" for "tax".

Amended by R.2020 d.082, effective September 8, 2020.

See: 52 N.J.R. 508(a) , 52 N.J.R. 1677(c) .

In (b) Example 1, substituted "at" for "in" and updated the N.J.A.C. reference. Statutory References

See N.J.S.A. 54:10A-2 as to what acts constitute doing business in State of New Jersey for purposes of acquiring a taxable status.

N.J.A.C. 18:7-1.7 Domestic corporations subject to tax

(a) The tax is imposed on every domestic corporation, with specified exceptions, for the mere possession of the privilege of having its corporate franchise.

(b) A domestic corporation not otherwise exempt is subject to tax for every fiscal or calendar accounting period, or part thereof, whether it does business, owns capital or property, maintains an office, or engages in any activity, whether within or outside New Jersey.

(c) A domestic corporation is subject to tax even though it carries on its business entirely outside New Jersey.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b), substituted "outside" for "without".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-2 as to domestic corporations subject to New Jersey annual franchise tax.

N.J.A.C. 18:7-1.8 Foreign corporations subject to tax

(a) Qualifications for subject corporations. The tax is imposed on every foreign corporation subject to tax as described in N.J.A.C. 18:7-1.6, and includes every corporation that derives receipts from sources within New Jersey or engages in contacts within New Jersey or does business, employs or owns capital or property, or maintains an office in New Jersey in a corporate or organized capacity, regardless of whether it has formally qualified or is authorized to do business in New Jersey, provided that the taxpayer's business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Example 1

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

Example 2

A foreign corporation, which operates several retail stores outside New Jersey, leases an office in New Jersey for the convenience of its buyers when they come to New Jersey. It has several employees permanently assigned to such office. Salesmen call at the office to solicit orders from the buyers, and the merchandise is shipped to such office by the sellers. Upon receipt, the merchandise is examined and sent to the various stores of the corporation outside New Jersey. The corporation is subject to the corporation business tax because it maintains an office, is regularly doing business through its constituted representatives, and owns property in New Jersey.

Example 3

Note: The foregoing examples illustrate conditions giving rise to subjectivity to the corporation business tax without regard to whether or not the corporation holds a general or special certificate of authority to do business in New Jersey.

A foreign corporation has applied for and has received a certificate of authority to do business in New Jersey by the Division of Revenue and Enterprise Services, but does not actually do any business in New Jersey, nor does it have any office or property or any employees in New Jersey, nor does it own or employ capital here. The corporation has sought and received the privilege of exercising its corporate franchise in New Jersey and is, therefore, subject to the corporation business tax and must file a return and pay the minimum tax.

(b) A financial business corporation, a banking corporation, a credit card company, or similar business that has its commercial domicile in another state is subject to corporation business tax in this State if during any year it obtains or solicits business or receives gross receipts from sources within this State.

(c) Mandatory submission of affidavit; proof of authorization to do business. A foreign corporation, which is subject to tax under the Corporation Business Tax Act, must submit an affidavit by a duly authorized corporate officer, stating whether or not the corporation at any time prior to the date of admitted subjectivity under the Corporation Business Tax Act held any authorization to do business in New Jersey or carried on in this State any of the activities set forth in N.J.A.C. 18:7-1.6(a).

History

HISTORY:

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

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

Administrative correction.

See: 28 N.J.R. 4509(a).

Amended by R.1996 d.518, effective November 4, 1996.

See: 27 N.J.R. 3913(a), 28 N.J.R. 4795(a).

Amended by R.2011 d.217, effective August 15, 2011.

See: 43 N.J.R. 277(a), 43 N.J.R. 2193(b).

In (a), substituted "that derives receipts from sources within New Jersey or engages in contacts within New Jersey or" for "which", deleted a comma following "property", and inserted ", provided that the taxpayer's business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States"; added new (b); and recodified former (b) as (c).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

N.J.A.C. 18:7-1.9 Doing business in New Jersey; definition and rules of construction

(a) The term "doing business" is used in a comprehensive sense and includes all activities that occupy the time or labor of men or women for profit.

1. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization within the State shall be deemed to be "doing business" for the purposes of the Corporation Business Tax Act.

2. In determining whether a corporation is "doing business", it is immaterial whether its activities result in a profit or a loss.

(b) Whether a foreign corporation is doing business in New Jersey pursuant to N.J.A.C. 18:7-1.6(a)2iii is determined by the facts in each case. Consideration is given to such factors as:

1. The nature and extent of the activities of the corporation in New Jersey;

2. The location of its offices and other places of business;

3. The continuity, frequency, and regularity of the activities of the corporation in New Jersey;

4. The employment in New Jersey of agents, officers, and employees; and

5. The location of the actual seat of management or control of the corporation.

Example

Foreign corporation R holds trademarks that were assigned to it by its parent corporation. R receives fees as a result of licensing those trademarks to certain New Jersey companies for use in New Jersey. R is subject to the corporation business tax on its apportioned income as a result of its trademark licensing activities.

(c) A foreign corporation shall not be deemed to be doing business or employing, or owning capital or property in this State for the purposes of the Act by reason of the following:

1. The maintenance of cash balances with banks or trust companies in New Jersey;

2. The ownership of shares of stock or securities kept in New Jersey in a safe deposit box, safe, vault, or other receptacle rented for the purpose, or 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;

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; and

4. Any combination of the foregoing activities.

(d) If the only business activity of a foreign corporation within New Jersey consists of the solicitation of orders for sales of its tangible personal property, which orders are to be sent outside the State for acceptance or rejection and, if accepted, are to be filed by shipment or delivery from a point outside the State, then such corporation is doing business in New Jersey and is subject to the tax. Unless it has additional contacts with New Jersey; however, it will not be liable for any tax measured by the income of the corporation. (See P.L. 86-272, 15 U.S.C. § 381). The corporation will be liable for filing a return and payment of the minimum tax.

1. For the in-State activities of the foreign corporation to immunize the corporation from taxation measured by income, such activities must be limited solely to:

i. Speech or conduct that explicitly or implicitly invites an order; and

ii. Activities that neither explicitly nor implicitly invite an order but that are entirely ancillary to requests for an order.

2. Examples of additional activities or contacts with New Jersey that will subject a corporation to the tax based on or measured by income are:

i. Repairs, maintenance, and installations;

ii. Collection or repossession activities;

iii. Credit investigations;

iv. Conducting training courses, seminars, or lectures for personnel, other than for personnel involved only in solicitation;

v. Providing technical assistance;

vi. Customer complaint resolution if the sole purpose is not to ingratiate sales personnel with the customer;

vii. Approving or accepting orders or securing deposits on sales;

viii. Acquiring personnel for other than solicitation activities;

ix. Maintaining a display at a single location in excess of two weeks during the tax year;

x. Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;

xi. Owning, leasing, or maintaining in-State facilities, such as a warehouse or answering service; and

xii. Consigning stock of goods or other tangible personal property to any person, including an independent contractor, for sale.

3. Examples of additional activities that, together with the solicitation activities described in (d)1 above will not subject a corporation to tax based on or measured by income are:

i. Soliciting through advertising;

ii. Carrying samples and promotional materials for display or distribution without charge;

iii. Providing automobiles, owned or leased, registered or not registered in New Jersey, to sales personnel for their use in conducting protected activities.

iv. Checking customer inventories without charge;

v. Maintaining a display at a single location for less than two weeks during the tax year;

vi. Recruiting, training, or evaluating of sales personnel;

vii. Soliciting of orders at an in-State sales employee's in-home work space that is not paid for by the company; and

viii. Mediating customer complaints if just to ingratiate sales personnel with the customer.

(e) Independent contractors may solicit or make sales or maintain an office without subjecting a company to liability for corporation business tax based on or measured by income. Sales representatives who represent a single principal would not be considered independent contractors. A corporation would be subject to income-based tax, if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

History

HISTORY:

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

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

Amended by R.1995 d.194, effective April 3, 1995.

See: 27 N.J.R. 471(a), 27 N.J.R. 1440(b).

Amended by R.1996 d.518, effective November 4, 1996.

See: 27 N.J.R. 3913(a), 28 N.J.R. 4795(a).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

N.J.A.C. 18:7-1.10 Foreign corporations engaged in interstate commerce

A foreign corporation, which falls into any of the taxable categories subjecting a corporation to tax, as enumerated in N.J.A.C. 18:7-1.6, is subject to the corporation business tax, notwithstanding its business is wholly or partly in interstate commerce.

History

HISTORY:

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

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

Amended by R.1996 d.518, effective November 4, 1996.

See: 27 N.J.R. 3913(a), 28 N.J.R. 4795(a).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Substituted "corporation business tax," for "Tax Act", and inserted a comma following the first occurrence of "corporation" and the N.J.A.C. cite.

N.J.A.C. 18:7-1.11 Foreign corporations stocking goods in New Jersey

A foreign corporation, which regularly maintains a stock of goods in New Jersey and makes deliveries to its customers from such stock shall be deemed to be doing business in New Jersey within the meaning of the Corporation Business Tax Act.

Example 1

A foreign manufacturing corporation has its factories and offices located outside New Jersey. Its sole activity in New Jersey consists of holding or storing goods in a public warehouse in this State. It has no employees in New Jersey. The corporation is subject to the corporation business tax because it owns property in New Jersey.

Example 2

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance

and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the corporation business tax because it maintains an office within the State.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph, inserted a comma following "corporation", and inserted "Corporation Business Tax"; in Examples 1 and 2, substituted "corporation business tax" for "Tax Act".

STATUTORY REFERENCES:

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

N.J.A.C. 18:7-1.12 Exempt corporations

Corporations are exempt from the corporation business tax as provided in N.J.S.A. 54:10A-3.

History

HISTORY:

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

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

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

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

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

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

In (a), inserted "other than the tax pursuant to N.J.S.A. 54:10A-5a" following "gross receipts," in 4 and rewrote 5.

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

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

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

Repeal and New Rule, R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Exempt corporations".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-3 as to those corporations declared exempt from the annual New Jersey franchise tax.

N.J.A.C. 18:7-1.13 Regulated investment company; definition

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

(b) A regulated investment company may also qualify as an investment company.

History

HISTORY:

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

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

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

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

Designated existing paragraph as (a); added (b).

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

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

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

N.J.A.C. 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. "Banking corporation" means those banking corporations subject to tax under N.J.S.A. 54:10A-34, which are defined in N.J.S.A. 54:10A-36 as New Jersey chartered banks, national banks headquartered in New Jersey, and foreign national banks.

2. "Foreign bank" means commercial banks chartered in foreign states of the United States or in foreign countries.

3. "Foreign national bank" means national banks headquartered in foreign states of the United States.

(b) Applicable rules concerning tax nexus and subjectivity to the corporation business tax, which are contained in this chapter shall apply to foreign banks, as well as to any other taxable entity, including banking corporations. In particular, but without limitation thereto, foreign banks and foreign national banks shall be subject to N.J.A.C. 18:7-1.6 and 1.8 through 1.11.

(c) Any foreign bank or foreign national bank, which engages in any activity described or contemplated in P.L. 1996, c. 17, effective April 17, 1996, shall be subject to the corporation business tax in this State.

(d) Foreign banks subject to the corporation business tax shall file 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 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 the completion of filing transitionary short period returns required at 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. Thereafter, it would continue to file returns for a 12-month calendar 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. 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 periods after the completion of filing transitionary short period returns, as required at 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 that are subsequently required to file New Jersey returns) include the following:

1. A Pennsylvania state-chartered bank reports on the calendar year basis. The bank began doing business in Pennsylvania in a prior year and it begins doing business in New Jersey on July 1 of Year 1. The bank is required to file on May 15 (30 days after the April 15 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 and to pay the Year 1 corporation business tax on May 15 (30 days after the April 15 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, PA. 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 the Year 1 corporation business tax on May 15 (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 a fiscal year basis for Federal purposes (ending July 31) and has its principal office in Philadelphia, PA began doing business in Pennsylvania prior to July 31. It begins doing business in New Jersey on August 1 of the Fiscal Year 1. It is required to file its first annual corporation business tax return on December 15 (30 days after the Federal due date of November 15) of Fiscal 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 15 (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 New Jersey State-chartered bank will also file corporation business tax returns for the pre-merger short period. 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 State-chartered bank. Prior to the merger, the Pennsylvania state-chartered bank was doing business in New Jersey and reporting on a calendar year basis. The New Jersey State-chartered bank will file on May 15 (30 days after the Federal due date of April 15) of Year 2, 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 pursuant to N.J.S.A. 54:10A-2, which will be based on reporting the income and tax liabilities for its pre-merger months of Year 1.

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 (30 days after the Federal due date of 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 December 15 of Year 1 pursuant to 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 2 by the New Jersey State-chartered bank for its prior annual privilege period.

(h) For banks that are members of a combined group, see N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.

History

HISTORY:

New Rule, R.1997 d.254, effective June 16, 1997.

See: 29 N.J.R. 850(a), 29 N.J.R. 2708(a).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (d), (e), (f), (f)4, and added (g) and (h).

N.J.A.C. 18:7-1.15 Investment company; definition

(a) "Investment company" means any corporation:

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

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

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

4. Which is not a banking corporation as defined by the Corporation Business Tax Act;

5. Which is not a financial business corporation as defined by the Corporation Business Tax Act; and

6. Which is not a merchant or dealer in stocks, bonds, or other securities, and which is regularly engaged in buying and selling such securities to customers.

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

1. The making and/or negotiating of loans. These activities are generally considered as either banking and/or financial business activities;

2. The renting or leasing of real or tangible personal property. These activities are generally considered financial business activities or other than investment activities;

3. The investment in general partnerships since the status of a general partner is not considered as consistent with a qualified investment activity and investments in general partnerships are not statutorily enumerated assets;

4. The direct day-to-day management of operations of affiliated corporations or the actual providing of services, directly or as an intermediary, for the benefit of affiliated corporations;

5. The buying and/or selling of stocks, bonds, notes, and other securities for the corporation's customers;

6. The buying and/or selling of real or tangible personal property whether it is classified as inventory, as operating assets, or as capital assets;

7. The direct investment in collectibles, including, but not limited to, stamps, pottery, cars, and gold coins;

8. The direct investment in trademarks or similar assets; or

9. The direct investment in a non-publicly-traded pass-through entity, if that entity would not satisfy the definition of investment company if it had been organized as a corporation.

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

1. For services performed;

2. For the sale or transfer of assets;

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

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

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

(e) A corporation electing to file as an investment company shall make its election on a timely filed original return or on a timely filed amended return, and shall substantiate its claim in accordance with the tests

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

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

1. Business test (three parts):

i. (Income adjusted): For purposes of the 90 percent requirement provided by (a)1 above, a taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions as reported for Federal income tax purposes, from cash and/or investment assets. Total income before deductions as reported for Federal income tax purposes must be adjusted as follows:

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

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

(3) Add interest on Federal, State, municipal, and other obligations included in determining New Jersey new income, but not otherwise included in Federal total income; and

(4) Do not add any capital loss carry back or carry forward in computing total income.

ii. (Income unadjusted): For purposes of the 90 percent requirement provided by (a) above, a taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions, as reported for Federal income tax purposes, from cash and/or investment assets plus interest on Federal, State, municipal, and other obligations not otherwise included in Federal taxable income and exclusive of any capital loss carryback or carryforward.

(1) A gain resulting from the disposition of an asset and reported on the installment basis for Federal income taxes is considered income for purposes of the investment company statute in the year in which the installment is received under both (f)1i and ii above. Income reported on the installment basis is treated as investment income only if it is generated by the sale of an investment asset. Interest income received in conjunction with each installment is deemed investment income.

iii. (Deductions): For purposes of the 90 percent requirement provided by (a) above, a taxpayer, during the entire period covered by its report, must have incurred 90 percent or more of its total deductions as reported for Federal income tax purposes, for holding, investing, and reinvesting in cash and/or investment assets.

2. Assets test: For purposes of the 90 percent requirement provided by (a)2 above, at least 90 percent of the taxpayer's gross assets located in New Jersey, valued at cost, must consist of cash and/or investment assets, during the period covered by its report.

Example No. 1

Corporation A

Adjusted Income Test:

Sch. A-6 Other Interest	$ 56,205	Sch. A-11 Total Income	$ 65,152

Sch. A-29 Interest on Exempt Securities	31,385	Sch. A-29 Interest on Exempt Securities	31,385
Total Investment Income	$ 87,590	Sch. D-Selling Price $ 71,000 Less Gain-$ 8,947	62,053
Sch. A-9(a) Capital gain (*)	8,947		
Total Income	$ 96,537	Total Income--Adjusted	$ 158,590

(*)From sale of non-investment type assets.

Ratio of Investment Income ($ 87,590) to Total Income Adjusted ($ 158,590) equals 55%

Unadjusted Income Test:

Sch. A-6 Other Interest	$ 56,205	Sch. A-6 Other Interest	$ 56,205
Sch. A-29 Interest on Exempt Securities	31,385	Sch. A-9(a) Capital Gain	8,947
Total Investment Income	$ 87,590	Sch. A-29 Interest on Exempt Securities	31,385
Sch. A-9(a) Capital Gain (*)	8,947		
Total Income	$ 96,537	Total Income-Unadjusted	$ 96,537

(*)From sale of non-investment type assets.

Ratio of Investment Income ($ 87,590) to Total Income Unadjusted ($ 96,537) equals 91%

Deduction Test:

Sch. A-13 Salaries	$ 24,000	Sch. A-13 Salaries	$ 24,000
Sch. A-17 Tax (Investment related)	1,000	Sch. A-17 Taxes	1,000

Total related to Investments	$ 25,000	Sch. A-27 Total Deductions	$ 25,000
Sch. A-17 Taxes (Real Estate)	1,200		
Sch. A-27 Total Deductions	$ 26,200		

Ratio of Investment Related Deductions ($ 25,000) to Total Deductions ($ 26,200) equals 95%

Assets Test--CBT-100		
Schedule B (restated at cost)		
Cash	$ 21,588	
Bonds, Notes & Mortgages	123,821	
NJ State & Local Governmental Obligations	27,140	
All Other Governmental Obligations	1,067,874	
Total Intangible Personal Property	$ 1,240,393	
Land	5,000	*
Buildings	30,000	*
Machinery & Equipment	17,000	*
Total Real and Tangible Personal Property	$ 52,000	
Total Assets	$ 1,292,393	

(*)Sold during accounting period

Ratio of Total Intangible Assets to Total Assets equals 96%

Corporation A does not qualify since it did not meet the adjusted Income Test.

Example No. 2

Corporation B

Adjusted Income Test:			
Sch. A6 Other Interest	$ 82,722	Sch. A6 Other Interest	$ 82,722
Total Income from Investments	$ 82,722	Sch. A-11 Total Income--Adjusted	$ 82,722
Ratio of Investment Income to Total Income--Adjusted equals 100%			
Unadjusted Income Test:			
Sch. A6 Other Interest	$ 82,722	Sch. A6 Other Interest	$ 82,722
Total Income from Investments	$ 82,722	Sch. A-11 Total Income--Unadjusted	$ 82,722
Ratio of Investment Income to Total Income--Unadjusted equals 100%			
Deduction Test:			
Sch. A-17 Taxes	$ 1,709		
Sch. A-18 Interest Expense	37		
Total Investment related deductions	$ 1,746	Sch. A-27 Total Deductions	$ 1,746
Ratio of Investment Related Deductions equals 100%			
Assets Test: CBT-100			
Schedule B (restated at cost)			
Cash	$ 26,482		

Bonds, Notes & Mortgages	365,444
All Other Governmental Obligations	499,254
Total Investment Type Assets	$ 891,180
Total Real and Tangible Personal Property	-0-
Total Assets	$ 891,180

Ratio of Investment Type Assets to Total Assets equals 100%

Corporation B qualifies as an investment company since it met each test.

Example No. 3

Corporation C

Adjusted Income Test:

Sch. A-5 Interest on Gov't Obligations	$ 9,000	Sch. A-11 Total Income	$ 32,000
Sch. A-6 Other Interest	$ 5,000	Sch. A-2 Cost of Goods Sold	$ 1,000
Sch. A-8 Gross Royalties	8,000	Sch. A-9(a) Sales Price	$ 10,000
Sch. A-9(a) Capital Gain	2,000	Gain 2,000 equals (Basis)	8,000*
Sch. A-29 Interest on Other Obligations	500	Sch. A-29 Interest on Other Obligations	500
Total Income from$ Investments	24,500	Total Income--Adjusted	$ 41,500
Add: Basis of Asset Sold	8,000	*	
Gross Investment Income	$ 32,500		

(*)Investment type asset

Ratio of Gross Investment Income to Total Income--Adjusted equals 78%

Unadjusted Income Test:

Sch. A-11 Total Income	$ 32,000	Sch. A-11 Total Income	$ 32,000
Sch. A-3 Gross Profit	(1,000)*	Sch. A-29 Interest on Other Obligations	$ 500
Sch. A-7 Gross Rents	(6,000)	*	
Sch. A-29 Interest on Other Obligations	500		
Total Income--from Investments	$ 25,500	Total Income--Unadjusted	$ 32,500

(*)Non-investment income

Ratio of Investment Income to Total Income--Unadjusted equals 78%

Deduction Test:

Sch. A-12 Compensation of Officers	$ 2,000	Sch. A-12 Compensation of Officers	$ 2,000
Sch. A-13 Salaries & Wages	10,000	Sch. A-13 Salaries & Wages	10,000
Sch. A-17 Tax	10,000	Sch. A-17 Taxes	12,000*
		Sch. A-21 Depreciation	1,100
Total Investment Related Deductions	$ 22,000	Sch. A-27 Total Deductions	$ 25,100

(*)Includes $ 2,000 real estate tax

Ratio of Investment Related Deductions to Total Deductions equals 88%

Assets Test: CBT-100

Schedule B (restated at cost)

Cash	$ 5,000	
Bonds, Notes & Mortgages	50,000	
NJ State & Local Gov't Obligations	10,000	
All Other Gov't Obligations	100,000	
Patents & Copyrights	1,000	
Total Investment Type Assets	$ 166,000	
Land	50,000	
Bldgs. & Improvements	200,000	
Total Real and Tangible Personal Property	$ 250,000	(non-investment type assets)
Total Assets	$ 416,000	

Ratio of Investment Type Assets to Total Assets equals 40%

Corporation C does not qualify as an investment company since it did not meet all tests.

Example No. 4

Corporation D

Adjusted Income Test:			
Sch. A-4 Dividends	$ 14,000		
Sch. A-5 Interest on Gov't Obligations	12,000		
Sch. A-6 Other Interest	11,000		
Sch. A-8 Gross Royalties	11,000	Sch. A-11 Total Income	$ 48,000
Sch. A-11 Total Income	$ 48,000	Deduct: Capital loss per Federal Sch. D	(10,050)*
Add: Sales price of assets sold	50,000	Add: Basis of capital asset sold	60,050*

Total Investment Income	$ 98,000	Total Income--Adjusted	$ 98,000
(*)Investment type asset sold at a loss			
Ratio of Investment Income to Total Income--Adjusted equals 100%			
Unadjusted Income Test:			
Total Income from investments	$ 48,000	Sch. A-11 Total Income Unadjusted	$ 48,000
Ratio of Total Investment Income to Total Income--Unadjusted equals 100%			
Deduction Test:			
Total Investment Related Deductions	$ 30,250	l Investment Related Deductions	$ 30,250
		Sch. A-17 Real Estate Tax	675
		Sch. A-21 Depreciation	120
		Sch. A-27 Total Deductions	$ 31,045
Ratio of Investment Related Deductions to Total Deductions equals 97%			
Assets Test: CBT-100 Schedule B (restated at cost)			
Cash	$ 11,000		
Accounts & Notes Receivable	12,000		
Corporate Stocks	30,000		
Bonds, Mortgages & Notes	30,000		
NJ State & Local Gov't	15,000		

Obligations	
Patents & Copyrights	20,000
All Other Intangible	$ 60,000
Personal Property	
Total Investment Type Assets	$ 178,000
Land	$ 15,000
Furniture & Equipment	1,200
Total Real and Tangible	$ 16,200
Personal Property	
Total Assets	$ 194,200
Ratio of Investment Type Assets to Total Assets equals 92%	
Corporation D qualifies as an investment company since it met each test.	

Example No. 5: Corporation A negotiates and discounts loans as opposed to merely investing in notes that were negotiated by others. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights, and other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business for purposes of the Corporation Business Tax Act.

Example No. 6: Corporation B makes or deals in secured or unsecured loans and discounts. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing, and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights, and other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business prohibited by the Corporation Business Tax Act from qualifying for the election.

Example No. 7: Corporation C rents or leases property in transactions that approximate secured loans. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing, and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights, and other securities for its own account" since this is considered a financial business activity.

Example No. 8: Corporation D provides and charges Corporation O and other affiliates for general and administrative services it performs on behalf of Corporation O and the affiliates. The charges cover the cost, which includes a percentage of Corporation D's wages, depreciation expense, as well as other direct and indirect expenses incurred by Corporation D to provide these services. Corporation D must include such receipts in the denominator, but not the numerator, in calculating the tests provided under the rule. The charges made to Corporation O go beyond actual reimbursements and, while considered receipts, are not considered receipts from qualified investment activities within the meaning of the rule. Where

such inclusion causes the percentage to drop below the 90 percent requirement, the corporation will be denied its claim to investment company status.

(g) An investment company may also qualify as a regulated investment company. See N.J.A.C. 18:7-1.13.

History

HISTORY:

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

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

As amended, R.1982 d.34, effective February 16, 1982.

See: 13 N.J.R. 684(b), 14 N.J.R. 209(b).

(c) added.

Amended by R.1985 d.561, effective November 4, 1985.

See: 17 N.J.R. 1537(a), 17 N.J.R. 2677(a).

Substantially amended.

Amended by R.1990 d.482, effective October 1, 1990.

See: 22 N.J.R. 1904(a), 22 N.J.R. 3159(a).

Definition of investment company restructured; investment activities and assets, receipts, reimbursements, and timeliness of elections clarified further, pursuant to the holdings of the court in *National Wax Paper Company v. Director, Division of Taxation MC-539-78* (Tax Court 1981) and *Milton Management, Inc. v. Director, Division of Taxation* MC-386-72 (Division of Tax Appeals, 1975), and *Department of Environmental Protection v. Franklin Township,* 3 N.J. Tax 105, 119 (Tax Court 1981), *aff'd* 5 N.J. Tax 476 (App.Div.1983).

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

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

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

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

Added (g).

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

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

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

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

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

In (f), inserted "1" following "provided by (a)" in 1i, substituted "(a)2" for "(b)2i and ii" in 2.

Amended by R.2006 d.280, effective August 7, 2006.

See: 38 N.J.R. 1558(a), 38 N.J.R. 3183(a).

In (a)1, inserted "publicly traded limited partnership or limited liability company interests"; in (b)7, deleted "or" from the end; in (b)8, inserted "or" at end; and added (b)9.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted commas throughout the section; in (a)4, inserted "Corporation Business Tax"; in (a)5, substituted "Corporation Business Tax Act" for "act"; in (b)7, inserted "and"; in (d), substituted "When a" for "Where"; in (f)1i(3), inserted "and" at the end; in (f)ii(1), substituted "(f)1i" for "(c)1i"; in the introductory paragraphs of (f)1i and (f)1ii, and (f)1iii, inserted "a" preceding "taxpayer"; in (f) Example No. 1, substituted "NJ" for "N.J."; in (f) Example No. 4, substituted "Personal Property" for "Personalty"; in (f) Example Nos. 5 and 6, inserted "Corporation Business Tax"; in (f) Example Nos. 6 and 7, substituted ", and" for "or"; and in (f) Example No. 8, inserted "Corporation" preceding "O".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-4(f) as to those corporations included and those not included within the definition of an investment company.

N.J.A.C. 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. Discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt;

2. Buying and selling exchange;

3. Making of or dealing in secured or unsecured loans and discounts;

4. Dealing in securities or shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers;

5. 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

6. 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.

7. Certain leasing transactions which approximate secured loans by meeting each of the following requirements:

i. Lessor must look primarily to the creditworthiness of the lessee in order to recover its investment.

ii. Lessor may not rely on repetitious leasing of the same property.

iii. The lease must be a net lease.

iv. The lessor must recover its full investment plus its cost of financing through the rental payments, tax benefits, and the residual value of the property.

(b) For purposes of this section:

1. "Tax benefits" means those benefits derived from depreciation and any investment tax credit related to the financed property.

2. "Residual value of the property" means the estimated value of the leased property at the end of the original lease as determined at the time the lease is executed.

3. "Net lease" means a lease under which the lessor will not, directly or indirectly, provide or be obligated to provide for:

i. The servicing, repair, or maintenance of the leased property during the lease term.

ii. The purchasing of parts and accessories for the leased property; however, the improvements and additions to the leased property may be leased to the lessee upon its request.

iii. The loan of replacement or substitute property while the leased property is being serviced.

iv. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

v. The renewal of any license or registration for the property unless such action by the taxpayer is clearly necessary to protect its interest as an owner or financier of the property.

(c) A financial business corporation shall not include:

1. Any enterprise that is not a corporation;

2. National banks;

3. Production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub. L. 91-181 (12 U.S.C. §§ 2091 et seq.);

4. Stock or mutual insurance companies authorized to transact business in this State;

5. Securities brokers or dealers, investment companies, or investment bankers not employing moneyed capital with the object of making profit by its use as money or in substantial competition with the business of national banks;

6. Real estate investment trusts;

7. Credit unions organized under the laws of this State;

8. Savings banks organized under the laws of this State;

9. Savings and loan or building and loan associations organized under the laws of this State;

10. Pawn brokers organized under the laws of this State; and

11. State banks and trust companies organized under the laws of this State.

(d) A financial business corporation may not qualify as an investment company as that term is used in N.J.A.C. 18:7-1.15.

(e) The business of national bank is defined, and may be redefined from time to time, by the Congress of the United States at 12 U.S.C. §§ 21 et seq. (The National Banking Act).

1. "The business of national banks" as used in N.J.S.A. 54:10A-4(m) and this section means the business of the bank itself and does not include bank subsidiaries, holding companies, or affiliates.

(f) A corporation may qualify as a financial business corporation provided that 75 percent of its gross income is derived from the activities enumerated in (a)1 through 7 above. For purposes of making this computation, gross income shall be the sum of the amounts reported on line 1 and lines 4 through 10 of Schedule A on Form BFC-1, adjusted as follows:

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

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

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

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

(g) A corporation that qualifies as a financial business corporation must file 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.

(h) For financial business corporations that are members of a combined group, see N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.

History

HISTORY:

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

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

Formerly entitled "Motion to report as investment company".

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

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted commas throughout the section; in the introductory paragraph of (b)3, deleted a comma following "directly"; in (c)3 and the introductory paragraph of (e), updated the U.S.C. cites; in the introductory paragraph of (f) and (f)3, deleted "(a)" preceding "7"; and in (g), deleted "(Section 38 of the Corporation Business Tax Act)" from the end.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (g) and added (h).

N.J.A.C. 18:7-1.17 Application of the tax to licensees pursuant to the Casino Control Act; casino business consolidated return

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

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

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

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

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

(c) The principles of consolidation are determined by regarding each casino hotel as though it were a single corporation reporting in its own right pursuant to the Corporation Business Tax Act. 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. Common effective control is the power exercisable by any person or entity arising out of ownership or a contractual arrangement which joins more than one licensee or other entity or entities and permits domination in the management of more than one licensee or other entity or entities for the purpose of engaging in a single casino hotel business. Common effective control also occurs where a contractual arrangement permits more than one licensee or other entity or entities to operate jointly a single casino hotel business. For example, where the same persons or entities simultaneously control voting stock, boards of directors, or serve as or nominate managing partners, or are employed as managers or executives in more than one licensee or other entity or entities which participates in the business activities conducted by the same casino hotel, or where a licensee or other entity or entities executes a sale and leaseback of its property with another licensee or other entity or entities and reserves by contract the option to recover its property, all such licensees or other entity or entities subject to common effective control shall join in filing the consolidated return. Notwithstanding an absence of common ownership, licensees and all other entities subject to common effective control joined in the operation of the business conducted by a casino hotel by management contract or partnership arrangement shall join in filing the return.

2. 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. See N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.

3. 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. For purposes of this section and notwithstanding any other provision, all divisions, components, or entities that comprise the casino hotel business are required to be included in the casino consolidated return. This includes, without limitation thereto, entities known as "qualifiers." The term "qualifiers" means entities that have officially qualified to participate in the casino industry in New Jersey pursuant to N.J.S.A. 5:12-84 or 5:12-85.c or similar statute, but that are not licensed under the Casino Control Act.

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

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

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

EXAMPLE

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

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

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

History

HISTORY:

New Rule, R.1985 d.453, effective September 3, 1985.

See: 17 N.J.R. 901(a), 17 N.J.R. 2145(a).

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

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

Added (c)3.

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

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

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

Amended by R.2006 d.204, effective June 5, 2006.

See: 38 N.J.R. 915(a), 38 N.J.R. 2518(a).

In the introductory paragraph of (c), inserted "and all other entities" in the fourth sentence and "or entity subject to common effective control" in the sixth sentence; in (c)1, inserted "or other entity or entities" six times and inserted "or other entity or entities subject to common effective control" and "all other entities subject to common effective control"; inserted the last sentence in (c)2 and (c)3; and added (c)4.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (b), substituted "corporation business tax" for "Corporation Business Tax" and inserted a comma following "loss"; in (c)1, inserted a comma following "directors" and "partners"; in (c)2, substituted "(c)4" for "paragraph (c)(4)"; and in (c)3, deleted "paragraph" preceding "(c)4"; in (d), inserted "or her"; and in (e), deleted "the" preceding "prior".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Section was "Application of the tax to licensees under the Casino Control Act; casino business consolidated return". In (a), updated the N.J.S.A. cite; rewrote (c).

N.J.A.C. 18:7-1.18 Definition of S corporation

"S corporation" means a corporation included in the definition of an "S corporation" pursuant to I.R.C. § 1361.

History

HISTORY:

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

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

Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Substituted "I.R.C." for "section 1361 of the Federal Internal Revenue Code of 1986, 26 U.S.C.".

N.J.A.C. 18:7-1.19 Definition of New Jersey S corporation

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

History

HISTORY:

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

See: 35 New Jersey Register 1573(a).

Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.

See: 35 New Jersey Register 1573(a), 35 New Jersey Register 4310(a).

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

N.J.A.C. 18:7-1.20 Definition of public utility

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

History

HISTORY:

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

See: 35 New Jersey Register 1573(a).

Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.

See: 35 New Jersey Register 1573(a), 35 New Jersey Register 4310(a).

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

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N.J.A.C. 18:7-1.21 Definition of qualified investment partnership

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

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

i. It is managed by an independent third party for a fee;

ii. There is no direct or indirect relationship between the manager and any of the partners; and

iii. There is no direct or indirect affiliation between or among the partners.

History

HISTORY:

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

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

Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.

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

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

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

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

Designated paragraph as (a), added 1.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), substituted "partnership" for "entity", inserted a comma following the second occurrence of "currencies", and substituted "I.R.C." for "Section 1236 of the Federal Internal Revenue Code of 1986, 26 U.S.C.".

N.J.A.C. 18:7-1.22 Definition of savings institution

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

History

HISTORY:

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

See: 35 New Jersey Register 1573(a).

Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.

See: 35 New Jersey Register 1573(a), 35 New Jersey Register 4310(a).

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

N.J.A.C. 18:7-1.23 Definition of partnership

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

History

HISTORY:

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

See: 35 New Jersey Register 1573(a).

Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.

See: 35 New Jersey Register 1573(a), 35 New Jersey Register 4310(a).

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

N.J.A.C. 18:7-1.24 Certain insurance companies subject to the corporation business tax

(a) Combinable captive insurance companies, as defined at 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 pursuant to N.J.S.A. 17:47B-12 and any other insurance premiums taxes imposed pursuant to 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.

(d) For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

History

HISTORY:

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 18:7-1.25 Nexus and combined groups

(a) For 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 member of a combined group may have nexus with New Jersey by deriving New Jersey receipts from the unitary business (whether such receipts are the member's own receipts or are receipts derived from intercompany transactions with other members of the combined group, regardless of whether the receipts are eliminated). A member may have nexus consistent with other factors giving rise to nexus with New Jersey pursuant to N.J.A.C. 18:7-1.6 through 1.14. A member may also have nexus independent of a combined group. Such member will be a taxable member of the combined group.

(b) Pursuant to N.J.S.A. 54:10A-4(h) and (z), a combined group is a taxpayer for 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.

1. 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41) for the income derived from the unitary business; provided, however, with regard to the surtax imposed pursuant to section 1 at P.L.

2018, c. 48 (N.J.S.A. 54:10A-5.41) and for that purpose only, 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 by the combined group.

(c) For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

History

HISTORY:

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 18:7-2.1 Nature of tax; in general

(a) The Corporation Business Tax 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 at 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 become 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 N.J.A.C. 18:7-21.

History

HISTORY:

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted "and as also".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

In (a), inserted "Corporation Business Tax", and substituted "at" for "in"; added (c).

N.J.A.C. 18:7-2.2 Calendar and fiscal years; definitions

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

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

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b), inserted "of a calendar year".

STATUTORY REFERENCES:

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

N.J.A.C. 18:7-2.3 Federal calendar or fiscal year for reporting

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

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

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

History

HISTORY:

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

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

Added (c).

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted "Corporation Business Tax"; and in (b), substituted "52 to 53-week" for "52-53 weeks".

N.J.A.C. 18:7-2.4 (Reserved)

History

HISTORY:
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Repealed by R.2011 d.271, effective November 7, 2011.
See: 43 N.J.R. 1511(a), 43 N.J.R. 3038(a).
Section was "Proof of Federal accounting period".

N.J.A.C. 18:7-2.5 (Reserved)

History

HISTORY:
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Repealed by R.2011 d.271, effective November 7, 2011.
See: 43 N.J.R. 1511(a), 43 N.J.R. 3038(a).
Section was "Proof of accounting period other than Federal basis".

N.J.A.C. 18:7-2.6 Subject corporations must file on the basis of a calendar year period unless otherwise permitted

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

History

HISTORY:

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Subject corporations must file on basis of calendar year period unless otherwise permitted". Substituted "corporation business tax return" for "Corporation Business Tax Return".

N.J.A.C. 18:7-2.7 Effect of failure by a corporation to establish accounting period

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

History

HISTORY:

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

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

N.J.A.C. 18:7-2.8 Effect of failure by a corporation to submit proof of an established fiscal year accounting period

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

History

HISTORY:

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

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

N.J.A.C. 18:7-2.9 Effect of proof of established fiscal year accounting period submitted late

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

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Deleted "due" preceding "proof" and substituted "section" for "regulation".

N.J.A.C. 18:7-2.10 Period of application of tax

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

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Deleted "See N.J.A.C. 18:7-1.6, (Taxable status; how created.)" from the end.

STATUTORY REFERENCES:

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

N.J.A.C. 18:7-2.11 Component factors of tax base

The tax for the period or partial period prescribed in N.J.A.C. 18:7-2.10 is measured by a taxpayer's allocable entire net income. The tax liability may also be the Alternative Minimum Assessment amount calculated pursuant to N.J.S.A. 54:10A-5a and N.J.A.C. 18:7-18.

History

HISTORY:
As amended, R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Added the second sentence.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.
Amended by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Inserted "a" preceding "taxpayer's".
STATUTORY REFERENCES:
N.J.S.A. 54:10A-5, 15.

N.J.A.C. 18:7-2.12 Application of State franchise tax to corporations

The franchise tax is imposed for all or any part of each calendar or fiscal year during which the taxpayer possessed a New Jersey franchise or otherwise has a taxable status as set forth in N.J.A.C. 18:7-1.6 or other provision of these rules.

History

HISTORY:
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Substituted "N.J.A.C. 18:7-1.6 or other provision of these rules" for "N.J.A.C. 18:7-1.16".
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.

N.J.A.C. 18:7-2.13 Conditions destroying franchise and franchise tax

(a) A domestic corporation may cease to possess a franchise as a result of proof provided to the Division of Taxation of:

1. Its dissolution;

2. Its consolidation or merger into another corporation;

3. The surrender, revocation, or annulment of its charter; or

4. The expiration of the term of duration prescribed in its charter.

History

HISTORY:

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted designation (a); in the introductory paragraph of (a), inserted "proof provided to the Division of Taxation of"; and in (a)3, inserted a comma following "revocation".

N.J.A.C. 18:7-2.14 (Reserved)

History

HISTORY:

New Rule, R.2001 d.260, effective August 6, 2001.

See: 33 N.J.R. 1344(a), 33 N.J.R. 2678(a).

Repealed by R.2011 d.271, effective November 7, 2011.

See: 43 N.J.R. 1511(a), 43 N.J.R. 3038(a).

Section was "Allocation of payments received with CAR-100".

N.J.A.C. 18:7-3.1 General bases for computation of tax

On a return for any accounting period which begins after June 30, 1986, no portion of the tax is measured by net worth.

History

HISTORY:
Amended by R.1983 d.62, effective March 7, 1983.
See: 14 N.J.R. 1206(a), 15 N.J.R. 343(d).
Added "accounting period before July 1, 1986" to (a). Also added (b)-(e).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).

N.J.A.C. 18:7-3.2 (Reserved)

History

HISTORY:
Amended by R.1970 d.121, effective October 5, 1970.
See: 2 N.J.R. 78(a), 2 N.J.R. 95(a).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Computation of tax on entire net worth".

N.J.A.C. 18:7-3.3 (Reserved)

History

HISTORY:
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
As amended, R.1983 d.62, effective March 7, 1983.

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

Added "accounting period before April 1, 1983".

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

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

Section was "Computation of tax on average value of real and tangible personal property".

N.J.A.C. 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 at (b) through (d) below.

(b) For accounting or 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 subsection pursuant to N.J.S.A. 54:10A-5a and N.J.A.C. 18:7-18.1, of the taxpayer pursuant to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than $ 100,000	$ 500.00
$ 100,000 or more but less than $ 250,000	$ 750.00
$ 250,000 or more but less than $ 500,000	$ 1,000
$ 500,000 or more but less than $ 1,000,000	$ 1,500
$ 1,000,000 or more	$ 2,000

1. For accounting or privilege periods beginning in calendar year 2002 and thereafter, a taxpayer that 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 for the accounting or privilege period. If the related corporations do not have the same fiscal years, the overlapping portion shall be placed upon the equivalent fiscal basis to arrive at the threshold amount.

(c) For privilege periods beginning in calendar year 2012 and thereafter the minimum tax for corporations that are New Jersey S corporations shall be based on the New Jersey gross receipts of the taxpayer, as defined for the purposes of this subsection pursuant to N.J.S.A. 54:10A-5a and N.J.A.C. 18:7-18.1, pursuant to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than $ 100,000	$ 375.00
$ 100,000 or more but less than $ 250,000	$ 562.50
$ 250,000 or more but less than $ 500,000	$ 750.00
$ 500,000 or more but less than $ 1,000,000	$ 1,125
$ 1,000,000 or more	$ 1,500

(d) If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are required also to file returns with New Jersey. Such returns shall reflect the minimum tax. Entities required to file minimum returns under this subsection include, without limitation thereto, qualified New Jersey Subchapter S subsidiaries, members of a casino consolidated group, and members of a combined group required to file a consolidated return by the Director pursuant to N.J.S.A. 54:10A-10.c.

(e) For information regarding the statutory minimum tax of taxable members of a combined group filing a New Jersey combined return, see N.J.A.C. 18:7-21.

History

HISTORY:

Amended by R.1970 d.121, effective Oct. 5, 1970.

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

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

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

Changed "New Jersey" to "domestic" corporation. Added "accounting period before April 1, 1983". Added $ 250.00 tax for investment, regulated investment and real estate investment companies.

Repeal and New Rule, R.1994 d.186, effective April 18, 1994.

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

Section was "Computation of tax by domestic corporations".

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

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

Rewrote (a); in (f), inserted "1998, 1999 and 2000" following "1997"; added new (g) and recodified former (g) as (h); in new (h), substituted "2002" for "1997" throughout and "2001" for "1996"; added (i).

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

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

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

Amended by R.2007 d.284, effective September 4, 2007.

See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).

In (g), inserted "through 2005"; and rewrote (h).

Amended by R.2012 d.111, effective June 4, 2012.

See: 44 N.J.R. 142(a), 44 N.J.R. 1727(a).

Added new (i); and recodified former (i) as (j).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Section was "Minimum tax". In (a), substituted a semicolon for a comma following "$ 250.00", substituted two section marks for one section mark, inserted a comma following "$ 5,000,000" and following "more", inserted "(filing separate returns)", substituted "at" for "in"; added (e).

N.J.A.C. 18:7-3.5 (Reserved)

History

HISTORY:

Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1982 d.395, effective November 1, 1982.
See: 14 N.J.R. 826(b), 14 N.J.R. 1221(b).
Added (c).
Amended by R.1983 d.219, effective June 20, 1983.
See: 15 N.J.R. 320(a), 15 N.J.R. 1038(e).
Deleted and reserved (a). In (b), added 2-4. Also deleted old (c).
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Computation of tax by short tax table".

N.J.A.C. 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, for a corporation that is not a New Jersey S corporation.

2. Except as may be provided in (a)3 and 4 below, for a foreign corporation acquiring a taxable status in New Jersey on or after January 1, 1980, and filing its New Jersey return Form CBT-100 on a short period basis, the tax rate is nine percent on adjusted entire net income after proper proration.

3. For privilege periods beginning on or after July 1, 1996, a taxpayer that is not a New Jersey S corporation that has entire net income of $ 100,000 or less for a 12 month privilege period, the rate for that privilege period shall be 7 1/2 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $ 8,333 per month.

Example: A taxpayer having a five month accounting period qualifies for the 71/2 percent rate if its income for the period does not exceed $ 41,666.

4. For privilege periods beginning on or after January 1, 2002, a taxpayer that is not a New Jersey S corporation that has entire net income of $ 50,000 or less for a 12-month privilege period, the rate for that privilege period shall be 6 1/2 percent. A corporation that is not a New Jersey S corporation having an accounting period less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $ 4,166 per month.

5. For privilege periods ending on and after July 31, 2019, the tax rates at (a)1, 2, 3, and 4 above shall be applied to taxable net income, as defined at N.J.S.A. 54:10A-4(w), and the non-operational income that is specifically assigned to New Jersey.

(b) For privilege periods ending on or after July 1, 2007, there shall be no tax imposed on New Jersey S corporations with total entire net income that is not subject to Federal income tax.

(c) The rates for income of New Jersey S corporations that are subject to Federal tax are as follows:

1. Except as may be provided in (c)2 or 3 below, for a New Jersey S corporation the tax rate is nine percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. § 1374 or 1375.)

2. For privilege periods beginning on or after July 1, 1996, a taxpayer that is a New Jersey S Corporation that has entire net income of $ 100,000 or less for a 12-month privilege period, the tax rate is 7.5 percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. § 1374 or 1375). A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $ 8,333 per month.

3. For privilege periods beginning on or after January 1, 2002, a taxpayer that is a New Jersey S corporation that has entire net income of $ 50,000 or less for a 12-month privilege period, the tax rate is 6.5 percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. § 1374 or 1375.) A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $ 4,166 per month.

(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 at 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 12-month period, the rate is nine percent;

2. If the taxable net income is $ 100,000 or less in a 12-month period, the rate is 7.5 percent; and

3. If the taxable net income is $ 50,000 or less in a 12-month period, the rate is 6.5 percent.

(e) See N.J.A.C. 18:7-21 for more information on combined groups and combined returns.

(f) See N.J.A.C. 18:7-3.29 for information on the surtax.

(g) For privilege periods ending on and after July 31, 2020, a combined group shall be treated as one taxpayer for the purposes at (d) above for the income derived from the unitary business pursuant to N.J.S.A. 54:10A-4(z).

History

HISTORY:

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

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

Amended by R.1980 d.146, effective April 9, 1980.

See: 12 N.J.R. 159(b), 12 N.J.R. 293(b).

Repeal and New Rule, R.1994 d.186, effective April 18, 1994.

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

Section was "Method of computing part two of tax; net income base".

Amended by R.1995 d.134, effective March 6, 1995.

See: 27 N.J.R. 57(a), 27 N.J.R. 935(c).

Amended by R.1996 d.495, effective October 21, 1996.

See: 28 N.J.R. 3056(b), 28 N.J.R. 4592(b).

Amended by R.1998 d.193, effective April 20, 1998.
See: 30 N.J.R. 605(a), 30 N.J.R. 1426(a).
Rewrote (g) and (h); inserted new (i) and (j); and recodified former (i) through (k) as (k) through (m).
Special amendment, R.2003 d.135, effective February 27, 2003 (to expire August 26, 2003).
See: 35 N.J.R. 1573(a).
Rewrote the section.
Adopted concurrent amendment, R.2003 d.370, effective August 22, 2003.
See: 35 N.J.R. 1573(a), 35 N.J.R. 4310(a).
Provisions of R.2003 d.135 adopted without change.
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
In (b), rewrote 6i.
Amended by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "Tax rates--corporations, S corporations and surtax". Rewrote the section.
Amended by R.2022 d.116, effective September 19, 2022.
See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).
Added (a)5, (d), (e), (f), and (g).

N.J.A.C. 18:7-3.7 (Reserved)

History

HISTORY:
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1982 d.6, effective January 18, 1982.
See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).
(a)2: Added "but before June 30, 1974"; (a)3: Added "but before December 31, 1980".
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Corporation tax prepayments; amounts due".
New Rule, R.2007 d.284, effective September 4, 2007.
See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).
Amended by R.2009 d.384, effective December 21, 2009.
See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).
In (a), substituted "2010" for "2009".
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Surtax".

N.J.A.C. 18:7-3.8 Investment company; tax self-assessed and payable

(a) The tax payable by an investment company entitled and electing to report as such is a tax measured by 40 percent of its entire net income at the rate provided by law.

(b) In no case shall the total tax be less than $ 250.00 provided that for privilege periods beginning on and after January 1, 2002, the tax shall not be less than $ 500.00, except that for a taxpayer that 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 for the privilege period.

History

HISTORY:

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

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

Amended by R.1990 d.489, effective October 1, 1990.

See: 22 N.J.R. 1871(a), 22 N.J.R. 3147(a).

Tax rate amended to conform to statutory tax rates.

Repeal and New Rule, R.1994 d.186, effective April 18, 1994.

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

Section was "Investment company; tax assessed and payable".

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

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

Rewrote the section.

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b), inserted a comma following "2002", and substituted "I.R.C. § 1504 or 1563" for "sections 1504 or 1563 of the Federal Internal Revenue Code of 1986".

N.J.A.C. 18:7-3.9 (Reserved)

History

HISTORY:

Amended by R.1982 d.6, effective February 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).

"By" was "for"; added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "N.J.A.C. 18:7-3.7"; deleted "section 3.7"; deleted "of this chapter".

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

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

Section was "Investment company tax prepayments; amounts, dates due".

N.J.A.C. 18:7-3.10 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) For privilege periods beginning on and after January 1, 2002, the tax applicable to a regulated investment company shall be $ 500.00, provided, however, that for a taxpayer that 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 for the privilege period.

(c) A regulated investment company, as defined at N.J.S.A. 54:10A-4(g), which also qualifies as an investment company, as defined at N.J.S.A. 54:10A-4(f), is not subject to the AMA. Such a company shall annually file 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) A taxpayer that qualifies as both a regulated investment company and an investment company shall pay the minimum tax applicable to all taxpayers of $ 500.00 unless it is a member of a controlled or consolidated group having total payroll of $ 5,000,000 or more, in which case the minimum tax would rise to the level of $ 2,000.

(e) A regulated investment company that does not qualify as an investment company is subject to the alternative minimum assessment.

History

HISTORY:

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

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

Amended by R.1983 d.496, effective November 7, 1983.

See: 15 N.J.R. 1365(a), 15 N.J.R. 1872(b).

Deleted old (a)-(c). In (a), added $ 250.00 tax. Also added new (b).

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

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

Rewrote the section.

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b), inserted a comma following "2002", and substituted "I.R.C. § 1504 or 1563" for "sections 1504 or 1563 of the Federal Internal Revenue Code of 1986"; and in (c), substituted "which" for "that".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (c).

N.J.A.C. 18:7-3.11 (Reserved)

History

HISTORY:

Amended by R.1982 d.6, effective January 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).

Added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "N.J.A.C. 18:7-3.7"; deleted "section 3.7"; deleted "of this chapter".

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

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

Section was "Regulated investment company; tax prepayments, amounts and dates due".

N.J.A.C. 18:7-3.12 Method of accounting

In general, the method of accounting, whether cash, accrual, or other basis, used in computing net income for Federal income tax purposes is to be used in computing entire net income under the Corporation Business Tax Act.

History

HISTORY:

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted a comma following "accrual" and inserted "Corporations Business Tax".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-4(k)(3) as to Director's right to redetermine the period in which income should be included despite method of accounting used by the taxpayer.

N.J.A.C. 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. Twenty-five percent on or before the 15th day of the fourth month;

2. Twenty-five percent on or before the 15th day of the sixth month;

3. Twenty-five percent on or before the 15th day of the ninth month; and

4. The balance on or before the 15th day of the 12th month of its current accounting period.

(b) For privilege periods beginning on or after January 1, 2003, each taxpayer with gross receipts of $ 50,000,000 or more for the prior privilege period shall pay its estimated tax for its current privilege period in installments as follows:

1. Twenty-five percent on or before the 15th day of the fourth month of the period;

2. Fifty percent on or before the 15th day of the sixth month of the period; and

3. The balance on or before the 15th day of the 12th month of its current privilege period.

(c) When the tax liability for the preceding tax year is $ 500.00 or less, a taxpayer may, in lieu of making the installment payments otherwise required, discharge its entire obligation with respect to estimating its tax by making a single payment on or before the original due date for filing its return. The single payment is 50 percent of the tax shown on the face of its return. Such tax must be determined with reference to the tentative return or final return which was filed or should have been filed on or before the original date of such return. The single payment should be computed by taking into account any payment which may have been made on the 15th day of the first month of its current tax year.

(d) For purposes of applying this rule, it is necessary that the preceding tax year be a full calendar or fiscal year, or where such return is for a short period of less than 12 months, the actual tax liability for such short period must be divided by the number of whole months covered by the return and multiplied by 12 to impute a tax for a full calendar or fiscal year. For the purpose of this computation a fraction of a month is to be disregarded.

(e) A taxpayer shall be entitled to a credit in the amount of the estimated tax payments made and shall be entitled to the return of any amount so paid which is in excess of the total tax payable under N.J.S.A. 54:10A-15(c).

(f) Any amount overpaid and appearing on the face of the 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 pursuant to 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 at N.J.S.A. 54:10A-4(c), a combined group as defined at 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 N.J.A.C. 18:7-21.

(h) The due date for any payment of estimated tax cannot be extended.

History

HISTORY:

New Rule, R.1982 d.6, effective January 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).

Amended by R.1990 d.296, effective June 18, 1990.

See: 22 N.J.R. 1045(a), 22 N.J.R. 1946(a).

In (f): added last sentence. Added form number CBT-100.

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

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

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

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

In (a), substituted "privilege periods" for "accounting period" in the introductory paragraph; added new (b); recodified former (b) through (g) as (c) through (h); in new (g), substituted "savings institutions" for "limited partnership associations".

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a)1 and (a)2, deleted "and" from the end; and in (e), deleted "and N.J.A.C. 18:7-3" from the end.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

In (f), substituted "respective New Jersey corporation business tax return" for "return CBT-100" and substituted "pursuant to" for "under"; rewrote (g).

N.J.A.C. 18:7-3.14 Estimated payment for fourth quarter 2002

Notwithstanding contrary provisions of law, for the privilege period of the taxpayer beginning in calendar year 2002, an underpayment of the installment payment due on or before the 15th day of the 12th month of the period exists if the amount actually paid is less than the amount that would have been paid if the taxpayer had paid 25 percent of its actual liability for the current privilege period. The underpayment is the amount of this difference.

History

HISTORY:

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

See: 35 New Jersey Register 1573(a).

Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.

See: 35 New Jersey Register 1573(a), 35 New Jersey Register 4310(a).

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

N.J.A.C. 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) Interest is determined at the annual rate referred to in (c) below based upon the amount of the underpayment of any installment of estimated tax for the period from the date such installment was required to be paid until the 15th day of the fourth month following the close of the tax year, or the date such underpayment was received by the Director, whichever is earlier. For purposes of determining the period of the underpayment:

1. The date prescribed for payment of any installment of estimated tax may not be extended; and

2. A payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under (a)1 above for such date shall be considered a payment of any previous underpayment.

(c) The rate to be used at (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, 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 pursuant to this section 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
Item (5)	Amount of underpayment for each installment date (item (3) minus item (4))	32,500
Item (6)	Interest shall be charged on each underpayment 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 at (e) below precludes the imposition of the addition to the tax, it should attach to its New Jersey corporation business tax return, for the taxable year a Form CBT-160 showing the applicability of any exception upon which the taxpayer relied.

(e) Exceptions to imposition of interest on underpayment of an installment payment. The addition to the tax under this rule will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equaled or exceeded the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

1. An amount equal to the tax determined on the basis of the tax rates for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year. If the tax rates for the current taxable year with respect to which the underpayment occurs differ from the rates applicable to the preceding taxable year, the exception will only apply to installments due on or after the change in tax rates. If the preceding return was a short period return filed pursuant to N.J.A.C. 18:7-12.1, the tax computed on the basis of the facts shown on such return for purposes of determining the applicability of the exception shall be the tax appearing on such short period return multiplied by 12 and then divided by the number of whole months covered by such short period return; or

2. An amount equal to 90 percent of the tax determined by placing on an annual basis the taxable income and taxable net worth for:

i. The first three months of the taxable year, in the case of the installment required to be paid in the fourth month;

ii. Either the first three months or the first five months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the sixth month;

iii. Either the first six months or the first eight months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the ninth month; and

iv. Either the first nine months or the first eleven months of the taxable year (whichever results in no addition being imposed), in the case of the installment required to be paid in the twelfth month.

3. The tax so determined shall be placed on an annual basis by first multiplying it by 12, and then dividing the resulting amount by the number of months in the taxable year.

History

HISTORY:

New Rule, R.1982 d.6, effective January 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).

Amended by R.1984 d.322, effective August 6, 1984.

See: 16 N.J.R. 1043(a), 16 N.J.R. 2152(b).

Section substantially amended.

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Substantially amended (c).

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b)2, deleted "paragraph" preceding "(a)1"; rewrote (c); in the introductory paragraph of (e), substituted "equaled" for "equalled"; and in (e)1, updated the N.J.A.C. cite.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

In the introductory paragraph of (c), substituted "at" for "in"; in (c)1, inserted a comma following "three percent" and "nine percent"; in (c)1i, inserted "New Jersey corporation business", deleted "CBT-100," following "tax return,", substituted "pursuant to" for "under", substituted "section" for "rule", and deleted "$" preceding "32,500"; in (d), substituted "at" for "in", inserted "New Jersey corporation business", and deleted "CBT-100," following "return,".

N.J.A.C. 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 through 54:10A-40 (regarding banking corporation and financial business corporation taxability under the Corporation Business Tax Act in general) and N.J.A.C. 18:7-21 (for banking corporations and financial business corporations in the context of combined reporting).

History

HISTORY:

New Rule, R.1982 d.6, effective January 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted a comma following "11.12", and substituted "banking corporation" for "their".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote the section.

N.J.A.C. 18:7-3.17 Tax credits

(a) The following are credits permitted against the corporation business tax:

1. Business Employment Incentive Grant (BEIP), N.J.S.A. 34:1B-129;

2. Urban Enterprise Zone Employee Tax Credit, N.J.S.A. 52:27H-78;

3. Urban Enterprise Zone Investment Tax Credit, N.J.S.A. 52:27H-78;

4. Redevelopment Authority Project Tax Credit, N.J.S.A. 55:19-13;

5. Research and Development Tax Credit, N.J.S.A. 54:10A-5.24;

6. Manufacturing Equipment and Employment Investment Tax Credit, N.J.S.A. 54:10A-5.18;

7. New Jobs Investment Tax Credit, N.J.S.A. 54:10A-5.6;

8. Business Retention and Relocation Assistance Act (BRRAG), N.J.S.A. 34:1B-114;

9. Small New Jersey Based High Technology Business Investment Tax Credit, N.J.S.A. 54:10A-5.30;

10. HMO Assistance Fund Tax Credit, N.J.S.A. 17B:32B-12;

11. Effluent Equipment Tax Credit, N.J.S.A. 54:10A-5.31;

12. Neighborhood Revitalization State Tax Credit, N.J.S.A. 52:27D-492;

13. AMA Tax Credit, N.J.S.A. 54:10A-5a.f;

14. Economic Recovery Tax Credit, N.J.S.A. 52:27BBB-55;

15. Sheltered Workshop Tax Credit, N.J.S.A 54:10A-5.38;

16. Urban Transit Hub, N.J.S.A 34:1B-209;

17. Offshore Wind Economic Development, N.J.S.A. 34:1B-209.4;

18. Grow New Jersey Assistance Tax Credit, N.J.S.A. 34:1B-244;

19. Angel Investor Credit, N.J.S.A. 54:10A-5.30; and

20. Residential Economic Recovery and Growth Tax Credit, N.J.S.A. 52:27D-489f.

(b) Any credit carryover should be taken in the manner set forth in the section granting the relevant credit and should be applied in the sequence that the credits are listed in (a) above. If the credit carryover section is silent about whether a carryover is allowed, no carryover is permitted.

(c) Corporate tax credits may not be used to decrease the tax due calculated under the alternative minimum assessment. N.J.S.A. 54:10A-5a.

History

HISTORY:

New Rule, recodified from 18:7-3.20 by R.1995 d.459, effective August 21, 1995.

See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).

Former N.J.A.C. 18:7-3.17, Enterprise zone employees tax credit, recodified to N.J.A.C. 18:7-3.20.

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

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

Rewrote (a); added (d).

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

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

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

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

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

Amended by R.2007 d.285, effective September 4, 2007.

See: 39 N.J.R. 762(a), 39 N.J.R. 3782(a).

Rewrote (a); in (b), substituted "c. 162" for "c.162" twice; and in (c), substituted "is permitted" for "should be allowed".

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Coordination of tax credits". Rewrote the section.

N.J.A.C. 18:7-3.18 (Reserved)

History

HISTORY:

New Rule, R.1988 d.413, effective September 6, 1988.

See: 20 N.J.R. 48(b), 20 N.J.R. 2318(a).

Amended by R.1992 d.479, effective December 7, 1992.

See: 24 N.J.R. 2809(a), 24 N.J.R. 4411(b).

(a): Added "Cost of recycling equipment"; (g): Added text to Example.

Amended by R.1995 d.459, effective August 21, 1995.

See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).

In (b)4, added reference to N.J.A.C. 18:7-3.17 for priority of tax credits.

Repealed by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Recycling tax credit".

N.J.A.C. 18:7-3.19 (Reserved)

History

HISTORY:

New Rule, R.1995 d.148, effective March 20, 1995.

See: 26 N.J.R. 4976(a), 27 N.J.R. 1201(a).

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

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

In (a), changed N.J.A.C. reference; and in (b), deleted a former first sentence.

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

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

Added new (c), recodified former (c) as (d).

Repealed by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Smart moves for business program (formerly employer trip reduction program) tax credit".

N.J.A.C. 18:7-3.20 (Reserved)

History

HISTORY:

New Rule, R.1984 d.496, effective November 5, 1984.

See: 16 N.J.R. 1325(a), 16 N.J.R. 3057(a).

Recodified from 18:7-3.17 by R.1995 d.459, effective August 21, 1995.

See: 27 N.J.R. 472(a), 27 N.J.R. 3207(a).

Amended by R.2007 d.203, effective July 2, 2007.

See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

Updated the N.J.A.C. reference, inserted a period following "zones", and deleted the period following the closing quotation mark at the end.

Repealed by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Enterprise zone employees tax credits".

N.J.A.C. 18:7-3.21 Manufacturing equipment and employment investment tax credit

(a) The following words and terms, as used in this section, shall have the following meanings unless the context clearly indicates otherwise:

"Base year" means the tax year immediately preceding the year in which a qualified investment was placed in service.

"Cost of qualified equipment" means, and is determined according to, the following criteria:

1. With respect to self-constructed equipment, the term means the cost amount properly charged to the capital account for depreciation in accordance with Federal income tax law. This includes all charges incurred to produce a particular manufacturing piece of equipment. Costs include engineering designs, drafting, and other consultations required, as well as the physical construction costs associated with the finished product.

2. With respect to purchased equipment, the term is determined to be the net cost or net monetary consideration provided for acquisition of title and/or ownership of the subject property.

3. With respect to equipment acquired by written lease, the term is the minimum amount required by the agreement to be paid over the term of the lease, provided that the minimum amount shall not include any amount required to be paid after the expiration of the useful life of the equipment. Property which a taxpayer leases, rents, or licenses to another person is not qualified equipment.

4. 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.

"Credit allowable" means the credit available after applying limitations listed under (b)2i and ii below.

"Credit available" means the credit earned plus any unused carryover from prior years.

"Credit earned" means the manufacturing equipment portion of the credit plus the employment investment portion of the credit in a given tax year.

"Employee equivalents" means the aggregate hours of qualified part-time employees who worked for the taxpayer for at least 20 hours per week for at least six months. This amount is used to determine the total number of full-time employees and equivalents necessary when calculating the employment investment portion of the credit. The employees must be New Jersey residents domiciled in this State who are working at locations in New Jersey.

"Measurement year" means the tax year immediately following the year in which a qualified investment was placed in service.

"Placed in service," with respect to qualified equipment, means and occurs 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 tax year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"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 N.J.S.A. 54:32B-8.13a, having a useful life of four or more years, and 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. Lease renewals, subleases, or assignments shall not be considered as qualified equipment. See N.J.A.C. 18:24-4.2.

"Useful life" used to distinguish three-year property from all other property, is determined in accordance with I.R.C. § 168.

(b) A corporate taxpayer that acquires qualified manufacturing equipment either by purchase or lease and/or has an increase in New Jersey employees due to the equipment investment is entitled to a corporation business tax credit.

1. The credit earned is subject to the following limitations:

i. The manufacturing equipment portion is limited to two percent of the cost of qualified equipment placed in service up to a maximum credit for the tax year of $ 1,000,000, provided 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 N.J.S.A. 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 N.J.S.A. 54:10A-5 in an amount equal to four percent 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.

ii. The employment investment portion is limited to three percent of the cost of qualified equipment, not to exceed a maximum allowed amount of $ 1,000 multiplied by the increase in the average number of qualified employees and/or employee equivalents. It is valid for each of the two tax years next succeeding the tax year for which the manufacturing equipment portion is allowed.

2. The two portions combined plus any carryover (the credit available) shall not reduce the tax liability below 50 percent of the tax liability otherwise due for any tax year or below the statutory minimum tax provided at N.J.S.A. 54:10A-5(e).

(c) If the total credit earned in the current or prior years is unused due to the limitations contained in (b)2i and ii above, the unused portion may be carried over to the seven tax years succeeding the year in which the credit was earned.

(d) The credit assigned to property that has been disposed of, or which ceases to be qualified equipment prior to the end of its categorized useful life, should be redetermined using the ratios specified below:

THREE-YEAR PROPERTY	ALL OTHER PROPERTY
Number of months qualified use	Number of months qualified use
36	60

(e) Property subject to lease agreements shall have a minimum term of four years with a maximum not to exceed 20 years to be considered qualified equipment.

(f) The following example illustrates the application of the credit:

Example:	Year 1	Year 2	Year 3	Year 4
Cost of qualified equipment placed in service	None	$ 3,000,000	$ 5,000,000	$ 1,000,000
Average employees and/or employee equivalents	125	140	150	160

Year 2: XYZ Corporation places qualified manufacturing equipment in service in New Jersey during Year 2. The cost of the manufacturing equipment, excluding shipping and installation, is $ 3,000,000. The taxpayer receives a recycling equipment tax credit of $ 10,000 and its corporate tax liability is $ 400,000. The manufacturing equipment portion of the credit is $ 60,000 ($ 3,000,000 cost x two percent, not to exceed $ 1,000,000), and the employment investment portion is unavailable until the two years following placement of equipment in service. Therefore, the credit is the lesser of $ 60,000 or $ 190,000 (50 percent of the tax liability less the recycling equipment credit). In this case the allowable credit for XYZ Corporation is $ 60,000, the lesser of the two amounts.

Year 3: XYZ Corporation places additional qualified equipment in service during 1995, which was acquired through a lease agreement. The lease agreement required $ 5,000,000 to be paid over the term of the lease. The taxpayer is not eligible for any other tax credits, and its corporation business tax liability is $ 220,000. The manufacturing equipment portion of the credit is $ 100,000 ($ 5,000,000 total lease cost x two percent, not to exceed $ 1,000,000). The employment investment portion is $ 25,000 (150 measurement year average - 125 base year average = average increase of 25 x $ 1,000, not to exceed three percent of the cost of qualified equipment placed in service in New Jersey in Year 2). Therefore, the credit is the lesser of $ 125,000 ($ 100,000 + $ 25,000) or $ 110,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $ 110,000, the lesser of the two amounts. The difference between the total of the two credit

portions ($ 125,000) and the credit allowable ($ 110,000), or $ 15,000 may be carried over for a maximum of seven years.

Year 4: Qualified equipment is placed in service during Year 4 at a cost of $ 1,000,000. The taxpayer is not eligible for any other tax credits, and its corporation business tax liability is $ 350,000. The manufacturing equipment portion of the credit is $ 20,000 ($ 1,000,000 total lease cost x two percent, not to exceed $ 1,000,000). The employment investment portion is $ 45,000, based on calculations for the Year 2 and Year 3 investments (150 measurement year average - 125 base year average = average increase of 25 x $ 1,000 or $ 25,000 for the Year 2 investment AND 160 measurement year average - 140 base year average = average increase of 20 x $ 1,000 or $ 20,000 for the Year 3 investment). Therefore, the credit is the lesser of $ 80,000 ($ 20,000 + $ 45,000 + $ 15,000 carryover from Year 3) or $ 175,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $ 80,000, the lesser of the two amounts.

History

HISTORY:

New Rule, R.1995 d.460, effective August 21, 1995.

See: 27 N.J.R. 838(a), 27 N.J.R. 3208(a).

Amended by R.2007 d.284, effective September 4, 2007.

See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).

Rewrote (b)1i; and in (b)2ii, updated the N.J.A.C. reference.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), definition "Cost of qualified equipment", paragraph 1, deleted "the" preceding "Federal" and in paragraph 3, inserted a comma following "rents"; in (a), definition "Placed in service", paragraph 2, substituted "tax" for "taxable"; in (a), definition "Qualified equipment", inserted a comma following "apparatus" and "assembling", and inserted "and" preceding "placed"; in (a), definition "Useful life", substituted "I.R.C. § 168" for "section 168 of the Federal Internal Revenue Code"; rewrote (b)2; throughout (f), substituted "Year 1" for "1993", "Year 2" for "1994", "Year 3" for "1995", and "Year 4" for "1996"; and in (f) Year 3 and Year 4, substituted "corporation business" for "corporate".

N.J.A.C. 18:7-3.22 New jobs investment tax credit

(a) Corporate taxpayers are allowed a credit against the portion of the corporation business tax 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 new jobs.

1. For a small business taxpayer, as defined in N.J.S.A. 54:10A-5.5, at least five new jobs must be created. For any other taxpayer, at least 50 new jobs must be created. The median annual compensation for the new jobs must be at least $ 27,000, adjusted for inflation beginning January 1, 1994, as provided in N.J.S.A. 54:10A-5.6e. The employer should rank the new employees by annual compensation. If the middle employee has compensation less than $ 27,000, the lowest ranking jobs should be deleted from the list until the median of the remaining list is at least $ 27,000. (If there is an even number on the list, the top half must be greater than $ 27,000.) The number of employees on this revised list is the number of new jobs created for purposes of this credit.

2. For privilege periods beginning on and after January 1, 2002, the eligibility standards for the New Jobs Investment Tax Credit Act have been expanded to include small or mid-size business taxpayers. For tax year 2002 such taxpayers shall have annual payroll of $ 5,000,000 or less and annual gross receipts of not more than $ 10,000,000. Such amounts will be adjusted annually for inflation commencing January 1, 2003, by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $ 50.00. "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.

i. In addition for privilege periods beginning on and after January 1, 2002, for eligible taxpayers the applicable new jobs factor for five new jobs is 0.01. For each five additional new jobs over the additional five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding to it 0.01, up to a maximum new jobs factor 0.20.

(b) The amount of the credit shall be determined by multiplying the amount of the taxpayer's qualified investment, as defined in N.J.S.A. 54:10A-5.8, in property purchased for business relocation or expansion, as defined in N.J.S.A. 54:10A-5.5, by the taxpayer's new job factor determined under N.J.S.A. 54:10A-5.9.

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

(c) The aggregate annual credit allowed for a tax year shall be an amount equal to the sum of one-fifth of the allowable credit for qualified investment placed into service or use during a prior tax year, plus one-fifth of the allowable credit for qualified investment placed into service or use during the current tax year.

1. The amount of the credit shall not reduce the tax liability by more than 50 percent of that portion of the taxpayer's tax liability otherwise due for all tax years which is attributable to and the direct result of the taxpayer's qualified investment.

2. The amount of the tax credit shall not reduce the tax liability below the statutory minimum tax provided at N.J.S.A. 54:10A-5.7b.

3. If the credit exceeds the limitations in (c) through (c)2 above, the amount of credit remaining shall be refunded to the taxpayer. The amount refunded to the taxpayer shall not exceed 50 percent of the sum of the amount of property taxes timely paid in the taxable year pursuant to N.J.S.A. 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 N.J.S.A. 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. Any excess amount may not be carried forward.

(d) The credit shall only be applied against corporation business tax liability attributable to, and the direct result of, the taxpayer's qualified investment.

1. If the taxpayer's liability for corporation business tax, local property tax, and implicit property tax paid through rental or lease on property subject to local tax and for which taxes another party that is not a related person is liable, are not solely attributable to the taxpayer's qualified investment, then the amount of such taxes so attributable may be determined by multiplying the amount of tax due under those tax acts for the tax year by the ratio of compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey whose positions are directly attributable to the qualified investment, to total compensation paid during the taxable year to all employees of the taxpayer employed in New Jersey.

2. Any credits allowable under N.J.S.A. 54:10A-5.3 (recycling tax credit), N.J.S.A. 52:27H-78 (urban enterprise zone credit), and N.J.S.A. 55:19-13 (urban development corporation credit) shall be applied against and reduce only the amount of corporation business tax not apportioned to the qualified investment under this act. 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 the act for the tax year, unless their application is otherwise prohibited by the applicable credit statutes.

(e) The unused portion of the credit shall be forfeited if the property is disposed of prior to the end of its recovery period, or ceases to be used in a new or expanded business facility, except where the cessation is due to fire, flood, storm, or other casualty, pursuant to the provisions of N.J.S.A. 54:10A-5.10 and 5.11. 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 pursuant to the calculation under N.J.S.A. 54:10A-5.10.b. 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 the 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 Uniform Procedure Law.

1. If the average number of employees attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit was based, the credit shall be redetermined and the excess forfeited for the current tax year and for each succeeding year pursuant to the calculations required under N.J.S.A. 54:10A-5.10c.

(f) N.J.S.A. 54:10A-5.13 requires the taxpayer to make written application to the Director of the Division of Taxation for allowance of the credit. No prior approval will be required if the return and Form 304 claiming the credit are filed on or before the original due date of the return. However, the return will be reviewed upon filing, and the Division will notify the taxpayer if the credit is disallowed. If the taxpayer applies for an extension to file Form CBT-100 or CBT-100S, a letter application from the taxpayer requesting allowance of the credit must accompany the request for extension, Form CBT-200T. The recordkeeping requirements of N.J.S.A. 54:10A-5.12 for qualified property must be followed.

EXAMPLE

New Jersey Investment Tax Credit Calculation

Corporation ABC in the current year purchases and installs the following at location D in New Jersey:

1. A newly constructed building for $ 1,000,000;

2. Equipment with three year life for $ 100,000;

3. Equipment with five year life for $ 200,000; and

4. An airplane for $ 100,000.

At location E in New Jersey, the corporation makes repairs on existing facilities for $ 250,000.

At location F in New Jersey, the corporation purchases a building, owned and used by an unrelated party, for $ 500,000.

All locations are in New Jersey. None of the locations are in an urban enterprise zone.

In the prior year Corporation ABC had 50 employees, all at location E, with annual payroll of $ 2,000,000 and gross receipts of $ 5,000,000. In the current year Corporation ABC employs 120 people, 50 at location E, 65 at location D, and five at location F, all with income above $ 30,000, and has gross receipts of $ 10,000,000 and payroll of $ 5,000,000. The 65 employees at location D are all newly hired New Jersey residents with total compensation of $ 3,000,000. The corporation business tax liability for Corporation ABC in the current year is $ 10,000.

Corporation ABC should compute its current year New Jersey investment tax credit this way: (Line reference numbers are to Form 304 (1-95) New Jobs Investment Tax Credit.)

First, calculate the allowable investment base as follows:

Qualified investment:			
line 4(a) with three year life	0.35 x	$ 100,000 =	$ 35,000
line 4(b) with five year life	0.70 x	200,000 =	140,000
line 4(c) with seven year or more life	1.00 x	1,000,000 =	1,000,000
line 5 Sum of lines 4(a), 4(b), and 4(c)			$ 1,175,000

The investment base is $ 1,175,000.

(The airplane purchase does not qualify; the repairs at location E do not qualify; and the purchase of existing property at location F does not qualify. See N.J.S.A. 54:10A-5.5 and N.J.A.C. 18:7-3.22(b).)

Second, calculate the number of eligible new jobs created as follows in order to arrive at the new jobs factor:

line 6(a) Average New Jersey employment for this tax year	120
line 6(b) Average New Jersey employment for last tax year	50
line 6(c) Subtract line 6(b) from line 6(a)	70
line 6(d) Divide line 6(a) by 2	60
line 6(e) Number of eligible new jobs	65
line 6(f) Smaller of 6(c), 6(d), or 6(e)	60
line 7(a) Divide line 6(f) by 50 with no remainder	1
line 7(b) Multiply line 7(a) by .005	.005
line 7(c) Enter the smaller of .10 or line 7(b)	.005

(The number of eligible jobs is limited to 60, one-half total employment. ABC is, with $ 10,000,000 in gross receipts, not a small taxpayer in the current year.)

The new jobs factor is .005.

Third, calculate the maximum annual credit:

line 8 Multiply line 7(c) x line 2 x .2	
.005 x $ 1,175,000 x .2 =	$ 1,175
line 9 Qualified investment from prior two years	0
line 10 Aggregate Annual Credit:	
(Sum of lines 8, 9(a), 9(b), 9(c), and 9(d))	$ 1,175

Fourth, calculate tax attributable to new investment which is eligible to be offset by the credit (which is proportional to compensation of new employees relative to all employees).

line 11 Compensation of all new jobs in New Jersey	$ 3,000,000
attributable to the qualified investment	
line 12 Total compensation of all employees in New	$ 5,000,000
Jersey	
line 13 Divide line 11 by line 12	.60
line 14 Enter tax liability from front page of CBT	
line 15 Multiply line 13 by line 11 CBT-100 page 1	6,000

Fifth, arrive at the allowable credit:

line 16 Multiply line 15 by 50 percent	$ 3,000
line 17 Enter the smaller of line 10 or line 16	1,175

History

HISTORY:

New Rule, R.1995 d.461, effective August 21, 1995.

See: 27 N.J.R. 840(a), 27 N.J.R. 3209(a).

Administrative correction.

See: 27 N.J.R. 4908(a).

Public Notice: Inflation adjustments.

See: 27 N.J.R. 4921(a).

Public Notice: Inflation adjustments.

See: 29 N.J.R. 708(a).

Public Notice: Inflation adjustments.

See: 30 N.J.R. 1330(c).

Public Notice: Inflation adjustments.

See: 31 N.J.R. 1112(a).

Public Notice: Inflation adjustments.

See: 32 N.J.R. 1087(b).

Public Notice: Inflation adjustments.

See: 33 N.J.R. 903(a).

Public Notice: Inflation adjustments.

See: 34 N.J.R. 1057(a).

Public Notice: Notice of Corporation Business Tax; New Jobs Investment Tax Credit Revised Inflation Adjustment.

See: 35 N.J.R. 280(a).

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

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

In (a), added 2.

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

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

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

Petition for Rulemaking.

See: 36 N.J.R. 589(b).

Public Notice: Notice of Inflation Adjustments.

See: 37 N.J.R. 1895(b).

Public Notice: Division of Taxation: Corporation Business Tax; New jobs investment tax credit: inflation adjustments.

See: 38 N.J.R. 1477(a).

Public Notice: Notice of inflation adjustments.

See: 39 N.J.R. 1827(a).

Public Notice: Notice of inflation adjustments.

See: 40 N.J.R. 2296(b).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a)1, inserted a comma following "1994", deleted the fourth sentence, and substituted the second occurrence of "is" for "are"; in (a)2, inserted a comma following "2003"; in the introductory paragraph of (e), inserted a comma following "storm" twice, updated the N.J.S.A. cite, and deleted "Tax" following "State"; throughout (f), substituted "the current year" for "1994", substituted "In the prior year Corporation ABC" for "ABC in 1993", and inserted "Corporation" preceding "ABC" three times.

N.J.A.C. 18:7-3.23 Research credit for privilege periods beginning before January 1, 2018

(a) For privilege periods beginning before January 1, 2018, a taxpayer may be allowed a credit against its corporation business tax liability in an amount equal to 10 percent of the excess of the qualified research expenses for the fiscal or calendar accounting year over the base amount, and 10 percent of the basic research payments determined in accordance with I.R.C. § 41 in effect on June 30, 1992, provided that I.R.C. § 41(h), relating to termination of the availability of the credit in 1995, does not apply.

(b) For purposes of this section, the term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer:

1. In-house research expenses; and

2. Contract research expenses.

(c) In general, the term "in-house research expenses" means:

1. Any wages paid or incurred to an employee for qualified services performed by such employee;

2. Any amount paid or incurred for supplies used in the conduct of qualified research; and

3. Under Federal regulations prescribed, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

i. Paragraph (c)3 above shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under I.R.C. § 41(f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(d) "Qualified services" means services consisting of engaging in qualified research, or engaging in the direct supervision or direct support of research activities which constitute qualified research. If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of engaging in qualified research, or engaging in the direct supervision or direct support of research activities which constitute qualified research, the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(e) The term "supplies" means any tangible property other than:

1. Land or improvements to land; and

2. Property of a character subject to allowance for depreciation.

(f) The term "wages" means:

1. In general, the term "wages" has the meaning given such term by I.R.C. § 3401(a).

2. For self-employed individuals and owner-employees, in the case of an employee (within the meaning of I.R.C. § 401(c)(1)), the term "wages" includes the earned income (as defined in I.R.C. § 401(c)(2)) of such employee.

3. Exclusion for wages to which targeted jobs credit applies, the term "wages" shall not include any amount taken into account in determining the targeted jobs credit under I.R.C. § 51(a).

(g) In general, the term "contract research expenses" means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

1. If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(h) Trade or business requirement may be disregarded for in-house research expenses of certain start-up ventures. In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of (b) above if, at the time such in-house research expenses are paid or incurred, the

principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business:

1. Of the taxpayer; or

2. Of one or more other persons who with the taxpayer are treated as a single taxpayer under I.R.C. § 41(f)(1).

(i) Base amount requirements are as follows:

1. In general, the term "base amount" means the product of:

i. The fixed-base percentage; and

ii. The average annual gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (hereinafter referred to as the "credit year").

2. In no event shall the base amount be less than 50 percent of the qualified research expenses for the credit year.

3. Fixed-base percentage requirements are as follows:

i. Except as otherwise provided in this paragraph, the fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

ii. Start-up companies shall comply with the following:

(1) For taxpayers to which this subparagraph applies, the fixed-base percentage shall be determined under this subparagraph if there are fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which the taxpayer had both gross receipts and qualified research expenses.

(2) In a case to which this subparagraph applies, the fixed-base percentage is:

(A) Three percent for each of the taxpayer's first five taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses;

(B) In the case of the taxpayer's sixth such taxable year, one-sixth of the percentage which the aggregate qualified research expenses of the taxpayer for the fourth and fifth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(C) In the case of the taxpayer's seventh such taxable year, one-third of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth and sixth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(D) In the case of the taxpayer's eighth such taxable year, one-half of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, and seventh such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(E) In the case of the taxpayer's ninth such taxable year, two-thirds of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, and eighth such taxable years is of the aggregate gross receipts of the taxpayer for such years;

(F) In the case of the taxpayer's tenth such taxable year, five-sixths of the percentage which the aggregate qualified research expenses of the taxpayer for the fifth, sixth, seventh, eighth, and ninth such taxable years is of the aggregate gross receipts of the taxpayer for such years; and

(G) For taxable years thereafter, the percentage which the aggregate qualified research expenses for any five taxable years selected by the taxpayer from among the fifth through the tenth such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.

iii. In no event shall the fixed-base percentage exceed 16 percent.

iv. The percentages determined under (i)3i above shall be rounded to the nearest <1>/100th of one percent.

4. Consistent treatment of expenses is required. Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

5. For purposes of this subsection, gross receipts for any taxable year shall be reduced by returns and allowances made during the taxable year. In the case of a foreign corporation, there shall be taken into account only gross receipts which are effectively connected with the conduct of a trade of business within the United States.

(j) Qualified research, for purposes of this subsection, is defined as follows:

1. The term "qualified research" means research:

i. With respect to which expenditures may be treated as expenses under I.R.C. § 174;

ii. Which is undertaken for the purpose of discovering information

(1) Which is technological in nature; and

(2) The application of which is intended to be useful in the development of a new or improved business component of the taxpayer;

iii. Substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in (j)3 below; and

iv. Does not include any activity described in (j)4 below.

2. For purposes of this subsection, the following tests shall be applied separately to each business component:

i. In general, (j)1 above shall be applied separately with respect to each business component of the taxpayer.

ii. The term "business component" means any product, process, computer software, technique, formula, or invention which is to be:

(1) Held for sale, lease, or license; or

(2) Used by the taxpayer in a trade or business of the taxpayer.

iii. Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component (and not as part of the business component being produced).

3. For purposes of (j)1iii above, the following are purposes for which research may qualify for credit:

i. In general, research shall be treated as conducted for a purpose described in this paragraph if it relates to:

(1) A new or improved function;

(2) Performance; or

(3) Reliability or quality.

ii. Research shall, in no event, be treated as conducted for a purpose described in this paragraph if such research relates to style, taste, cosmetic, or seasonal design factors.

4. The term "qualified research" shall not include, nor shall credit be allowed for, any of the following:

i. Research after commercial production, that is, any research conducted after the beginning of commercial production of the business component;

ii. Adaptation of existing business components, that is, any research related to the adaptation of an existing business component to a particular customer's requirement or need;

iii. Duplication of an existing business component, that is, any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component;

iv. Surveys, studies, or similar activities as follows:

(1) Efficiency survey(s);

(2) Activity relating to management function or technique;

(3) Market research, testing, or development (including advertising or promotions);

(4) Routine data collection; or

(5) Routing or ordinary testing or inspection for quality control;

v. Any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in:

(1) An activity which constitutes qualified research (determined with regard to this subparagraph); or

(2) A production process with respect to which the requirements of (j)1 above are met;

vi. Foreign research, that is, any research conducted outside the United States;

vii. Any research in the social sciences, arts, or humanities; or

viii. Funded research, that is, any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

(k) Credit allowable with respect to certain payments to qualified organizations for basic research shall be as follows:

1. In general, in the case of any taxpayer who makes basic research payments for any taxable year;

i. The amount of basic research payments taken into account under (k)2 below shall be equal to the excess of such basic research payments, over the qualified organization base period amount.

ii. That portion of such basic research payments which does not exceed the qualified organization base period amount shall be treated as contract research expenses for purposes of this paragraph.

2. Basic research payments shall be defined, for purposes of this subsection, as follows:

i. In general, the term "basic research payment" means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if:

(1) Such payment is pursuant to a written agreement between such corporation and such qualified organization; and

(2) Such basic research is to be performed by such qualified organization.

ii. In the case of a qualified organization described in (k)6iii or iv below (k)2i(2) above shall not apply.

3. For purposes of this subsection, the term "qualified organization base period amount" means any amount equal to the sum of the minimum basic research amount, plus the maintenance-of-effort amount.

4. Concerning the minimum basic research amount, for purposes of this subsection:

i. In general, the term "minimum basic research amount" means an amount equal to the greater of:

(1) One percent of the average of the sum of amounts paid or incurred during the base period for:

(A) Any in-house research expenses; and

(B) Any contract research expenses; or

(2) The amounts treated as contract research expenses during the base period by reason of this subsection (as in effect during the base period).

ii. Except in the case of a taxpayer which was in existence during the taxable year (other than a short taxable year) in the base period, the minimum basic research amount for any base period shall not be less than 50 percent of the basic research payments for the taxable year for which a determination is being made under this subsection.

5. Concerning the maintenance of effort amount, for purposes of this subsection:

i. In general, the term "maintenance-of-effort" amount means, with respect to any taxable year, an amount equal to the excess (if any) of an amount equal to: the average of the nondesignated university contributions paid by the taxpayer during the base period, multiplied by the cost-of-living adjustment for the calendar year in which such taxable year begins, over the amount of nondesignated university contributions paid by the taxpayer during such taxable year.

ii. Nondesignated university contributions, for purposes of this paragraph, means any amount paid by a taxpayer to any qualified organization described in (k)6i below:

(1) For which a deduction was allowable under I.R.C. § 170; and

(2) In which was not taken into account:

(A) In computing the amount of the credit under this provision (as in effect during the base period) during any taxable year in the base period; or

(B) As a basic research payment for purposes of this section.

iii. Cost-of-living adjustment shall be defined as follows:

(1) In general, the cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under I.R.C. § 1(f)(3), by substituting "calendar year 1987" for "calendar year 1989" in subparagraph (B) of I.R.C. § 1(f)(3).

(2) If the base period of any taxpayer does not end in 1983 or 1984, I.R.C. § 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which the base period ends for 1989. Such substitution shall be in lieu of the substitution under (k)5iii(1) above.

6. For purposes of this subsection, the term "qualified organization" means any of the following organizations:

i. Educational institutions, that is, any educational organization which:

(1) Is an institution of higher education (within the meaning of I.R.C. § 3304(f)), and

(2) Is described in I.R.C. § 170(b)(1)(A)(ii).

ii. Certain scientific research organizations, that is, any organization not described in (k)6i above which:

(1) Is described in I.R.C. § 501(c)(3) and is exempt from tax under I.R.C. § 501(a);

(2) Is organized and operated primarily to conduct scientific research; and

(3) Is not a private foundation.

iii. Scientific tax-exempt organizations, that is, any organization which:

(1) Is described in:

(A) I.R.C. § 501(c)(3) (other than a private foundation); or

(B) I.R.C. § 501(c)(6);

(2) Is exempt from tax under I.R.C. § 501(a);

(3) Is organized and operated primarily to promote scientific research by qualified organizations described in subparagraph i pursuant to written research agreements; and

(4) Currently expends:

(A) Substantially all of its funds; or

(B) Substantially all of the basic research payments received by it, for grants to, or contracts for basic research with, an organization described in (k)6i above.

iv. Certain grant organizations, that is, any organization not described in (k)6ii or iii above which:

(1) Is described in I.R.C. § 501(c)(3) and is exempt from tax under I.R.C. § 501(a) (other than a private foundation);

(2) Is established and maintained by an organization established before July 10, 1981, which meets the requirements of (k)6iv(1) above;

(3) Is organized and operated exclusively for the purpose of making grants to organizations described in (k)6i above pursuant to written research agreements for purposes of basic research; and

(4) Makes an election, revocable only with the consent of the United States Secretary of the Treasury, to be treated as a private foundation for purposes of United States Code Title 26 (other than I.R.C. § 4940, relating to excise tax based on investment income).

(l) Definitions and special rules shall be as follows:

1. The term "basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include:

i. Basic research conducted outside of the United States; or

ii. Basic research in the social sciences, arts, or humanities.

2. The term "base period" means the three-taxable-year period ending with the taxable year immediately preceding the first taxable year of the taxpayer beginning after December 31, 1983.

3. For purposes of determining the amount of credit allowable under subsection (k)1 above, for any taxable year, the amount of the basic research payments taken into account under (k)2 above:

i. Shall not be treated as qualified research expenses under (k)1i above; and

ii. Shall not be included in the computation of base amount under (k)1ii above.

4. For purposes of applying (b) above to this subsection, any basic research payments shall be treated as an amount paid in carrying on a trade or business of the taxpayer in the taxable year in which it is paid (without regard to the provisions of (g)1 above).

5. The term "corporation" shall not include:

i. An S corporation;

ii. A personal holding company (as defined in I.R.C. § 542); or

iii. A service organization (as defined in I.R.C. § 414(m)(3)).

(m) For Special Rules, see I.R.C. § 41(f).

(n) Notwithstanding any provision in this section to the contrary, other than calculations made pursuant to (u) below, a credit can be claimed for only those research activities that are performed in New Jersey.

(o) Notwithstanding any provision in this section to the contrary, a credit for increased research activities is allowed based on qualified expenditures made in taxable years beginning on and after January 1, 1994.

(p) The filing of a consolidated tax return by a controlled group of corporations shall not be permitted.

(q) Section references are to the Internal Revenue Code, unless otherwise noted.

(r) The research credit shall be generally allowed for qualified research. Qualified research is that which is limited to scientific experimentation or engineering activities designed to aid in the development of a new or improved product, process, technique, formula, invention, or computer software program held for sale, lease, or license, or used by the taxpayer in a trade or business. For in-house research expenses, this trade or business requirement will be met if the principal purpose for conducting the research is to use the results of the research in the active conduct of a future trade or business. The research credit shall generally not be allowed for the following types of activities:

1. Research conducted after the beginning of commercial production;

2. Research adapting an existing product or process to a particular customer's need;

3. Duplication of an existing product or process;

4. Survey or studies;

5. Research relating to certain internal-use computer software;

6. Research conducted outside the State of New Jersey;

7. Research in the social sciences, arts, or humanities; or

8. Research funded by another person (or government entity.)

(See I.R.C. § 41 and regulations thereunder for other definitions and special rules concerning the research credit.)

(s) The research and expenditure tax credit is determined as follows:

1. First, calculate fixed-base percentage. Fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

Example:	Year	Qualified Research Expenses	Gross Receipts
	1984	$ 2,000,000	$ 10,000,000
	1985	4,000,000	15,000,000
	1986	6,000,000	20,000,000
	1987	8,000,000	30,000,000
	1988	10,000,000	25,000,000
	Total	$ 30,000,000	$ 100,000,000
	$ 30,000,000	= 3% fixed base percentage	
	$ 100,000,000		

2. Next, compute the base amount. The base amount is the average gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined (credit year) multiplied by the fixed base percentage.

Example:	Year	Gross Receipts
	1990	$ 25,000,000
	1991	20,000,000
	1992	35,000,000
	1993	30,000,000
	Total	$ 120,000,000
		divided by 4 =
	Average Gross Receipts	$ 30,000,000
	Fixed Base Percentage	x 3%
	Base Amount	$ 900,000

3. Then, compute current qualified research expenses.

	Total Costs Incurred	Research Tax Credit Qualified Research Expenses
Wages	$ 750,000	$ 500,000
Supplies	250,000	250,000
Depreciation	100,000	-0-
Overhead	250,000	250,000
Total	$ 1,350,000	$ 1,000,000
Then compute the research tax credit.		
Current year qualified research expenses	$ 1,000,000	
Less: Base Amount	(900,000)	

Total incremental research expenses	$ 100,000
Research tax credit %	x 10%
New Jersey research tax credit	$ 10,000

(t) Credit for increased research activities shall take priority as specified by N.J.S.A. 54:10A-5.24b. If any amount of property or expenditures is included in the calculation of the research credit, or for which a credit is allowed, then no such amounts can be allowed for the recycling credit, manufacturing and employment investment credit, and the new jobs credit.

(u) If taxpayer has research within and outside New Jersey and cannot determine the amount of New Jersey qualified research expenses for the period beginning after December 31, 1983, and before January 1, 1989, calculate the amount to be used in the numerator of the ratio to arrive at the fixed base percentage as follows: take the figure for qualified research and development expenses everywhere for the period and multiply it by the average of the average of the payroll fraction and the property fraction used on the corporation business tax returns for the corresponding years in question. This amount becomes the numerator of a fraction whose denominator is taxpayer's aggregate gross receipts everywhere for the period.

(v) Any Federal deduction under I.R.C. § 174 will be the same for New Jersey purposes, since there is no New Jersey provision for a separate modified state tax credit amount under such circumstances.

(w) For privilege periods beginning before January 1, 2012, the credit allowable in any given privilege period cannot exceed 50 percent of the tax liability otherwise due on the return and cannot reduce the tax liability to an amount less than the statutory minimum provided in N.J.S.A. 54:10A-5(e).

(x) For privilege periods beginning on or after January 1, 2012, 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).

(y) 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 accounting years following a credit's tax year, except as provided at N.J.S.A. 54:10A-5.24.b and 54:10A-5.24b (which allow a carryover of 15 privilege periods for certain qualifying fields of research (advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology) as defined at N.J.S.A. 54:10A-5.24b.b).

(z) Credits allowable shall be applied in the order of the credits' tax years.

(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 pursuant to 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.

History

HISTORY:

New Rule, R.1995 d.462, effective August 21, 1995.

See: 27 N.J.R. 842(a), 27 N.J.R. 3210(a).

Administrative correction.

See: 28 N.J.R. 4509(a).

Amended by R.2012 d.111, effective June 4, 2012.

See: 44 N.J.R. 142(a), 44 N.J.R. 1727(a).

Rewrote (w) and (x).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Throughout the section, substituted "I.R.C. § " for "IRC Section" and "IRC section"; in (c)3i, substituted "I.R.C. § " for "subsection IRC"; in (d), inserted a comma following the fourth occurrence of "research"; in (h)2, substituted "I.R.C. § " for "IRC subsection"; deleted (i)3ii3 and (i)4i; in (j)2i, deleted "paragraph" preceding "(j)1"; in (j)4iii, inserted the first occurrence of "an"; in (j)4v, substituted "Any" for "Except to the extend provide in rule, any"; in (k)5iii(1), substituted "I.R.C. § " for "Code Section"; in (k)6iii(2), substituted "I.R.C. § " for "section I.R.C."; in (k)6iv(4), substituted "United States" for "U.S." twice; in (*l*)3, deleted "subsection" preceding "(k)2"; in (s)1, inserted a comma following "1983" and "1989"; and in (u), inserted a comma following "1983".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Section was "Research credit". In (a), substituted "For privilege periods beginning before January 1, 2018, a taxpayer may" for "A taxpayer shall", deleted "as" following "§ 41", inserted a comma following "§ 41(h)", and substituted "1995, does" for "1995 shall"; rewrote (y); and added (aa) and (bb).

N.J.A.C. 18:7-3.23A 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 10 percent of the excess of the qualified research expenses for the privilege period over the base amount, and 10 percent of the basic research payments for the privilege period determined in accordance with I.R.C. § 41. All of the terms, definitions, rules, methods for calculating the credit, and restrictions are consistent with the terms, definitions, rules, methods for calculating the credit, and restrictions at I.R.C. § 41, and the applicable regulations promulgated by the U.S. Department of the Treasury, except as otherwise noted in this section. Amounts paid, incurred, or accrued by the taxpayer for energy research in New Jersey may also qualify for the New Jersey research credit if the amounts qualify for the Federal corporate income tax credit pursuant to 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; and 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.

(d) Notwithstanding any provision in this section to the contrary, other than calculations made pursuant to (j) below, a credit may 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. Thus, in the event of the repeal of I.R.C. § 41, the New Jersey research and development credit will be determined based on I.R.C. § 41 that was in effect the last day prior to the effective date of the repeal by Congress.

(g) The research credit is allowed for qualified research in New Jersey. The research expenditures must meet the qualifications of both I.R.C. §§ 41 and 174, 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 promulgated 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, except as provided for at (f) above (detailing the effect of repeal of I.R.C. § 41 by Congress). If a taxpayer files an amended Federal return changing the method used or adjusting 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 reflect these adjustments by also filing 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. In the case of repeal by Congress, in calculating the New Jersey research and development credit, a taxpayer would use the method for calculating the credit that the taxpayer would have used for Federal purposes as would have been reported on their Federal return when taking the credit for Federal tax purposes if I.R.C. § 41 had not been repealed by Congress.

(i) Credit for increased research activities must take priority as specified at 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 at N.J.S.A. 54:10A-5.24.b.

(j) If a taxpayer has research conducted both 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 research 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 both 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 research 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 pursuant to 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 at N.J.S.A. 54:10A-5(e). In the case of a New Jersey combined group, the credit that 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, to the seven consecutive privilege periods following a credit's tax year, except as provided at N.J.S.A. 54:10A-5.24.b and 54:10A-5.24b (which allows the carryover to be 15 privilege periods for businesses performing qualifying research in certain fields (advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology) as defined at N.J.S.A. 54:10A-5.24b.b).

(n) Research credits allowable must be applied in the order of the tax years in which the credits were earned.

(o) The provisions at I.R.C. §§ 41(f)(2) and 41(g), and applicable Federal regulations allowing for the flow-through of a 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.

(p) 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.

(q) For purposes of the New Jersey research 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 the 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.

(r) 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 I.R.C. § 41(h)(3) that was disallowed for the I.R.C. § 41 corporate income tax credit because the taxpayer made an election pursuant to I.R.C. §§ 41(h) and 3111(f) to take the I.R.C. § 3111(f) payroll credit in lieu of the I.R.C. § 41 corporate income tax credit, shall be allowed for the purposes of calculating the New Jersey research credit provided for pursuant to this section.

(s) Examples:

Example 1: A taxpayer performs 50 percent of their research in New Jersey and 50 percent in Pennsylvania. Of the expenses that qualify for Federal purposes, only 50 percent 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 payments from the other combined group members for qualified research expenses within the meaning of I.R.C. § 41(b) for research conducted on their behalf. Company E is located in Maine and also receives payments from the other combined group members for qualified research expenses within the meaning of I.R.C. § 41(b) for research conducted on their behalf. Although the research payments made to both Company A and E qualify for a Federal research credit, 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.i.

Example 3: Company T is a qualified small business and a start-up company that performs research in New Jersey. For Federal purposes, Company T made an election pursuant to I.R.C. § 41(h) for the Federal payroll tax credit at I.R.C. § 3111(f) to use 25 percent of its qualified research expenditures for the Federal payroll credit instead of the Federal corporate income tax research credit. Only 75 percent of the qualified research expenditures may be used for calculating the New Jersey research credit. The other 25 percent 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.

History

HISTORY:

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 18:7-3.24 (Reserved)

History

HISTORY:

New Rule, R.2004 d.367, effective October 4, 2004.

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

Repealed by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Effluent equipment tax credit".

N.J.A.C. 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 a 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.

History

HISTORY:

New Rule, R.2004 d.367, effective October 4, 2004.

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

Repealed by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Economic recovery tax credit".

Special New Rule, R.2020 d.057, effective April 8, 2020 (to expire October 5, 2020).

See: 52 N.J.R. 1025(a).

Section was "Reserved".

Readoption of Special New Rule, R.2021 d.032, effective April 5, 2021.

See: 52 N.J.R. 1991(a), 53 N.J.R. 544(a).

Provisions of R.2020 d.057 readopted with changes: in (a), inserted a comma following two occurrences of "paid"; and in (b), substituted the first occurrence of "a" for "the".

N.J.A.C. 18:7-3.26 Additional estimated payments resulting from P.L. 2018, c. 48, and P.L. 2020, c. 118

(a) If the retroactive provisions at 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, that 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 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 at 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 at 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.

History

HISTORY:

New Rule, R.2004 d.367, effective October 4, 2004.

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

Repealed by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "HMO assistance fund tax credit".

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 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 at 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 12-month period, the rate is nine percent;

2. If the taxable net income is $ 100,000 or less in a 12-month period, the rate is 7.5 percent; and

3. If the taxable net income is $ 50,000 or less in a 12-month period, the rate is 6.5 percent.

(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 at 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 of the taxpayer's taxable net income as defined at 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 40 percent of the taxpayer's taxable net income as defined at 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) 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 calculate the tax based on the rates imposed pursuant to 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 pursuant to N.J.S.A. 54:10A-5.c(1).

(h) The statutory minimum tax of each taxable member of a combined group filing either a mandatory or elective New Jersey combined return shall be $ 2,000 for the group privilege period. For privilege periods ending on and after July 31, 2019, 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.

History

HISTORY:

New Rule, R.2004 d.367, effective October 4, 2004.

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

Repealed by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Neighborhood revitalization State tax credit".

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 18:7-3.28 Tiered Subsidiary Dividend Pyramid Tax Credit

(a) Pursuant to N.J.S.A. 54:10A-5.46, 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 at P.L. 1945, c. 162 (N.J.S.A. 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 at P.L. 1945, c. 162 (N.J.S.A. 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4), or, for a combined group filing a combined return, but for subsections g and h of section 18 at P.L. 2018, c. 48 (N.J.S.A. 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 at P.L. 1945, c. 162 (N.J.S.A. 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) dividends and deemed dividends from a separate lower-tier combined group that files a New Jersey combined return separate and apart from another (dividend paying) combined group and that paid the 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 percent eliminated between combined group members filing a New Jersey combined return together. For purposes of the Tiered Subsidiary Dividend Pyramid Tax Credit, a combined group is entitled to the credit for dividends and deemed dividends 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.

(h) The credit allowed pursuant to this section shall be claimed on Form 332 on a timely filed New Jersey corporation business tax return.

(i) The tax credit cannot be used against the surtax.

History

HISTORY:

New Rule, R.2004 d.367, effective October 4, 2004.

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

Repealed by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Redevelopment authority project tax credit".

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 18:7-3.29 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), each taxpayer shall pay a surtax as follows:

1. For a taxpayer, except as provided at (d) below, 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 percent.

(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, P.L. 1945, c. 162 (N.J.S.A. 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) for privilege periods ending on and after July 31, 2019.

(c) The surtax imposed pursuant to this section shall be imposed on allocated taxable net income, and shall be due and payable, in accordance with section 15 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-15), and the surtax shall be administered pursuant to the provisions at P.L. 1945, c. 162 (N.J.S.A. 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 pursuant to 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 I.R.C. § 965 are to be excluded from the allocated taxable net income computation.

(f) The surtax does not apply to non-operational income and non-unitary partnership income.

(g) 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.

1. 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41) for the income derived from the unitary business; provided, however, with regard to the surtax imposed pursuant to section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41), and for that purpose only, 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.

2. The combined group must keep accurate books and records to permit 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, the taxpayer shall take into account their allocated taxable net income when computing the surtax.

History

HISTORY:

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 18:7-3A.1 General

(a) The New Jersey Urban Enterprises Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), approved August 15, 1983, provides for the establishment of up to 10 urban enterprise zones in urban areas suffering from high unemployment and economic distress. P.L. 1985, c. 391, made certain changes to eligibility requirements for designation as a zone. P.L. 1988, c. 93, modified the definition of a qualified business, made adjustments to the eligibility requirements for the employee tax credit, and provided for an alternative investment tax credit. P.L. 1993, c. 367, further modified the definition of a qualified business and provided for the designation of 10 additional enterprise zones. Zones are designated by an Urban Enterprise Zone Authority. The Authority may grant certain corporation tax and other benefits to businesses existing in, or formed in, enterprise zones, which have met the definition of a qualified business. This subchapter of the corporation tax rules sets forth the possible benefits, the necessary definitions, and the procedures for qualifying for any or all of these corporation tax benefits. Rules on the sales and use tax and urban enterprise zones are in N.J.A.C. 18:24-31. For Urban Enterprise Zone Authority rules and policies, see N.J.A.C. 5:120.

(b) No business can obtain tax benefits under this subchapter unless it meets the definition of a "qualified business" in N.J.A.C. 18:7-3A.2.

History

HISTORY:

Amended by R.1994 d.419, effective August 15, 1994.

See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

Recodified from N.J.A.C. 18:7-15.1 and amended by R.2007 d.203, effective July 2, 2007.

See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

In (a), substituted "c. 391" for "c.391", "c. 93" for "c.93", and "c. 367" for "c.367"; and in (b), updated the N.J.A.C. reference.

Administrative correction.

See: 41 N.J.R. 1512(a).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "P.L. 1983, c. 303" for "Chapter 303, Laws of 1983,", deleted "and 5:121" from the end, and inserted a comma following "seq.)", "391", "93", and "367".

N.J.A.C. 18:7-3A.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

A "qualified business" means either:

1. An entity authorized to do business in New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or

2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:

i. Resident within the zone, within another zone, or within a qualifying municipality;

ii. Either unemployed, while residing in New Jersey, for at least six months prior to being hired, or recipients of New Jersey public assistance programs, for at least six months prior to being hired;

iii. Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, P.L. 97-300 (29 U.S.C. §§ 1501 et seq.). Section 1503(8) of that Act defines the term as follows:

"The term 'economically disadvantaged' means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, state or local welfare program; (B) has, or is a member of a family which has received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; (D) is a foster child on behalf of whom state or local government payments are made; or (E) in cases permitted by regulations of the Secretary (U.S. Secretary of Labor), is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements."

For purposes of the corporation business tax credits, the "qualified business" must be a corporation.

"Enterprise zone" or "zone" means an urban enterprise zone designated by the Urban Enterprise Zone Authority under N.J.S.A. 52:27H-60 et seq.

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which the municipality makes application for enterprise zone designation, an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the state average annual unemployment rate; except that any municipality that qualifies for state aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) shall qualify if its municipal average unemployment rate for that year exceeded the state average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor. For purposes of P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), the seven municipalities in which the six enterprise zones are to be designated pursuant to criteria according priority consideration for designation of these zones pursuant to section 7 of P.L. 1983, c. 303 (N.J.S.A. 52:27H-66) shall be deemed qualifying municipalities.

History

HISTORY:

Amended by R.1994 d.419, effective August 15, 1994.

See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

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

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

In "qualified business", deleted the last sentence in the last paragraph of 2iii.

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

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

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

Recodified from N.J.A.C. 18:7-15.2 and amended by R.2007 d.203, effective July 2, 2007.

See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

In 2iii of the definition "qualified business", substituted "U.S.C. §§" for "United States Code"; in definition "Enterprise zone", deleted the comma preceding "et seq."; and in definition "Qualifying municipality", substituted "c. 14 (N.J.S.A. 52-27D-178 et. seq.)" for "c.14 (C. 52-27D-178, et seq.)" and "c. 303" for "c.303" two times.

N.J.A.C. 18:7-3A.3~~18:7-3A.3 (Reserved)

History

HISTORY:

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

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

Repealed by R.1994 d.419, effective August 15, 1994.

See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

Recodified from N.J.A.C. 18:7-15.3 by R.2007 d.203, effective July 2, 2007.

See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

N.J.A.C. 18:7-3A.4 Credits against total tax for new employees and investments in urban enterprise zones

(a) Section 19 of the Urban Enterprise Zones Act, N.J.S.A. 52:27H-78, is applicable to a qualified business in an enterprise zone, only if the Urban Enterprise Zone Authority specifically made section 19 applicable when the enterprise zone was designated. Under section 19, any qualified business (as defined in N.J.A.C. 18:7-3A.2) that is actively engaged in the conduct of a business from a location within an enterprise zone (as defined in N.J.A.C. 18:7-3A.2), which business in that location consists primarily of manufacturing or other business that is not primarily considered as a retail sales business, or as a warehousing business, shall receive an enterprise zone employees tax credit against the amount of tax imposed under N.J.S.A. 54:10A-5 (N.J.S.A. 54:10A-1 et seq., the Corporation Business Tax Act). The credit shall only be available for new

employees hired on or after the date of designation of the enterprise zone, or the date of commencement of business in the enterprise zone, whichever is later.

(b) A one-time credit of $ 1,500 shall be allowed for each new full-time, permanent employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7-3A.2) in which the designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, who was, immediately before employment by the taxpayer, unemployed for at least 90 days, or dependent upon public assistance as the primary source of income. Further qualifications for this benefit are in (e) and (f) below.

(c) A one-time credit of $ 500.00 shall be allowed for each new full-time, permanent employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7-3A.2) in which the designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, who does not meet the requirements of (b) above, and who was not, immediately before employment by the taxpayer, employed at a location within the qualifying municipality in which the qualified business is located. Further qualifications for this credit are in (e) and (f) below.

(d) See N.J.S.A. 52:27H-78.c for alternate tax benefit. The statute allows a corporation business tax credit to qualified small businesses (under 50 employees) that were in business in the zone prior to designation of the zone and that make an investment in the zone. These businesses may obtain an eight percent investment credit, to be applied against corporation business tax, by entering into an agreement, approved by the Urban Enterprise Zone Authority, with the zone city, to make an investment in the urban enterprise zone which contributes substantially to the economic attractiveness of the zone. These expenditures may include improvement of the appearance or customer facilities of its place of business or improvements in landscaping, recreation, police and fire protection, etc., in the zone.

(e) The enterprise zone employee tax credits provided in (b) and (c) above, shall be allowed in the tax year immediately following the tax year in which the new full-time, permanent employee was first employed by the taxpayer, but shall only be allowed if the employee for whom credit is claimed was employed by the taxpayer for at least six continuous months during the tax year for which the credit is claimed. The credit shall be permitted in any tax year of a 20 year period from the date of designation of the enterprise zone, or in any tax year of a period of 20 tax years from the date within that designation period upon which the taxpayer is first subject to the corporation business tax under N.J.S.A. 54:10A-1 et seq., whichever is later. The termination of designation as an enterprise zone at the end of the 20-year designation period shall not terminate the eligibility period under this section.

(f) The employee tax credit is available only for new full-time, permanent employees who have been employed by the qualified business for at least six continuous months during the year for which the credit is claimed. For a new employee to be considered a full-time, permanent employee, the total number of full-time, permanent employees, including the new employee, employed by the qualified business during the calendar year must exceed the greatest number of full-time, permanent employees employed in the zone by the qualified business during any prior calendar year since the zone was designated. "Calendar year" means the year the new employees are hired. The comparison is made to the peak employment on any date during the calendar years prior to the calendar year in which the new employees are hired, not the employment level on the last date of prior calendar years. The new employees must then continue to be employed during the following year in which the credit is claimed for six continuous months.

Example 1: ABC Company is a qualified business. The highest number of full-time permanent employees the company has employed in any prior calendar years since the zone was designated was 100. ABC Company employs 100 employees in Year 1 and hires five new employees in June of Year 10. The five new employees reside in the qualifying municipality in which the zone is located and, immediately prior to employment by the qualified business, were unemployed for at least 90 days. The five new employees remain with the company through June 30 of Year 11. ABC Company may claim the employee tax credit for the Year 11 tax year for the employees hired in Year 10. The employees remained employed by ABC Company for at least six continuous months during the year for which the credit is claimed (Year 11). The five new employees are considered full-time permanent employees because the total number of full-time permanent employees, including the new employees, employed by ABC during the Year 10 calendar year (105) exceeded the

greatest number of full-time permanent employees employed in the zone by ABC Company in prior calendar years (100). The total credit is $ 7,500 ($ 1,500 x 5).

Example 2: Same facts as above except that in March of Year 11 ABC Company terminated two of the employees hired in Year 10, and in April of Year 11 hires three new employees. The new employees reside in the qualifying municipality in which the zone is located and, although they were not unemployed for at least 90 days prior to employment by the qualified business or on public assistance, they were not employed, immediately prior to employment by the qualified business, within the qualifying municipality in which the qualified business is located. The new employees remained with ABC Company through December of Year 12. ABC may claim the $ 1,500 credit for the Year 11 tax year only for the three employees hired in Year 10 who were not terminated, since the two terminated employees would not have worked for six continuous months during the year for which the credit is claimed. ABC may claim the $ 500.00 credit for the Year 12 tax year for each of the three employees hired in Year 11 since they remained with ABC for six continuous months in Year 12 and the highest number of employees in Year 11 (106) exceeded the highest number of full-time permanent employees (105) in prior calendar years. The $ 1,500 credit could not be claimed for the three employees hired in Year 11 because they were not unemployed or on public assistance.

(g) Enterprise zone employee tax credits or enterprise zone investment tax credits under this section shall not reduce the taxpayer's tax liability under N.J.S.A. 54:10A-1 et seq. in any tax year by more than 50 percent or the amount otherwise due, but any unused employee or investment tax credits may be carried forward by the taxpayer to the next succeeding tax year and be applied against 50 percent of that year's tax, but not beyond the 20 year totals set forth in (e) above.

(h) The credit shall not exceed an amount which would reduce the total tax liability below the statutory minimum. For minimum tax see N.J.A.C. 18:7-3.4.

History

HISTORY:

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

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

Amended by R.1994 d.419, effective August 15, 1994.

See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

Recodified from N.J.A.C. 18:7-15.4 and amended by R.2007 d.203, effective July 2, 2007.

See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

In (a), substituted "N.J.S.A. 52:27H-78," for "(N.J.S.A. 52:27H-78)", updated the N.J.A.C. references and deleted the comma preceding "et seq."; and in (b) and (c), updated the N.J.A.C. references.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted the first and third occurrences of "that" for "which"; in (b) and (c), deleted "against the tax" following the first occurrence of "credit"; in (d), updated the N.J.S.A. cite, inserted the first occurrence of "business" and inserted "urban enterprise"; in (e), substituted "20-year" for "20 year"; and rewrote (f) Examples 1 and 2.

N.J.A.C. 18:7-3A.5 Qualification for benefits

There is no formal procedure for registration as a qualified business for the purpose of obtaining the corporation tax benefits. However, each annual CBT-100 Corporation Business Tax Return which claims any urban enterprise zone corporation tax benefits must include proof that it is a qualified business. This proof may consist of a certificate or other proof of status as a qualified business for sales tax purposes under N.J.A.C. 18:24-31. If a sales tax certificate or some other form of proof has not been obtained, the taxpayer should attach a statement setting forth how it qualifies as a "qualified business" as defined in N.J.A.C. 18:7-3A.2, with sufficient detail to permit verification by the Division of Taxation.

History

HISTORY:

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

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

Amended by R.1994 d.419, effective August 15, 1994.

See: 26 N.J.R. 2203(a), 26 N.J.R. 3462(a).

Recodified from N.J.A.C. 18:7-15.5 and amended by R.2007 d.203, effective July 2, 2007.

See: 39 N.J.R. 848(a), 39 N.J.R. 2540(b).

Updated the final N.J.A.C. reference.

N.J.A.C. 18:7-5.1 Entire net income; definition

(a) "Entire net income" means total net income from all sources, whether within or outside the United States, and includes:

1. The gain derived from the employment of capital or labor, or from both combined, as well as

2. Profit gained through a sale or conversion of capital assets.

(b) For the purpose of the New Jersey tax, 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 to the United States Treasury Department for the purpose of computing its Federal income tax, subject to the adjustments set forth in this subchapter.

(c) Consistent with N.J.A.C. 18:7-11.15, entire net income shall be determined on a separate entity basis as if the contemporaneous Federal return had not been a consolidated return.

Example 1: Corporation A is part of a consolidated group filing for Federal purposes which as a group incurred a net operating loss for the year. Corporation A, however, on a separate entity basis had net income of $ 100,000 before its charitable contribution expense of $ 15,000 is taken into account. Based on a separate, non-consolidated calculation under the Internal Revenue Code, and the contribution limitations applicable to all corporations for the period under review (that is, 10 percent), Corporation A's reportable net income for New Jersey purposes is $ 90,000 ($ 100,000 - ($ 100,000 x .10)).

Example 2: Corporation B is part of a consolidated group filing for Federal purposes which sold goods in the ordinary course of business to Corporation C, also a member of the same consolidated group filing. The selling price between Corporation B and C was at arm's length and included a profit element in it. The Federal corporate consolidated filing would recognize but defer the gain on the sale of the goods between Corporation B and C since Corporation C had not disposed of the property outside the group at year end. For New Jersey

purposes, however, Corporation B must report the gain on the sale of the property for net income purposes, and Corporation C must include the full sales price of the property in its inventory value.

(d) Entire net income shall be determined as if no election had been made under I.R.C. § 1371.

History

HISTORY:

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

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

(c) added.

Amended by R.1992 d.231, effective June 1, 1992.

See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).

Added examples to (c); deleted (e).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), substituted "outside" for "without"; in (b), substituted "subchapter" for "Subchapter"; and rewrote (d).

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-4(k) as to definition and scope of "entire net income."

Law Reviews

How New Jersey treats the acquisition of assets. John M. Metzger, 147 N.J.L.J. 1356 (1997).

N.J.A.C. 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 exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations, where such exemption or credit has been deducted in computing Federal taxable income.

(1) All income that is exempt under any provision of the 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;

(2) New Jersey shall follow the Federal government's treatment of the related expenses paid with Paycheck Protection Program (PPP) loans and forgiven loans will be excluded from entire net income. A taxpayer, pursuant to the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), shall not be denied a deduction for ordinary and necessary business expenses paid for with the proceeds of a Federal Paycheck Protection Program loan by reason of the exclusion from entire net income, pursuant to P.L. 1945, c. 162, of such loan, or portion thereof, forgiven pursuant to § 1106 of the Federal CARES Act, P.L. 116-136, or any subsequent expansion of the Federal Paycheck Protection Program, including the provision of

second draw loans pursuant to § 311 of Division N of the "Consolidated Appropriations Act, 2021," P.L. 116-260; and

(3) Items of income excluded from Federal taxable net income pursuant to the specific terms of a treaty do not have to be added back to entire net income;

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 at 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 a 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 or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder that owns 10 percent or more of the taxpayer's outstanding shares of capital stock. The amount deducted shall be reduced by 10 percent 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 owed 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 as 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 owed directly or indirectly to holders of 10 percent 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 owed 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 owed 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 research 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 that 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 subparagraph, 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;

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);

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 I.R.C. § 965;

xxiv. For privilege periods beginning after December 31, 2017, the amounts taken as a deduction pursuant to I.R.C. § 199A; and

xxv. For privilege periods beginning after December 31, 2017, see N.J.A.C. 18:7-5.22 for more information on the interest deduction limitation in subsection (j) at I.R.C. § 163; and

2. Deduct from Federal taxable income:

i. For privilege periods ending on or before December 31, 2016, 100 percent of all dividends or deemed dividends for Federal purposes included in Federal taxable income that were received from subsidiaries meeting the definition of a subsidiary having the requisite degree of ownership of investment as described at N.J.S.A. 54:10A-4(d) and 100 percent of all dividends from those subsidiaries that were added to Federal taxable income in accordance with (a)1 above. For privilege periods beginning on or after January 1, 2017, 95 percent of all dividends or deemed dividends for Federal purposes included in Federal taxable income that were received from subsidiaries meeting the definition of a subsidiary at N.J.S.A. 54:10A-4(d) and 95 percent of all dividends or deemed dividends from those subsidiaries that 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 pursuant to 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 at (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 or deemed dividends received from a subsidiary shall be excluded from the entire net income of a taxpayer to the extent to which the subsidiary: received the same dividends or deemed dividends from other subsidiaries; included those dividends or deemed dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and paid tax to New Jersey on those dividends or deemed dividends, based on the subsidiary's allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). This sub-subparagraph shall not apply to privilege periods ending on and after July 31, 2019. Taxpayers may request section 8 relief as a result of differing allocation factors.

(3) For privilege periods ending on and after July 31, 2019, but before July 31, 2020, the extent to which a subsidiary: received dividends from other subsidiaries; included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and paid tax on those dividends; and 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, please 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 regarding 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 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 percent to less than 80 percent owned subsidiaries. Dividends received from a regulated investment company that are treated as interest for purposes of the Internal Revenue Code and/or that are not considered qualifying dividends for Federal purposes are not eligible for deduction or exclusion from entire net income pursuant to this subsection.

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined at 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 at (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 to which the subsidiary: received the same dividends from other subsidiaries; included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and paid tax to New Jersey on those dividends, a taxpayer shall exclude from the 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). This sub-subparagraph shall not apply to privilege periods ending on and after July 31, 2019. Taxpayers may request section 8 relief as a result of differing allocation factors.

(3) For privilege periods ending on and after July 31, 2019, but before July 31, 2020, the extent to which a subsidiary: received dividends from other subsidiaries; included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 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 please refer to 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 regarding 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).

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 pursuant to (a)1xii above using any method, life and salvage value that 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 that 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 pursuant to this subparagraph 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 pursuant to (a)1xii above over related depreciation claimed on that property pursuant to (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 described in this section, from its entire net income, as follows:

(1) Any deductions pursuant to this subsection can only be claimed to the extent that they are not deductible in determining Federal taxable income, or not deductible pursuant to 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 at (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 that are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities.

(C) Entering into foreign exchange or hedging transactions relating to any transactions pursuant to (a)2vii(3)(A) and (B) above or (D) below.

(D) Any other activities that 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 at (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 I.R.C. § 250. See N.J.S.A. 54:10A-4.15 and N.J.A.C. 18:7-5.19 for more information.

History

HISTORY:

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

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

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

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

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

(b)7 added.

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

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

Substantially amended.

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

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

Substantially amended.

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

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

Revised text.

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

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

Amended by R.1997 d.204, effective May 19, 1997.

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

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

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

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

Rewrote the section.

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

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

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

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

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

In (a), deleted iii, recodified former iv through viii as iii through vii in 2.

Amended by R.2006 d.61, effective February 6, 2006.

See: 37 N.J.R. 4195(a), 38 N.J.R. 1080(a).

In (a)2i, deleted "of this chapter"; added (a)2i(1) and (a)2ii(1).

Amended by R.2007 d.284, effective September 4, 2007.

See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).

In (a)1viii, updated the second N.J.A.C. reference; in (a)1xviii, deleted "and" from the end; in (a)1xix, substituted a semicolon for the period at the end; and added (a)1xx and (a)1xxi.

Amended by R.2009 d.151, effective May 4, 2009.

See: 41 N.J.R. 721(b), 41 N.J.R. 2050(a).

In (a)2v, substituted "the transferor of the property shall take" for "there shall be allowed", "shall restore" for "there must be restored" and "(a)1xii" for "(a)1x".

Amended by R.2009 d.384, effective December 21, 2009.

See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).

In (a)1xx, deleted "and" from the end; in (a)1xxi, substituted "; and" for a period at the end; and added (a)1xxii and (a)2viii.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote the section.

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

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

1. However, if 100 percent of the foreign tax amount is not deductible from Federal taxable income as dividends received under N.J.A.C. 18:7-5.2(a) 2i, then the percentage which is taxed may be deducted from Federal taxable income. No other foreign taxes are deductible.

History

HISTORY:

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

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

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

Administrative change and correction.

See: 31 N.J.R. 1818(a).

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

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

Rewrote the section.

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), substituted "I.R.C. § 78" for "Section 78 of the Internal Revenue Code".

N.J.A.C. 18:7-5.4 Factors not adjustable to Federal taxable income

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

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

2. The general business credit allowed or allowable for Federal income tax purposes under I.R.C. § 38.

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

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

3. Depreciation attributable to a decrease in the basis of depreciable property for Federal income tax purposes, as a result of the general business credit allowed or allowable under I.R.C. § 38.

i. This depreciation may not be taken as a deduction in computing the New Jersey net income tax base.

ii. Depreciation taken for New Jersey net income tax purposes must be reported at the same amount as reported for Federal income tax purposes for the same period.

History

HISTORY:

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

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

(a)2 deleted; (a)1 amended; 3 and 4 renumbered as 2 and 3.

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a)1, substituted "I.R.C. § " for "Section", and deleted "of the Internal Revenue Code" following the first occurrence of "sections"; in the introductory paragraphs of (a)2 and (a)3, and in (a)2ii, substituted "I.R.C. § 38" for "Section 38 of the Internal Revenue Code"; and in (a)2i, inserted "Corporation Business Tax".

N.J.A.C. 18:7-5.5 Entire net income; determining stock ownership

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

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

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

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

Ownership equity of Corporation A in Corporation C:

Direct investment in Corporation C				20%
Investment in Corporation B	90%			
Investment of Corporation B in Corporation C	70%			
Indirect investment in Corporation C	.90	x .70	=	63%
Aggregate ownership by Corporation A of the stock of Corporation C				83%

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

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

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

Ownership equity of Corporation D in Corporation F:

Direct investment in Corporation F				20%
Investment in Corporation E	90%			
Investment of Corporation E in Corporation F	60%			
Indirect investment in Corporation F	.90	x .60	=	54%
Aggregate ownership by Corporation D of the stock of Corporation F				74%

History

HISTORY:

New Rule, R.1987 d.118, effective March 2, 1987.
See: 18 N.J.R. 2004(b), 19 N.J.R. 410(c).
Old rule repealed.
Amended by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Deleted former (a), and recodified (b) as (a).

N.J.A.C. 18:7-5.6 Adjustment of entire net income to period covered by return; how computed

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

1. Its Federal taxable income is first adjusted in the manner set forth on N.J.A.C. 18:7-5.1 through 5.4;

2. The result is then divided by the number of calendar months or parts thereof covered by the Federal income tax return;

3. The result is then multiplied by the number of the calendar months or parts thereof covered by the return under the Corporation Business Tax Act. A part of a month shall be deemed to be a month.

History

HISTORY:
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Amended by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
In (a)3, inserted "Corporation Business Tax".
STATUTORY REFERENCES:
N.J.S.A. 54:10A-17.

N.J.A.C. 18:7-5.7 Right of Director to independently determine net income

If in the opinion of the Director the method employed in N.J.A.C. 18:7-5.6 does not properly reflect the taxpayer's net income properly apportionable to New Jersey under the Act for the period covered by its New Jersey return, the Director may determine entire net income solely on the basis of the taxpayer's income during such period.

History

HISTORY:

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

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

N.J.A.C. 18:7-5.8 Calculation of gain in certain instances

(a) A selling parent corporation in an I.R.C. § 338(h)(10) transaction does not recognize gain on the sale of target stock for New Jersey purposes for acquisition dates occurring on or after January 14, 1992.

(b) Where a target corporation recognizes gain as the result of an I.R.C. § 338(h)(10) election, the target reports and pays tax on such gain pursuant to N.J.A.C. 18:7-5.1(a).

History

HISTORY:

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

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

Section was "Procedure for computing short period return".

New Rule, R.1996 d.378, effective August 5, 1996.

See: 28 N.J.R. 2515(a), 28 N.J.R. 3810(a).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "an I.R.C. § " for "a Federal I.R.C."; and in (b), inserted "§ ".

N.J.A.C. 18:7-5.9 (Reserved)

History

HISTORY:

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

See: 11 New Jersey Register 40(d), 11 New Jersey Register 150(b).

Formerly entitled "Procedure for computing when taxpayer alters corporate identity".

N.J.A.C. 18:7-5.10 Right of Director to correct distortions of net income allocation factors; adjustments and redeterminations

(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 a manner so as either directly or indirectly to distort its true entire net income 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 the Act, or whereby the activity, business, receipts, expenses, assets, liabilities, or net income of the taxpayer are improperly or inaccurately reflected, the Director is authorized and empowered, in his or her discretion and in whatever manner he or she may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and outside the State and the allocation of entire net income or to make any other adjustments in any tax report or tax return as may be necessary to make a fair and reasonable determination of the amount of tax payable under the Act.

1. Where 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 the transaction.

3. For purposes of this section, "fair and reasonable tax" is the tax that would have been payable by a taxpayer reporting the same transaction(s) on a separate entity basis where the parties to the transaction(s) had independent economic interests.

4. For purposes of this section, "substantial portion of stock" is the direct or indirect ownership of 20 percent or more of the outstanding shares of any class of stock. For purposes of arriving at this level of ownership the stock attribution rules of I.R.C. § 318 will be used.

5. Under N.J.S.A. 54:10A-10.b interest should be charged on loans or advances made by one related party to another from the day after the debt arises until the debt is satisfied. With respect to intercompany trade receivables of related taxpayers, interest is not required to be charged on an intercompany trade receivable before the first day of the third calendar month.

i. If the creditor is regularly engaged in the business of making loans or advances, the arm's length interest rate should be charged. Upon failure to do so, the Division of Taxation can determine what interest should have been charged. Where the creditor is not in the business of loaning money or making advances, either an arm's length rate based on the facts and circumstances or a safe haven rate is acceptable. However, the safe haven rule does not apply to any loan or advance in which the interest or principal amount is expressed in a currency other than U.S. dollars.

ii. For interest paid or accrued on a loan or advance, a safe haven rate is one that is between 100 percent and 130 percent of the Applicable Federal Rate (AFR) as determined under I.R.C. § 1274(d) in effect on the date that the loan or advance is made. Adjustments for inadequate interest would be made at 100 percent of the AFR and adjustments for excessive interest would be made at 130 percent of the AFR. In the case of a sale-leaseback transaction, the lower limit would be 110 percent of the AFR. In determining the rate of interest actually charged on a written loan or

advance, any original issue discount included in income by the lender or any bond premium deducted by the lender is to be taken into account.

6. Where a service by one member of a group to another member is rendered for less than an arm's length charge, the Division of Taxation may make appropriate allocations to reflect an arm's length charge for that service. The arm's length charge is equal to the costs or deductions incurred by the member performing the service, except in cases where the service is an integral part of the business activity of either member.

7. If tangible property is made available by one member of the group to another, the latter should be charged the arm's length rental charge.

8. Where one member of a group of controlled entities sells or otherwise disposes of tangible property to another at other than an arm's length price, a proper allocation will be made between the seller and the buyer using the following methods.

i. Comparable uncontrolled price method: This method must be used if there are comparable uncontrolled sales (sales between outsiders or a member and an outsider where the property sold and the circumstances involved are identical, or nearly identical, to those in the controlled sale). To the extent they are not identical, adjustments are made.

ii. Resale price method: If there are not comparable uncontrolled sales, the resale price method must be used if the standards for its application are met. A typical situation where this method is required is where a manufacturer sells products to a related distributor which, without further processing, resells the products to unrelated parties.

iii. Cost plus method: If the standards for application of the resale price method are not satisfied, either that method or the cost plus method is used, depending on which is more feasible and will produce a more accurate arm's length price. Normally, the cost plus method is appropriate where a manufacturer sells products to a related entity that performs substantial manufacturing, assembly, or other processing of the product or adds significant value by use of its intangible property (trademark, for example) before resale.

iv. Comparable profits method: In general, the comparable profits method evaluates whether the amount charged in a controlled transaction is arm's length based on objective measures of profitability (profit level indicators) derived from uncontrolled taxpayers that engage in similar business activities under similar instances.

v. Profit split method: In general, the profit split method evaluates whether the application of the combined operating profit or loss attributable to one or more controlled transactions is arm's length by reference to the relative value of each controlled taxpayer's contribution to that combined operating profit or loss. The combined operating profit or loss must be derived from the most narrowly identifiable business activity of the controlled taxpayers for which data is available that includes the controlled transactions (relevant business activity).

vi. Unspecified methods: In general, methods not specified in (a)8i, ii, iii, iv, and v above may be used to evaluate whether the amount charged in a controlled transaction is arm's length. Any method used under this paragraph should be applied in accordance with the provisions of U.S. Treas. Reg. § 1.482-1.

9. Under both the comparable uncontrolled price method and the resale price method, market conditions faced by the affiliate are taken into account. Thus, goods may be sold, for a period, at a price which is below the full cost of manufacture in order to establish or maintain a market.

i. Assuming that the requirements of one of the methods in (a)8 above are met, it must be used unless the taxpayer can show that some other method is clearly more appropriate. Where none of the first five methods listed can reasonably be applied, some other appropriate method can be used.

ii. Where a taxpayer makes controlled sales of many different products or many sales of the same product and it is impractical to calculate an arm's length price for each product or sale, it is permissible to apply the proper method of pricing to product lines or other groupings. Also, the Division of Taxation may use statistical sampling techniques to verify or determine the arm's length price of all sales to a related entity.

10. The Division will apply equitable principles to prevent unjust situations from occurring.

(b) The application of this section is not limited to an agreement, understanding, or arrangement existing between a taxpayer and any other corporation or any person or firm for the purpose of avoiding or evading tax under the Act. It is also applicable where adjustments and redeterminations relate to transfer pricing and other transactions between related persons or entities where evasion or tax avoidance is not a consideration. The Director may initiate adjustments under this section solely in the interests of determining a fair and reasonable tax, and without respect to any benefit arising out of inter-corporate relationships or the relationships of any person holding a substantial portion of the stock of a taxpayer. The Division shall not be limited to indices, trade practices, cost sheets, Internal Revenue Reports, or any other factor in determining the appropriate transfer price for goods, services, intangibles, or other dispositions made to related parties. Where the Director determines that there is an adjustment to net income under this section, he or she may also make a corresponding adjustment to the allocation factor.

(c) Where 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 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, the Director may adjust and redetermine items on any affected taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey. The following example is an illustration only and in no way shall be interpreted as a standard for calculating wages in a particular case.

Example: Corporation D entered into an employment agreement with its sole shareholder's spouse for the performance of services as an accounting clerk. The agreement called for the shareholder's spouse to monitor 10 accounts. For the service performed, the spouse is to receive an annual salary of $ 100,000 along with a substantial benefit package. The Director, upon audit, learns that the spouse works only five hours per week in completely performing the duties. The Director, based upon the going wage for such services, determines that the total compensation package would not exceed $ 10,000 a year and adjusts the taxpayer's expense to determine properly the net income and the taxpayer's wage fraction of the allocation factor and to provide dividend treatment for the disallowed wage compensation.

(d) Where any taxpayer, 20 percent or more of whose capital stock is owned either directly or indirectly by or through the same interests as those of the taxpayer, conducts any activity, transaction, or business with such interests which either directly or indirectly creates an artificial loss, net income, or allocation factor, the Director may adjust and redetermine such items on any taxpayer report or return as may be necessary properly to reflect the taxpayer's adjusted entire net income apportionable to New Jersey.

Example 1: Corporation E, the great grandparent of the taxpayer, borrows $ 1 million from the taxpayer. The agreement calls for the principal and interest at the rate of two percent per annum to be paid at the end of one year. Upon audit, the Director determines that a market interest rate given the economic conditions at the time of the loan and the circumstances of the borrower is 13 percent per annum. Therefore, he adds the additional income to the taxpayer's net income as reported, and adjusts the expense on the great grandparent's return, if it files in New Jersey.

Example 2: Corporation F is the parent company of over 10 subsidiaries and provides all administrative services for the 10 subsidiaries. Corporation F receives dividend income from its subsidiaries, interest income from other investments, and service fee income from the subsidiaries for the administrative services it performs on their behalf which are an integral part of the business activity of the parent. All costs incurred by the parent are charged to the subsidiaries based solely upon the total assets of each subsidiary. Upon audit, the Director determines that the service fee includes no profit element and that the allocation of the costs of the administrative services bears no relationship to the services provided to each subsidiary. Accordingly, the Director imputes an element of profit, and assigns the charges to each subsidiary by a method reflecting the actual costs incurred in providing the services to each subsidiary.

(e) The following examples are merely illustrative and are in no way intended to limit the scope of the Director's discretion to inquire into transfer pricing or the determination of a fair and reasonable tax:

Example 1: K Corporation, the manufacturer of a proprietary product, sells goods to its distributors and wholesale customers at a 50 percent profit. It also sells goods to related foreign corporations at a 5 percent gross profit for marketing by them overseas.

On a separate entity basis, in an arm's length transaction these sales would yield a 50 percent gross profit and the price that might have been paid or received for the goods includes an amount sufficient to reflect that 50 percent gross profit.

The Director may include additional profits in entire net income sufficient to reflect the arm's length price that might have been paid or received.

Example 2: L Corporation is the parent corporation in a vertically integrated oil company. Its marketing subsidiary is a taxpayer. The marketing corporation reports a significantly lower gross profit than other taxpayers selling the same generic products in volume.

L Corporation has set its transfer prices to its marketing subsidiary at a price $ 0.02 per gallon higher than published New York tanker port prices for its product because it deems, in good faith, that its brand name value and economies of scale are more properly attributable to the parent corporation. It also uses this transfer price to sell its product to all its independent retailers.

The fair price which might have been paid for the product sold by the marketing subsidiary would not be based upon "New York tanker prices" plus the lesser of representative contract carrier costs or the actual costs incurred for delivery. The Director would recognize the $ 0.02 per gallon higher price since that is the same price used for comparable sales to all uncontrolled entities for the audit period.

(f) Whenever the Director deems it necessary, in order properly to reflect entire net income of the taxpayer, he or she may determine the year or period in which an item of income, deduction, asset or liability shall be included, without regard to the method of accounting used by the taxpayer.

(g) The Director may require any person or corporation to submit whatever information under oath or affirmation, or to permit whatever examination of its books, papers and documents, as may be necessary to enable him or her to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not the person or corporation is subject to the tax imposed by the Act.

History

HISTORY:

Amended by R.1992 d.231, effective June 1, 1992.

See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).

Revised section.

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

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

In (a)8, added iv through vi; and in (a)9i, deleted "three" preceding "methods in" in the first sentence, and substituted "first five" for "three" preceding "methods" in the second sentence.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), substituted "outside" for "without"; in (a)1 and (a)2, inserted a comma following "arrangement" three times; in (a)4, substituted "I.R.C. § " for "IRC section"; in the introductory paragraph of (a)5, updated the N.J.S.A. cite; in (a)5ii, substituted "I.R.C. § " for "Internal Revenue Code Section"; in (a)8iii, substituted the second occurrence of "that" for "which"; in (b), substituted the third occurrence of "is" for "are", and inserted a comma following "understanding", "Reports", and "intangibles"; and in (e) Example 1, substituted "that" for "which" following "price" twice.

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-4(k)(3) as to right of Director to determine the year in which an item of income or a deduction shall be included without regard to taxpayer's method of account, and 54:10A-10 as to Director's right to redetermine tax due when taxpayer's business records appear distorted..

N.J.A.C. 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 pursuant to this section 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 pursuant to this section, 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) above shall not apply to members of a combined group reported on the same New Jersey combined return. See N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.

(i) For privilege periods ending on and after July 31, 2019, (a) through (g) above shall apply to taxpayers that are not included together as members of a combined group reported on the same New Jersey combined return. See N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.

History

HISTORY:

New Rule, R.1978 d.30, effective January 27, 1978.

See: 10 N.J.R. 40(b), 10 N.J.R. 128(b).

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

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

Section was "New jobs credit; salaries deduction".

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

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

Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003.

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a) and (f), substituted "I.R.C. § " for "sections", and deleted "of the Federal Internal Revenue Code of 1986".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Section was "Right of Director to require consolidated filing, and certain disclosures". In (a), substituted two section marks for one section mark, and inserted a comma preceding "other"; in (d), substituted "pursuant to this section" for "by this rule"; in (e), substituted "return, required pursuant to this section," for "return required under this rule"; in (f), substituted two section marks for one section mark, and inserted a comma following "shall" and "Director"; and added (h) and (i).

N.J.A.C. 18:7-5.12 Net operating loss deduction

For privilege periods ending before July 31, 2019, a taxpayer may deduct a New Jersey net operating loss carryover as defined at 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.

History

HISTORY:

New Rule, R.1986 d.26, effective February 3, 1986.

See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

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

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

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote the section.

N.J.A.C. 18:7-5.13 New Jersey net operating loss carryover

(a) For privilege periods ending before July 31, 2019, a New Jersey net operating loss, as defined at N.J.A.C. 18:7-5.15, for any 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 privilege periods and is reduced in each such succeeding privilege period by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven privilege periods following the privilege period of the loss, taking into account the normal or extended due date for filing the return for the seventh privilege period succeeding the privilege period of the loss. The net operating loss carryover may not be carried back to any privilege period preceding the privilege period of the loss. For this purpose, 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 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) The net operating loss may only be carried over by the actual corporation that sustained the loss. The net operating loss may, however, be carried over by the corporation that sustained the loss and which is the surviving corporation of a statutory merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation or is a part of a statutory consolidation. Section 4(k) of the Act defines entire net income in terms of a specific corporate franchise. See N.J.S.A. 54:10A-4.5.

(c) Corporations acquired under I.R.C. § 338 do not lose their net operating loss carryover because the corporate franchise remains unchanged to the extent it does not fall within the provisions of N.J.A.C. 18:7-5.14.

Example 1: A domestic corporation dissolves pursuant to laws of the State of New Jersey and incorporates in another state. This newly formed corporation of another state is a new legal entity for corporation business tax purposes and the net operating loss carryover of the domestic corporation is not available to the new entity.

Example 2: The example below illustrates the net operating loss carryover for the full term of seven years and demonstrates the application of net operating loss deductions in the proper sequence.

Amounts From Returns									
Return Year	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**	**1991**	**1992**
Fiscal Year Ended	**31-Dec-84**	**31-Dec-85**	**31-Dec-86**	**31-Dec-87**	**31-Dec-88**	**31-Dec-89**	**31-Dec-90**	**31-Dec-91**	**31-Dec-92**
Line 28	($ 100,000)	(6,000)	(8,000)	(10,000)	50,000	8,000	(5,000)	2,000	10,000
NJ Adjustments	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
ENI before NOL ded. or exclusions	(95,000)	(1,000)	(3,000)	(5,000)	55,000	13,000	0	7,000	15,000
NOL Deduction	NA	0	0	0	55,000	13,000	0	7,000	9,000
ENI before exclusions	0	0	0	0	0	0	0	0	6,000
Dividend exclusion & IBF exclusion	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Entire Net Income	0	0	0	0	0	0	0	0	4,000
NOL Carryovers Applied									
1985	0								
1986	0	0							
1987	0	0	0						
1988	55,000	0	0	0					
1989	13,000	0	0	0	0				
1990	0	0	0	0	0	0			
1991	7,000	0	0	0	0	0	0		
1992		1,000	3,000	5,000	0	0	0	0	0
1993			0	0	0	0	0	0	0
1994				0	0	0	0	0	0
1995					0	0	0	0	0
1996						0	0	0	0
1997							0	0	0
1998								0	0
1999									0
Unused	20,000	0	0	0	0	0	0	0	0
Total	95,000	1,000	3,000	5,000	0	0	0	0	0

(d) The following explain and/or define the above table: Line 28 is the amount of the taxpayer's taxable income, before net operating loss deduction and special deductions that the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax. New Jersey Adjustments are the statutory additions and deductions to line 28 that are peculiar to the New Jersey corporation business tax.

1. "ENI" means entire net income as defined in the Act and in these rules.

2. "NOL" means net operating loss.

i. Exclusions are the exclusions from entire net income for dividends received and the eligible net income of an international banking facility.

3. "IBF" means the eligible net income of an international banking facility.

(e) For privilege periods ending on and after July 31, 2019, see N.J.A.C. 18:7-5.21.

History

HISTORY:

New Rule, R.1986 d.26, effective February 3, 1986.

See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

Administrative Correction to (c), removing Examples 1:B and 2:C from Code.

See: 23 N.J.R. 1024(a).

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

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

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

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

In (b), added the N.J.S.A. reference.

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

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

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

Amended by R.2009 d.384, effective December 21, 2009.

See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).

In (a), inserted the last sentence.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted a comma following "1984" and "2009"; in the introductory paragraph of (c), substituted "I.R.C. § " for "Internal Revenue Code Section"; and in the introductory paragraph of (d), substituted the first occurrence of "that" for "which" and "New Jersey" for "NJ".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (a) and added (e).

N.J.A.C. 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 of 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) The Director may disallow the carryover in those instances where the facts support the premise that a corporation was acquired for the primary purpose of the use of its net operating loss carryovers. In this context, to prevent the trafficking in loss corporations, the Director will consider the following facts:

1. Whether the physical location or other fixed assets of the loss corporation were used in a new business;

2. The extent of the termination of the existing work force of the loss corporation;

3. A price paid for the loss corporation in excess of the market value of the assets; and

4. Any other material factor deemed appropriate to the determination.

(c) No single factor shall be deemed on its own to be dispositive of the issue.

Example 1: B Corporation was wholly owned by a single stockholder. It operated a notably unsuccessful restaurant and built up significant net operating loss carryovers. The stockholder transferred 49 percent of his or her stock to an investor who has access to a recognized and uniformly profitable fast food franchise. B Corporation releases substantially all of its existing employees, disposes of its equipment and undertakes the fast food franchise business at a new location. Notwithstanding that B Corporation's sole stockholder sold less than 50 percent of his or her stock and the corporation still sells food in a heated state, the net operating loss carryovers to B Corporation become zero. The disposition of land, labor, and capital until nothing remains except an empty corporate shell whose principal attributes are the apparent existence of an unused net operating loss carryover and some liquid capital in quest of an entirely new business is deemed to support the premise that the corporation was acquired for the primary purpose of the use of its net operating loss

carryover. The economic substance of the transaction would have been to transfer the loss carryovers to a new business which is precluded by the rule.

Example 2: C Corporation was a manufacturer of buggy whips and button hooks. Due to a declining demand for its products it has built up significant net operating loss carryovers. C Corporation has only one stockholder who sells 50 percent of his capital stock to a woman who has invented a cheap and well-styled perpetual motion machine for which there is a clamorous demand. C Corporation changes its name to D Corporation and hires additional employees. It expands its plants, closes out its old product lines and realizes huge profits in its rejuvenation. D Corporation's net operating loss carryovers from its buggy whip days are unaffected by any of the above circumstances and may be claimed as a net operating loss deduction. The economic substance of the transaction is a mere restructuring of its manufacturing product line. It did not change its business where it only reallocated its economic factors of production.

(d) Subsections (a), (b), and (c) above do not apply to combined returns and combined groups. See N.J.S.A. 54:10A-4.5 and N.J.A.C. 18:7-21 for more information on prior net operating loss conversion carryovers (PNOLS) and net operating losses (NOLs) in the context of combined reporting and combined groups.

(e) Subsections (a), (b), and (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 through a 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 that originally generated the PNOLS and NOLS.

History

HISTORY:

Administrative Correction to (c), added Examples to section.

See: 23 N.J.R. 1024(a).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted a comma following "1984"; in (b)4, inserted "factor"; in (c) Example 1, inserted "or her" twice, and inserted a comma following "labor"; and in (c) Example 2, substituted "well-styled" for "well styled", and deleted ", retools" following "D Corporation".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

In (a), substituted "of the corporation's"for "its", substituted "50-percentage-point" for "50 percentage point", and inserted a comma preceding "the exchange"; added (d) and (e).

N.J.A.C. 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 exclusion from entire net income is an allowable deduction in computing a net operating loss.

(c) There is no net operating loss for any year that a New Jersey corporation business tax return is not filed or if filed does not report entire net income as a negative amount.

History

HISTORY:

New Rule, R.1986 d.26, effective February 3, 1986.

See: 17 N.J.R. 2096(a), 18 N.J.R. 309(a).

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

In (a), inserted the last sentence; in (b), substituted "exclusion" for "exclusions", substituted "is an" for "are", and substituted "deduction" for "deductions"; in (c), substituted "New Jersey corporation business tax return" for "Corporation Business Tax Return (CBT 100)".

N.J.A.C. 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.

History

HISTORY:

New Rule, R.1986 d.26, effective February 3, 1986.

See: 17 New Jersey Register 2096(a), 18 New Jersey Register 309(a).

N.J.A.C. 18:7-5.17 Suspension of net operating loss carryover

(a) Except as provided below, for privilege periods beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss 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. This section shall not restrict the surrender or acquisition of corporation business tax benefit certificates pursuant to N.J.S.A. 34:1B-7.42a and shall not restrict the application of corporation business tax certificates pursuant to N.J.S.A. 54:10A:4-2.

Example 1:

Minnow, Inc. is a calendar year taxpayer. In 2000, it filed a NJ CBT-100 that reported a $ 1,000,000 net operating loss. In 2001, the taxpayer had the following income:

Operating Income	$ 100,000
Dividends from wholly owned subsidiary	$ 50,000
Subtotal	$ 150,000

In 2001, Minnow, Inc., uses an NOL deduction of $ 150,000 thus decreasing its prior year NOL to $ 850,000. It does not use any dividend received deduction (DRD) in 2001.

The Business Tax Reform Act suspended the NOL deduction in tax years 2002 and 2003. Assuming the same facts set forth above, in filing its return after the law changes the use of the taxpayer's NOL deduction is suspended.

In 2003, Minnow, Inc. would use a DRD of $ 50,000 and pay taxes on Entire Net Income of $ 100,000. The company would continue to have an NOL carryover of $ 1,000,000 that it could potentially use in 2004.

Example 2:

Striper, Inc. is a calendar year taxpayer. In 2001, it filed a NJ CBT return reporting a $ 1,000,000 net operating loss. In 2002, Striper, Inc. reported the following items:

Operating Loss	($ 100,000)
Dividends from wholly owned subsidiary	$ 40,000

In 2002, as it would have done before the law change, the taxpayer offsets $ 40,000 of current year loss against the dividend received deduction. The taxpayer secures an additional NOL of $ 60,000 that will be available in 2004.

Example 3:

In 2001, a taxpayer purchased tax benefits in the Tax Benefit Certificate Program but did not use them in 2001. They can be used in 2002.

Example 4:

In 2002, a taxpayer purchased tax benefits in the Tax Benefit Certificate Program. They can be used in 2002 notwithstanding the general suspension of NOL deductions in 2002 and 2003. Tax Benefit Certificates can be both acquired and applied during the NOL suspension period.

(b) 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 percent. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this section, 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 section.

(c) Any net operating deduction that was disallowed by the prohibition, and would have expired in return periods beginning in 2002 and 2003 is extended for two years. Any net operating loss deduction that was disallowed by the prohibition, and would have expired in return periods beginning in 2004 and 2005, is extended for one return period for each return period that it was disallowed.

History

HISTORY:

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

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

Adopted concurrent new rule R.2003 d.370, effective August 22, 2003.

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

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

Amended by R.2007 d.284, effective September 4, 2007.

See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).

Inserted designation (a); and added (b) and (c).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a) Example 1, inserted a comma following the second occurrence of "Inc.", inserted "thus" preceding "decreasing", substituted the second occurrence of "its" for "the", and inserted "the" preceding "taxpayer's"; and in (c), deleted a comma following the first occurrence of "expired".

N.J.A.C. 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 may be permitted:

1. To the extent that the taxpayer establishes that:

i. A principal purpose of the transaction giving rise to the payment of the interest was not to avoid tax otherwise due;

ii. The interest is paid pursuant to arm's length contracts at an arm's length rate of interest; and

iii. 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, a measure of the tax includes the interest received from the related member, and 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;

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 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

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 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 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:

(A) The name of the related member;

(B) The amount of the interest;

(C) The relevant foreign nation; and

(D) Such other information as the Director may prescribe; or

ii. An independent lender through a related member as conduit, provided that the taxpayer legally guarantees the debt on which the interest is required;

5. For purposes of this subsection:

i. "Foreign nation" means an established sovereign government that is recognized as such by the United States Department of State;

ii. "Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation and/or the withholding of tax on interest, dividends, and royalties, for the prevention of double taxation of the respective nations' residents, and the sharing of information;

iii. "Foreign corporation" means a business entity incorporated or organized under the laws of a foreign nation;

iv. "Domestic subsidiary" means a business entity incorporated under the laws of any state or commonwealth of the United States;

v. "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 I.R.C. § 1563.(b);

(3) A person to or from whom there is attribution of stock ownership in accordance with I.R.C. § 1563.(e); or

(4) A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (a)4v(1) through (3) above of this definition;

vi. "Related entity" means:

(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;

(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

(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., 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 is deemed to be satisfied if the taxpayer provides a schedule of:

(1) The name of the related member;

(2) The country of domicile of the related member;

(3) The amount paid to the related member; and

(4) The nature of payment or, alternatively, by providing a copy of Federal Form 5472 or its equivalent as an attachment to Form NJ CBT-100;

viii. "Rate of tax" means allocation factor times the tax rate percentage.

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: Same facts as Example 1, but Royal Palm, Ltd., the foreign parent, will borrow the funds and lend directly to the operating companies including Red Oak, Inc., the domestic subsidiary. Interest expense attributable to amounts borrowed by Red Oak, Inc., the domestic subsidiary, from Royal Palm, Ltd., the foreign parent, and any costs associated with the lending which are assessed to Red Oak, Inc. as an expense recovery of the lending originations would not be added back to Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 3: Same facts as Example 1, but Little Palm, Ltd., the foreign subsidiary, or Royal Palm, Ltd., the foreign parent, establishes a second domestic subsidiary, White Pine, Inc., to facilitate the borrowing and on-lending activities. White Pine, Inc. will be authorized to borrow from Little Palm, Ltd., the foreign subsidiary, or from third party sources such as commercial paper markets or bond markets either inside the United States or outside the United States. White Pine, Inc. will lend the proceeds of the borrowings to Red Oak, Inc. Red Oak, Inc. will pay interest to White Pine, Inc. on the borrowings. All interest expense attributable to amounts borrowed by Red Oak, Inc. from White Pine, Inc. except any traced to domestic sources or countries that do not have a comprehensive treaty with the United States, 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 Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 4: Same facts as Example 1, but Little Palm, Ltd., the foreign subsidiary, forms White Pine, Inc. White Pine, Inc. borrows funds from Little Palm, Ltd. and holds the funds. The funds are made available for loan to Red Oak, Inc. and Blue Spruce, Inc., another affiliated domestic subsidiary on an as needed basis. White Pine, Inc. manages the lending transactions for two or more affiliated entities within the United States. White Pine, Inc. will loan funds to Red Oak, Inc. and Blue Spruce, Inc. White Pine, Inc. will charge an origination fee to cover the costs charged by Little Palm, Ltd., the foreign subsidiary to White Pine, Inc., a domestic subsidiary. Red Oak, Inc. and Blue Spruce, Inc. will make periodic interest payments and/or principal payments, depending on the terms of the notes. The interest and loan origination expenses paid by Red Oak, Inc. and Blue Spruce, Inc. to White Pine, Inc. will not be added back to Federal taxable income provided that the loans are at arm's length rates and properly documented.

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. 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 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. 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, 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 may be permitted:

1. If the interest expenses and costs, as well as, intangible expenses and costs are directly or indirectly paid, accrued, or incurred to a related member in a foreign nation 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:

(1) The name of the related member;

(2) The amount of the interest expenses and costs and intangible expenses and costs deducted;

(3). The relevant foreign nation; and

(4) Such other information as the Director may prescribe;

2. If the interest expenses and costs, as well as, the intangible expenses and costs that the taxpayer establishes meet both of the following:

i. 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

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 tax;

3. If the taxpayer establishes, to the satisfaction of the Director, that the adjustments are unreasonable by 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 agree in writing to the application or use of an alternative method of apportionment.

(c) For purposes of (b) above:

1. "Foreign nation" means an established sovereign government that is recognized as such by the United States Department of State;

2. "Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation and/or the withholding of tax on interest, dividends and royalties, for the prevention of double taxation of the respective nations' residents, and the sharing of information;

3. "Foreign corporation" means a business entity incorporated or organized under the laws of a foreign nation;

4. "Domestic subsidiary" means a business entity incorporated under the laws of any state within the United States;

5. "Intangible property" to which intangible expenses and costs relate, means and includes, but is not limited to, patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, film, information technology, and similar types of intangible assets;

6. "Intangible expenses and costs" means and includes:

i. 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 I.R.C. §§ 1. et seq.;

ii. Losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions;

iii. Royalty, patent, technical, and copyright fees;

iv. Licensing fees; and

v. Other similar expenses and costs;

7. "Interest expenses and costs" means amounts directly or indirectly allowed as deductions under I.R.C. § 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;

8. "Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is:

i. A related entity;

ii. A component member as defined in I.R.C. § 1563.(b);

iii. A person to or from whom there is attribution of stock ownership in accordance with I.R.C. § 1563.(e); or

iv. A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (b)5viii(1) through (3) above of this definition;

9. "Related entity" means:

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;

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

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., apply for purposes of determining whether the ownership requirements of this definition have been met;

10. The disclosure requirement for interest paid to a related member shall be deemed to be satisfied if the taxpayer provides a schedule of:

i. The name of the related member;

ii. The country of domicile of the related member;

iii. The amount paid to the related member; and

iv. The nature of payment or, alternatively, by providing a copy of Federal Form 5472 or its equivalent as an attachment to Form CBT-100;

(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.

History

HISTORY:

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

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

Adopted concurrent new rule, R.2003 d.370, effective August 22, 2003, with changes effective September 15, 2003.

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

In (a), inserted "regardless of whether a tax was actually paid on the related member," following "foreign nation" in 1iii, inserted "except any traced to domestic sources or countries that do not have a comprehensive treaty with the United States," following "White Pine, Inc." in Example 3 of 5, rewrote Example 5, added Example 6 and 7 and deleted Examples 4 and 5 in 6.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

Special amendment, R.2020 d.057, effective April 8, 2020 (to expire October 5, 2020).

See: 52 N.J.R. 1025(a).

Rewrote the section.

Readoption of Special amendment, R.2021 d.032, effective April 5, 2021.

See: 52 N.J.R. 1991(a), 53 N.J.R. 544(a).

Provisions of R.2020 d.057 readopted with changes: in (a)6 Example 1, substituted "short-term" for "short term" and "long-term" for "long term".

N.J.A.C. 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. §§ 951.A 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/eliminated on Schedule A, column b. 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, column b 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.

History

HISTORY:

Special New Rule, R.2020 d.057, effective April 8, 2020 (to expire October 5, 2020).

See: 52 N.J.R. 1025(a).

Readoption of Special New Rule, R.2021 d.032, effective April 5, 2021.

See: 52 N.J.R. 1991(a), 53 N.J.R. 544(a).

Provisions of R.2020 d.057 readopted with changes: in (b), inserted a comma following "deduction"; and in (e), substituted "Schedule A, column b" for "Schedule A-8" twice, and substituted "excluded/eliminated" for "excluded".

N.J.A.C. 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 corporation business tax return, as

applicable, and providing the Director of the Division of Taxation with adequate documentation of the previously taxed dividend income.

History

HISTORY:

Special New Rule, R.2020 d.057, effective April 8, 2020 (to expire October 5, 2020).

See: 52 N.J.R. 1025(a).

Readoption of Special New Rule, R.2021 d.032, effective April 5, 2021.

See: 52 N.J.R. 1991(a), 53 N.J.R. 544(a).

Provisions of R.2020 d.057 readopted with change: in (b), substituted "corporation business tax return" for "CBT-100 or BFC-1".

N.J.A.C. 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 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 are, as follows:

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

ii. "Base year BAF" means the taxpayer's business allocation factor as provided in sections 6 through 10 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-6 through 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. The base year BAF is the allocation factor reported on the taxpayer's Schedule J of its respective New Jersey corporation business tax return.

iii. "UNOL" means the unabsorbed portion of a net operating loss, as calculated at N.J.S.A. 54:10A-4(k)(6), that was in effect for the base year, the last privilege period ending prior to July 31, 2019. The UNOL is the amount 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 pursuant to this paragraph, including any net operating loss sustained by the taxpayer during the base year. The UNOL is the amount reported on Form 500;

2. The prior net operating loss conversion carryover shall be calculated, as follows:

i. 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 tax 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.

ii. 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-6 through 54:10A-10) for privilege periods ending on and after July 31, 2019.

Such carryover periods shall not exceed the 20 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 that 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 at N.J.S.A. 54:10A-4(k)(4) and (5) allocated to this State.

iii. The prior net operating loss conversion carryover computed pursuant to this paragraph shall be applied against the entire net income allocated to this State before the net operating loss carryover computed pursuant to 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 until 2044 (that is, four years subsequent to the original due date of the return representing the last period for which the prior net operating loss conversion carryover could be carried over for use before expiring);

4. The limitations provided for at N.J.S.A. 54:10A-4(k)(6)(D) and 54:10A-4(k)(6)(F) shall apply to the prior net operating loss conversion carryovers; and

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 five-year carryover period, in addition to the original 15-year carryover period pursuant to N.J.S.A. 54:10A-4.3.

(b) For the purposes of the net operating loss deduction calculation pursuant to 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. 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 over. The portion of the loss that shall be carried over 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 at N.J.S.A. 54:10A-4(k)(4) and (5) allocated to this State;

2. For purposes of this subsection, 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 at N.J.S.A. 54:10A-4(k)(6)(A), and computed without the exclusions at N.J.S.A. 54:10A-4(k)(4) and (5), allocated to this State pursuant to sections 6 through 10 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-6 through 54:10A-10);

3. 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 pursuant to subparagraphs (A), (B), or (C) of paragraph (1) of subsection (a) at section 108 of the Federal I.R.C., 26 U.S.C. § 108, for the privilege period relating to the discharge of indebtedness;

4. A net operating loss carryover shall not include any prior net operating loss conversion carryovers; and

5. Where there is a change in 50 percent 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 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 pursuant to subsection (v) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6).

1. 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 at 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 to the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

(d) For more information on PNOLs and NOLs in relation to combined groups and combined reporting, see N.J.A.C. 18:7-21.

History

HISTORY:

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 18:7-5.22 Application of Internal Revenue Code Section 163(j)

(a) For privilege periods beginning after December 31, 2017, the interest deduction limitation in subsection (j) at I.R.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 I.R.C. § 163(j).

(c) The I.R.C. § 163(j) limitation is applied first, before applying the related party add backs at 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 I.R.C. § 163(j), applying the limitation to those members as each separate taxpayers, and then apply the limitations at 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 at I.R.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 at I.R.C. § 163(j) to Federal consolidated returns shall apply. However, such members are still subject to the limitations set forth at 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 at I.R.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 N.J.A.C. 18:7-21.

(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 at I.R.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 N.J.A.C. 18:7-21.

(h) For corporation business tax purposes, New Jersey conforms to the CARES Act amendments and any other subsequent amendments at I.R.C. § 163(j).

History

HISTORY:

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 18:7-5.23 Application of Federal stock ownership attribution rules

Except as otherwise provided either in this chapter or for specific purposes in certain sections of the Corporation Business Tax Act, the Federal stock ownership attribution rules apply for New Jersey corporation business tax purposes, except as set forth in this section. However, if a provision of the Internal Revenue Code regarding stock ownership attribution rules or subsequent amendments to any provision of the Internal Revenue Code 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 N.J.A.C. 18:7-21.

History

HISTORY:

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 18:7-7.1 General instructions regarding allocation of net income

(a) No corporation, foreign or domestic (other than a corporation entitled and electing to report as an investment company, regulated investment company or real estate investment trust) is entitled to allocate any part of its entire net income outside New Jersey unless during the period covered by the return it maintained a regular place of business outside the State. Notwithstanding the foregoing, for privilege periods beginning on or after July 1, 2010, a corporation is not required to maintain a regular place of business outside New Jersey in order to allocate any part of its entire net income outside New Jersey.

(b) In the absence of a regular place of business, 100 percent of its entire net income must be allocated to New Jersey.

(c) The mere ownership of assets outside New Jersey does not constitute a basis for allocating less than 100 percent of the taxpayer's net income to New Jersey.

(d) Where the taxpayer does not maintain a regular place of business outside New Jersey and its allocation factor is 100 percent and the taxpayer in fact pays a tax based on or measured by income to another state, see N.J.A.C. 18:7-8.3 which provides for the eligibility and method in computing a reduction in the tax for such taxpayer.

History

HISTORY:

Amended by R.1985 d.54, effective February 19, 1985.

See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).

"Corporation" substituted for "taxpayer" and added "or real estate investment trust."

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

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

Amended by R.2009 d.384, effective December 21, 2009.

See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).

In (a), inserted the last sentence.

N.J.A.C. 18:7-7.2 Regular place of business; definition

(a) A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance. The following factors will assist in the determination of what is a regular place of business.

1. Bona fide office: An office in which an employee in attendance performs significant duties related to the business of the taxpayer. An office in name only, space of the taxpayer or any place where an employee does not actually perform significant duties constituting part of taxpayer's business does not constitute a regular place of business.

2. Space of the taxpayer: The taxpayer must be directly responsible for the expenses incurred in maintaining the regular place of business and must either own or rent the facility in its own name and not through a related person or entity. The regular place of business should be identifiable as belonging to the taxpayer by, for example, reflecting the taxpayer's name on the exterior and interior of the building and being listed in the taxpayer's name in a telephone book.

3. Regularly maintained, occupied and used by the taxpayer in carrying on its business: The taxpayer must regularly maintain, occupy and use the premises by employing one or more regular employees who are in attendance during normal working hours. Premises are not regularly maintained, occupied and used in the event employees are in attendance only on a part time basis and, in their absence, telephone messages are received by an answering service or recording device.

4. Regular employee: A regular employee must be under the control and direction of the taxpayer in transacting the taxpayer's business and/or performing work on behalf of the taxpayer. The officers of the taxpayer are generally deemed to be regular employees of the taxpayer while independent contractors and members of the taxpayer's board of directors are not regular employees of the taxpayer. The method or procedure by which a taxpayer reports the compensation paid to an individual (such as a

W-2 form) shall not be conclusive as to whether the individual is a regular employee (See N.J.A.C. 18:7-8.14.):

i. The facilities of a public warehouse located outside New Jersey and utilized to store property of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer where the warehouse is not the space of the taxpayer.

ii. The facilities of an independent contractor located outside of New Jersey and used to store, convert, process, finish and/or improve the goods of the taxpayer prior to shipment to customers shall not constitute a regular place of business of the taxpayer.

iii. A job site, field office or other facility which is not regularly maintained, occupied and used in taxpayer's business or where administrative duties, such as performing payroll functions, telephoning, recordkeeping, banking, accounting, the hiring and firing of employees and similar functions are not performed, is not a regular place of business.

iv. The location of inventories outside New Jersey in the possession of employees in their homes, or in trucks, or in coin-operated machines do not represent space regularly maintained, occupied and used by the taxpayer in carrying on its business.

v. In the event that the taxpayer's business is conducted by an independent agent or independent contractor, the place of business of the independent agent or independent contractor shall not be considered a regular place of business of the taxpayer. In addition, any employee of such independent agent or independent contractor shall not be considered a regular employee of the taxpayer.

(b) A taxpayer does not have a regular place of business outside New Jersey solely by consigning goods to an independent factor outside New Jersey for sale at the direction of either the consignor or consignee.

(c) The mere fact that a taxpayer is subject to an income or franchise tax in other jurisdictions shall not be determinative as to whether the taxpayer maintains a regular place of business outside New Jersey where taxable status in that jurisdiction is based on criteria other than a regular place of business.

History

HISTORY:

Amended by R.1985 d.54, effective February 19, 1985.

See: 16 N.J.R. 2999(b), 17 N.J.R. 476(b).

(a)1-2 deleted and new text (a)1-4 substituted; (c) added.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), inserted "factors"; in (a)1, substituted "An office in name only" for "A token office"; in (a)4iv and (c), deleted "of" following "outside"; and in (a)4v, inserted "that". Statutory References

See N.J.S.A. 54:10A-6 as to how to determine allocation factor for taxpayer maintaining regular place of business outside New Jersey.

N.J.A.C. 18:7-7.3 Allocating and non-allocating companies; definition

(a) A taxpayer that allocates a portion of its entire net income outside this State is referred to as an "allocating" taxpayer.

(b) A taxpayer that does not allocate any part of its entire net income outside this State is referred to as a "non-allocating" taxpayer.

(c) A taxpayer that maintains a regular place of business outside New Jersey for less than 50 percent of the period of time covered by a return is referred to as a "part year allocating" taxpayer.

History

HISTORY:

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

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

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

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

Added (c).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was " 'Allocating' and 'non-allocating' companies; definition". In (a) and (b), substituted "that" for "which".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-4(b) as to definition of "allocation factor," and 54:10A-6 as to how to determine allocation factor for a taxpayer who maintains a regular place of business outside New Jersey.

N.J.A.C. 18:7-7.4 Allocation factor; definition

"Allocation factor" means the proportionate part of a taxpayer's entire net income used to determine a measure of its tax under the Act.

History

HISTORY:

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

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

N.J.A.C. 18:7-7.5 Allocation factor; application

(a) If the taxpayer had a regular place of business outside New Jersey during the period covered by the return, its tax liability under the New Jersey Corporation Business Tax Act is measured by that part of its entire net income allocated to New Jersey according to a formula called the business allocation factor.

(b) If the taxpayer is deemed to be a "part year allocating" taxpayer because it had a regular place of business outside New Jersey for less than 50 percent of the period of time covered by the return, it will determine its overall business allocation factor by prorating the overall business allocation factor computed by the number of months, or part thereof, that a regular place of business was maintained and adding this to 100 percent prorated by the number of months, or part thereof, a regular place of business was not maintained.

Example: Corporation X establishes its only regular place of business outside New Jersey on November 16 of its 12 month calendar year. The overall business allocation factor computed on Schedule J for the entire period was 62.2424 percent. The prorated allocation factor would be 93.7071 percent computed as follows:

$$\frac{(62.2424 \times 2) + (100 \times 10)}{12}$$

History

HISTORY:

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

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

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

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

Designated paragraph as (a), added (b).

Amended by R. 2017 d. 123, effective June 19, 2017.

See 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b), inserted a comma following the second occurrence of "months" and "thereof".

HISTORICAL NOTE:

Laws of 1968, Chapter 250 eliminated the use of the asset factor for the purpose of allocating net worth, effective with respect to privilege periods commencing after December 31, 1968.

STATUTORY REFERENCES:

See Laws 1968, Chapter 250 as to elimination of asset factor for purpose of allocating net worth, effective with respect to privilege periods commencing after December 31, 1968. See N.J.S.A. 54:10A-4(b) as to definition of "allocation factor". See N.J.S.A. 54:10A-6 as to how to determine allocation factor for taxpayer maintaining regular place of business outside New Jersey.

N.J.A.C. 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 at 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) Subsection (a) above may apply to foreign corporations, otherwise not subject to the New Jersey corporation business tax, whose only connection to this State is restricted to owning one or more limited partnership interests in one or more limited partnerships doing business in New Jersey, provided the taxpayer's connection with this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States. See N.J.A.C. 18:7-1.6.

(c) A foreign corporate limited partner of a limited partnership doing business in New Jersey is considered exercising its franchise to do business in this State, doing business in this State or employing capital in this State, and, therefore, is subject to tax under N.J.S.A. 54:10A-2 and filing a corporation business tax return, if:

1. The limited partner is also a general partner of the limited partnership;

2. The foreign corporate limited partner, in addition to the exercise of its rights and powers as a limited partner, takes an active part in the control of the partnership business;

3. The foreign corporate limited partner meets the criteria set forth in N.J.A.C. 18:7-1.9 or 1.6; or

4. The business of the partnership is integrally related to the business of the foreign corporation.

(d) Tax filing and payment responsibilities of partnerships are set forth in N.J.A.C. 18:7-17. For the partnership processing fee, see N.J.A.C. 18:35-11.

(e) It shall be the burden of the taxpayer to prove to the Director by clear and cogent evidence that the facts and circumstances surrounding its involvement with the limited partnership or limited liability company do not subject it to tax under the Act.

(f) For purposes of this section, the term "partnership" has the same meaning as is set forth under I.R.C. § 7701(a)(2) and the regulations issued thereunder. Partnerships that are not treated for Federal tax purposes as pass-through entities are also not treated as pass-through entities under this section. The term "partnership" shall include limited liability companies treated as partnerships.

(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 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) 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 the purpose of this section only, means use of the following method: Taxpayer shall separately compute the receipts fractions attributable to the partnership activity. The taxpayer next computes the 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.

4. For further information about combined returns and unitary businesses, see N.J.A.C. 18:7-21.

5. 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 at (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 N.J.A.C. 18:7-21.

1. Solely for purposes of this section, each regular place of business of a partnership that is unitary with a corporate partner is to be treated as a regular place of business of the corporate partner. Relief pursuant to N.J.A.C. 18:7-8.3 is permitted to domestic partners with respect to partnership income duplicated on a return of a domestic corporate partner filed with another state. By virtue of its subjectivity under the Corporation Business Tax Act, a corporate partner may seek relief under N.J.S.A. 54:10A-8 if the taxpayer believes that tax computed does not result in a fair apportionment.

(i) A "tiered partnership," for the purposes of this section, is a partnership whose partners are partnerships. A corporation that is a partner in a partnership that in turn is a partner in yet another partnership is not immune from New Jersey taxation simply because of the tiered partnership. The ultimate tax burden and loss benefit falls on the corporate partner. The corporation shall file a New Jersey corporation business tax return taking account of its ultimate distributive share of the tiered partnership's income or loss from New Jersey activities.

(j) The classification of partnership items of income, expense, or loss as operational or nonoperational is to be determined in accordance with N.J.S.A. 54:10A-6.1. Whether or not a partnership is unitary or nonunitary with its corporate partner is a different issue from the issue of taxability of operational or nonoperational income or the deductibility of operational or nonoperational expenses or losses.

(k) Any New Jersey corporate tax credits for which a subject corporate partner may qualify shall pass through to the corporate partner. The corporate partner may claim its proportionate share of such credit on its New Jersey corporation business tax return.

EXAMPLE I

Corporation ABC is a foreign corporation which allocates to New Jersey, and also has 50 percent share in a partnership that is doing business in New Jersey, but is not unitary with the corporation. The corporation would calculate its allocation factor and allocated income exclusive of the activities of the partnership. The partnership would calculate its allocated income based upon its own attributes, and the allocated incomes from both entities are combined to make allocated net income.

	ABC Corp.	Fraction in NJ	General Partnership	Fraction in NJ
Property NJ	9,000		500	
Everywhere	10,000	.900000	1,000	.500000
Receipts NJ	3,000		5,000	
Everywhere	10,000	.300000	20,000	.250000
Double Weighting of		.300000		.250000

Receipts Fraction					
Payroll NJ	6,000		250		
Everywhere	10,000	.600000	1,000	.250000	
Total		2.100000		1.250000	
Allocation Factor		.525000		.132500	
(Total divided by 4)					
Net Income of Corporation					$ 5,000
Corporation's					$ 1,000
Distributive Share of Partnership Income					
Total Net Income					$ 6,000
Corporation's Income		5,000			
Corporation's		.525000			
Allocation Factor					
Corporation's					$ 2,625
Allocation Net Income					
Partnership Income				1,000	
Partnership				.312500	
Allocation Factor					
Partnership					$ 313
Allocation Net Income					
Total Allocated Net Income					$ 2,938

EXAMPLE II

Corporation DEF is a foreign corporation that has no nexus with New Jersey other than a 50 percent general partnership interest in a partnership, which is not unitary with the corporation. The corporation would calculate its allocation factor and allocated income exclusive of the activities of the partnership. In this case, the allocation factor is zero and the corporation does not allocate any of its income to New Jersey. The partnership would allocate its income as a separate entity. The allocated income from both calculations are then combined to compute the tax liability of the corporation.

	DEF Corp.	Fraction in NJ	General Partnership	Fraction in NJ
Property NJ	0		750	
Everywhere	10,000	0.000000	1,000	.750000

Receipts NJ	0		10,000		
Everywhere	10,000	0.000000	20,000	.500000	
Double Weighting of Receipts Fraction		0.000000		.500000	
Payroll NJ	0		750		
Everywhere	10,000	0.000000	1,000	.750000	
Total		0.000000		2.500000	
Allocation Factor (Total divided by 4)		0.000000		.625000	
Net Income of Corporation					$ 5,000
Corporation's Distributive Share of Partnership Income					$ 1,000
Total Net Income					$ 6,000
Corporation's Income		5,000			
Corporation's Allocation Factor		.000000			
Corporation's Allocation Net Income					$ 0
Partnership Income				1,000	
Partnership Allocation Factor				.625000	
Partnership Allocation Net Income					$ 625
Total Allocated Net Income					$ 625

EXAMPLE III

Corporation XYZ is unitary with a partnership and holds a 50 percent general partnership interest in a general partnership. The taxpayer should use the flow through method of allocation since there is a sufficient integration of assets and business activities between the corporation and partnership.

	XYZ Corp.	50 Percent Partnership Interest	Combined	Fraction in NJ
Property NJ	9,000	750	9,750	
Everywhere	10,000	1,000	11,000	.886364
Receipts NJ	3,000	10,000	13,000	

Everywhere	10,000	20,000	30,000	.433333	
Double Weighting of Receipts Fraction				.433333	
Payroll NJ	6,000	750		6,750	
Everywhere	10,000	1,000	11,000	.613636	
Total				2.36666	
Allocation Factor (Total divided by 4)				.591667	
Net Income of Corporation					$ 5,000
Corporation's Distributive Share of Partnership Income					$ 1,000
Total Net Income					$ 6,000
Combined Allocation Factor					.591667
Allocated Entire Net Income					$ 3,550

The numerator and denominator of each fraction is determined by taking the corporation's property, payroll or receipts in New Jersey and everywhere and adding them to its share of the partnership's property, payroll or receipts in New Jersey and everywhere. The partnership's fractions are based on the corporation's percentage ownership interest without regard to special allocations. The column in the example headed "Fraction in NJ" represents each combined fraction in decimal form.

EXAMPLE IV

Corporation GHI is a foreign corporation which has no nexus with New Jersey other than a 10 percent general partnership interest in a limited partnership, which is unitary with the corporation. GHI is subject to Corporation Business Tax. Since the corporation has a unitary relationship with the partnership, the flow through method should be used to calculate the correct amount of income to be allocated to New Jersey. Corporation LMN holds a limited partnership interest in the same limited partnership. The corporation and the partnership are not part of a unitary business, and the limited partnership does not have liabilities to third parties. LMN is not subject to corporation business tax in New Jersey since it is a true limited partner, not a "deemed general partner" pursuant to (c) above.

	GHI Corp.	10 Percent General Partnership Interest	Combined	Fraction in NJ
Property NJ	0	750	750	
Everywhere	10,000	1,000	11,000	.068182
Receipts NJ	0	10,000	10,000	
Everywhere	10,000	20,000	30,000	.333333
Double Weighting of Receipts Fraction				.333333
Payroll NJ	0	750	750	

Everywhere	10,000	1,000	11,000	.068182	
Total				.803030	
Allocation Factor (Total divided by 4)				.200758	
Net Income of Corporation					$ 5,000
Corporation's Distributive Share of Partnership Income					$ 1,000
Total Net Income					$ 6,000
Combined Allocation Factor					.200758
Allocated Entire Net Income					$ 1,205

The numerator and denominator of each fraction is determined by taking the corporation's property, payroll or receipts in New Jersey and everywhere and adding them to its share of the partnership's property, payroll or receipts in New Jersey and everywhere. The partnership's fractions are based on the corporation's percentage ownership interest without regard to special allocations. The column in the example headed "Fraction in NJ" represents each combined fraction in decimal form.

History

HISTORY:

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

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

Section was "Optional short tax table in lieu of allocation of net worth".

New Rule, R.1997 d.430, effective October 6, 1997.

See: 29 N.J.R. 1686(a), 29 N.J.R. 4327(a).

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

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

In (a), deleted the last sentence; rewrote (b); in (c), amended the N.J.A.C. reference in 3 and added 4; rewrote (d); in (f), deleted the last sentence; deleted (*l*).

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "Corporation Business Tax Act" for "corporation business tax" and inserted a comma following "employing"; in (c)2, substituted "corporate" for "corporation"; in (g)1, (g)2, and the introductory paragraph of (h), inserted a comma following "payroll" five times; in (g)1, substituted "subsection" for "section"; in (g)2, added quotation marks around "Flow through accounting apportionment,"; in (g)3vi, inserted a comma following "technology"; in (h)1, substituted the first occurrence of "that" for "which", inserted "Act" and inserted "the" preceding "taxpayer"; in (j), inserted a comma following "expense"; rewrote the introductory paragraph of (k); deleted former (k)1 and (k)2; in EXAMPLE I, substituted "incomes" for "income" and "allocated net income" for

"Allocated Net Income"; in EXAMPLE II, substituted "that" for "which"; and in EXAMPLE III and EXAMPLE IV, substituted "New Jersey" for "State" four times.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

In (a), substituted "at" for "in" preceding "N.J.S.A."; in (g)1, deleted ", payroll, and property" following the first occurrence of "receipts" and following "transactions)"; in (g)2, substituted "the purpose" for "purposes" and deleted "property, payroll, and" preceding both instances of "receipts"; recodified (g)4 as (g)5; added new (g)4; in (h), substituted "at" for "in" preceding "(g)", and inserted the last sentence.

N.J.A.C. 18:7-8.1 Business allocation factor; computation

(a) The business allocation factor is computed on the basis of the average percentage resulting from the following three fractions:

1. Average value of real and tangible personal property in New Jersey over the average value of such property both within and outside New Jersey (this is usually referred to as the property fraction);

2. Receipts allocable to New Jersey over receipts both within and outside New Jersey (this is usually referred to as the receipts fraction in this subchapter but may also be referred to as the sales fraction. The terms may be used interchangeably for fiscal periods beginning on or after July 1, 1996);

3. Payroll allocable to New Jersey over payroll within and outside New Jersey (this is usually referred to as the payroll fraction).

(b) The business allocation factor is weighted as follows:

1. For fiscal or calendar accounting years beginning before July 1, 1996, the business allocation factor is computed by adding together the percentages derived from the foregoing three fractions for the period covered by the return, and dividing the total of the percentages by three.

2. For fiscal or calendar accounting years beginning on or after July 1, 1996, the business allocation factor is computed by adding together the percentages derived by adding the property fraction, the payroll fraction, and twice the receipts for the period covered by the return, and dividing the total of the percentages by four.

(c) If the receipts fraction is missing, the other two percentages are added and the sum is divided by two, and if both the receipts fraction and one other fraction are missing, the remaining percentage may be used as the business allocation factor. If the receipts fraction is present and either the property or payroll fraction is absent, then the percentages represented by the two fractions present are added together and divided by three. A fraction is not missing merely because its numerator is zero, but it is missing if both its numerator and denominator are zero.

(d) For privilege periods beginning on or after January 1, 2012, the business allocation factor is computed according to the following schedule:

1. For privilege periods beginning on or after January 1, 2012, but before January 1, 2013, 15 percent of the property fraction plus 70 percent of the sales fraction plus 15 percent of the payroll fraction;

2. For privilege periods beginning on or after January 1, 2013, but before January 1, 2014, five percent of the property fraction plus 90 percent of the sales fraction plus five percent of the payroll fraction; and

3. For privilege periods beginning on or after January 1, 2014, 100 percent of the sales fraction.

(e) For taxpayers with fiscal year privilege periods, the business allocation factor is computed according to the following schedule:

1. For a taxpayer that has a privilege period that begins in 2011 and ends in 2012, the business allocation factor is computed with the numerator consisting of the property fraction, plus twice the sales fraction plus the payroll fraction and the denominator of which is four (double weighted sales factor allocation method);

2. For the taxpayer that has a privilege period that begins in 2012 and ends in 2013, the sales fraction will account for 70 percent of the allocation, and the property and payroll fractions will each account for 15 percent of the allocation;

3. For the taxpayer that has a privilege period that begins in 2013 and ends in 2014, the sales fraction will account for 90 percent of the allocation, and property and payroll fractions will each account for five percent of the allocation; and

4. For privilege periods beginning in 2014 and for all subsequent privilege periods, the sales fraction will account for 100 percent of the allocation.

Example: Company A has a privilege period that begins August 1, 2011, and ends on July 31, 2012. For the Company A's 2011-2012 privilege period, Company A must use the double weighted sales factor allocation method. For Company A's 2012-2013 privilege period, Company A must use the 70% sales factor allocation method. For Company A's 2013-2014 privilege period, Company A must use the 90% sales fraction method. For Company A's 2014-2015 privilege period and all subsequent privilege periods, Company A will use the 100% sales factor allocation method.

(f) For privilege periods beginning on or after January 1, 2012, the determination of the sales factor for airlines is as follows:

1. 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.

2. For a taxpayer that is an airline 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, respectively.

(g) As used in (f) above, "revenue miles" means passenger revenue miles for passengers, ton revenue miles for freight, or aircraft revenue miles for aircraft rentals.

1. The passenger revenue mile fraction is determined by multiplying the number of revenue-paying passengers aboard the vehicle by the distance traveled in New Jersey divided by the number of revenue-paying passengers aboard the vehicle multiplied by the distance traveled everywhere.

2. The freight revenue mile fraction is determined by dividing the revenue freight ton miles in New Jersey by the revenue freight to miles everywhere. A freight revenue ton mile is equal to one ton carried one mile.

3. The rental revenue mile fraction is determined by dividing the number of rental miles flown in New Jersey by total rental miles flown.

History

HISTORY:

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

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

Substantially amended section.

Amended by R.2012 d.111, effective June 4, 2012.

See: 44 N.J.R. 142(a), 44 N.J.R. 1727(a).

Added (d) through (g).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a)1, (a)2, and (a)3, substituted "outside" for "without" three times; in (a)3, substituted "Payroll" for "Payrolls" and "payroll" for "payrolls"; and in (e)3, substituted the second occurrence of "that" for "which".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-6 as to how to compute business allocation factor.

N.J.A.C. 18:7-8.2 Method of arithmetic computation required

In computing allocation percentages, division must be carried to six decimal places, for example, .201614 or 20.1614 percent.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted a comma following "example", and substituted "percent" for "per cent".

N.J.A.C. 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) Reduction in tax for income duplicated on a return filed with another State pursuant to N.J.S.A. 54:10A-8 and this rule--100 percent allocation factor:

1. Eligibility:

i. Where the business allocation factor under N.J.S.A. 54:10A-6 is 100 percent and the taxpayer in fact paid a tax based on or measured by income to a foreign state, resulting in a duplication of income being taxed, the taxpayer may, under N.J.S.A. 54:10A-8, apply for a reduction in the amount of its tax. The reduction is available only where the taxpayer in its own right acquired a taxable status in the foreign state by reference to at least one of the criteria described at N.J.A.C. 18:7-1.6.

Example: Corporation A does not maintain a regular place of business outside New Jersey, other than a statutory office. Corporation A was not a domestic corporation in State X, nor did Corporation A meet any of the other criteria described at N.J.A.C. 18:7-1.6 in State X which would have created a taxable status in New Jersey. Although it was not itself doing business in State X, Corporation A

was a member of an affiliated group of corporations which conducted a unitary business in State X and as such is permitted or required to join in filing a combined or consolidated return in State X. In fact, Corporation A did so.

Any duplication of income being reported to New Jersey and to State X may not form the basis for a reduction in the tax.

2. Method:

i. An eligible taxpayer computes its reduction on a rider attached to its return by demonstrating that a part of entire net income is duplicated on a return filed with another state. The eligible taxpayer must attach a copy of all relevant portions of the return filed with the foreign state relating to income reported, the computation of all components of its apportionment fractions, and the computation of the tax paid to the foreign state. The eligible taxpayer must also submit a schedule apportioning all property, receipts, and payroll to a common denominator defined consistent with the return. For purposes of calculating the reduction:

(1) The business allocation factor may be based upon only so much of adjusted entire net income appearing on its corporation business tax return as is reported to the foreign state;

(2) The formula apportionment used in the foreign state may not exceed the business allocation factor as determined under N.J.S.A. 54:10A-6 and these rules;

(3) The business allocation factor must be computed by using the lesser of the tax rates of the foreign state or the tax rate under the New Jersey Corporation Business Tax Act.

Example 1: Corporation A does not maintain a regular place of business outside New Jersey other than a statutory office. As a consequence, Corporation A's business allocation factor is 100 percent. Corporation A sold land for $ 250,000 which had a tax basis and book value of $ 100,000 and was situated in State Y. Under the laws of State Y, the entire gain is directly allocable to State Y and is taxed at an eight percent rate. Corporation A may determine the portion of its tax which is measured by net income as follows:

	New Jersey Tax Income Base	Duplicated in State Y
Gross income exclusive of gain on sale of land	$ 500,000	
Net gain on sale of land	+150,000	$ 150,000
Total income	650,000	
Deductions	-447,778	
Taxable income before net operating deductions and special deductions	202,222	
Adjustments--NJ Corporation Business Tax Deducted--add back	+20,000	
Entire net income	$ 222,222	
Tax at 9% -- before reduction	$ 20,000	
Formula apportionment not used in State Y		100%
Duplication of income		150,000
Reduction--may not exceed 9%		.08
Tax paid to State Y		$ 12,000
Reduction	-12,000	

Paid with return	$ 8,000

Example 2: Corporation B does not maintain a regular place of business outside New Jersey other than a statutory office. Corporation B's business allocation factor is 100 percent. Corporation B did however start and complete a construction job in State Z and paid an income tax to State Z at a 10 1/2 percent rate. Corporation B may determine the portion of its corporation business tax measured by net income as follows:

For accounting periods beginning before July 1, 1996:

		New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss		$ 227,500	$ 227,500
deduction and special deductions			
Add ACRS	$ 15,000		
Less NJ depreciation	12,000	3,000	
Add ACRS	15,000		
Less State Z Depreciation	15,000		-0-
+Add back of NJ CBT, other States, Political Subdivisions, etc. tax paid or accrued	52,000	52,000	
Taxes imposed or measured by income from State Z return	28,800		28,800
Municipal bond interest add back--NJ	7,000	7,000	
Municipal Bond Interest add back--State Z	-0-		-0-
Net Operating Loss--NJ	4,500	(4,500)	
Net Operating Loss--State Z	5,000		(5,000)

Dividend Exclusion--NJ	10,000	(10,000)	(10,000)
Dividend Exclusion--State Z	-0-	———	———
Entire Net Income		$ 275,000	
Portion of ENI duplicated			$ 241,300
Apportionment (computed below)			.250000
Apportioned duplicated ENI			$ 60,325
Tax at 9% on New Jersey Income Base		$ 24,750	
Tax at State Z rate (10 1/2%) on Apportioned duplicated ENI			$ 6,334
Reduction--at 9% of Apportioned duplicated ENI ($ 60,325)		$ 5,429	
New Jersey tax after credit		$ 19,321	

+ For accounting periods beginning on or before July 7, 1993 only, New Jersey CBT was required to be added back in computing New Jersey ENI.

For accounting periods beginning on or after July 1, 1996:

	New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss	$ 227,500	$ 227,500

deduction and special deductions			
Add ACRS	$ 15,000		
Less NJ depreciation	15,000	3,000	
Add ACRS	15,000		
Less State Z Depreciation	15,000		-0-
Add back of NJ CBT, other States, Political	52,000	52,000	
Subdivisions, etc. tax paid or accrued			
Taxes imposed or measured by income from State Z return	28,800		28,800
Municipal bond interest add back--NJ	7,000	7,000	
Municipal Bond Interest add back--State Z	-0-		-0-
Net Operating Loss--NJ	4,500	(4,500)	
Net Operating Loss--State Z	5,000		(5,000)
Dividend Exclusion--NJ	10,000	(10,000)	(10,000)
Dividend Exclusion--State Z	-0-		
Entire Net Income		$ 275,000	
Portion of ENI duplicated			$ 241,300
Apportionment (computed below)			.245000

Apportioned duplicated ENI		$ 59,118
Tax at 9% on New Jersey Income Base	$ 24,750	
Tax at State Z rate (10 1/2%) on Apportioned duplicated ENI		$ 6,207
Reduction--at 9% of Apportioned duplicated ENI ($ 59,118)	$ 5,321	
New Jersey tax after credit	$ 19,429	

Corporation B computed the apportionment on its State Z return as follows:

	State Z	Every where	Portion in State Z
Property Fraction	$ 140,000	$ 500,000	
Owned (Valued under State Z law and regulation)			
Leased (at 8 times annual rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$ 180,000	$ 600,000	0.300000
Receipts Fraction	$ 200,000	$ 1,000,000	0.200000
Double Weighting of Receipts Fraction			0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			1.000000
Allocation Factor using State Z Law and Regulation (Total divided by four)			0.250000

For accounting periods beginning before July 1, 1996, if the formula apportionment had been determined in State Z consistent with the NJ Corporation Business Tax Act, it would have been:

Property Fraction		
Owned (Valued under NJ CBT Act)	$ 100,000	$ 400,000
Leased (at 8 times rentals)	$ 40,000	$ 100,000

Total Property Fraction	$ 140,000	$ 500,000	0.280000
Receipts Fraction	$ 200,000	$ 1,000,000	0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			0.780000
Allocation Factor using NJ CBT Act (Total divided by three)			0.260000

For accounting periods beginning on or after July 1, 1996, if the formula apportionment has been determined in State Z consistent with the N.J. Corporation Business Tax Act, it would have been:

Property Fraction			
Owned (Valued under NJ CBT Act)	$ 100,000	$ 400,000	
Leased (at 8 times rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$ 140,000	$ 500,000	0.280000
Receipts Fraction	$ 200,000	$ 1,000,000	0.200000
Double Weighting of Receipts Fraction			0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			0.980000
Allocation Factor using NJ CBT Act (Total divided by four)			0.245000

For the period beginning prior to July 1, 1996, since the apportionment fraction (.250000) used in State Z does not exceed the business allocation factor as it would have been determined under the Act and this subchapter, it is used for purposes of determining the reduction.

For the period beginning on or after July 1, 1996, since the apportionment fraction (.250000) used in state Z exceeds the business allocation factor as it would have been determined under the Act and this subchapter, the New Jersey business allocation factor (.245000) would be used for purposes of determining the reduction.

(c) For privilege periods ending on and after July 31, 2019, if it appears that the 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 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 54:10A-4.10.

History

HISTORY:

Amended by R.1984 d.594, effective January 7, 1985.

See: 16 N.J.R. 3001(a), 17 N.J.R. 115(c).

(b) added.

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

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

Rewrote tables in (b)2i(3).

Administrative correction.

See: 40 N.J.R. 6477(a).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted a comma following "worth"; and rewrote (b).

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Added (c).

N.J.A.C. 18:7-8.4 Property fraction; "tangible personal property"; definition and scope; special situations

(a) The term "tangible personal property" shall mean corporeal personal property, such as machinery, fixtures, tools, implements, goods, wares, and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidence of an interest in property, and evidences of debt.

(b) Tangible personal property within New Jersey.

1. Tangible personal property is within New Jersey if and so long as it is physically situated or located here, even though it may be stored in a bonded warehouse in this State.

2. Property of the taxpayer held in New Jersey by an agent, consignee, or factor is (and property held outside New Jersey by an agent, consignee, or factor is not) situated or located within New Jersey.

3. Mobile or movable property, such as construction equipment or trucks, is within New Jersey based on the ratio of time the property is used within the State to the time the property is used everywhere during the period covered by the return.

4. Ships are within New Jersey based on the ratio of time the vessels are in operation in New Jersey to the time the vessels are in operation everywhere, and including all sailing days, days in port for loading, unloading, ordinary repairs, refueling, or provisioning as operation.

5. Aircraft used by airlines are within New Jersey based on the ratio of takeoffs in regular scheduled or charter flights that occur during revenue service from points in New Jersey to the total of all such takeoffs everywhere. Aircraft used other than by airlines in revenue service are within New Jersey based on the ratio of takeoffs from points in New Jersey to the total of all takeoffs everywhere when the aircraft are in use.

6. Consistent with N.J.S.A. 54:10A-6(b), satellites used in the communications industry are included in the denominator of the property fraction but the numerator shall include a portion of such property

based upon the ratio of ground stations serviced in New Jersey to the number of all such ground stations.

(c) Tangible personal property in transit.

1. Property in transit from a point in New Jersey to another point in New Jersey is situated or located in New Jersey.

2. Property in transit from a point outside New Jersey to another point outside New Jersey is situated or located outside New Jersey.

3. Property, while in transit from a point outside New Jersey to a point in New Jersey or vice-versa does not have a fixed situs either within or outside the State and, therefore, will not be deemed to be "situated" or "located" either within or outside New Jersey and accordingly, such property while so in transit should be omitted from both the numerator and the denominator of the property fraction.

4. Property ceases to be in transit when it is delivered to or becomes subject to actual possession by the owner at the point of destination.

History

HISTORY:

Amended by R.1987 d.137, effective March 16, 1987.

See: 18 N.J.R. 627(a), 19 N.J.R. 464(a).

(b)3.-6. added.

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

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

Changed section name.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted commas throughout the section; in (b)3, substituted "State" for "state"; and in (c)2 and (c)3, substituted "outside" for "without" three times.

STATUTORY REFERENCES:

See: N.J.S.A. 54:10A-6(A) as to computation of the property fraction.

N.J.A.C. 18:7-8.5 Business allocation factor; property fraction derived from average values

(a) The percentage of the taxpayer's real and tangible personal property within New Jersey is determined by dividing the average value of such property within New Jersey by the average value of real and tangible personal property within and outside New Jersey.

1. Average values in both the numerator and denominator shall be determined without deduction of any encumbrance.

(b) The term "taxpayer's real and tangible personal property" shall include property owned, leased, rented, or used by the taxpayer during the period covered by the return and shall exclude property not yet in service or removed from service during that period. Property or equipment under construction (exclusive of inventory work in progress) is excluded from the property fraction until it is completed.

(c) The average values used in determining the property fraction of the allocation factor are normally based on book value with respect to property owned, including property on consignment (consignor). Leased or rented property is valued at eight times its annual rent, including any amounts (such as taxes) paid or accrued in addition to or in lieu of rent during the period covered by the return. Subrents do not reduce annual rents, but rather enter into the determination of the receipts fraction. Property that is used which is neither owned, leased or rented should be valued at book value but if the books do not disclose a fair value or disclose a minimal value then that property should be shown at fair value, which for this purpose would be market value, including, but not limited to, loaned property, bailments, etc. Property on consignment held by the consignee is considered property used. Leasehold improvements are treated as owned by the taxpayer. The numerator and the denominator shall take into account depreciation disallowed at N.J.A.C. 18:7-5.2 where the taxpayer accounts for its property on a Federal income tax basis on its books.

(d) The overriding objective is a fair and reasonable apportionment of entire net income by weighing the allocation factor for the portion of the real and tangible personal property owned, leased, rented, or used in this State.

Example 1: Taxpayer is the lessor of equipment. Consistent with generally accepted accounting principles it accounts for its capital leases as completed sales. Consistent with principles of tax accounting, it accounts for that same leasing as net rental income which is reported as entire net income.

That entire net income is apportioned by use of the allocation factor which must include the property fraction. That property fraction must reflect the percentage of the taxpayer's real and tangible personal property within New Jersey, including the leased property, despite the fact that the property no longer appears on the books of the corporation in order to effect a fair and reasonable apportionment of entire net income.

Example 2: Taxpayer is engaged in long term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting. It recognizes income on a contract in a tax year where its property was removed to other taxing jurisdictions to work on unrelated construction in progress.

That property fraction must reflect the average value of the taxpayer's real and tangible personal property inside the State and everywhere during the period of construction to fairly and reasonably apportion the entire net income reported for the period covered by the return.

History

HISTORY:

As amended, R.1983 d.62, eff. March 7, 1983.

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

Added 3. to (a).

Amended by R.1986 d.284, effective July 21, 1986.

See: 18 N.J.R. 627(a), 18 N.J.R. 1487(a).

Substantially amended.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), substituted "outside" for "without"; in (b) and (d), inserted a comma following "rented" twice; and in (d) and Example 2, substituted "State" for "state".

N.J.A.C. 18:7-8.6 Average value; computation period

(a) Average value is generally computed on a quarterly basis where the taxpayer's usual accounting practice permits such computation.

(b) At the option of the taxpayer or the Director, a more frequent basis (monthly, weekly, or daily) may be used. Where the taxpayer's usual accounting practice does not permit computation of average value on a quarterly or more frequent basis, a semi-annual or annual basis may be used where no distortion of average value results. If any basis other than quarterly is used on the return, such basis and the reasons therefor must be fully explained on a separate rider.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b), inserted a comma following "weekly".

N.J.A.C. 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) The receipts of the taxpayer are to be computed on the cash, accrual, or other method of accounting used in computation of its net income for Federal income tax purposes. However, the numerator and denominator of the receipts fraction must, in any event, relate to the entire net income recognized during the period covered by the return.

Example 1:

Taxpayer is engaged in long-term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting whereby it recognizes the net income on its contracts in their entirety in the year of completion.

The composition of the receipts fraction must be determined in harmony with the entire net income to which it relates. The numerator and denominator of the receipts fraction must reflect the entire contract revenues on completed contracts recognized in entire net income during the period covered by the return.

Example 2:

Taxpayer recognizes income on a sale for tax purposes on the installment method. The numerator and denominator of the receipts fraction should include the same proportion of the sale as is prorated as recognized income to the year covered by the return.

(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 that 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 at 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) The receipts sourced to a state, a possession or territory of the United States or the District of Columbia or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income or business presence or business activity shall be excluded from the denominator of the sales fraction. This principle applies to single entity taxing jurisdictions, as well as post-apportionment combination states. The rule also permits the throwout of receipts to pre-apportionment combination states. Receipts from pre-apportionment combination states are not required to be thrown out of the denominator of the New Jersey receipts fraction if they create a potential tax in a foreign state. For purposes of this subsection, "pre-apportionment combination states" are those states where the receipts from all states are added together before the apportionment factor is calculated. "Post-apportionment combination states" are those where the various apportionment factors are calculated first then totaled. If a taxpayer believes that application of the throwout rule in a particular situation produces an improper allocation, the taxpayer may avail itself of the prescribed avenues to request the Director's discretionary adjustment of the allocation factor pursuant to N.J.S.A. 54:10A-8. Notwithstanding the foregoing, for privilege periods beginning on or after July 1, 2010, the receipts sourced to a state, a possession or territory of the United States or the District of Columbia, or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income or business presence or business activity are not required to be excluded from the denominator of the sales fraction found in N.J.S.A. 54:10A-6(B).

Example: ABC Inc., a New Jersey corporation, manufactures goods in New Jersey. It also maintains an office in Philadelphia. Eighty percent of ABC Inc.'s payroll and property are in NJ. It sells 30 percent of its goods to NJ customers; 30 percent to PA customers; and 40 percent to customers in other states. ABC Inc. files returns and pays tax to NJ and PA only. It is not subject to tax in other states due to the protection of P.L. 86-272. ABC Inc. has entire net income of $ 1,000,000.

For tax year 2001, beginning 1/1/01, and ending 12/31/01, its allocation factor is:

$$\underbrace{\left(\frac{80}{100}\right)}_{\text{Property}} + \underbrace{\frac{80}{100}}_{\text{Payroll}} + \underbrace{\frac{30}{100}}_{\text{Double Receipts}} + \frac{30}{100}\Big) \div 4 = \underbrace{55\%}_{\text{Allocation Percentage}}$$

For tax year 2001, beginning 1/1/01, and ending 12/31/01, its allocation factor is:

$$\underbrace{\left(\frac{80}{100}\right)}_{\text{Property}} + \underbrace{\frac{80}{100}}_{\text{Payroll}} + \underbrace{\frac{30}{60}}_{\text{Double Receipts}} + \frac{30}{60}\Big) \div 4 = \underbrace{65\%}_{\text{Allocation Percentage}}$$

(e) Receipts that are included in the numerator of a jurisdiction's receipts fraction by reason of the operation of a throwback provision are deemed not to be receipts assigned to that jurisdiction and are, therefore, excludible from this State's receipts fraction denominator.

(f) For pre-throwout repeal returns the amount by which the exclusion of receipts from the denominator of the sales fraction increases the liability of all the members of an affiliated group or controlled group pursuant to I.R.C. § 1505 or 1563 over the liability calculated without application of the exclusion shall not exceed $ 5,000,000. If the exclusion increases the liability of all the members of an affiliated group or controlled group by more than $ 5,000,000 for the privilege period, then the amount of liability in excess of $ 5,000,000 due to the exclusion shall be abated, and the abated liability shall be allocated among the members of the affiliated group or the controlled group in proportion to each member's increase in liability due to the exclusion of such receipts. The Director may allow a single corporation within the affiliated group or controlled group to act as the key corporation (clearinghouse) for the abatement. "Business

presence" or "business activity" taxes include, but are not limited to, net worth taxes, gross receipts taxes, and single business taxes. For example, business presence or business activity taxes include, but are not limited to, the Pennsylvania Bank Shares Tax (72 P.S. 7701 et seq.) and the New York Franchise Tax on Banking Corporations (Article 32 of the New York tax laws). Property taxes, excise taxes (for example, cigarette taxes), payroll taxes, and sales taxes are not considered "business presence" or "business activity" taxes.

(g) For pre-throwout repeal returns the exclusion of sales increases the liability of a single entity taxpayer that is independent of and not affiliated with any controlled or affiliated group as defined above, then such increase shall be capped at $ 5,000,000 and the excess shall be abated.

History

HISTORY:

Amended by R.1985 d.43, effective February 19, 1985.

See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).

(b) substantially amended and Examples added.

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

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

Added (d) through (g).

Adopted concurrent amendment, R.2003 d.370, effective September 15, 2003.

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

Rewrote (d) and (f).

Amended by R.2009 d.384, effective December 21, 2009.

See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).

In (d), inserted a comma following "jurisdictions" and inserted the last sentence.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "outside" for "without"; in the introductory paragraph of (b), inserted a comma following "accrual"; in (c)2 Example, substituted "N.J.S.A. 54:10A-4(k)(1)" for "Section 4(k)(1) of the law"; in the introductory paragraph of (d), substituted "post-apportionment" for "postapportionment", and "pre-apportionment" for "preapportionment" three times, and inserted a comma following "Columbia"; in (d) Example, substituted "ABC Inc.'s" for "ABC's" and inserted a comma following "1/1/01"; in (e), substituted the first occurrence of "that" for "which"; in (f), substituted "For pre-throwout repeal returns the" for "The", substituted "I.R.C. § 1505 or 1563 " for "sections 1505 or 1563 of the Internal Revenue Code of 1986", and inserted "and" preceding the second occurrence of "single"; and in (g), substituted "For pre-throwout repeal returns" for "If".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Section was "Business allocation factor; determination or receipts fraction". In (c), inserted a comma following "excluded"; in (c)2, substituted "that" for "which", inserted "(New Jersey receipts)" following "numerator", and substituted "at" for "in".

N.J.A.C. 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 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 at N.J.A.C. 18:7-8.7(c).

History

HISTORY:

Amended by R.1985 d.43, effective February 19, 1985.

See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).

Substantially amended.

Amended by R.1989 d.311, effective June 19, 1989.

See: 21 N.J.R. 438(b), 21 N.J.R. 1744(c).

Exceptions to receipts allocable to New Jersey added at (a)1i-iv, with examples.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Throughout the section, substituted "outside New" for "outside of New"; in (a)1iv, substituted "that" for "which"; and in (a)4, inserted "and".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

In (a)2, substituted "if the benefit of the service is received" for "performed"; and in (a)5, substituted "at" for "in".

N.J.A.C. 18:7-8.9 Receipts from sales of capital assets; when includible

(a) The gross receipts from sales of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) either within or outside New Jersey should not be included in either the numerator or denominator of the receipts fraction. The net gains from such sales that are included in entire net income are the amounts that are properly to be included in the computation of the receipts fraction. For the purposes of the numerator in the computation of the receipts fraction, a net loss should not offset a net gain.

ILLUSTRATION
FACTS

	Selling Price	Cost	Net Gain	Net Loss
Property #1	$ 1,000	$ 600	$ 400	
Property #2	2,000	2,200		$ 200
Property #3	3,000	2,900	100	_____
			$ 500	$ 200
			(200)	
Amount of gain appearing on Schedule A			$ 300	

The $ 300 net gain is includable in the denominator of the receipts fraction in all cases. The computation to arrive at the amount to be included in the numerator is given in the following examples:

Example 1:

At the time of sale, Property #1 was located within New Jersey, whereas Property #2 and #3 were located outside New Jersey.

Amount of N.J. Gains	$400	= 80% x $300 (net gain) = $240
Total Gains	$500	

The amount of $240 is to be included in the numerator of the receipts fraction.

Example 2:

At the time of sale, Property #1 and #3 were located outside New Jersey, whereas Property #2 was located within New Jersey.

Amount of N.J. Gains	-0-	= 0% x $300 (net gain) = -0-
Total Gains	$500	

There is nothing attributable to this transaction that will affect the numerator of the receipts fraction.

Example 3:

At the time of sale, Property #1 and #3 were located within New Jersey, whereas Property #2 was located outside New Jersey.

Amount of N.J. Gains	$500	= 100% x $300 (net gain) = $300
Total Gains	$500	

(b) Where the taxpayer's business is the buying and selling of real estate or the buying or selling of securities for trading purposes, these assets are not deemed to be capital assets and the gross receipts from the sales thereof are included in the same manner as other includable receipts.

1. If a taxpayer is trading for its own account, the proceeds of such trades would be treated on a net basis.

History

HISTORY:

Amended by R.1985 d.43, effective February 19, 1985.

See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).

(a) substantially amended and examples added.

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

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

In (b), added 1.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "outside" for "without", and "that" for "which" three times; and, in Example 1, inserted a comma following the first occurrence of "New Jersey".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-6(B) as to what tangible personal property shall be includible when computing taxpayer's receipts fraction.

N.J.A.C. 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.

1. The numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned under this section if the service is performed within this State. If the service is performed both within and outside this State, the numerator of the receipts fraction includes receipts from services based upon the cost of performance or amount of time spent in the performance of such services or by some other reasonable method that should reflect the trade or business practice and economic realities underlying the generation of the compensation for services. "Cost of performance" is defined as all direct costs incurred in the performance of the service, including direct costs of subcontractors.

i. 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.

ii. It is immaterial where the amounts were payable or where they actually were received.

Example 1: Taxpayer derives advertising revenues in the course of broadcasting television or radio programs. It sets its advertising rates based upon the listening audience it has succeeded in reaching. The appropriate method of assigning the portion of its advertising revenues attributable to services performed in New Jersey is based upon the proportion of its listening audience in New Jersey.

Example 2: Taxpayer earns income from the sale of long distance telephone communications service. It bills the originators of long distance telephone calls directly and for all calls placed by them. The appropriate method of allocating its long distance toll revenues attributable to services performed in New Jersey is based upon billings for calls originating in New Jersey.

2. Commissions received by the taxpayer are allocable to New Jersey if the services for which the commissions were paid were performed in New Jersey. If the taxpayer's services for which commissions were paid were performed for the taxpayer by salesmen or working out of a New Jersey office of the taxpayer, the taxpayer's services will be deemed to have been performed in New Jersey.

The taxpayer is a New Jersey sales agent of a Pennsylvania manufacturer and receives in New Jersey an order from a New York customer. The order is forwarded to the manufacturer which accepts it and fills it by shipment direct to the customer. The taxpayer's commission is allocable to New Jersey.

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

i. Twenty-five percent of such fees are allocated to the state of origination.

ii. Fifty percent of such fees are allocated to the state in which the service is performed.

iii. Twenty-five percent of such fees are allocable to the state in which the transaction terminates.

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

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

iv. Certain lump sum payments for services performed within and outside New Jersey must be apportioned in the following manner in order to result in a fair and reasonable receipts fraction.

(1) Transportation revenues of an airline are from services performed in New Jersey based on the ratio of departures from New Jersey to total departures. Departures may be weighted as to cost and value of aircraft by type where weighting would give a more fair and reasonable business allocation factor.

(2) 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 driven in New Jersey and the denominator of which is the mileage driven in all jurisdictions. For convenience, taxpayers required to maintain mileage records in compliance with the International Fuel Tax Agreement pursuant to N.J.S.A. 54:39A-24 and to N.J.A.C. 13:18-3.12 shall make calculations using such records.

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

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

4. If a taxpayer receives a lump sum in payment for services and also for materials or other property, the sum received must be apportioned on a reasonable basis.

i. That part apportioned to services performed is includible in receipts from services;

ii. That 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.

5. Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the following procedures:

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 international private investors, international traders, or insurance companies, receipts shall be allocated to New Jersey to the extent the domicile of the beneficiaries of the plan, beneficiaries of the account, or beneficiaries of the similar pool of assets held by the institutional investor is in New Jersey.

(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 New Jersey 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 the following:

(1) The portion of receipts deemed to arise from services performed within New Jersey shall be determined by multiplying the total of such receipts from the sale of such services by a fraction. The numerator of the fraction is the average of the sum of the beginning of the year and the end of the year balance of shares owned by the regulated investment company shareholders domiciled in New Jersey for the regulated investment company's taxable year for Federal income tax purposes that ends within the taxable year of the taxpayer. The denominator of the fraction is the average of the sum of the beginning of the year and end of the 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 (a)5i through iii above, 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 made, or the selling or purchasing of assets and related activities. As used in this section, "related activities" means administration services, distribution services, management services, and other related services.

(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 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.

(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 in N.J.S.A. 54:10A-4(g) and meets the requirements of I.R.C. § 851.

(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.

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

i. For purposes of this subsection:

(1) "Securities" has the meaning provided by I.R.C. § 475.(c)(2);

(2) "Commodities" has the meaning provided by I.R.C. § 475.(e)(2); 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.

History

HISTORY:

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

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

Amended by R.1985 d.43, effective February 19, 1985.

See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).

(c) substantially amended and examples and illustration added.

Amended by R.1989 d.439, effective August 21, 1989.

See: 21 N.J.R. 1106(a), 21 N.J.R. 2527(a).

Added subsection (e)1-2vi.

Administrative Correction to (c).

See: 21 N.J.R. 3477(a).

Administrative Correction to (c) and Example 1.

See: 22 N.J.R. 363(a).

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

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

Rewrote (a) and (c).

Administrative correction.

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

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

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

Rewrote (e); added (f).

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

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

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

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

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

In (c)4, rewrote iii.

Amended by R.2007 d.218, effective July 16, 2007.

See: 39 N.J.R. 1243(a), 39 N.J.R. 2653(a).

Deleted former (c)4i; and recodified former (c)4ii and (c)4iii as (c)4i and (c)4ii.

Amended by R.2009 d.384, effective December 21, 2009.

See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).

In (c)4ii(1), inserted a comma preceding "such" and following "trailers", and substituted "(c)4ii" for "(c)4iii".

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

Amended by R.2020 d.082, effective September 8, 2020.

See: 52 N.J.R. 508(a), 52 N.J.R. 1677(c).

Added (a); recodified former (a) through (f) as (a)1 through (a)6; rewrote (a)5iv; in (a)5iv(5), updated the N.J.S.A. references, inserted a comma following "individual" and "trust", and substituted "this State" for "the State", and "(a)5iii" for "(e)3". Statutory References

See N.J.S.A. 54:10A-6(C) as to includability of compensation for personal services in receipts fraction.

N.J.A.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 N.J.A.C. 18:7-21 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 subparagraph, a customer is considered located within this State if a recipient is either:

(1) Engaged in a trade or business and maintains a 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 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 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 at (a)6i and ii below in order to result in a fair and reasonable receipts fraction. For transportation companies that meet the qualifications at N.J.S.A. 54:10A-4.7(b), see N.J.A.C. 18:7-21 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, which is the number of miles in New Jersey and the denominator, 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 at N.J.S.A. 54:10A-4.7(b), see N.J.A.C. 18:7-21 for additional information and applicable rules for transportation combined groups filing New Jersey combined returns.

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 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 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 jurisdictions in which the broadcast customer has viewers. 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 programing);

(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.

History

HISTORY:

New Rule, R.2020 d.082, effective September 8, 2020.

See: 52 N.J.R. 508(a), 52 N.J.R. 1677(c).

Amended by, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote the section.

N.J.A.C. 18:7-8.11 Receipts; rents and royalties

(a) Receipts from rentals of real and personal property situated in New Jersey, and royalties from the use in New Jersey of patents or copyrights, are allocable to New Jersey.

1. Receipts from rentals include all amounts received by the taxpayer for the use or occupation of property, whether or not such property is owned by the taxpayer.

2. Receipts from royalties include all amounts received by the taxpayer for the use of patents or copyrights, whether or not such patents or copyrights were originally issued to or are owned by the taxpayer.

3. A patent or copyright is used in New Jersey to the extent that activities thereunder are carried on in New Jersey.

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

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

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

Example 1: Corporation B is a Delaware corporation having legal title to certain trademarks. Corporation B licenses those trademarks to affiliated entities, and the affiliates pay Corporation B an arm's length royalty for their use. The trademarks are used by the affiliates within and outside New Jersey. Allocation of Corporation B's income from trademark royalties paid to it by affiliates is based upon the use of the trademarks in New Jersey by the affiliates. If an affiliate generates 10 percent of its sales revenue from the use of a trademark within New Jersey and therefore is recognizing 10 percent of the affiliate's revenue in its New Jersey receipts fraction numerator and 90 percent in other jurisdictions, 10 percent of the royalty paid by the affiliate to Corporation B for that trademark is apportioned to New Jersey by Corporation B.

History

HISTORY:

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

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

Added (b).

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b)2 Example 1, inserted "Corporation" preceding the second and third occurrences of "B".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-6(B)(5) as to includability of rents and royalties in computing receipts fraction.

N.J.A.C. 18:7-8.12 Other business receipts

(a) All other business receipts earned by the taxpayer within New Jersey are allocable to New Jersey. Other business receipts include all items of income entering into the determination of entire net income during the year for which the business allocation factor is being computed and is not otherwise provided for in these rules. Examples of such business receipts include, but are not limited to, interest income, dividends, governmental subsidies, or proceeds from sales of scrap.

(b) For treatment of dividends see N.J.A.C. 18:7-8.7(c)2, Example.

(c) For treatment of receipts from sales of capital assets, see N.J.A.C. 18:7-8.9.

(d) Receipts from the sale of real property situated in New Jersey are earned in New Jersey.

(e) Intangible income not apportioned by other provisions of these rules is included in the numerator of the receipts fraction where the taxable situs of the intangible is in this State. The taxable situs of an intangible is the commercial domicile of the owner or creditor unless the intangible has been integrated with a business carried on in another state. Notwithstanding that the commercial domicile is outside this State, the taxable situs is in New Jersey to the extent that the intangible has been integrated with a business carried on in this State.

Example: Taxpayer has its domicile outside this State. It is in the business of lending money, some of which is loaned to New Jersey residents. Interest income and related fees (for example, late payment fees, annual fees, etc.) recognized from such loans is income derived from sources within this State and, as such, is earned in New Jersey. That interest and fee income is includable in the numerator of the receipts fraction.

(f) For treatment of non-operational income, see N.J.A.C. 18:7-8.17.

(g) For sourcing of I.R.C. § 951A income, I.R.C. § 250(b) income, and the related I.R.C. § 250(a) deduction, see N.J.A.C. 18:7-5.19.

History

HISTORY:

Amended by R.1985 d.43, effective February 19, 1985.

See: 16 N.J.R. 3420(b), 17 N.J.R. 477(a).

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

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

Amended by R.2007 d.218, effective July 16, 2007.

See: 39 N.J.R. 1243(a), 39 N.J.R. 2653(a).

Added (g).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted a comma following "subsidies"; in (e) Example, inserted "and related fees (for example, late payment fees, annual fees, etc.)" and "and fee"; and deleted former (g).

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Added (g).

N.J.A.C. 18:7-8.13 Business allocation factor; payroll fraction

(a) Wages, salaries, and other compensation include all amounts paid for personal services rendered to the taxpayer, but do not include amounts paid of the taxpayer that do not have in them the element of compensation for personal services actually rendered or to be rendered.

(b) The percentage of the taxpayer's payroll allocable to New Jersey is determined by dividing the wages, salaries, and other personal service compensation of the taxpayer's employees within New Jersey during the period covered by the return by the total amount of compensation of all the taxpayer's employees during the period.

1. All executive salaries are includible in both the numerator, as applicable, and the denominator.

2. In general, a taxpayer reporting to the Division of Employer Accounts in the New Jersey Department of Labor and Workforce Development must allocate to New Jersey all wages, salaries, and other personal service compensation, and other items reportable to that Division in the amount prescribed by the New Jersey Department of Labor and Workforce Development.

(c) Wages, salaries, and other compensation are computed on the cash or accrual basis, in accordance with the method of accounting used by the taxpayer in reporting for Federal income tax purposes.

History

HISTORY:

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

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), the introductory paragraph of (b), and (c), inserted a comma following "salaries"; in (a), substituted "that" for "which"; and rewrote (b)2.

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-6(c) as to treatment of wages, salaries and other personal service compensation of taxpayer's employees.

N.J.A.C. 18:7-8.14 Definition of officers and employees

(a) Those officers and employees whose wages, salaries, and other personal service compensation are required to be included in the computation of the payroll fraction of the business allocation factor include every individual, officer, and general executive officer whose relationship with the taxpayer is that of employee and employer.

(b) Generally, the relationship of employer and employee exists when the taxpayer has the right to control and direct the individual not only as to the result to be accomplished by him or her but also as to the means by which such result is to be accomplished. If the relationship of employer and employee exists, the designation or description of the relationship, and the measure, method, or designation of the compensation, are immaterial.

(c) Compensation paid to officers, such as the Chairman, President, Vice-President, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, Comptroller, and any other officer charged with and performing general executive duties of the corporation must also be included.

(d) A director of a corporation is not an employee; therefor compensation paid to directors for acting as such should not be included in either the numerator or denominator in computing the payroll fraction.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted a comma following "salaries" and "officer"; and in (b), inserted "or her" and a comma following "method".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-6(c) as to includibility of wages, salaries, and other personal service compensation of officers of taxpayer, and 54:10A-7 as to definition and scope of "compensation" of officers and employees.

N.J.A.C. 18:7-8.15 Compensation of officers and employees within New Jersey

(a) 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 outside this State if:

1. The service is performed entirely within this State; or

2. The service is performed both within and outside this State, but the service performed outside the State is incidental to the individual's service within the State. For example, service that is temporary or transitory in nature or which consists of isolated transactions;

3. The service is not performed entirely in any state but some of the service is performed in this State; and

i. The base of operations, or, if there is no base of operations, then the place from which the service is directed or controlled, is in this State; or

ii. The base of operations or place from which the 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;

4. Contributions are not required or paid with respect to such service under an unemployment compensation law of any other state.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a) and (a)2, substituted "outside" for "without" three times; in the introductory paragraph of (a), inserted a comma following "salaries"; and in (a)2, substituted "that" for "which".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-6(C) as to includibility of compensation of officers of taxpayer, and 54:10A-7 as to definition and scope of "compensation" of officers.

N.J.A.C. 18:7-8.16 Allocation: international banking facilities

Any banking corporation, having an international banking facility, which maintains a regular place of business (other than a statutory office) outside New Jersey, 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 this subchapter in the usual way. 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 denominator of the fractions described in this subchapter, whether or not such international banking facility income amounts are otherwise attributable to New Jersey.

History

HISTORY:

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

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Allocation: International Banking Facilities". In the first paragraph, deleted "of" following "outside, substituted "N.J.S.A. 54:10A-4(n)" for "N.J.A.C. 18:7-16.1"; and, deleted the second paragraph.

N.J.A.C. 18:7-8.17 Non-operational income

Non-operational income of taxpayers is not subject to allocation but shall be specifically assigned. One hundred percent of non-operational income from taxpayers having their 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.

History

HISTORY:

New Rule, R.1994 d.186, effective April 18, 1994.

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

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

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

Rewrote the section.

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Deleted ", unless another state has nexus to all of the income" from the end.

N.J.A.C. 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 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 that 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 54:10A-4.10. For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

1. A combined group may not change the allocation factor formula pursuant to 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 pursuant to N.J.S.A. 54:10A-4.7. The member submitting such application on behalf of the combing group must be 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 upon which the application is based, together with a computation of the amount of tax that would be due under the proposed method with the submission of Form A-3730 when making a request for an adjustment of the business allocation factor.

History

HISTORY:

Amended by R.1989 d.508, effective October 2, 1989.

See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).

Addition of form number to requirements at (c)3.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "outside" for "without", and the first and third occurrences of "that" for "which"; in the introductory paragraph of (b), substituted "N.J.S.A. 54:10A-6" for "Section 6 of the Act", inserted a comma following "worth", inserted "or she" and "or her"; in (b)2, inserted "and"; in (b)5, substituted "this" for "the"; and in the introductory paragraph of (c), inserted "or her".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (c)3 and added (d).

N.J.A.C. 18:7-11.1 Returns; corporations required to file

(a) Returns are required to be filed annually by the following:

1. Every corporation subject to tax, regardless of the amount of its entire net income. (See N.J.A.C. 18:7-1.6.)

2. Every 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 subject to tax under the Act.

History

HISTORY:

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b)1, deleted ", Taxable status; how created" following the N.J.A.C. reference.

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-2 as to those corporations deemed liable to tax under the Act; 54:10A-4 as to definition of "corporation" and of "taxpayer", and 54:10A-11 as to receivers and others conducting the business of a corporate taxpayer who are subject to tax under the Act.

N.J.A.C. 18:7-11.2 Returns where Federal net income is changed

If the amount of the Federal net income of any taxpayer is changed or corrected by a final determination of the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or if a renegotiation of a contract or subcontract with the United States results in a change in said net income, or where a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, the taxpayer is required to report its changed or corrected net income or the results of renegotiation and to concede its accuracy or state where it is erroneous.

N.J.A.C. 18:7-11.3 Effect of deficiency notice

(a) Any deficiency notice (including a notice issued pursuant to a waiver filed by a taxpayer) pursuant to the provisions of the Internal Revenue Code is a final determination unless a timely petition to redetermine the deficiency is filed in the Tax Court of the United States, in which event the judgment of the court of last resort affirming the deficiency, or the redetermination of the deficiency pursuant to the judgment of the court of last resort, is the final determination.

(b) The allowance by the Commissioner of Internal Revenue of a refund of any part of the tax shown on the taxpayer's return or of any deficiency thereafter assessed, whether the refund is made on the Commissioner's own motion or pursuant to judgment of a court, is also a final determination.

(c) A taxpayer who for any reason accepts any portion of a deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code is required to report that portion of the deficiency accepted within 90 days in accordance with N.J.A.C. 18:7-11.8 and N.J.S.A. 54:10A-13.

(d) Only the portion of any deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code that is the subject of a timely petition for redetermination in the Tax Court of the United States may delay the reporting requirements set forth in N.J.A.C. 18:7-11.8 and then only to the extent permitted by (a) above.

Example: The Internal Revenue Service (IRS) redetermined the net income of a taxpayer's 1983 tax return based on three separate issues, A, B, and C. These three issues resulted in increases in net income for New Jersey purposes of $ 5,000, $ 30,000, and $ 110,000 respectively. The taxpayer accepted Issue A resulting in a $ 5,000 increase in income for New Jersey purposes and requested a hearing before the IRS on Issues B and C. The taxpayer has 90 days from the issuance of the deficiency to report Issue A to the Division of Taxation.

Six months later, the IRS issues a determination that it intends to uphold the entire amount represented by Issues B and C. The taxpayer accepts the determination on Issue B, but appeals Issue C to the Tax Court of the United States. The taxpayer has 90 days from the issuance of the IRS determination to report the $ 30,000 increase in net income represented by Issue B to the Division of Taxation.

One year later, the Tax Court issues an unfavorable decision to the taxpayer on Issue C. The taxpayer accepts the verdict and decides not to appeal the issue any further. The $ 110,000 represented by Issue C must be reported to the Division of Taxation within 90 days of the court decision.

History

HISTORY:

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

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

Amended by R.1990 d.102, effective February 5, 1990.

See: 21 N.J.R. 3079(a), 22 N.J.R. 363(b).

Added subsections (c) and (d) and example.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (d) Example, inserted "(IRS)", inserted a comma following "B" and "$ 30,000", substituted "uphold" for "hold to", and inserted the second and third occurrences of "of Taxation".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-13 as to requirement that taxpayer report any change of amendment in his federally taxed net income to Division of Taxation.

N.J.A.C. 18:7-11.4 Amended return

Any taxpayer filing an amended return with the United States Treasury Department shall also file an amended return with the Division of Taxation. See N.J.A.C. 18:7-11.8.

History

HISTORY:

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

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

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

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

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-13 to requirement that taxpayer report any amended return for his Federally taxable net income to New Jersey Division of Taxation.

N.J.A.C. 18:7-11.5 Change of accounting period

(a) A taxpayer will not be permitted to change its accounting period for purposes of the Corporation Business Tax Act unless it has first obtained the permission of the Commissioner of Internal Revenue for Federal income tax purposes where permission is required under the Internal Revenue Code. A copy of such permission must be filed with the Division of Taxation.

(b) The taxpayer will also be required to file a short period return and remit the amount of its tax liability for the period from the close of its last accounting period for which a return was filed to the beginning of its newly authorized accounting period.

History

HISTORY:

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted "Corporation Business Tax" and substituted "income" for "Income".

N.J.A.C. 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 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 the return and containing the allocation schedules, must be completed and attached to the New Jersey corporation business tax return.

(b) The Director may require any taxpayer to file any other reports and submit any further information the Director may require in the administration of the provisions of the Act.

(c) Every return shall have annexed to it a certification by the president, vice-president, comptroller, secretary, treasurer, assistant treasurer, accounting officer, or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained in the return are true.

1. The fact that an individual's name is signed on a certification of the return shall be prima facie evidence that such individual is authorized to sign and certify the return on behalf of the corporation;

2. 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 the corporation;

3. Annual return forms are supplied by the Division of Taxation but failure to receive a form does not relieve any taxpayer from the obligation to file a return under the provisions of the Act.

History

HISTORY:

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

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a)1, inserted "Form" twice; in (b), substituted "the Director" for "he"; and in the introductory paragraph of (c), inserted a comma following the first occurrence of "officer".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (a).

N.J.A.C. 18:7-11.7 Time for filing returns

(a) 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, 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 pursuant to this section shall be due and payable on or before the date prescribed in this section for the filing of the return.

(b) For a return that 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 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 30th day after the original due date for filing the taxpayer's Federal corporate income tax return is a business day on the 14th of the month and the 15th of said month is also a business day, then the 15th of the month shall be deemed the due date of the New Jersey corporation business tax return.

(e) For privilege periods beginning on and after July 31, 2020, if the 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 15th.

History

HISTORY:

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

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

Amended by R.1985 d.561, effective November 4, 1985.

See: 17 N.J.R. 1537(b), 17 N.J.R. 2677(b).

(b) and (c) added.

Amended by R.1989 d.196, effective April 17, 1989.

See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

N.J.A.C. 18:7-11.7 cite corrected.

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "corporation business tax" for "Corporation Business Tax"; in (b), inserted "Postal Service"; and in (c), inserted a comma following "Sunday".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (a) and (b); in (c), substituted "submitted" for "mailed", and added (d) and (e).

N.J.A.C. 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 New Jersey corporation business tax return. To amend New Jersey corporation business tax returns, 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) Any taxpayer that files an amended return with the United States Treasury Department must file an amended New Jersey corporation business tax return within 90 days thereafter.

(c) After the filing of a report of change or correction on an amended 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's report.

(d) If the Division of Taxation assesses and bills a deficiency to a taxpayer resulting from a Federal change and if the taxpayer pays the deficiency in full within the 90 day period from the issuance of the report, then no separate return need be filed by the taxpayer reflecting the Federal change.

History

HISTORY:

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

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

Amended by R.1989 d.196, effective April 17, 1989.

See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

N.J.A.C. 18:7-11.8 cite corrected.

Amended by R.1989 d.508, effective October 2, 1989.

See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).

Deletion of text at (a) and addition of text regarding reporting changes resulting from IRS audit. Clarification of text at (c).

Amended by R.1990 d.102, effective February 5, 1990.

See: 21 N.J.R. 3079(a), 22 N.J.R. 363(b).

Added subsection (d), upon adoption.

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

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

Amended by R.2009 d.384, effective December 21, 2009.

See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).

Rewrote (a); and in (c), substituted "an amended CBT-100 or amended CBT-100S return" for "an IRA-100, or CBT-100-X".

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a) and (c), inserted "Form" preceding all occurrences of "CBT"; in (a), deleted "a" following "use" and "form" following the third occurrence of "100S"; in (b), substituted "that" for "which" and "corporation business tax" for "Corporation Business Tax"; and in (c), inserted "Federal" and deleted ", but neither the Director nor the taxpayer may change the allocation of entire net income within and without New Jersey as theretofore computed" from the end.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (a) and (c).

N.J.A.C. 18:7-11.9 Time for filing returns for unauthorized foreign corporations doing business in New Jersey

(a) A foreign corporation that does business, employs, or owns capital or property or maintains an office in New Jersey without authorization or after its withdrawal from the State, is subject to tax for each calendar or fiscal accounting period or part thereof during which it has engaged in any such activity. The corporation is subject to the same requirements with respect to filing returns and paying taxes as a duly authorized corporation.

(b) In this connection, see N.J.S.A. 14A:13-11 pursuant to which every foreign corporation transacting any business, directly or indirectly, in New Jersey without having first obtained a Certificate of Authority to do business here, shall for each offense forfeit to the State the sum of not less than $ 200.00 nor more than $ 1,000 to be recovered with costs in an action prosecuted by the Attorney General in the name of the State.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "that" for "which" and inserted a comma following "employs"; and in (b), inserted a comma following "connection", substituted "pursuant to" for "under", and inserted "here,", "not less than", and "nor more than $ 1,000".

STATUTORY REFERENCES:

See N.J.S.A. 14A:13-11 as to every foreign corporation which shall transact any business in New Jersey, directly or indirectly, without first having obtained a Certificate of Authority to do business forfeiting to the State for each offense the sum of $ 200.00 to be recovered with costs in an action prosecuted by the Attorney General in the name of the State. See N.J.S.A. 54:10A-4 as to definitions of "fiscal year" and "privilege period". See N.J.S.A. 54:10A-15 as to due dates for filing returns under the Act.

N.J.A.C. 18:7-11.10 (Reserved)

History

HISTORY:
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "Failure to file return or make payment when due".

N.J.A.C. 18:7-11.11 Returns required to be filed by corporation ceasing to be subject to tax

(a) A domestic corporation that ceases to possess its franchise is required to file a return covering each year or period for which no return was previously filed.

(b) A foreign corporation that surrenders its authority to do business or otherwise ceases to have a taxable status in New Jersey is required to file a return covering each year or period for which no return was filed.

History

HISTORY:
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
In (a) and (b), substituted "that" for "which".
STATUTORY REFERENCES:
See N.J.S.A. 54:10A-2, 15, 17 as to requirements for filing short period returns.

N.J.A.C. 18:7-11.12 Extension of time to file return; interest and penalty

(a) No extension will be granted unless request is made on a Tentative Return Form and is actually received by the Division of Taxation 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 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 may request an extension for a period not exceeding six months and will generally receive approval, provided that the taxpayer has complied with the instructions set forth on the Tentative Return 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.

2. 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 subject to the following conditions:

1. No extension will be granted unless request is actually received by the Division or postmarked on or before the due date of the return;

2. The extension shall be made on a copy of page 1 of the taxpayer's respective New Jersey corporation business tax return, including the exact name, address, New Jersey 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 the taxpayer's 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 six months.

(d) In general, extension requests shall not be granted for any period exceeding six months from the original due date.

(e) Where the taxpayer has requested a Federal extension, the Division shall grant the taxpayer an extension for a period not exceeding six months. In cases where the taxpayer has failed to obtain a Federal extension, the taxpayer, upon request, may be granted a two-month extension for filing the return from the original due date of the return, if sufficient cause is 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 from the original due date of the return.

(f) Extensions may be confirmed, in writing, by the Division, 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. 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 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 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 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 7004, it will be granted an extension of time to file a corporation business tax return until the Federal election is filed, provided that the New Jersey extension has been properly filed in accordance with these rules.

(j) 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 a New Jersey combined return for the group privilege period may request an extension of time to file on behalf of the combined group pursuant to (b) above, as though the combined group were one taxpayer and shall include the unitary I.D. number for the combined group.

History

HISTORY:

Amended by R.1970 d.121, effective October 5, 1970.

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

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

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

Amended on an emergency basis, R.1981 d.163, effective May 11, 1981.

Expired July 10, 1981, without readoption.

See: 13 N.J.R. 377(a).

Rule substantially amended to provide for the imposition of interest and penalties on Corporation Business Tax payments made during additional extended period for which an additional extension was granted.

As amended, R.1982 d.6, effective January 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).

Section substantially amended.

Amended by R.1983 d.497, effective November 7, 1983.

See: 15 N.J.R. 1366(a), 15 N.J.R. 1872(c).

Text substantially amended.

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Added text to (f) "or December 8, 1987. On ...".

Amended by R.1991 d.35, effective January 22, 1991.

See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).

Added (g), recodified old (g).

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote the section.

N.J.A.C. 18:7-11.13 Place for filing returns and payment of tax

(a) Amended returns and related documents together with remittances payable to "State of New Jersey" must be forwarded to the New Jersey Division of Taxation, Revenue Processing Center, PO Box 666, Trenton, NJ 08646-0666. See N.J.A.C. 18:7-11.19 for electronic filing requirements.

(b) A separate remittance is required to be made with each return.

History

HISTORY:

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote (a).

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-15, 18 as to manner and form of tax payment.

N.J.A.C. 18:7-11.14 Secrecy of returns

The returns are deemed secret and confidential and New Jersey law prohibits the unauthorized disclosure of information obtained from the returns or the records pertaining thereto.

History

HISTORY:

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

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

N.J.A.C. 18:7-11.15 Consolidated returns

(a) 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 at (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 pursuant to 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, pursuant to (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 N.J.A.C. 18:7-21.

History

HISTORY:

Amended by R.1985 d.453, effective September 3, 1985.

See: 17 N.J.R. 901(a), 17 N.J.R. 2145(a).

Added text to (a): "Provided, however, any... at N.J.A.C. 18:7-1.17."

Amended by R.1991 d.35, effective January 22, 1991.

See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).

Added (d) and (e).

Amended by R.1996 d.378, effective August 5, 1996.

See: 28 N.J.R. 2515(a), 28 N.J.R. 3810(a).

Deleted provisions relating to gain on the sale of target stock under IRC 338(h)(10).

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

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

Rewrote (a).

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

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

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

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

In (a), substituted "For privilege periods ending before July 31, 2019, corporations" for "Corporations"; in (b), substituted "at" for "in" and "pursuant to" for "under"; in (c), substituted "pursuant to" for "under", inserted a comma after "above"; and added (d).

N.J.A.C. 18:7-11.16 Return to be filed by an S Corporation

(a) Except as may be provided otherwise by this section, an S corporation, that is, one which has made an election under section 1361 et seq., of the Internal Revenue Code of 1954, as amended and supplemented, must complete its New Jersey corporation business tax return on its own separate basis as though no election had been made under the Federal statute.

(b) Except as may be provided otherwise by this section, in preparing its corporation business tax return the taxpayer cannot assume that ordinary income or loss (Federal taxable income) is equal to Federal taxable income before net operating loss deduction and special deductions for New Jersey corporation business tax purposes, when the taxpayer has elected Federal S corporation treatment. Certain amounts not necessarily limited to I.R.C. § 179 expenses and Form 1120-S dividends that qualify for the dividend exclusion are not included as part of the S corporation's ordinary income (loss) computation, but rather are passed directly through to the shareholder on the Federal Form K-1 Schedule. For corporation business tax purposes these amounts are included in the computation of entire net income, as if the corporation were a C corporation and no Federal S corporation election were made.

Example 1: S Corporation has 1985 taxable income for Federal tax purposes of $ 100,000. However, not included in computation of such amount is a $ 5,000 I.R.C. § 179 expense and $ 10,000 of S Corporation dividends received from a different corporation that qualify for the Federal dividend exclusion. Barring any other difference between Federal taxable income and New Jersey taxable income per Schedule A, Form CBT-100, New Jersey taxable income before net operating loss deduction (NOL) and special deductions is computed as such:

$ 100,000	Federal Taxable Income
(5,000)	I.R.C. § 179 Expense
10,000	Qualifying S Corporation Dividends
$ 105,000	New Jersey Taxable Income Before NOL and Special Deductions

Example 2: S Corporation is liquidating under I.R.C. § 337. When disposing of its real property during the 12 month distribution period, the corporation recaptures for Federal tax purposes $ 5,000 of I.R.C. § 291 expenses which an S Corporation does not include as part of Federal taxable income if it were an S Corporation for the three preceding years before the I.R.C. § 337 election and the I.R.C. § 1363(b) election. Since the S Corporation is treated as a C Corporation for State tax purposes, the I.R.C. § 291 recapture is part of taxable income before net operating loss and special deductions on Schedule A, Form CBT-100.

(c) With respect to tax years beginning after July 7, 1993, S corporation status may be elected for New Jersey purposes by the shareholders of a Federal S corporation. The filing of an election Form CBT-2553 with the Division of Taxation to be recognized as a New Jersey S corporation is required. A New Jersey S corporation is entitled to pay its tax at a preferential rate as provided in N.J.S.A. 54:10A-5(c)(2) and (3) and to report and pay its tax liability on Form CBT-100S.

History

HISTORY:

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

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

Amended by R.1986 d.464, effective November 17, 1986.

See: 18 N.J.R. 1686(b), 18 N.J.R. 2332(a).

(b) added.

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-2 as to requirement for annual filing of return under this Act despite other arrangements for filing a Federal return.

N.J.A.C. 18:7-11.17 Copies of tax returns or other information required

(a) 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, 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 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 to N.J.S.A. 54:10A-14(a), as amended at P.L. 2020, c. 118. See N.J.A.C. 18:7-11.17A for more information on the Federal return mandate.

(b) The Director may require all taxpayers to keep records 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 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.

History

HISTORY:

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

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

Added (d).

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b) and (c), inserted "or she"; in (b), deleted "whatever" preceding "records", substituted "the Director" for "he", and inserted a comma following "documents"; and in (c), substituted the third, fourth, and fifth occurrences of "the" for "whatever".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (a); in (b), substituted "that the Director" for "he or she"; and in (c), substituted "the Director" for "he or she".

N.J.A.C. 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 State 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 (for example, 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; and

16. Schedule UTP.

(b) Failure to include a copy of the Federal return and the above forms and 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 at (a) above, 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 at (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 Federal forms and schedules not required pursuant to this section must be made available to the Division of Taxation, upon request.

History

HISTORY:

New Rule, R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

N.J.A.C. 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 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 the New Jersey corporation business tax returns must meet the following conditions and requirements:

1. Reproductions must be facsimiles of the complete official form, produced by photo-offset, photo-engraving, photo-copying, or other similar reproduction processes;

2. Reproductions must be on paper of substantially the same color, weight, and texture and of a quality at least equal to that used in the official form;

3. Reproductions must be of the same size as that of the official form, both as to overall dimensions of the paper and the imagery produced;

4. Format of pages shall adhere to following:

i. It is preferable that both sides of the paper be used in making reproductions. However, reproduction on one side will be acceptable.

ii. All reproductions must result in the same page arrangement as that of the official form and the spacing of the printed matter on each individual page and the fold must be the same as on the official form.

iii. Separate pages must be fastened together in numerical order.

iv. Each separate page must be clearly identified, by listing at the top of the page the corporate name and New Jersey serial number.

5. The color and quality of the reproduction of the printed matter must be substantially the same as that of the official form, and the reported information must be entirely legible;

6. The taxpayer's full and correct name, address, and identifying number as it appears on the pre-stenciled form furnished by the Director must be typed or printed on the reproduction;

7. All reported information on page 1 of the return must be typed or printed;

8. Reproductions of forms may be made after insertion of the tax computations and the other required information;

9. All signatures on forms to be filed must be original signatures, affixed subsequent to the reproduction process;

10. The Director does not undertake to approve or disapprove the specific equipment or process in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. It should be noted, however, that photocopies do not meet all the above conditions;

11. The Director does not undertake to approve or disapprove the specific writing medium or style of writing to be used, but requires that the reported information on the reproduced form be of good quality black-on-white with hand writing of satisfactory legibility.

History

HISTORY:

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

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted the first occurrence of "the"; in (a) and the introductory paragraph of (b), deleted ", CBT-100-X," twice; in (b)1, inserted a comma following "copying"; in (b)2, inserted a comma following "weight" and substituted "equal to" for "as good as"; in (b)5, (b)7, and (b)11, substituted "reported" for "filled-in"; in (b)6, substituted ", address," for "and address", and deleted "serial" following "identifying"; in (b)7, substituted "page" for "Page" and "return" for "Return"; and in (b)10, substituted "photocopies" for "photostats".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Section was "Reproduction of forms". In (a), substituted "corporation business tax return" for "Corporation Business Tax Return Forms CBT-100 and CBT-200T"; and in the introductory paragraph of (b), substituted "the New Jersey corporation business tax returns" for "Forms CBT-100 and CBT-200T".

N.J.A.C. 18:7-11.19 Electronic filing and payment

(a) For tax years beginning on or after January 1, 2015, tax preparers who file corporation business tax returns must file corporation business tax returns and, if such preparer is instructed by the taxpayer to make all payments of corporation business tax, including estimated payments, such preparer must make those payments electronically.

(b) For tax years beginning on or after January 1, 2016, taxpayers that are subject to the corporation business tax and submit their own returns must file their corporation business tax returns electronically. Payments of corporation business tax liabilities, including estimated payments, must be made electronically whether remitted directly by the taxpayer or by the tax preparer as instructed by the taxpayer.

(c) "Tax preparer" means as defined in N.J.S.A. 54:48-2.

(d) As a result of changes in technology, the Division of Taxation will determine which electronic filing methods satisfy the requirements imposed in this section. The Division will provide notice as to the

authorized electronic filing methods by publication on the Division's website and through other means as the Director may deem appropriate.

History

HISTORY:

New Rule, R.2015 d.015, effective January 20, 2015.

See: 46 N.J.R. 1591(a), 47 N.J.R. 275(a).

Section was "Reserved".

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (d), inserted "of Taxation".

N.J.A.C. 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) If a corporation ceases to exist as the result of an action such as a merger or if its New Jersey S status terminates, for example, the short period return for the terminating corporation or corporation losing its New Jersey S status would be due on the 15th day of the 4th month after the close of the short year ending on the date of the merger or on the day before the S corporation disqualifying event.

Example: A corporation had been granted New Jersey S status for the period beginning January 1 of the calendar year. The election terminated on April 6 of the calendar year due to merger. The due date for the return for the short period January 1 to April 6 of the calendar year (that is, through the close of business on the date that the merger occurs) is August 15 of the calendar year which is the 15th day of the 4th month after the close of the period. An automatic six-month extension of the time to file Form CBT-100S is available by making a tentative return and paying the tentative tax on Form CBT-200T by August 15 of the calendar year.

(d) In the case of a combined group filing a New Jersey combined return, in addition to (b)4 above, where the managerial member is changing its accounting period, a short period return is required pursuant to (b)3 above, if the corporation is the managerial member of the combined group, or in the case of (b)2 above, when the combined group first gains taxable status with New Jersey. A short period return would only be required pursuant to (b)1 above, 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 must report its income for the months prior to its departure on the combined group return. The departing taxpayer shall report the income for the 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 that joined a second combined group that files a New Jersey combined return would report on the second group's return, the income for the months the member was part of the second combined group. To determine the amount of income that is attributable to 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) 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.

3. For a taxpayer that is a member of a combined group filing a New Jersey combined return, and that member properly dissolves and receives a 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 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 remaining months in the 12-month period after the previous managerial member departed the group.

4. Where the combined group loses its taxable status with New Jersey, the managerial member of the combined group must file a short period return for the part of the group privilege period that the combined group had taxable status in New Jersey.

(e) For transitionary short period returns for banks switching accounting periods, see N.J.S.A. 54:10A-34.1 for more information.

History

HISTORY:

Amended by R.1991 d.35, effective January 22, 1991.

See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).

Added (c).

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

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

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

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

Rewrote (c); and added (d).

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

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

Deleted existing (c); recodified (d) as (c).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (b), (b)2, (b)3, and (b)4, substituted "that" for "which"; in (b)2, substituted "corporation business tax" for "Corporation Business Tax" and "for" for "upon the"; in (b)3, substituted "12" for "twelve"; in the introductory paragraph of (c), substituted "terminating" for "disappearing"; and in (c) Example, substituted "of the calendar year" for ", 1998" five times, deleted ", 1998" following the second occurrence of "January 1", substituted the first occurrence of "Form" for "the" and the second occurrence of "Form" for "form".

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Added (d) and (e).

N.J.A.C. 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. For any short period return, the minimum tax for a New Jersey corporation and for a foreign corporation may not be prorated and at least the proper minimum tax amount must be paid.

2. With respect to net income, a domestic corporation filing a short period return shall not be entitled to prorate its adjusted net income. A foreign corporation whose short period return under the Act covers a period other than the accounting period reported upon for Federal income tax purposes, may prorate its adjusted entire net income by dividing its adjusted entire net income by the number of calendar months or parts thereof covered by the Federal income tax return and multiplying the result by the number of calendar months or parts thereof covered by the short period return. A part of a month shall be deemed to be a month.

3. With respect to net income, a foreign corporation whose short period return under the Act covers the same period as the accounting period reported upon for Federal income tax purposes shall not be entitled to prorate its adjusted entire net income.

4. Where a taxpayer is entitled and has elected to allocate less than the full amount of its entire net income to New Jersey the allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return. For treatment of allocation on a short period return, see N.J.A.C. 18:7-12.3.

(b) Subsection (a) above shall apply to a combined group when a short period return is required to be filed for the combined group. See N.J.A.C. 18:7-21 for more information on combined reporting.

History

HISTORY:

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

See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Amended by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
In (a)2, substituted "income tax return" for "Income Tax Return"; and in (a)4, inserted 'has".
Amended by R.2022 d.116, effective September 19, 2022.
See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).
Added (b).

N.J.A.C. 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 at (a) above, the allocation factors shall be applied to entire net income only after such entire net income shall have been prorated as indicated at N.J.A.C. 18:7-12.2.

(c) Subsections (a) and (b) above shall apply to combined groups required to file a short period combined return. See N.J.A.C. 18:7-21 for more information on combined reporting.

History

HISTORY:
Amended by R.1991 d.35, effective January 22, 1991.
See: 22 N.J.R. 2125(a), 23 N.J.R. 221(a).
Added (c).
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Amended by R.2004 d.367, effective October 4, 2004.
See: 36 N.J.R. 1680(a), 36 N.J.R. 4484(a).
Deleted (c).
Amended by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
In (b), substituted the first occurrence of "the" for "that", and inserted "described in (a) above".
Amended by R.2022 d.116, effective September 19, 2022.
See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).
In (b), substituted "at" for "in" twice; and added (c).

N.J.A.C. 18:7-13.1 Assessment and reassessment

(a) On its return, a taxpayer must compute the amount of tax payable pursuant to the Corporation Business Tax Act and must remit the amount of the reported tax.

1. The Director shall cause the return to be examined and shall conduct any audit or investigation or reaudit as he or she may deem necessary;

2. If the Director determines that there is a deficiency with respect to payment of any tax due under the Act, he or she shall assess or reassess the additional taxes, penalties and interest due to the State, give notice of such assessment or reassessment to the taxpayer, and make demand for payment;

3. There shall be added to the amount of any deficiency assessment or reassessment, interest at the rate of one and one-half percent per month or fraction thereof to be calculated from the date the tax was originally due and payable until December 8, 1987. On and after December 9, 1987, interest shall be calculated at the annual rate of five percentage points above the prime rate, compounded daily until the date of actual payment. On and after July 1, 1993, interest shall be calculated 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.

4. If the failure to pay tax when due is explained to the satisfaction of the Director, the Director may abate the payment of any interest charge in excess of the annual rate of three percentage points above the prime rate.

(b) For tax liabilities accruing prior to July 1, 1993, the Director may assess an additional tax at any time within five years from the date of the filing of the return or amended return. Any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993, shall continue to be in full force and effect. For tax liabilities accruing on and after July 1, 1993, the Director may assess an additional tax at any time within four years from the date of the filing of the return or amended return.

1. In the case of a false or fraudulent return with intent to evade the tax, the Director may assess the tax at any time.

2. Where no return has been filed as provided by law, the Director may make an estimate of the tax and assess the same at any time.

3. For tax liabilities accruing prior to July 1, 1993, where a return is filed before or after the due date prescribed in the statute, the Director may assess an additional tax, recompute and reassess the tax at any time within five years from the due date of the return, or from the date of filing of the return or amended return, whichever is later. For tax liabilities accruing on and after July 1, 1993, the period to assess additional tax is four years.

(c) Where, before the expiration of the period prescribed by law for the assessment of any additional tax, a taxpayer has consented in writing that such period may be extended, the amount of any additional tax due may be determined at any time within the extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

(d) 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 if a renegotiation of a contract or subcontract with the United States results in a change in the taxable income, or if a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, the taxpayer shall file a report of the change or correction or an amended return within 90 days after the final determination of any change, correction, renegotiation, computation, or recomputation.

(e) For reports or returns filed prior to July 1, 1993, and within five years from the date of filing the report of change or correction or an amended return, the Director may reexamine the return, recompute and

reassess the tax, and shall so notify the taxpayer. For tax liabilities accruing on and after July 1, 1993, the period of limitation to make a deficiency assessment runs for an additional four year period from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue. The additional period of limitation will only be applicable to the increase or decrease in tax attributable to the adjustments in the changed or corrected income.

History

HISTORY:

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

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

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Added text in (a)3 "December 8, 1987. On ..."; changed percentage points in (a)4 from "three quarters of one percent per month" to "three percentage points above the prime rate, compounded daily."

Administrative Correction: Incorporated (d)1 into (d) and deleted (d)2-3.

See: 22 N.J.R. 3504(a).

Amended by R.1992 d.404, effective October 19, 1992.

See: 24 N.J.R. 3275(a), 24 N.J.R. 3733(a).

Revised (a)4.

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

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

Amended by R.1995 d.499, effective September 5, 1995.

See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the introductory paragraph of (a); in (a)1 and (a)2, inserted "or she"; in (a)1, substituted "conduct" for "make", and inserted "as"; in (a)2, inserted the second occurrence of "to", and deleted "upon it" following "demand"; in the introductory paragraph of (b), inserted a comma following the second occurrence of "1993"; and rewrote (e).

N.J.A.C. 18:7-13.2 Hearing; protest

(a) The rules concerning the right of taxpayer to a hearing are:

1. Any taxpayer aggrieved by any finding or assessment of the Director may, within 90 days of the date of the notice of assessment or finding, file a protest in writing, in the form and manner described in N.J.A.C. 18:32-1.2, and may request a hearing; and

2. Thereafter the Director shall grant an informal hearing to the taxpayer, if requested.

(b) Hearings before the Division of Taxation are to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

History

HISTORY:

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

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

Amended by R.1991 d.23, effective January 22, 1991.

See: 22 N.J.R. 1995(a), 23 N.J.R. 219(a).

Reference to N.J.A.C. 18:1-1.8 added; (b), regarding powers of Director, deleted; (c) recodified to (b).

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

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

Administrative correction.

See: 40 N.J.R. 4605(a).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), substituted "The rules" for "Rules".

STATUTORY REFERENCES:

See N.J.S.A. 54:49-18 as to procedures and time limits for filing a protest against any assessment under the Act, and taxpayer's right to a hearing thereon.

N.J.A.C. 18:7-13.3 Appeal

(a) Any aggrieved taxpayer may, within 90 days after any final decision, order, finding, assessment or action of the Director made pursuant to the provisions of the Corporation Business Tax Act, appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

(b) 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.

History

HISTORY:

Amended by R.1989 d.508, effective October 2, 1989.

See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).

Reference to State Tax Uniform Procedure Law added. Text at (b) and (c) deleted in entirety.

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

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

Designated existing paragraph as (a) and added (b).

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

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
In (a), inserted "Corporation Business Tax", and deleted "Tax" following "State".

N.J.A.C. 18:7-13.4 (Reserved)

History

HISTORY:
Repeal and New Rule, R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "Service of notice on taxpayers".

N.J.A.C. 18:7-13.5 (Reserved)

History

HISTORY:
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "Closing agreements".

N.J.A.C. 18:7-13.6 Time for payment of tax

(a) The annual franchise tax must be paid to the Director in full on or before the due date of the return. For accounting periods ending on or after December 31, 1980, the annual franchise tax, including any estimated or installment payments required to be made pursuant to the Corporation Business Tax Act and N.J.A.C. 18:7-3.13 must be paid to the Director in full on or before the due date of the return. For due dates of returns see N.J.A.C. 18:7-11.7.

(b) Installment payments are due on or before the respective due dates as set forth in N.J.A.C. 18:7-3.13.

(c) A taxpayer that ceases to be subject to tax under the Act must pay the entire tax for each fiscal or calendar accounting period or part of a period during which it had a taxable status. See N.J.A.C. 18:7-11.11.

History

HISTORY:

Amended by R.1982 d.6, effective January 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).

(a) Added "on and after"; deleted "and thereafter"; added "but before December 31, 1980"; added "For accounting periods ending on or after December 31, 1980 ... return".

(b) added.

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote (a); and in (c), substituted "that" for "which".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-15 as to requirements for use of fiscal or calendar year accounting periods and due dates thereunder.

N.J.A.C. 18:7-13.7 Additional tax; change in Federal tax; interest to be charged

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commissioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, within 15 days after the date of the Division's assessment letter to the taxpayer, the taxpayer must remit that additional tax together with interest thereon 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.

(b) However, if the taxpayer failed to notify the Director of any change in Federal net income within 90 days as required by the Act, any additional tax resulting from a change, plus interest thereon computed as indicated in (a) above, shall be deemed to have been due within 15 days after notification was required to be filed with the Director.

History

HISTORY:

Amended by R.1986 d.284, effective July 21, 1986.

See: 18 N.J.R. 627(a), 18 N.J.R. 1487(a).

(a) substantially amended.

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Substantially amended (a).

Amended by R.1989 d.196, effective April 17, 1989.

See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

At (a) annual percentage rate changed from five to three percentage points above prime; at (b) language added in parentheses regarding exception on or after December 9, 1987.

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote (a); in (b), deleted "and its provision" following "Act"; and deleted former (c).

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-13 as to requirements and time limits for filing amended tax returns under this Act should a change, correction, or recomputation of Federally taxable income occur, and 49-6 as to possible deficiency assessments and attendant penalties and interest after final tax report is filed.

N.J.A.C. 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 section only:

1. A Tentative Return and Application for Extension of Time to File a tentative New Jersey corporation business tax return and an installment voucher are not returns;

2. 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 New Jersey corporation business tax return for the appropriate tax year, with the words "AMENDED RETURN" clearly 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), the claim will be considered a timely refund claim if it is filed with the Division of Taxation within four years of the later of filing or payment of the original return self-assessment.

(f) Where the Director makes an assessment and the taxpayer properly protests the assessment pursuant to N.J.A.C. 18:7-13.2, the taxpayer may establish that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. Upon audit and verification, the Director will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment pursuant to N.J.S.A. 54:49-16. After a final determination has been issued, the taxpayer has 90 days in which to appeal to the Tax Court if it is dissatisfied with the determination. The offset procedure is not considered a refund action pursuant to N.J.S.A. 54:49-14.

(g) Where the Director assesses additional tax by way of an additional assessment or final determination and the taxpayer pays the assessment, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim, unless the taxpayer follows the procedure prescribed in N.J.S.A. 54:49-14b and N.J.A.C. 18:2-5.5(c)1.

(h) If a taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A-8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7-8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the Corporation Business Tax Act, plainly noting on the filed returns its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7-10.1. In addition, a claim for refund must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) To claim a refund and amend the applicable New Jersey corporation business tax returns, the applicable return for the appropriate tax year shall be used. The words "AMENDED RETURN" shall be clearly indicated on the front page of the 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

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 corporation business tax return. A penalty for late filing of the corporation business tax return may be imposed pursuant to N.J.S.A. 54:49-4.

Example 2: One year after filing a 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 pursuant to N.J.S.A. 54:49-6 and to file claims for refund pursuant to 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 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.

History

HISTORY:

Repeal and New Rule, R.1989 d.508, effective October 2, 1989.

See: 21 N.J.R. 1503(b), 21 N.J.R. 3177(a).

Amended by R.1993 d.660, effective December 20, 1993.

See: 25 N.J.R. 1842(a), 25 N.J.R. 5943(a).

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

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

Amended by R.1995 d.499, effective September 5, 1995.

See: 27 N.J.R. 645(a), 27 N.J.R. 3379(b).

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

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

In (a), added the last sentence; in (d), inserted a reference to Form CBT-100-X in the second sentence; and in (i), changed name and address.

Amended by R.2000 d.21, effective January 18, 2000.

See: 31 N.J.R. 2862(a), 32 N.J.R. 311(a).

Rewrote (c)3 and (d); in (h), substituted a reference to claim for refund for a reference to form CBT-100-X; and in (i), rewrote the introductory paragraph and Example 2, and substituted a reference to CBT-100 for a reference to CBT-100-X in Example 4.

Amended by R.2002 d.153, effective May 20, 2002.

See: 33 N.J.R. 4083(a), 34 N.J.R. 1849(b).

In (g), substituted "assessment" for "additional" preceding ", the taxpayer may" and inserted ", unless the taxpayer follows the procedure prescribed in N.J.S.A. 54:49-14.b and N.J.A.C. 18:2-5.5(c)1" following "refund claim"; in (i), rewrote Example 3.

Administrative change.

See: 35 N.J.R. 3847(b).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

Amended by R.2022 d.116, effective September 19, 2022.

See: 54 N.J.R. 865(a), 54 N.J.R. 1819(a).

Rewrote (c), (e), and (i).

N.J.A.C. 18:7-13.9 Payment of refunds; rejection of claims; interest on overpayments

(a) If upon examination of a claim for refund, it shall be determined by the Director that there has been an overpayment of tax, the amount of the overpayment and the interest on the overpayment if any, shall be credited against any liability of the taxpayer under any state tax law.

(b) If there is no liability the taxpayer shall be entitled to a refund of the tax so overpaid and the interest on the overpayment, if any.

(c) If the Director shall reject the claim for refund in whole or in part, he or she shall make a determination accordingly and serve a notice upon the taxpayer.

(d) For tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later. The interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date the interest begins to accrue to the date of the refund. The interest will begin to accrue on the later of the date of the filing by the taxpayer of the refund claim or requested adjustment, the date of the payment of the tax, or the due date of the report or return. No interest will be paid on an overpayment of less than $ 1.00. Interest will not be paid on an overpayment if the taxpayer requests that the overpayment be applied to future tax liabilities.

History

HISTORY:

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

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

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (c), inserted "or she" and substituted "a determination" for "an order".

STATUTORY REFERENCES:

See N.J.S.A. 54:49-15 as to procedures required of the Director should he determine subsequent to the taxpayer's filing of a claim for refund, either that an overpayment has been made or that the claim should be rejected, and 54:49-15.1 as to interest on overpayments.

N.J.A.C. 18:7-13.10 Refund for erroneous payments

(a) Where no questions of fact or law are involved and it appears from the records of the Director that any moneys have been erroneously or illegally collected from any taxpayer or have been paid by any taxpayer under a mistake of fact or law, the Director may at any time within two years of payment, upon making a record in writing of his or her reasons therefor, certify to the State Treasurer that the taxpayer is entitled to a refund.

(b) The Treasurer shall then authorize payment from the appropriation for this purpose.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), inserted "or her".

STATUTORY REFERENCES:

See N.J.S.A. 54:49-16 as to right of Director to order a refund of tax overpaid at any time within two years of overpayment.

N.J.A.C. 18:7-13.11 Lien of tax

(a) The tax imposed by the Act, including the required tax prepayment for accounting periods ending March 31, 1968, and thereafter, shall constitute a lien on all 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.

1. All interest, penalties, and costs of collection that fall due or accrue shall be added to and become a part of this lien;

2. The lien date is not affected by an extension of time that may be granted for filing the return.

(b) Notwithstanding the provisions of any other law, all such taxes, interest, penalties, and costs imposed or incurred under the Act, whether levied or assessed or not, shall unless sooner paid continue and remain a lien on all of the taxpayer's property and franchises until the expiration of ten years after January 1 of the year in which they become due and payable.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), inserted a comma following "1968"; in (a)1 and (a)2, substituted "that" for "which"; and in (a)1 and (b), inserted a comma following "penalties".

STATUTORY REFERENCES:

See N.J.S.A. 54:49-15 as to requirement for annual payment of tax under the Act, and 10A-16 as to liability of delinquent taxpayer to lien for overdue taxes, interests, penalties, and costs of collection.

N.J.A.C. 18:7-13.12 Release of property from lien

(a) The Director may release any property from the lien of any tax, interest, or penalty imposed upon any corporation in accordance with the provisions of the Act, or of any certificate, judgment, or levy procured by him or her, upon written application made to him or her and upon payment of a $ 5.00 fee, provided:

1. Payment be made to the Director of such sum as he or she shall deem adequate consideration for release; or

2. Deposit be made of whatever security or bond the Director shall deem proper to secure payment of any debt evidenced by any tax, interest, penalty, cost of collection, certificate, judgment, or levy, the lien of which is sought to be released; or

3. The Director is satisfied that payment of the tax is otherwise provided for.

(b) The application for release shall be in such form as shall be prescribed by the Director and shall contain an accurate description of the property to be released together with whatever other information the Director may require. The release shall be given under the seal of the Director and may be recorded in any office in which conveyances of real estate may be recorded.

History

HISTORY:

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Added "cost of collection" to (a)2.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), inserted a comma following "interest" and "judgment", inserted "or her" twice, and substituted "$ 5.00" for "$ 5"; in (a)1, inserted "or she"; and in (a)2, inserted a comma following "judgment".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-30 as to requirements taxpayer must meet to obtain release of his property from lien for overdue corporation franchise taxes.

N.J.A.C. 18:7-13.13 Certificate as to lien for unpaid corporation franchise taxes

(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 in the application one of the following:

1. That there are no liens in favor of the State for corporation franchise taxes due pursuant to the provisions of the Act; or

2. That there are liens as stated in the certificate; or

3. That there exists some other status which the Director's records disclose.

(b) The fee for a tax lien status certificate shall be $ 25.00 for each corporation listed in the application for which a certificate is requested.

(c) The form of the application prescribed by the Director requires 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 certain other specified pertinent information.

(d) Any person who shall acquire for a valuable consideration an interest in lands covered by such a certificate in reliance thereon shall hold his or her interest free from any lien held by the State for unpaid corporation franchise taxes due pursuant to the provision of the Act and not shown on the certificate.

History

HISTORY:

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

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

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Raised the fee for a tax lien status certificate from "$ 5.00" to "$ 25.00".

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), substituted "section" for "Section"; and in (d), inserted "or her".

STATUTORY REFERENCES:

See N.J.S.A. 54:10A-29 as to right to taxpayer to apply for and obtain certificate declaring its status in regard to liens for unpaid corporate franchise taxes.

N.J.A.C. 18:7-14.1 Tax Clearance Certificate

(a) This section describes certain actions and certain transactions by corporations that require the prior issuance of a Tax Clearance Certificate by the Director of the Division of Taxation as evidence that all State taxes, penalties, interest, and fees have been paid or provided for in order to avoid a transferee liability to certain officers and directors.

(b) The following words and terms, when used in this section, have the following meanings unless the context clearly indicates otherwise:

"Authorized foreign corporation" means a corporation holding a general Certificate of Authority to do business in New Jersey issued by the Division of Revenue and Enterprise Services to the exclusion of any other authority, license, or right derived from any other source.

"Business entity" means a corporation, partnership, or limited liability company, whether organized under the laws of this State or under the laws of any other state or foreign jurisdiction, which is subject to taxation under any state tax law.

"Certification" means a writing on behalf of a corporation making an undertaking executed under oath of its president, vice president, or treasurer which represents that the corporation making the undertaking has a net worth not less than 10 times the amount of all taxes paid by a corporation applying for a Tax Clearance Certificate during the last complete year in which it filed tax returns with the State of New Jersey. Net worth, for this purpose, is net worth defined in the conventional accounting sense determined consistent with generally accepted accounting principles and not as defined at N.J.S.A. 54:10A-4(d) of the Corporation Business Tax Act.

"Director" means the Director of the Division of Taxation.

"Domestic corporation" means a corporation that received its charter under any law of the State of New Jersey.

"Foreign corporation" means any corporation other than a domestic corporation that is subject to taxes. The term includes entities that are taxable as such, as well as any entity obligated to withhold personal income taxes or to collect sales and use tax.

"Liquidation" means any distribution by a corporation to its shareholders with respect to its capital stock except dividend distributions out of retained earnings.

"Taxes" means all taxes, fees, penalties, and interest owing under any tax law of the State of New Jersey that are payable to or collectible by the Director.

"Undertaking" means a writing by a domestic corporation or by an authorized foreign corporation executed on its behalf by its president, vice president, or treasurer which undertakes, as surety and not as guarantor, to pay all taxes of a corporation applying for a Tax Clearance Certificate on or before the date such taxes are payable. Where more than one corporation undertakes to pay such taxes, the undertaking must be jointly and severally undertaken.

(c) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the surviving corporation is a domestic corporation or an authorized foreign corporation.

(d) No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation, or merge or consolidate, under the laws of any jurisdiction, into a foreign corporation that is not an authorized foreign corporation; and no domestic corporation may dissolve, and no authorized foreign corporation may withdraw as an authorized corporation (except only where that withdrawal is affected by its merger or consolidation under the laws of another state into a domestic corporation or into another foreign corporation which, itself, is an authorized corporation), unless the corporation shall have applied for and received a Tax Clearance Certificate from the Director of the Division of Taxation that is dated not earlier than 45 days prior to the effective date of the corporate action or transaction described.

(e) No business entity may merge or consolidate into any other business entity other than a domestic business entity or a foreign business entity authorized to transact business in this State, unless the business entity files or causes to be filed by the Division of Taxation with the Division of Revenue and Enterprise Services a certificate issued by the Director of the Division of Taxation dated not earlier than 45 days prior to the effective date of the business entity action evidencing that the business entity's taxes have been paid or provided for.

(f) The Tax Clearance Certificate is issued by the Director of the Division of Taxation upon application on the appropriate form to the Division of Revenue and Enterprise Services, which is accompanied by a statutory fee of $ 120.00 ($ 25.00 application fee and $ 95.00 dissolution withdrawal fee). All fees related to the application and final dissolution/withdrawal must be paid with the initial application for tax clearance in the form of a check or money order payable to "Treasurer, State of New Jersey." Failure to complete the tax clearance procedure will result in the forfeiture of the $ 120.00 fee. The Tax Clearance Certificate is dated and it voids and becomes a nullity 46 days after that date. The Tax Clearance Certificate is evidence that the requisite corporation business taxes have been paid or provided for only during the 45-day period succeeding the issuance of the Tax Clearance Certificate.

(g) The corporation's tax liability will be deemed ended as of the date the application is accepted by the Division of Revenue and Enterprise Services, as long as the tax clearance procedure is successfully concluded with the Division of Taxation. Although the business tax liability will end before the issuance of the Tax Clearance Certificate, any prior tax obligation will remain payable and must be satisfied before a Tax Clearance Certificate will be issued. If a Tax Clearance Certificate is not issued, the business tax liability will be reactivated as if there was no lapse in subjectivity.

(h) An LLC or other business entity that has elected to be taxed as a corporation that is withdrawing from the State is required to obtain a Tax Clearance Certificate.

(i) A Tax Clearance Certificate may be issued under any one of three conditions:

1. Where an amount is deposited or paid on account which, in the judgment of the Director, is adequate to cover estimated taxes up to the date of the relevant corporation action. The amount that is deemed to be adequate is described in the instruction sheet accompanying the estimated summary tax return to be filed with the application; or

2. Where the application is accompanied by a written undertaking and a certification; or

3. Solely in the case where:

i. A domestic corporation intends to dissolve or where any corporation proposes to distribute any of its assets in dissolution or in partial or complete liquidation, and

ii. The application is accompanied by a written undertaking by the corporation or corporations that either own 50 percent or more of all classes of the applicant corporation's capital stock, or are a party together with the applicant corporation in the type of reorganization described at I.R.C. § 368(a)(1)(C), and the application is accompanied by a legal opinion signed by an attorney at law of the State of New Jersey who states that he or she is familiar with the facts of the transaction to the effect that all of the above requirements are met.

(j) As a condition of issuing any Tax Clearance Certificate, the Director may require evidence by affidavit, or by any other means that seems to him or her appropriate, that any foreign corporation that is not an authorized foreign corporation and that is a party to the transaction causing any corporation to seek a Tax Clearance Certificate has, itself, paid all taxes that it owes.

Example: A foreign corporation that is not subject to the corporation business tax or any property tax in New Jersey may be obligated to withhold personal income taxes or to remit sales and use tax. Such taxes must be paid whether or not withheld from employees or charged to customers.

(k) Whenever necessary to properly reflect the entire net income of any taxpayer, the Director may 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.

Example: A foreign corporation sold a piece of property located in this State at a substantial gain that it has elected to report on the installment method of accounting for Federal income tax purposes. Before it has recognized all of the gain on this sale, the foreign corporation withdraws from the State and cancels its Certificate of Authority to do business.

(l) In order properly to reflect the entire net income of the taxpayer, the Director may include all the unrecognized gain on the taxpayer's final return, notwithstanding any inconsistency in the timing of income for Federal and State tax purposes.

(m) See N.J.A.C. 18:7-14.5 for the streamlined dissolution or withdrawal procedure.

History

HISTORY:

The following annotations apply to N.J.A.C. 18:7-14.1 prior to its repeal by R.2017 d.123:

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

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

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Deleted text and substituted new.

The following annotations apply to N.J.A.C. 18:7-14.1 subsequent to its recodification from N.J.A.C. 18:7-14.17 by R.2017 d.123:

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

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

New Rule, R.1985 d.383, effective August 5, 1985.

See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Statutory fee raised from "$ 10.00" to "$ 25.00".

Amended by R.1992 d.231, effective June 1, 1992.

See: 24 N.J.R. 1522(a), 24 N.J.R. 2074(c).

Revised (g); added (h) and (i).

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

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

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

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

Rewrote the section.

Recodified from 18:7-14.17 and amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section. Former 18:7-14.1, Penalties, repealed.

N.J.A.C. 18:7-14.2 Actions not requiring the prior issuance of a Tax Clearance Certificate

(a) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the surviving corporation is a domestic corporation or an authorized foreign corporation.

(b) A corporate dissolution before commencing business may occur without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12-2(3).

(c) A dissolution of a corporation without assets may occur without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12-4.1(3).

(d) See N.J.A.C. 18:7-14.5 for the streamlined dissolution or withdrawal procedure.

History

HISTORY:

The following annotations apply to N.J.A.C. 18:7-14.2 prior to its repeal by R.2017 d.123:

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

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

Amended by R.1982 d.6, effective January 18, 1982.

See: 13 N.J.R. 688(a), 14 N.J.R. 105(d).

Text deleted and replaced by "See N.J.A.C. 18:7-11.12".

The following annotations apply to N.J.A.C. 18:7-14.2 subsequent to its recodification from N.J.A.C. 18:7-14.18 by R.2017 d.123:

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

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

New Rule, R.1985 d.383, effective August 5, 1985.

See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).

Amended by R.1989 d.196, effective April 17, 1989.

See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

Added (b), corporate dissolution before commencing business and (c), dissolution of a corporation without assets.

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

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

Added (d).

Recodified from 18:7-14.18 and amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "surviving corporation" for "survivor"; in (b) and (c), substituted "occur" for "be made"; and in (d), updated the N.J.A.C. reference. Former 18:7-14.2, Extension of time; failure to file or pay on time, repealed.

N.J.A.C. 18:7-14.3 Actions and transactions requiring the prior issuance of a Tax Clearance Certificate in order to avoid a personal liability to certain officers and directors

(a) No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation, or consolidate with another corporation to form a new corporation or merge into a foreign corporation that is an unauthorized foreign corporation, and no domestic corporation may dissolve (except as may be provided by law), and no authorized foreign corporation may withdraw its authority to do business in New Jersey, unless the foreign corporation shall have applied for and received a Tax Clearance Certificate from the Director of the Division of Taxation.

(b) See N.J.A.C. 18:7-14.5 for the streamlined dissolution or withdrawal procedure.

History

HISTORY:

The following annotation applies to N.J.A.C. 18:7-14.3 prior to its repeal by R.2017 d.123:

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Added "cost of collection".

The following annotations apply to N.J.A.C. 18:7-14.3 subsequent to its recodification from N.J.A.C. 18:7-14.19 by R.2017 d.123:

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

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

New Rule, R.1985 d.383, effective August 5, 1985.

See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).

Amended by R.1989 d.196, effective April 17, 1989.

See: 21 N.J.R. 14(a), 21 N.J.R. 1019(b).

Added "(except as may be provided by law)".

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

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

Designated paragraph as (a), inserted "of the Division of Taxation" following "from the Director"; added (b).

Recodified from 18:7-14.19 and amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "that" for "which" and "the foreign corporation" for "it"; and in (b), updated the N.J.A.C. reference. Former 18:7-14.3, Arbitrary assessment where taxpayer withholds return, repealed.

N.J.A.C. 18:7-14.4 Forms and instructions regarding procedure to obtain a Tax Clearance Certificate

(a) The forms for the closure of operations in New Jersey may be:

1. Downloaded from the Division of Revenue and Enterprise Services website http://www.nj.gov/treasury/revenue/dissforms.shtml.

History

HISTORY:

The following annotation applies to N.J.A.C. 18:7-14.4 prior to its repeal by R.2017 d.123:

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

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

The following annotations apply to N.J.A.C. 18:7-14.4 subsequent to its recodification from N.J.A.C. 18:7-14.20 by R.2017 d.123:

New Rule, R.1985 d.383, effective August 5, 1985.

See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).

Amended by R.1988 d.407, effective September 6, 1988.

See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).

Changed the address.

Amended by R.1989 d.437, effective July 21, 1989.

See: 21 N.J.R. 2526(b).

Address changed.

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

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

Rewrote (a); added (c).

Recodified from 18:7-14.20 and amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section. Former 18:7-14.4, Arbitrary assessment where taxpayer intends absconding; concealment, immediate payment demanded, repealed.

N.J.A.C. 18:7-14.5 Streamlined dissolution or withdrawal procedure

(a) Notwithstanding any rule or regulation to the contrary, the streamlined dissolution or withdrawal process begins when a corporation submits all required forms with proper remittance to:

New Jersey Division of Revenue and Enterprise Services
Business Liquidations
PO Box 308
Trenton, NJ 08625

(b) Remittance shall be in the form of a single check or money order payable to "Treasurer, State of New Jersey" in the amount of $ 120.00. This amount represents the formerly separate $ 25.00 fee to the New Jersey Division of Taxation and the $ 95.00 dissolution fee to the Division of Revenue and Enterprise Services. The full payment shall be forfeited if the applicant does not complete the tax clearance procedure.

(c) The applicant's tax eligibility will be deemed ended with the Division of Taxation on the date the application for dissolution or withdrawal is accepted by the Division of Revenue and Enterprise Services, provided that the tax clearance procedure is successfully concluded with the Division of Taxation. Although the business tax eligibilities end before the issuance of the Tax Clearance Certificate, all prior tax obligations remain payable and must be satisfied before a Tax Clearance Certificate will be issued. If a Tax Clearance Certificate is not issued, the business tax eligibilities of the taxpayer will be reactivated as if there had been no lapse in subjectivity.

(d) The application procedures to merge or consolidate corporations or reauthorize a foreign corporation remain unchanged.

History

HISTORY:

New Rule, R.2004 d.367, effective October 4, 2004.

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

Recodified from 18:7-14.21 and amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), (b), and (c), inserted "and Enterprise Services" three times; and in (a), deleted "The" preceding "New".
Former 18:7-14.5, Forfeiture of charter; conditions warranting, repealed.

N.J.A.C. 18:7-14.6 (Reserved)

History

HISTORY:
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "Forfeiture of charter; procedure".

N.J.A.C. 18:7-14.7 (Reserved)

History

HISTORY:
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Amended by R.1988 d.407, effective September 6, 1988.
See: 19 N.J.R. 2255(b), 20 N.J.R. 2310(c).
Substituted "crime of the fourth degree" for "misdemeanor".
Repealed by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Section was "Acting under voided charter a crime of the fourth degree".

N.J.A.C. 18:7-14.8 (Reserved)

History

HISTORY:
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "Reinstatement of voided domestic corporation; conditions warranting".

N.J.A.C. 18:7-14.9 (Reserved)

History

HISTORY:
Amended by R.1979 d.45, effective February 6, 1979.
See: 11 N.J.R. 40(d), 11 N.J.R. 150(b).
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "Reinstatement of voided domestic corporation; procedure".

N.J.A.C. 18:7-14.10 (Reserved)

History

HISTORY:
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "Revocation of authority of foreign corporation to do business in New Jersey".

N.J.A.C. 18:7-14.11 (Reserved)

History

HISTORY:
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "New certificate of authority for a foreign corporation".

N.J.A.C. 18:7-14.12 (Reserved)

History

HISTORY:
Amended by R.1985 d.383, effective August 5, 1985.
See: 17 N.J.R. 1252(b), 17 N.J.R. 1909(a).
(a)1 and (a)2 added.
Amended by R.1994 d.186, effective April 18, 1994.
See: 26 N.J.R. 761(a), 26 N.J.R. 1696(b).
Repealed by R.2017 d.123, effective June 19, 2017.
See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).
Section was "Personal liability of officers or directors for unpaid taxes".

N.J.A.C. 18:7-14.13 through 18:7-14.16 (Reserved)

History

HISTORY:
Repealed by R.1988 d.407, effective September 6, 1988.
See: 19 New Jersey Register 2255(b), 20 New Jersey Register 2310(c).
Sections repealed 14.13 Criminal penalties for failure to file; filing of false or fraudulent return; 14.14 False swearing; 14.15 Certain offenses deemed occurring in Director's office; Prima Facie evidence; and 14.16 False or fraudulent books, records or accounts.

N.J.A.C. 18:7-14.17 (Reserved)

History

HISTORY:

Recodified to N.J.A.C. 18:7-14.1 by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Tax Clearance Certificate".

N.J.A.C. 18:7-14.18 (Reserved)

History

HISTORY:

Recodified to N.J.A.C. 18:7-14.2 by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Actions not requiring the prior issuance of a Tax Clearance Certificate".

N.J.A.C. 18:7-14.19 (Reserved)

History

HISTORY:

Recodified to N.J.A.C. 18:7-14.3 by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Actions and transactions requiring the prior issuance of a Tax Clearance Certificate in order to avoid a personal liability to certain officers and directors".

N.J.A.C. 18:7-14.20 (Reserved)

History

HISTORY:

Recodified to N.J.A.C. 18:7-14.4 by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Forms and instructions regarding procedure to obtain a Tax Clearance Certificate".

N.J.A.C. 18:7-14.21 (Reserved)

History

HISTORY:

Recodified to N.J.A.C. 18:7-14.5 by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Streamlined dissolution or withdrawal procedure".

N.J.A.C. 18:7-17.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Nonresident corporate partner" means a partner that is not an individual, estate, or trust subject to taxation pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Nonresident corporate partners include:

1. Entities that are classified as partnerships for Federal income tax purposes;

2. Entities that are classified as corporations for Federal income tax purposes that:

i. Are not corporations exempt from tax pursuant to N.J.S.A. 54:10A-3; or

ii. Do not maintain a regular place of business, as defined in N.J.A.C. 18:7-7.2, in New Jersey.

"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.A. 54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that Act.

"Partner" means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of definition "Nonresident corporate partner", inserted a comma following "estate".

N.J.A.C. 18:7-17.2 Subjectivity

(a) For privilege periods beginning on or after January 1, 2002, a partnership, including any entity that is classified as a partnership for Federal income tax purposes, except a qualified investment partnership as defined herein (see N.J.A.C. 18:7-1.21) or a partnership listed on a United States national stock exchange, shall file a return on a form prescribed by the Director and remit tax under these rules.

(b) Entities that meet the requirements of N.J.S.A. 54A:5-8(c) are commonly referred to as "hedge funds." Income received by a nonresident individual, estate, or trust from a "hedge fund" is exempt from tax under the New Jersey gross income tax because it is not deemed to be carrying on from a trade or business.

1. In those situations in which partnerships do not meet the definition of qualified investment partnerships in N.J.S.A. 54:10A-4(r) (which would automatically exempt partnerships from partnership payments under N.J.S.A. 54:10A-15.11a), and if all of the income derived from the hedge fund partnership by the partners is not subject to New Jersey gross income tax, the partnership is not required to remit a payment of tax on behalf of its nonresident, noncorporate partners, since the income to the nonresidents is not considered subject to tax in New Jersey.

(c) P.L. 2001, c.136, applies to privilege periods beginning on and after January 1, 2001, and before January 1, 2002.

History

HISTORY:

Amended by R.2003 d.370, effective September 15, 2003.

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

In (b)1, amended the N.J.S.A. reference.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote (a); in the introductory paragraph of (b), inserted a comma following "estate"; in (b)1, substituted the third occurrence of "partnerships" for "them"; and in (c), inserted a comma following "2001".

N.J.A.C. 18:7-17.3 Due date for return

The return and payment of tax shall be due on or before the 15th day of the fourth month succeeding the close of the privilege period.

N.J.A.C. 18:7-17.4 Extension of time to file returns

No extension will be granted unless the request is made on Partnership Tentative Return and Application for Extension of Time to File Form PART-200T and the form is actually received by the Division of Taxation or is postmarked on or before the due date of the return. (See N.J.A.C. 18:7-11.12 for additional standards for extension of time to file.)

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted "of Taxation".

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N.J.A.C. 18:7-17.5 Calculation of tax

(a) The tax to be paid shall be the total of:

1. The share of entire net income of the partnership for the privilege period of all nonresident noncorporate partners multiplied by an allocation factor determined pursuant to N.J.S.A. 54:10A-6 and using the partnership's allocation fractions multiplied by the tax rate of .0637; plus

2. The share of entire net income of the partnership for the privilege period of all nonresident corporate partners multiplied by an allocation factor determined pursuant to N.J.S.A. 54:10A-6 and using the partnership's allocation fractions multiplied by the tax rate of .09.

3. As used in this subsection, the term "entire net income" as applied to partnerships means distributive share of partnership income for Federal purposes plus tax exempt interest income as shown on the Form Federal K-1.

(b) A partnership shall not claim credit or take into account estimated tax payments made by nonresident partners in determining how much tax to pay on behalf of any corporate partner.

(c) A partnership must have a regular place of business as defined under N.J.A.C. 18:7-7.2 outside the State of New Jersey in order to allocate a portion of its income outside New Jersey. For purposes of this subchapter, each regular place of business of a partnership that is unitary with a corporate partner who is filing a return in this State is to be treated as a regular place of business of the corporate partner. See N.J.A.C. 18:7-17.8(d).

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote (a); and in (c), substituted "that" for "which".

N.J.A.C. 18:7-17.6 Credit or refund

(a) As of the date the Division of Taxation receives the payment, the amount of tax paid by a partnership pursuant to N.J.A.C. 18:7-17.5 shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the rate for that partner class set forth in N.J.A.C. 18:7-17.5.

(b) Each payment amount credited will be deemed to have been paid by the respective partner for the privilege period of the partner.

(c) A nonresident noncorporate partner and a nonresident corporate partner may claim a credit on their own New Jersey returns for the amount of tax allocated to them by the partnership. Any excess tax payments may be refunded to the partner.

(d) Since partners may wish to claim a credit or refund for tax payments made on their behalf by a partnership, there may be an advantage if certain partnerships issue Form NJ-K1's as soon as possible after the close of the tax period.

(e) Example: A partnership has a fiscal year ending on January 31. The partnership tax payment on behalf of foreign partners is due May 15. The amount of payment on behalf of partners will not be credited to the accounts of partners until the date received by the Division of Taxation.

1. Accordingly, a calendar year partner, whose first quarter estimated payment is due by April 15 cannot take a credit against its April 15 estimated payment, for the partnership's May 15 tax payment that has not yet been received by the Division.

(f) Payments remitted on unauthorized or improperly prepared returns will be credited on the date the Division of Taxation is able to post the payment properly.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), the introductory paragraph of (e), and (f), inserted "of Taxation"; in (c), substituted "returns" for "return"; in (d), inserted "Form"; in (e)1, inserted a comma following "Accordingly", inserted "by", and substituted "that" for "which; and in (f), moved "properly" to the end.

N.J.A.C. 18:7-17.7 Estimated return

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 be required to make installment payments of tax. For privilege periods beginning on January 1, 2007, and thereafter, those partnerships that are required to make tax payments pursuant to N.J.S.A. 54:10A-15.11a.(1) shall make installment payments of 25 percent 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. A partnership required to make such payments shall be deemed to make them subject to the provisions of N.J.S.A. 54:10A-15.4 and shall be liable for any addition to tax provided thereunder.

History

HISTORY:

Repeal and New Rule, R.2007 d.284, effective September 4, 2007.

See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).

Section was "Estimated return".

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted a comma following "2007" and the second occurrence of "month".

N.J.A.C. 18:7-17.8 Certain corporate partners; exemption form

(a) In order for a nonresident corporate partner to establish that the partnership is not required to pay tax on its behalf, the partner must file annually with the partnership a statement making its claim for exemption. The claim shall be on a form specified by the Director. It must be filed annually and must be received by the partnership on or before the 15th day of the fourth month succeeding the close of the privilege period, or on or before the filing date of the return, if that occurs earlier.

(b) If a partnership erroneously makes a tax payment to the Division of Taxation on behalf of an entity that is exempt, the exempt entity must establish that the money has actually been paid to the State by the partnership, and the entity is actually exempt, in order to qualify for a refund.

(c) If a New Jersey S corporation, that does not have a place of business in New Jersey is a partner in a partnership, a tax payment is made on its behalf at the nine percent rate, since the corporation does not have a regular place of business in New Jersey.

(d) For purposes of this subchapter, each regular place of business of a partnership that is unitary with a corporate partner is to be treated as a regular place of business of the corporate partner. See N.J.A.C. 18:7-7.6(g) and (h)1.

(e) If a partner in a partnership is a qualified I.R.C. § 501(c)(3) charity or any retirement plan approved by the Internal Revenue Service, the partner may file Form 1065E with the partnership to relieve the partnership from making a payment measured by the partner's share. At present, New Jersey does not impose a tax on unrelated business income.

Example: A New Jersey general partnership has a unitary relationship under the criteria set forth at N.J.A.C. 18:7-7.6(g)3 with a corporate partner located in Illinois. As a result of this relationship the corporate partner is considered to have a regular place of business in the State and is not a "nonresident corporate partner." This partner may file a Form 1065E with the partnership so that no tax payments will be made by the partnership on the partner's behalf.

History

HISTORY:

Amended by R.2003 d.370, effective September 15, 2003.

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

Added (e) and (f).

Amended by R.2007 d.284, effective September 4, 2007.

See: 39 N.J.R. 844(a), 39 N.J.R. 3780(b).

In (e), inserted "or any retirement plan approved by the Internal Revenue Service,"; and deleted (f).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b), substituted "Division of Taxation" for "State" and deleted "from the State" from the end; in (c), substituted "the corporation' for "it"; in (d), substituted "that" for "which"; and rewrote (e).

N.J.A.C. 18:7-17.9 Allocation of tax for partners that are corporations

Separate accounting apportionment shall be used if a corporate partner and partnership are not in a unitary relationship in which the apportioned income of the partnership and partner (excluding the partner's distributive share) are added together. When a corporation and a partnership are in a unitary relationship, then a blended or combined allocation factor should be used. This allocation factor is derived by adding the partnership and corporation allocation fractions together and applying the combined factor to the corporation's entire net income including its distributive share of the partnership's income (see N.J.A.C. 18:7-7.6(g)).

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Substituted "This allocation factor" for "It".

N.J.A.C. 18:7-17.10 Electronic filing

(a) A partnership subject to the provisions of the Corporation Business Tax Act shall file its return and make payment of its liability by electronic means, if it has 10 or more partners, provided that the return is not prepared by a paid tax preparer. Payments of partnership liabilities and fees along with the submission of payment-related returns, such as the Partnership Return Voucher (Form Part-100) and the Partnership Tentative Return and Application for Extension of Time to File (Form Part 200-T), by a partnership subject to the provisions of the Corporation Business Tax Act with more than 10 partners shall be made electronically.

(b) A paid tax preparer who prepares returns for partnerships subject to the provisions of the Corporation Business Tax Act shall file electronically all of the partnership returns prepared by that preparer during the tax year as instructed by the partners of the partnership. Payment of the partnership liabilities and fees along with the submission of payment-related returns, such as the Partnership Return Voucher (Form Part-100) and the Partnership Tentative Return and Application for Extension of Time to File (Form Part 200-T), either by the partners or by a paid tax practitioner as instructed by the partners of the partnership shall be made electronically.

History

HISTORY:

Amended by R.2011 d.171, effective June 20, 2011.

See: 43 N.J.R. 385(a), 43 N.J.R. 1431(a).

Inserted designation (a); rewrote (a); and added (b).

Amended by R.2012 d.177, effective October 15, 2012.

See: 44 N.J.R. 1875(a), 44 N.J.R. 2379(b).

In (a) and (b), inserted "and fees"; and in (a), inserted "subject to the provisions of the corporation business tax".

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a) and (b), substituted "Corporation Business Tax Act" for "corporation business tax" three times; and in (b), inserted "electronically", deleted ", by electronic means" following the second occurrence of "partnership", and substituted "Payment" for "Payments".

N.J.A.C. 18:7-18.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Affiliated group" means a group of corporations defined as an affiliated group by I.R.C. § 1504, or any successor Federal law, that files a consolidated Federal income tax return for the privilege period pursuant to I.R.C. §§ 1501 through 1504.

"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 (including, for example, and without limitation, I.R.C. § 263A) multiplied at the taxpayer's election by (1) either the allocation factor computed pursuant to N.J.S.A. 54:10A-6; or (2) the receipts fraction of the allocation factor (N.J.A.C. 18:7-10.1 regarding

discretionary adjustments of the allocation factor by the Director). In a particular case, the Director may use another input or expenditure that is necessary to measure fairly and reasonably the business activity of the taxpayer.

"Key corporation" means a single member within an affiliated group designated by the group to act as a "clearinghouse" for adjustments made by or to members of the group. For privilege periods commencing after June 30, 2006, key corporations are not permitted for reporting for any other tax purposes in New Jersey.

"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. See N.J.S.A. 54:10A-5a.

"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 outside the State at the time of the receipt of or appropriation to the order 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; and

5. All other business receipts earned within the State.

Dividends are included in New Jersey gross receipts when the recipient's commercial domicile is in New Jersey.

History

HISTORY:

Amended by R.2003 d.370, effective September 15, 2003.

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

In "New Jersey gross receipts", inserted "Dividends are included in New Jersey gross receipts when the recipient's commercial domicile is in New Jersey" following 5.

Amended by R.2009 d.384, effective December 21, 2009.

See: 41 N.J.R. 3401(a), 41 N.J.R. 4825(a).

In the introductory paragraph, inserted "following" preceding "meanings"; in definition "Key corporation", inserted the last sentence; and in paragraph 2 of definition "New Jersey gross receipts", substituted "tangible" for "intangible".

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In definition "Affiliated group", substituted the first occurrence of "I.R.C." for "section 1504 of the Federal Internal Revenue Code of 1986, 26 U.S.C.", substituted "I.R.C. §§ " for "sections", and deleted "of the Federal Internal Revenue Code of 1986" from the end; in definition "Cost of goods sold", substituted "I.R.C. § " for "IRC Section", inserted "(1)" and "(2)", inserted a semicolon following "N.J.S.A. 54:10A-6", deleted "c.f." preceding the N.J.A.C. reference, and substituted "fairly and reasonably" for "equally"; in definition "Key corporation", inserted "made by or" and the third occurrence of "for"; in definition "New Jersey gross profits", inserted the second sentence; and in definition "New Jersey gross receipts" paragraph 2, substituted "outside" for "without".

N.J.A.C. 18:7-18.2 Alternative minimum assessment

(a) For privilege periods beginning on or after January 1, 2002, all New Jersey taxpayers except those enumerated in N.J.A.C. 18:7-18.3 are required to pay New Jersey corporation business tax computed under N.J.S.A. 54:10A-5 or the alternative minimum assessment computed under N.J.S.A. 54:10A-5a, whichever is greater. There are two methods of determining the alternative minimum assessment. One is based on New Jersey Gross Receipts, and the other is based upon New Jersey Gross Profits.

(b) For privilege periods beginning on and after July 1, 2006, the alternative minimum assessment shall be $ 0.00 except for corporations exempt from the corporation business tax on net income by virtue of the application of 15 U.S.C. §§ 381 et seq. (P.L. 86-272). For such taxpayers, the alternative minimum assessment shall continue to be computed in accordance with N.J.S.A. 54:10A-5a.

(c) For privilege periods beginning on and after January 1, 2007, a taxpayer exempt from corporation business tax on net income by virtue of the application of 15 U.S.C. §§ 381 et seq. (P.L. 86-272), that files a consent to the jurisdiction of this State to impose and pay the tax pursuant to N.J.S.A. 54:10A-5 shall have an alternative minimum assessment of $ 0.00.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "periods" for "period", deleted a comma following the N.J.A.C. reference and following "assessment", deleted "a" following "pay", and substituted "corporation business tax" for "Corporation Business Tax"; in (b), inserted "in accordance with N.J.S.A. 54:10A-5a"; in (c), deleted "the" preceding "corporation", inserted a comma following "86-272)", inserted "the" preceding "jurisdiction", and substituted "this" for "the".

N.J.A.C. 18:7-18.3 Taxpayers not subject to the alternative minimum assessment

(a) Corporations that are subject to tax under N.J.S.A. 54:10A-5 but that are not subject to the alternative minimum assessment are:

1. New Jersey S corporations;

2. Investment companies;

3. Professional corporations organized pursuant to N.J.S.A. 14A:17-1 et seq. or a similar corporation for profit organized to render professional services under the laws of another state; or

4. A person operating as a cooperative under 26 U.S.C. §§ 1381 et seq.

N.J.A.C. 18:7-18.4 Calculation of the alternative minimum assessment

(a) The computation of the alternative minimum assessment (AMA) based on New Jersey gross profits is calculated as follows:

1. If New Jersey gross profits are:

i. $ 1,000,000 or less, the AMA based on gross profits is zero;

ii. Greater than $ 1,000,000, but not over $ 10,000,000, the AMA is .0025 times the gross profits in excess of $ 1,000,000, multiplied by the AMA exclusion rate of 1.11111;

iii. Greater than $ 10,000,000, but not over $ 15,000,000, the AMA is the gross profits multiplied by .0035;

iv. Greater than $ 15,000,000, but not over $ 25,000,000, the AMA is the gross profits multiplied by .006;

v. Greater than $ 25,000,000, but not over $ 37,500,000, the AMA is the gross profits multiplied by .007; or

vi. Greater than $ 37,500,000, the AMA is the gross profits multiplied by .008.

(b) The computation of the AMA based on gross receipts is calculated as follows:

1. If New Jersey gross receipts are:

i. $ 2,000,000 or less, the AMA based on gross receipts is zero;

ii. Greater than $ 2,000,000, but not over $ 20,000,000, the AMA is .00125 times the gross receipts in excess of $ 2,000,000, multiplied by the AMA exclusion rate of 1.11111;

iii. Greater than $ 20,000,000, but not over $ 30,000,000, the AMA is the gross receipts multiplied by .00175;

iv. Greater than $ 30,000,000, but not over $ 50,000,000, the AMA is the gross receipts multiplied by .003;

v. Greater than $ 50,000,000, but not over $ 75,000,000, the AMA is the gross receipts multiplied by .0035; or

vi. Greater than $ 75,000,000, the AMA is the gross receipts multiplied by .004.

(c) For the first privilege period that the taxpayer pays the AMA, the taxpayer may select a computation method for the AMA, based either on gross profits or gross receipts. Once selected, that method must be employed for that privilege period and for the next succeeding four privilege periods.

(d) The maximum AMA for an individual corporation for a privilege period is $ 5,000,000. For an affiliated group of corporations, the maximum AMA is $ 20,000,000. If the $ 20,000,000 threshold is claimed by an affiliated group, the group must name a key corporation to act as a clearinghouse for adjustments to members of the group.

1. An affiliated group's AMA tax cannot be more than $ 20,000,000 less its corporation business tax (CBT) liability. Form 401 assists taxpayers in calculating the AMA threshold limit. Form 401, Column C, reflects the CBT liability of each corporation in the affiliated group, including the designated key corporation. Form 401, Column D, reflects the amount of AMA that each corporation in the group would be liable for in excess of each corporation's CBT liability. The total CBT liability is subtracted from $ 20,000,000. The resulting amount, if greater than zero, is the total AMA payable by the designated key corporation. Accordingly, if the amount is zero or less, all corporations are relieved of paying any AMA.

2. However, if for some reason an affiliated group does not elect to include one of its affiliate corporations on Form 401, even though it is part of the affiliated group, then the AMA cap for that

corporation must be calculated separately and that corporation will not be considered in calculating the AMA cap for the group listed on Form 401. The AMA calculation for members of the group may be computed using either the gross receipts or the gross profits method.

3. If it wishes to do so, a group can change its key corporation each year to allow a different entity to pay the AMA on behalf of the group so that such entity will be due the credit for excess AMA payments in 2007 when the credit against CBT is calculated.

4. Examples:

Example 1. An affiliated group has 10 corporations. The total CBT liability of the group is $ 23 million. Therefore, there would be no AMA liability because the CBT liability is more than the cap of $ 20 million.

Example 2. An affiliated group has 10 corporations. The total CBT liability of the group is $ 7 million, of which the key corporation's CBT liability is $ 1 million. When the group calculates its AMA liability, the group discovers that its total AMA liability is $ 50 million of which $ 43 million is in excess of its CBT liability of $ 7 million. However, because of the $ 20 million cap and the reduction in the cap for CBT payments, the group's AMA liability cannot be more than $ 13 million ($ 20 million less the group's CBT liability of $ 7 million). The total tax, paid by the key corporation, for itself and the members of the group that are listed on Form 401 is $ 14 million. This is made up of its $ 1 million in key corporation's CBT liability plus the $ 13 million AMA. The key corporation would reflect its own CBT liability on line 13 of Form CBT-100, page 1 and the $ 13 million key corporation AMA payment on line 17 of Form CBT-100, page 1. Each of the other members of the group would list its own CBT liability on line 13 of Form CBT-100, page 1 of its own return. The total amount of CBT liability shown on the returns of the other members of the group is $ 6 million.

Example 3. An affiliated group has 10 corporations. The total CBT liability of the group is $ 7 million, of which the key corporation's CBT liability is $ 1 million. If the group's excess AMA had been $ 9 million instead of $ 43 million (as in Example 2) the key corporation would be liable for $ 9 million AMA since the $ 20 million cap was not reached. The total tax, paid by the key corporation, for itself and the members of the group that are listed on Form 401, is $ 10 million. This is made up of the $ 1 million key corporation's CBT liability plus the $ 9 million AMA. The key corporation would reflect its own CBT liability on line 13 of Form CBT-100, page 1 and the $ 9 million key corporation AMA payment on line 17 of Form CBT-100, page 1. Each of the other members of the group would list its own CBT liability on line 13 of Form CBT-100, page 1 of its own return. The total amount of CBT liability shown on the returns of the other members of the group is $ 6 million.

(e) If a taxpayer has a short period return, the thresholds and caps provided by statute and this subchapter are prorated. For example, a taxpayer whose privilege period is six months shall become subject to tax under the gross profits method when gross profits are $ 500,000 or greater and under the gross receipts method when gross receipts are $ 1,000,000 or more. Similarly, for an individual corporation having a six month privilege period, the maximum alternative minimum tax shall be $ 2,500,000 or for an affiliated group of corporations shall be $ 10,000,000.

History

HISTORY:

Amended by R.2003 d.370, effective September 15, 2003.

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

In (d), added 1 through 4.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Calculation of the Alternative Minimum Assessment". In the introductory paragraph of (a), substituted "alternative minimum assessment" for "Alternative Minimum Assessment"; in the introductory paragraphs of (a) and (b), substituted "on" for "upon"; in (c) and the introductory paragraph of (d), substituted "AMA" for "Alternative Minimum Assessment" four times; in (c), deleted a comma following "period"; in (d)1, substituted "corporation business tax (CBT)" for the first occurrence of "CBT", and "each corporation's" for "its"; in

(d)3, substituted "its" for "the"; in (d)4 Examples 2 and 3, inserted "Form" preceding "CBT" six times; in (d)4 Example 2, substituted "the reduction" for "its reduction"; in (d)4 Example 3, substituted "the $ 1 million key" for "it's $ 1 million in key"; and in (e), inserted "provided by statute and this subchapter" and the third occurrence of "shall be".

N.J.A.C. 18:7-18.5 Alternative minimum assessment credits

(a) If the alternative minimum assessment (AMA) for a taxpayer exceeds the amount of tax computed under N.J.S.A. 54:10A-5 for a privilege period, that excess amount shall be permitted to the taxpayer as a credit unless such taxpayer is also entitled to a credit pursuant to N.J.S.A. 54:10A-5b (for certain air carriers pursuant to 49 U.S.C. § 40102).

(b) The credit may be carried forward to subsequent privilege periods, including periods when the AMA is no longer applicable, during which the tax pursuant to N.J.S.A. 54:10A-5 exceeds the AMA provided that:

1. The credit applied shall not reduce the amount of tax otherwise due to an amount less than the AMA for that period;

2. The credit applied shall not reduce the amount of tax otherwise due by more than 50 percent; and

3. The credit applied shall not reduce the amount of tax otherwise due below the statutory minimum set forth in N.J.S.A. 54:10A-5(e).

(c) If a corporation having AMA carryforward credits is liquidated or merged into another corporation, the carryforward credits are lost to the corporation that does not survive such reorganization.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Section was "Alternative Minimum Assessment credits". In (a), substituted "alternative minimum assessment" for "Alternative Minimum Assessment"; and in the introductory paragraph of (b) and (b)1, substituted "AMA" for "Alternative Minimum Assessment" three times.

N.J.A.C. 18:7-18.6 Gross receipts calculation; agency businesses

(a) Under the applicable accounting principles for several industries, cash flow relating to the underlying product is not considered a receipt of the taxpayer. Using this approach, a taxpayer in such a business may report as its gross receipts for Federal purposes fees it receives from its customers. This methodology enables certain high volume, low margin industries to achieve an accurate reflection of their tax liability when calculating the alternative minimum assessment (AMA).

1. For example, a professional employer organization (PEO), which serves as a co-employer with its customers, may use this "agency approach" in calculating its New Jersey gross receipts. Using that approach, the PEO may report as its gross receipts for Federal purposes the administrative fees it receives from its customers. The customers' payments of the fixed obligations and costs relating to the employees, such as wages, taxes and benefits, are then reported as reimbursed expenses, namely, direct expenses without profit or indirect cost reimbursement.

2. This approach is also applicable to other entities such as real estate and insurance agencies, where cash flow relating to the underlying product is not considered a receipt of the taxpayer.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In the introductory paragraph of (a), substituted "alternative minimum assessment (AMA)" for "AMA".

N.J.A.C. 18:7-19.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Licensed professional" means, and is limited to, persons rendering a professional service as defined in N.J.S.A. 14A:17-3(1).

"Professional corporation" means a corporation which is organized under The Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., or a similar act of another state for the purpose of rendering the same or closely allied professional service as its shareholders, each of whom must be licensed or otherwise legally authorized within the State to render such professional service.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote definition "Licensed professional".

N.J.A.C. 18:7-19.2 Payment of filing fee

(a) For privilege periods beginning on or after January 1, 2002, each professional corporation filing a corporation business tax return that has more than two licensed professionals shall make a payment of a filing fee of $ 150.00 for each licensed professional of the corporation, provided that the payment shall not exceed $ 250,000.

(b) If a professional corporation includes nonresident professionals, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the professional corporation filing fee may be used, provided that the professional corporation has an office outside New Jersey.

(c) The total apportioned professional corporation fee is equal to the sum of:

1. The number of resident professionals multiplied by $ 150.00; plus

2. The number of nonresident professionals with physical nexus to New Jersey multiplied by $ 150.00; plus

3. The number of nonresident professionals without physical nexus to New Jersey multiplied by $ 150.00, and the resulting product multiplied by the corporate allocation factor of the professional corporation.

(d) Example: A professional corporation has an office in Washington, D.C. It has 100 professionals in that office. Three of the attorneys travel from Washington to Newark, N.J. for a trial. As the result of their legal work in New Jersey, the firm receives a $ 1,000,000 legal fee. The professional corporation's New Jersey allocation factor for 2002 is 0 property, 0 payroll, $ 1,000,000 New Jersey receipts divided by $ 10,000,000 receipts everywhere which equals

$$\left(0 + 0 + \frac{1}{10} + \frac{1}{10}\right) \div 4 = 0.05.$$

0 Resident professionals = 0

Three nonresident professionals with physical nexus to New Jersey:

3 x $ 150.00 = $ 450.00

97 nonresident professionals without physical nexus

97 x $ 150.00 = $ 14,500

$ 14,550 x 0.05 = $ 727.50

Total of 0 + $ 450.00 + $ 727.50 = $ 1,177.50 total professional fee of the corporation for 2002.

(e) In calculating the number of licensed professionals of the corporation, a quarterly average is used. All professionals of the corporation are counted, regardless of the nature of their relationship to the corporation. They are included whether they are shareholders, employees, or owners and regardless of the nature of the licensed profession that they practice.

Example 1: A law firm has eight partners and 16 associates. It also employs one registered nurse and two certified public accountants. Since the firm has 27 licensed professionals, its professional fee payment is $ 4,050 (27 x $ 150.00) plus an installment payment of $ 2,025 (50 percent of $ 4,050) creditable against the succeeding year's payment.

Example 2: A nursing home that is a professional corporation has 10 physicians and 10 licensed registered nurses, half of which are nonresidents that have no physical nexus in New Jersey. The professional corporation has a New Jersey business allocation factor of 50 percent. The professional fee payment is $ 2,250 ((5 + 5) x $ 150.00) plus ((5 + 5) x $ 150.00) x 50 percent) plus an installment payment of $ 1,125 (50 percent of $ 2,250).

(f) In the event of a period shorter than a year, the fee and fee cap may be prorated by months. A fraction of a month is deemed to be a month.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (b), substituted "nonresident" for "non-resident"; in (d), substituted "divided by" for "over, inserted "then" preceding "calculated", inserted "$" preceding "14,500", and substituted "Total" for "total" and "$ 450.00" for "$ 450"; and in (e) Example 2, substituted "that" for "which" twice, and inserted ")" following the first occurrence of "$ 150.00".

N.J.A.C. 18:7-19.3 Installment payment

(a) Each professional corporation required to make a payment of the professional corporation filing fee shall, on or before the 15th day of the fourth month of its fiscal year, make an installment payment of its filing fee for the succeeding return period. The amount of the installment payment is 50 percent of the amount required to be paid for the present fiscal year.

(b) The amount of the installment payment shall be credited against the amount of the filing fee due for the succeeding return period. If the amount exceeds the fee due for the succeeding return period, the excess shall be credited against the amount for succeeding return periods.

(c) If a professional corporation dissolves, the corporation is not required to make a prepayment of the fee for the succeeding taxable period.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted "fee shall," for "fee, shall".

N.J.A.C. 18:7-19.4 Penalty and interest

For purposes of tax administration, the filing fee and installment payments pursuant to this subchapter are subject to the provisions of the State Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. Collection of the filing fee and installment payments shall be enforced pursuant to the terms of that Act, including, without limitation thereto, penalty and interest and cost of collection provisions.

History

HISTORY:

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Inserted "pursuant to this subchapter", and deleted "Tax" following "Uniform".

N.J.A.C. 18:7-20.1 S corporations

(a) The following words and terms, when used in this subchapter, shall have the following meanings:

1. "Federal S corporation" means a corporation making a valid election under Federal law (I.R.C. § 1361), to be an S corporation. For the definition of "S corporation" as used in this section, see N.J.A.C. 18:7-1.18.

2. "New Jersey S corporation" means an S corporation that has made a valid election under N.J.S.A. 54:10A-5.22, and that has been an S corporation since such election. For a definition of "New Jersey S corporation" see N.J.A.C. 18:7-1.19. For purposes of this section, a New Jersey S corporation also refers to a parent of a New Jersey Qualified Subchapter S Subsidiary.

3. "S corporation shareholder" means an individual, an estate, or a trust owning a share(s) in an S corporation.

(b) A New Jersey S corporation is subject to New Jersey corporation business tax as provided under P.L. 2002, c.40 (N.J.S.A. 54:10A-5(c)(2)). S corporation shareholders are subject to gross income tax, pursuant to N.J.S.A. 54A:5-1 et seq.

(c) A Federal S corporation must file a New Jersey Subchapter S Election form (CBT-2553) to elect treatment as a New Jersey Subchapter S corporation, to treat its subsidiary as a New Jersey Qualified Subchapter S Subsidiary (see N.J.A.C. 18:7-20.2), or to report a change in shareholders.

1. A Federal S corporation may make an election to be treated as a New Jersey S corporation if it meets all of the following criteria:

i. The corporation is or has applied to be an S corporation pursuant to I.R.C. § 1361;

ii. Each initial shareholder (holding shares on the day of the election) and the corporation must consent to the election, and the jurisdictional requirements that provide New Jersey with the right and jurisdiction to tax and collect the tax on each shareholder's pro rata share of S corporation income. Such right and jurisdiction shall not be affected by change of a shareholder's residency, except as provided in N.J.S.A. 54A:1-1 et seq.;

iii. With respect to nonconsenting shareholders, the corporation and consenting shareholders consent to the corporation assuming any tax liabilities of a nonconsenting shareholder as may be required pursuant to N.J.S.A. 54:10A-5.22b;

iv. The beneficiary of a qualified Subchapter S trust must make an election to be treated as the owner of the trust so that the trust will be eligible to hold stock and the beneficiary will be treated as the stockholder. If the trust is a shareholder at the time the S corporation election is made, the beneficiary's election may be made on the New Jersey Form CBT-2553 or on a separate consent statement to be attached to the Form CBT-2553. If the stock is acquired after the S corporation election is made, the beneficiary's election is made on a separate statement;

v. Those eligible to consent and sign an S election include:

(1) Adult shareholders who are not under disability;

(2) A shareholder and, if under disability and not a minor, the shareholder's representative;

(3) Each person having community interest in stock (or stock income), each tenant in common, joint tenant or tenant by the entirety; and

(4) An executor or administrator of an estate or any other fiduciary appointed by a testamentary instrument or court having jurisdiction over the estate's administration;

vi. Shareholder elections may be made on Form CBT-2553 or on separate consent statements which may be attached to Form CBT-2553;

vii. For S corporations having shareholders that are trusts, the trust beneficiaries or trust owners must join in the filing of the New Jersey Form CBT-2553. Both the trusts and the trust beneficiaries and/or owners must sign and consent to New Jersey's jurisdiction and right to tax, on the Form CBT-2553. (See (c)1iii above.)

(1) If an initial shareholder were to transfer stock to a trust which qualifies as a grantor trust of which the shareholder is a grantor, a new Form CBT-2553 shall be signed and filed by the Trustee;

viii. For an electing small business trust (ESBT) that is a shareholder of a Federal S corporation seeking to elect New Jersey S corporation status, shareholder consent must be signed by the trustee of the ESBT; and

ix. An Employee Stock Ownership Plan (ESOP) may be a shareholder of a New Jersey S corporation.

2. The fully completed and duly executed Form CBT-2553 shall be filed within one-calendar month of the time at which a Federal S corporation election would be required. Specifically, this form must be filed at any time before the 16th day of the fourth month of the first tax year the election is to take effect. If the tax year has 3 1/2 months or less remaining, and the election is made not later than three months and 15 days after the first day of the tax year, it shall be treated as timely made during such year. An election made by a small business corporation after the 15th day of the fourth month but before the end of the tax year is treated as having been made for the following year. A small business corporation is one that is defined in I.R.C. § 1361(b).

i. No filing extensions are available.

3. Federal S corporations that have neither made the election nor have been approved as New Jersey S corporations, in accordance with N.J.S.A. 54:10A-5.22, N.J.S.A. 54:10A-5.23, and N.J.A.C. 18:7-20.1(c), are subject to the provisions of the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq., and must continue to file the New Jersey Corporation Business Tax Return, Form CBT-100.

i. Failure to consent to the initial S corporation election will cause the election to be invalid.

ii. If a new shareholder (acquired either existing shares or shares issued at a later date subsequent to the initial New Jersey S corporation election) fails to sign a consent statement and objects to New Jersey's right and jurisdiction to tax, the S corporation is required to fulfill the tax requirements on behalf of such shareholder as stated under N.J.S.A. 54:10A-5.23.

4. Corporations that are void must be reinstated before an S election can be granted. Failure to reinstate by the S election due date precludes the New Jersey S election from being effective for that tax year.

(d) The reporting requirements for S corporations are as follows:

1. An S corporation making an election to be treated as an S corporation in New Jersey shall file an S corporation Corporation Business Tax Return (Form CBT-100S) along with a Schedule NJ-K-1 for each shareholder.

i. Foreign corporations that meet the filing requirements and whose income is immune from New Jersey tax pursuant to Public Law 86-272, 15 U.S.C. § 381 et seq., must obtain and complete Schedule N, Nexus-Immune Activity Declaration, and remit the minimum tax with the Form CBT-100S.

2. For New Jersey corporation business tax purposes, a Federal S corporation that fails to elect New Jersey S corporation status, or has not been approved for New Jersey S corporation status files its tax

return as a C corporation on Form CBT-100 and calculates its New Jersey allocation factor in order to determine its net income or loss allocated to New Jersey.

(e) If a corporation that has elected New Jersey S corporation status loses its Federal S corporation status during the taxable year, and, therefore, ceases to be a New Jersey S corporation, but continues its corporate existence, the corporation must file a New Jersey S corporation return (Form CBT-100S) for the short period ending on the day before the disqualifying event and a C corporation short period return (Form CBT-100) for the remainder of the year.

1. The due date for the return for the short period is the 15th day of the fourth month after the close of the period. An automatic six-month extension of time to file the Form CBT-100S is available by making a tentative return and paying the tentative tax on Form CBT-200 T on or before the due date of the return.

(f) In general, once an election is made and accepted, a corporation remains a New Jersey S corporation as long as it is a Federal S corporation unless the election is revoked pursuant to N.J.S.A. 54:10A-5.22(d).

1. To revoke an election, a letter of revocation signed by all shareholders holding more than 50 percent of the outstanding shares of stock on the day of the revocation must be filed. A copy of the original election form must accompany the letter of revocation.

2. Subject to (f)1 above, an election may be revoked on or before the last day of the accounting or privilege period in which the election would otherwise apply.

(g) A foreign business entity that is not required to be authorized to transact business in New Jersey in accordance with N.J.S.A. 14A:13-3 but that wishes to elect a New Jersey S Corporation status must submit to the Division of Revenue and Enterprise Services a completed New Jersey S Corporation Certification form (Form CBT-2553-Cert), along with a completed Form CBT-2553. A properly executed certification form affirms that the corporation has not engaged in any activities within New Jersey that would require the corporation to obtain a Certificate of Authority as required by N.J.S.A. 14A:13-3.

History

HISTORY:

Amended by R.2007 d.204, effective July 2, 2007.

See: 39 N.J.R. 763(a), 39 N.J.R. 2544(a).

In (c)1vii, deleted "and" from the end; in (c)1viii(1), substituted "; and" for the period at the end; added (c)1ix; and added (g).

Amended by R.2009 d.235, effective July 20, 2009.

See: 41 N.J.R. 1715(a), 41 N.J.R. 2800(a).

Deleted former (c)1vii; and recodified former (c)1viii and (c)1ix as (c)1vii and (c)1viii.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

N.J.A.C. 18:7-20.2 Qualified Subchapter S Subsidiaries (QSSS)

(a) The following terms, when used in this subchapter, shall have the following meanings:

1. "Qualified Subchapter S Subsidiary" (QSSS) means and includes a domestic corporation that is a wholly owned subsidiary of a Federal S corporation and for which a valid election has been made by the parent S corporation to be treated as a QSSS for Federal income tax purposes.

2. "New Jersey Qualified Subchapter S Subsidiary" (NJ-QSSS) means and includes a Federally qualified QSSS, wholly owned by a New Jersey S corporation, and for which the parent and the New Jersey S corporation make a valid NJ-QSSS election as set forth in these regulations.

(b) A Federal S corporation is permitted to own a Qualified Subchapter S Subsidiary (QSSS) and effectively to treat the subsidiary as if it were a division. The assets, liabilities, and items of income, deduction, and credit flow through to the parent retaining the same character as do the respective allocation factor attributes of the QSSS which flow through to the parent's property, receipts and payroll factors.

(c) A New Jersey S corporation seeking recognition as a New Jersey Qualified Subchapter S Subsidiary (NJ-QSSS), must meet the following requirements:

1. An S corporation parent of a QSSS must register as a New Jersey S corporation, or make a valid election and consent to jurisdiction pursuant to N.J.S.A. 54:10A-5.22, N.J.S.A. 54:10A-5.23 and these rules;

2. The parent shareholder must consent to New Jersey taxation of its QSSS's income allocation by filing a Form CBT-100S that includes the assets, liabilities, income, and expenses of the QSSS. The property, receipts, and payroll of the QSSS must be included in the parent's allocation factor. Failure of the parent either to consent or to file a Form CBT-100S for any period will result in the denial of NJ-QSSS status, and the subsidiary will be subjected to taxation in New Jersey as a C corporation;

3. The New Jersey S corporation electing to be recognized as a QSSS must file a completed and properly executed Form CBT-2553 by which its parent New Jersey S corporation consents to taxation of the QSSS's income and calculation of allocation fractions and factor by New Jersey. Form CBT-2553 must be executed by a qualified corporate officer of the New Jersey S corporation and by an authorized officer of the parent New Jersey S corporation. Form CBT-2553 must be filed before the 16th day of the fourth month of the first tax year that the NJ-QSSS election is to take effect; and

4. Any Federal S corporation that is treated Federally as a QSSS may be recognized in New Jersey as a NJ-QSSS provided that the conditions of this subsection have been met.

(d) Regardless of any provision in this section, every qualified NJ-QSSS must file a Form CBT-100S and pay the applicable minimum tax. Unless the NJ-QSSS formally dissolves by making the requisite filing through the Division of Revenue and Enterprise Services, it is required to file annually a corporation business tax return, remit the required tax, and make an annual report to the New Jersey Division of Revenue and Enterprise Services. A failure to file a New Jersey Form CBT-2553 containing the corporate parent's consent to taxation by New Jersey will result in the denial of New Jersey QSSS status and will subject the entity to taxation in New Jersey as a C corporation.

(e) A Federal QSSS that elects to be treated as a NJ-QSSS for New Jersey tax purposes and that has previously filed the necessary election form (Form CBT-2553) may request to have the estimated corporation business tax payments transferred to its parent corporation's account for the year in which the New Jersey QSSS election was made. The NJ-QSSS must submit a written request, signed by an officer of the NJ-QSSS, together with a copy of the New Jersey S corporation election form (Form CBT-2553) to the New Jersey Division of Taxation. The Division of Taxation will transfer to the parent all of the NJ-QSSS's estimated payments except for a designated amount that will be used to satisfy the NJ-QSSS's current year minimum tax liability and the 50 percent estimated tax payment for the subsequent year.

(f) The following examples are provided for illustration.

Example 1:

Taxpayer is an S corporation for Federal and New Jersey purposes, is headquartered in Illinois, and has branches in New Jersey and other states. It recently set up a North Carolina QSSS, which made the appropriate election to be treated as a disregarded entity for Federal purposes. Other than being a subsidiary of the parent, the QSSS has no operations in New Jersey.

The taxpayer intends to include income of the North Carolina QSSS in its allocation factor in order to allocate the parent's income among the various states in which it does business, including New Jersey. This treatment

is permitted in New Jersey provided that the North Carolina QSSS registers with New Jersey or has filed a Form CBT-2553-Cert, files a separate Form CBT-100S, and pays the minimum tax. If the foreign QSSS does not register or file a completed Form CBT-2553-Cert, the income does not flow up to the parent's return.

Example 2:

A holding company was set up in November with a calendar year end. An S election for Federal and New Jersey purposes was made for the new holding company effective from its inception. After the new company was set up, it acquired all the shares of two existing Federal S corporations having a calendar-year accounting period, from the same owner. Federal and New Jersey QSSS elections are made effective in November. One of the acquired corporations is a New Jersey S corporation, the other is a New Jersey C corporation.

The new holding company can make a timely New Jersey S corporation election since it was set up in November. The two acquired corporations, which change shareholders during their accounting year, cannot make New Jersey elections because their taxable years began in January. For the acquired corporations, the time limit to make valid New Jersey S corporation elections had already passed for that year.

History

HISTORY:

Amended by R.2007 d.204, effective July 2, 2007.

See: 39 N.J.R. 763(a), 39 N.J.R. 2544(a).

In the second paragraph of Example 1 of (f), inserted "or has filed a CBT-2553-Cert", inserted a comma following "CBT-100S", and added the last sentence.

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

Rewrote the section.

N.J.A.C. 18:7-20.3 Retroactive New Jersey S corporation elections

(a) A taxpayer that is authorized to do business in New Jersey, is registered with the Division of Taxation, and has filed Form NJ-CBT-100S tax returns with New Jersey but has failed to file a timely New Jersey S corporation election may file a retroactive election to be recognized as a New Jersey S corporation.

(b) An administrative user fee of $ 100.00 shall be included with a taxpayer's filing of its retroactive New Jersey S corporation election Form NJ-2553R, for each tax year that will be affected by the late filing.

(c) A retroactive New Jersey S corporation or Qualified Subchapter S Subsidiary election will not be granted if:

1. All appropriate corporation business tax returns have not been timely filed and taxes timely paid as if the New Jersey S corporation election request had been previously approved;

2. A New Jersey S corporation request is not received before an assessment becomes final;

3. The Division of Taxation has issued a notice denying a previous late filed New Jersey S election request, and the taxpayer has not protested the denial within 90 days; or

4. All shareholders have not filed appropriate tax returns and paid tax in full when due as if the New Jersey S corporation election request had been previously approved, and the taxpayers have not reported the appropriate S corporation income on their returns.

History

HISTORY:

New Rule, R.2008 d.11, effective January 7, 2008.

See: 39 N.J.R. 3730(a), 40 N.J.R. 192(b).

Amended by R.2017 d.123, effective June 19, 2017.

See: 49 N.J.R. 52(b), 49 N.J.R. 1694(a).

In (a), substituted the first comma for "and that", inserted the second comma, deleted "that" preceding the first occurrence of "has" and inserted "Form"; in (c)3, inserted "of Taxation"; and in (c)4, substituted "their" for "those".

N.J.A.C. 18:7-21.1 Definitions relevant to combined returns

(a) The following words and terms, as used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

1. "Affiliated group" means for purposes of section 23 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.11), an affiliated group as defined at I.R.C. § 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.

As used in this definition, "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 pursuant to 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. "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 the owner or owners are members of the affiliated group. Whether voting control is indirectly owned shall be determined, in accordance with I.R.C. § 318.

In cases where the "commonly owned" ownership standard is met, a New Jersey affiliated group shall include: (1) business entities wherever incorporated or formed that are U.S. domestic corporations, that are deemed to be, or are treated as U.S. domestic corporations pursuant to 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.

2. "Combinable captive insurance company" means an entity that is treated as an association taxable as a corporation under the Internal Revenue Code, where:

i. More than 50 percent 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 pursuant to the Internal Revenue Code, and not exempt from Federal income tax;

ii. The entity is licensed as a captive insurance company pursuant to the laws of this State or another jurisdiction;

iii. The business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent, members of its affiliated group, or both; and

iv. Fifty percent 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 at I.R.C. § 1504, except that the term "common parent corporation" as used at I.R.C. § 1504, shall mean any person, as defined at I.R.C. § 7701, and references to "at least 80 percent" at I.R.C. § 1504, shall be read as "50 percent or more." I.R.C. § 1504, shall be read without regard to the exclusions provided for at 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) at § 501 of the Internal Revenue Code, 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 pursuant to section 3 at P.L. 1945, c. 162 (N.J.S.A. 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 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6) and is exempt pursuant to section 3 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-3).

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 pursuant to this chapter, and shall include all business entities, except as otherwise provided for under any section of the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41) for the income derived from the unitary business; provided however, with regard to the surtax imposed pursuant to section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41), and for that purpose only, 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.

i. 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.

ii. 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.

iii. The combined group 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) of combined returns to file. However, a combined group will file on a water's-edge basis if no election to file a worldwide or affiliated group basis is made. See N.J.A.C. 18:7-21.15 for more information on determining which members are included on a water's-edge basis.

4. "Common ownership" means that more than 50 percent 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 the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with I.R.C. § 318.

i. Direct and indirect voting control, and tiered ownership. If the same person (and/or any related persons) holds directly or indirectly more than 50 percent 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 in a direct chain) connected through direct or indirect stock ownership, where more than 50 percent 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 51 percent of the stock of Corporation B; Corporation B owns 51 percent of Corporation C; and Corporation C owns 60 percent 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 Example 1, except Corporation C owns 40 percent of Corporation D, with another 20 percent of Corporation D being owned by an individual who owns 100 percent of Corporation A. Corporations A, B, C, and D are all treated as commonly owned or under common ownership, and subject to inclusion in a combined group. Corporation D is treated as commonly owned through the aggregation of Corporation C's 40 percent ownership in Corporation D and the related individual's 20 percent ownership in Corporation D.

ii. Related versus unrelated owners. Two or more corporations, where stock representing more than 50 percent 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 51 percent of Corporation A, 60 percent of Corporation B, and 100 percent 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 35 percent of Corporation B and W's husband, a related person, owned 25 percent of Corporation B, so that together W and her husband owned 60 percent of Corporation B.

Example 2. Foreign corporation (F) owns 100 percent of the stock of Corporation A (organized in the U.S.) and of Corporation B (also organized in the U.S.). Corporations A and B each directly or indirectly own various corporate subsidiaries in separate chains leading up to Corporations A and B, where the voting control of each subsidiary is more than 50 percent owned by a higher-tier corporation in the chain. Corporations 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.

(1) Two or more corporations shall not be treated as commonly owned or under common ownership, and subject to inclusion in a combined group, where aggregation of the ownership of such unrelated owners would be necessary in order to represent more than 50 percent of the voting control of any of such corporations.

Example 1. Individual I-1 owns stock representing 40 percent of the voting control of Corporation A and stock representing 20 percent of the voting control of Corporation B. Individual I-2 owns 30 percent of Corporation A and 45 percent of Corporation B. I-1 and I-2 are not related persons, and Corporations A and B are not otherwise related persons. Corporations A and B are not treated as commonly owned or under common ownership, and, thus, are not subject to inclusion in a combined group.

(2) In applying I.R.C. § 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 50 percent of the voting control of each entity is required to be transferred. See 26 CFR 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 at I.R.C. § 318 shall

generally apply, to the extent not inconsistent with the rules or requirements described in this definition or elsewhere in this chapter or at N.J.S.A. 54:10A-1 et seq., except that:

(A) In applying I.R.C. § 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent 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

(B) 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.

5. "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.

6. "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.

7. "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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-3) from the tax imposed pursuant to P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), shall not be a member of a combined group.

8. "Nontaxable member" means a member that is: not subject to tax pursuant to the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

9. "Taxable member" means a member that is subject to tax pursuant to the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 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.

10. "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 that 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 at P.L. 2001, c. 136 (N.J.S.A. 54:10A-15.6) or subsection a. of section 4

at P.L. 2001, c. 136 (N.J.S.A. 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.

i. A group of corporations related by common ownership may be engaged in more than one unitary business.

ii. See N.J.A.C. 18:7-21.2 for more information on unitary business.

N.J.A.C. 18:7-21.2 Unitary business

(a) The definition of unitary business for New Jersey corporation business tax purposes is defined at 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.

1. 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.

2. A unitary business is characterized by significant flows of value evidenced by factors, such as functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence.

i. 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. The United States Supreme Court has expressed the constitutional test using a variety of language; in 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.

3. 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*, 315 *U.S.* 501, 508 (1942). Unity of operation and use indicates the existence of interdependence of functions.

4. 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.

5. If the entities meet either the "Interdependence of Functions Test" or the "Unity of Use and Management Test," the entities are part of the unitary business.

(b) Interdependence of Functions Test - any of the following circumstances demonstrate that an interdependence of functions may exist:

1. 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. The principal activities of the entities are different steps of a vertically structured business. For example, in a natural resource business-exploration, mining and drilling, production, refining, marketing, and transportation to market (whether wholesale or retail);

3. Centralized management, as 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. 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. The existence of benefits from joint, shared, or common activity by entities. 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. The 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. 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 business' operations;

8. 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;

9. Significant sales, exchanges, or transfers of products, services, and/or intangibles between corporations related by common ownership; and

10. The exercise of control by one entity over another entity is indicative of a unitary relationship.

(c) Unity of Operations and Use Test. "Unity of use" means there is functional integration among the entities and is evidenced generally by shared support functions. "Unity of operations" is evidenced, generally, by centralized management or utilization 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 use and management 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 use and management. 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 corporation are also officers or directors of the subsidiary);

18. Control of major policies (for example, 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 (for example, 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 (for example, the parent corporation's employee handbook applies to all of a subsidiary's employees; or the subsidiary's employees are required to attend the 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 (for example, the parent corporation's board of directors requires that it approve the budget and expenditure plans of the subsidiary on a periodic basis); and

22. Required capital asset purchases approval (for example, 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 at (d)1 through 5 below, do not purport to set forth all the indicators 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 multi-state 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 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.

i. Where a voting interest is directly or indirectly acquired by, or in, a corporation, 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.

ii. 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.

3. A 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 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.

4. 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, 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.

5. Other indicators of a unitary business conducted between corporations related by common ownership 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.

(e) 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 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 provided 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 Schedule A of the New Jersey combined return.

(f) If a member of a combined group is completely spun off from the group, that spun-off business entity and the combined group must show, to the Director's satisfaction, that a unitary business relationship no longer exists. However, the Director may impose such conditions necessary to prevent the evasion of tax, for example, provide notice to the Division of a change in combined group composition as further explained at N.J.A.C. 18:7-21.29 pursuant to N.J.S.A. 54:10A-4.10(h).

(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, for example, provide notice to the Division of a change in combined group composition as further explained at N.J.A.C. 18:7-21.29 pursuant to N.J.S.A. 54:10A-4.10(h).

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 at (c) below;

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;

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 at 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;

2. 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 separate returns;

3. 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.S.A. 54:10A-4.6(k)(1);

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.

(c) 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.

1. While a disregarded entity itself is not a member of a combined group, 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. With regard to unitary partnerships, limited partnerships, or limited liability companies treated as partnerships, the respective 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 pursuant to N.J.S.A. 42:2C-92(a), 54:10A-4(gg), 54:10A-4.6(c)(1), 54:10A-15.6, and 54:10A-15.7. 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.

(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 at N.J.A.C. 18:7-21.2(a).

(f) The Director may permit by petition of the taxpayer and the members of its unitary business group that a certain otherwise excluded taxpayer that 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 exploit the tax attributes of either the other members or the otherwise excluded taxpayer.

N.J.A.C. 18:7-21.4 Mandatory combined returns 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 pursuant to 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 at N.J.A.C. 18:7-21.7 through 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. 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 pursuant to 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 to N.J.S.A. 54:10A-4(h) and 54:10A-4(z). In determining the corporation business tax liability on such taxable income, the rules promulgated pursuant to the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 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. 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 100 percent 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.

(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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-2). Pursuant to N.J.S.A. 54:10A-4(h) and 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.

N.J.A.C. 18:7-21.5 Determining the managerial member of the combined group and the managerial member's responsibilities

(a) If the combined group has a common parent corporation within the meaning of the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 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 the managerial member. Once the election of the managerial member is made, the election shall be binding for 10 successive privilege periods, pursuant to N.J.S.A. 54:10A-4.10(a), 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 members of the combined group. The managerial member shall be required to: file member returns; file member extensions for filing tax returns and other documents with the Director; pay member liabilities; receive member findings, assessments, and notices; make and receive member claims or file 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 (N.J.S.A. 54:10A-1 et seq.), whether 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.

(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 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, in accordance with the privilege period of the managerial member.

(g) If a managerial member leaves the combined group, the unitary I.D. 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 of a change in the combined group composition as described in further detail at N.J.A.C. 18:7-21.29. Such notification shall satisfy the requirements at N.J.A.C. 18:7-14.1, 14.2, 14.3, 14.4, and 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 pursuant to 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. 18:7-21.26.

N.J.A.C. 18:7-21.6 Methods for filing combined returns, assessments, making payments, requests for a refund

(a) 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 at N.J.A.C. 18:7-11.1 through 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; and

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, shall 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 New Jersey combined return.

N.J.A.C. 18:7-21.7 Determining the entire net income of the 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, 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:

1. 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, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

2. 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, P.L. 1945, c. 162 (N.J.S.A. 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.

i. The International Financial Reporting Standards (I.F.R.S.), which are issued by the International Accounting Standards Board (I.A.S.B.), qualifies as an acceptable method that "reasonably approximates income" if that is the only method of accounting the specific entity used.

(b) 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 at P.L. 2001, c. 136 (N.J.S.A. 54:10A-15.6) or subsection (a) of section 4 at P.L. 2001, c. 136 (N.J.S.A. 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 pursuant to this chapter.

(c) 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 eligible for elimination (that is, 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 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 that 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 at 26 CFR 1.965-9(a) for U.S. domestic

corporations that 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.

(d) Except as otherwise provided for in this section, business income from an intercompany transaction among members of the same combined group shall be deferred in a manner similar to the deferral at 26 CFR 1.1502-13. If one of the events at either (d)1 or 2 below 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:

i. Resold by the buyer to an entity that is not a member of the combined group;

ii. 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

iii. 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.

i. In the case of an event set forth at (d)2 above, 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.

(e) A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to I.R.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 net income of the group. A charitable deduction disallowed pursuant to I.R.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.

(f) 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. Amounts disallowed pursuant to N.J.S.A. 54:10A-4.6.j will not be required to be added back for the purposes of N.J.S.A. 54:10A-4(k)(2)(I) or 54:10A-4.4.

(g) To the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 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 pursuant to 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.

(h) The principles and provisions set forth in Federal regulations promulgated pursuant to I.R.C. § 1502, shall apply to the extent consistent with the Corporation Business Tax Act, New Jersey combined group membership principles, New Jersey combined unitary return principles, and rules set forth by the Director. For more information, see N.J.A.C. 18:7-21.27.

(i) For purposes of the deduction allowed in paragraph (4) of subsection (k) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4), if such income was already eliminated pursuant to this section.

(j) This section shall apply to worldwide group elective combined returns and affiliated group elective combined returns in accordance with section 23 at P.L. 2018, c. 48 (N.J.S.A. 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.

(k) Income excluded from Federal taxable income pursuant to a tax treaty is not added back into the entire net income of the combined group, and, thus, no elimination, deduction, or additional exclusion is permitted when computing the entire net income, since said income is not included in the entire net income of the combined group.

1. Example: Member 1 reports GILTI income for Federal purposes and receives a corresponding I.R.C. § 250 deduction, and member 2 is incorporated in a high tax jurisdiction that has a comprehensive tax treaty with the U.S., such as Germany, that results in member 2's non-U.S. income being excluded from the Federal taxable income of member 2 and also qualifying for the high tax exclusion in the GILTI computation of member 1. When computing the income of the combined group, member 2's treaty protected income is excluded from entire net income of the combined group and member 1 cannot eliminate the GILTI amount by member 2's income that was never included in entire net income or member 1's GILTI reported for Federal purposes, nor would member 1 be entitled to an I.R.C. § 250 deduction corresponding to said amount for either Federal or New Jersey purposes.

N.J.A.C. 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) The International Financial Reporting Standards (I.F.R.S.), that are issued by the International Accounting Standards Board (I.A.S.B.), qualify as an acceptable method that "reasonably approximates income" pursuant to the Corporation Business Tax Act for the purposes at N.J.S.A. 54:10A-4.6.b, if that is the only method of accounting the specific entity used.

N.J.A.C. 18:7-21.9 Combined groups, combined returns, and the interrelation with other New Jersey laws

(a) The members of the combined group shall each be subject to N.J.S.A. 54:10A-20, 54:10A-21, and 54:11-1 et seq., on an individual basis.

(b) The members of the combined group filing a combined return in New Jersey will be individually subject to the business registration requirements at N.J.S.A. 52:32-44 for public contracts.

N.J.A.C. 18:7-21.10 Ordering of the dividend elimination, subsidiary dividend received exclusion, and 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 100 percent of the intercompany dividends received from the other members of the combined group reported on the same New Jersey combined return.

(b) If the combined group 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) 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 (d), the allocated entire net income is greater than zero.

1. 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 unitary with the combined group, the pre-allocated dividend exclusions of each member of the combined group 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 Schedule J.

3. 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. 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.

N.J.A.C. 18:7-21.11 Net operating losses (NOLs) of members in a 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, 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 pursuant to 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 pursuant to N.J.A.C. 18:7-5.21(b);

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. For information on PNOLs of a corporation or combined group that is a party to a merger or acquisition, see (i) below; and

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 pursuant to section 2 at P.L. 1997, c. 334 (N.J.S.A. 54:10A-4.2) and section 1 at P.L. 1997, c. 334 (N.J.S.A. 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 pursuant to 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 pursuant to this section and N.J.A.C. 18:7-21.7, 21.8, 21.10, and 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 pursuant to N.J.A.C. 18:7-5.21(a) or separate return NOLs pursuant to 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, P.L. 1945, c. 162 (N.J.S.A. 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; and

6. To the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 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 pursuant to this subsection 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 at 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) and (b) above 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 at (b)5 above on their return.

(f) Post-allocation net operating losses of a separate return taxpayer that 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, and those independent activities of that member generate a net operating loss that the member reports on Schedule X for the privilege period, 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) For more on the reduction by the amount of the allocated discharge of indebtedness income excluded from Federal tax purposes, see N.J.S.A. 54:10A-4(k)(6)(F), 54:10A-4(u)(1), 54:10A-4(v)(3), 54:10A-4.6.c, 54:10A-4.6.h(1), 54:10A-4.6.n, and 54:10A-4.6.m.

(i) The Director may disallow the prior net operating loss carryovers or net operating loss carryovers at (a) through (g) above 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; (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 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 subsection 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) 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 to, 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 pursuant to subsection (v) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6).

N.J.A.C. 18:7-21.12 Tax credits earned by a member of a 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; and

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) above 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 at 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.

N.J.A.C. 18:7-21.13 Allocation 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-6 through 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 in this subchapter.

2. A combined group that 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 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. 18:7-21.28 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 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 at N.J.A.C. 18:7-7.1 through 7.6 and 8.1 through 8.17 that are not inconsistent with (a), (b), (c), or (d) above.

(f) Nothing at (a) through (e) above shall preclude the Director from making adjustments pursuant to N.J.S.A. 54:10A-4(k)(3), 54:10A-8, or 54:10A-10.

N.J.A.C. 18:7-21.14 Conversion of the outstanding alternative minimum assessment credits

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 at P.L. 2002, c. 40 (N.J.S.A. 54:10A-5a) shall be allowed to use the credit to offset the combined group's tax liability pursuant to paragraph (1) of subsection c. of section 5 at P.L. 1945, c. 165 (N.J.S.A. 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 at P.L. 2002, c. 40 (N.J.S.A. 54:10A-5a) shall not reduce the combined tax liability below 50 percent of the tax owed by the group. The remaining balance of the credit may be carried over until used by the combined group.

N.J.A.C. 18:7-21.15 The water's-edge 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 combined group shall take into account the income 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 80 percent or more of both its property and payroll during the privilege period are located outside the United States, the District of Columbia, or any territory or possession of the United States;

2. Each member, wherever incorporated or formed, if 20 percent 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 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; and

4. Each member that has income as defined under the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 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 1.14 for more detail on nexus).

(b) 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 and N.J.A.C. 18:7-21.16 and 21.17 for more information on elective combined return filing methods.

(c) For changes in the composition of the combined group, the members shall notify the Director, as set forth pursuant to the procedures at N.J.A.C. 18:7-21.29.

(d) For the purposes at (a)1 and 2 above, property and payroll are determined, in accordance to the rules at N.J.A.C. 18:7-8.1 through 8.17.

(e) In determining 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's attributes,

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, which is not all inclusive, 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:

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.

N.J.A.C. 18:7-21.16 Worldwide 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 original 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 at 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 at 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 not 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 affiliated group method was used to account for the combined group members' income and allocation data in the preceding privilege period and the 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 forms acceptable to the Director.

(g) For changes in the composition of the combined group, the members shall notify the Director as set forth at N.J.A.C. 18:7-21.29.

N.J.A.C. 18:7-21.17 Affiliated 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 at 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 irrespective as to, 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) The examples at (a)1, 2, and 3 above are not an exhaustive list.

(c) 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. 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 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.

(d) 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.

(e) 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 pursuant to I.R.C. § 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 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 is incorporated in the United States, or formed pursuant to the laws of the United States, any state, or the District of Columbia.

(1) Each member, wherever incorporated or formed, that is treated as a U.S. domestic corporation pursuant to the provisions of the Internal Revenue Code; or

ii. 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 (e)1 above, only the members that are treated as domestic corporations pursuant to the Federal I.R.C. and Federal S corporations that have not made a validly approved New Jersey S corporation election will be included. In instances in which a New Jersey S corporation also elects to be included in the combined return, 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 U.S. domestic corporations, as defined at N.J.S.A. 54:10A-4(x), that are related by common ownership applying the commonly owned test described in this subchapter (that is, direct or indirect ownership of more than 50 percent of voting control), rather than applying the standard applicable for Federal consolidated return purposes that looks to 80 percent 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 I.R.C. § 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-U.S. corporation.

(f) An affiliated group election shall be made by the managerial member of a 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 by the managerial member on or before the original 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 a 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 at U.S. Treas. Reg. § 1.1502-75(d)(3).

(g) 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 of 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 at U.S. Treas. Reg. § 1.1502-75(d)(3) shall be applied in determining whether a corporation is bound by an affiliated group election.

(h) 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 managerial member 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.

(i) If the water's-edge group filing method or the worldwide group method was used to account for the combined group members' income and allocation data in the preceding privilege period and the affiliated group 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.

(j) An affiliated group election shall constitute consent to the production of documents or other information that the Director reasonably requires to support that 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.

(k) For changes in the composition of the combined group, the members shall notify the Director as set forth at N.J.A.C. 18:7-21.29.

N.J.A.C. 18:7-21.18 Net 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. 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, that is, 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 at N.J.A.C. 18:7-21.14, since the alternative minimum assessment credit pursuant to 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 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. G.A.A.P. or in accordance with the 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) To qualify for the purposes of N.J.S.A. 54:10A-4(k)(16), a U.S. stock exchange or U.S. over-the-counter market must be regulated by a U.S. regulatory authority, and a foreign stock exchange or foreign over-the-counter market 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 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 at N.J.S.A. 54:10A-4(k)(16), shall otherwise have the same meaning as prescribed by the Financial Accounting Standards Board (F.A.S.B.) or International Accounting Standards Board (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 at 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 a change to filing combined returns apply for the purposes of computing the deduction.

(l) Where 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 a publicly traded U.S. parent corporation is not unitary with its subsidiaries that 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 that are filed with the S.E.C.

(n) A combined group that is privately held does not qualify for the deduction. Only 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 a publicly traded group of companies is not eligible for the deduction.

N.J.A.C. 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 pursuant to N.J.A.C. 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. 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.

N.J.A.C. 18:7-21.20 Combined group tax return accounting methods

(a) Tax returns filed by taxable members of a combined group and by members of a combined group shall be filed consistent with the provisions set forth in this subchapter (and specifically, N.J.A.C. 18:7-21.15, 21.16, and 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.

(c) 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.

(d) 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.

(e) 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 the 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.

(f) Pursuant to 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.

(g) Pursuant to the pro rata method, the income and allocation data of the member, as adjusted to reflect the determination of income pursuant to 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, and is similarly recomputed, if necessary. The combined group's taxable income is then allocated to each of the taxable members of the combined group.

1. 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.

2. For the purpose of determining whether a redetermination 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 a 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 pursuant to N.J.A.C. 18:7-5.10 and 13.1 or a change in the allocated group income for any one taxable member of the group increases or decreases.

(h) After determining the combined group's taxable income allocated to New Jersey of a taxable member that is not filing its return for the 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.

(i) 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.

(j) The International Financial Reporting Standards (I.F.R.S.), which are issued by the International Accounting Standards Board (I.A.S.B.), qualifies as an acceptable method that "reasonably approximates income" pursuant to the Corporation Business Tax Act 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.

N.J.A.C. 18:7-21.21 Subchapter S corporations and 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. 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.

N.J.A.C. 18:7-21.22 Application of other rules unaffected

All other rules pursuant to this chapter shall be otherwise unaffected; provided, however, any statute, rule, or regulation in the Corporation Business Tax Act or this chapter that is inconsistent with this subchapter, 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.

N.J.A.C. 18:7-21.23 Authority of the Director of the Division to require that a taxpayer be included in a combined return in certain instances

(a) If the Director determines that a combined group's income or loss does not properly reflect the unitary business activities of the combined group, the Director may require that the combined return of the combined group include the income, as well as the associated allocation factor or factors of any taxpayer

who is not otherwise included in the combined group on the combined return, but who is a member of a unitary business with the combined group, in order to cure the improper reflection of the allocation of income of the entire unitary business. 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.

(b) If the Director determines that a combined group's income or loss does not reflect a proper allocation of income or represents an evasion of tax, the Director may require that a combined return include or exclude the income and associated allocation factor or factors of taxpayers that may or may not have been included as members on the combined return. The Director may require that a combined return include or exclude 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 or exclusion in a combined return is in addition to, and not a limitation of or dependent on, the provisions in Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), enacted to prevent tax avoidance or evasion or to clearly reflect the income of any taxpayer.

(f) If the taxpayer disagrees with the Director's determination pursuant to (a) through (e) above, the taxpayer challenging the determination has the burden of proving by cogent evidence that is definite, positive, and certain in quality and quantity to overcome the Director's presumption of correctness.

N.J.A.C. 18:7-21.24 De-combination of a combined group

The Director, upon audit of the combined return and review of the facts and circumstances, may de-combine and require a member or members to 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 the inclusion was for the purpose of sharing tax credits that were not related to any function of the combined group.

N.J.A.C. 18:7-21.25 Banking corporations and combined groups

(a) Where at least one of the members of the combined group is a banking corporation, as defined at 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 (a) above departs from a 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) For purposes of the deduction allowed in paragraph (4) of subsection (k) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 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 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4), if such income was already eliminated pursuant to the provisions at N.J.S.A. 54:10A-4.6.

(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 that elects to take the deduction from entire net income provided for at N.J.A.C. 18:7-5.2(a)2vii, shall complete the allocation factor at 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 at 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 that have not filed transitionary 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.

N.J.A.C. 18:7-21.26 Conditions warranting the designation of a 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 at (a) above shall not represent an all-inclusive list of circumstances, where the Director may exercise the right to designate the managerial member of the combined group.

N.J.A.C. 18:7-21.27 Principles of Federal consolidated returns applicable

(a) The principles and provisions set forth in Federal regulations promulgated pursuant to I.R.C. § 1502, shall apply to the extent consistent with the Corporation Business Tax Act, New Jersey combined group membership principles, New Jersey combined unitary return principles, and rules promulgated by the Director.

(b) When computing the combined group entire net income, the principles set forth in the U.S. Treasury regulations promulgated at I.R.C. § 1502 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 Federal requirements.

(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 the entire net income. New Jersey combined returns are filed using a default mandatory water's-edge filing method or the elective worldwide or affiliated group filing method. To be included on a water's-edge return or worldwide return, an entity needs to be part of a unitary business of the combined group as defined in the Act. Water's-edge and worldwide returns are State tax concepts, not Federal consolidated return concepts (see N.J.S.A. 54:10A-4.11 and N.J.A.C. 18:7-21.15 and 21.16 for more information). 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 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) For New Jersey combined reporting purposes, the requisite ownership threshold is more than 50 percent. Although the Federal rules otherwise apply, New Jersey does not conform to the 80 percent 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) Generally, the provisions at 26 CFR 1.1502-13 apply, except as otherwise noted at N.J.S.A. 54:10A-4.6.e and except where 26 CFR 1.1502-13 deals with specific provisions of the Internal Revenue Code to which New Jersey does not conform.

(g) 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), 54:10A-4(k)(2)(F), 54:10A-4(k)(12), and 54:10A-4(k)(13). Adjustments must be made, accordingly.

(h) To the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 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 at 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.

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 to, 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 pursuant to subsection (v) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6).

3. The provisions of the I.R.C. governing the interaction between I.R.C. § 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 pursuant to subsection (v) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6).

(i) There are interactions between N.J.S.A. 54:10A-4.15, 54:10A-4.6.d, 54:10A-4(k)(5), 54:10A-4.5.c, 54:10A-4.6.n, 54:10A-4(v), 54:10A-4.6.h, 54:10A-4.6.m, and 54:10A-5.46, impacting dividends, the dividend exclusion, GILTI, FDII, Net Operating Losses (NOLs), and special deductions as noted in this subsection.

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 at N.J.S.A. 54:10A-4(u), 54:10A-4(v), and 54:10A-4.6.h(1) (by operation of N.J.S.A. 54:10A-4(v)) also 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 carryovers 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 I.R.C. § 250 (see N.J.S.A. 54:10A-4.15, which specifically coupled the Act to I.R.C. § 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 I.R.C. § 250 deductions and take the deductions for Federal tax purposes, the Federal consolidated return rules, and Federal rules governing the interaction of net operating losses and the I.R.C. § 250 deductions apply.

(j) New Jersey has its own tax credits and its own rules for tax credits, except regarding the New Jersey Research Tax Credit. Although the New Jersey Research Tax Credit has its own specific limitations, the Federal rules governing I.R.C. § 41 apply.

(k) In general, New Jersey follows the guidelines set forth pursuant to the Federal consolidated return regulations regarding I.R.C. § 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.

N.J.A.C. 18:7-21.28 Combined groups engaged in transportation of freight by air or 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 percent 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 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground, as described at (a) above, then (a) above applies, and N.J.A.C. 18:7-8.10A (dealing with the sourcing of receipts for certain services) does not apply.

(c) If less than 50 percent 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 (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 at (a) above, 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 percent 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 percent 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, (a) above shall apply.

N.J.A.C. 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 that 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 at N.J.A.C. 18:7-14.1 through 14.5.

(c) Subsections (a) and (b) above shall also apply to elective combined returns.

52 N.J.R. 508(a)

VOLUME 52, ISSUE 6, MARCH 16, 2020

RULE PROPOSALS

Reporter
52 N.J.R. 508(a)

Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

TREASURY--TAXATION > DIVISION OF TAXATION

Administrative Code Citation

Proposed Amendments: N.J.A.C. 18:7-1.6 and 8.10

Proposed New Rule: N.J.A.C. 18:7-8.10A

Text

Corporation Business Tax Act

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

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 [page=509] 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 programing 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.

[page=510] **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.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [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 [in] **at** N.J.A.C. 18:7-[8.10(e)] **8.10(a)5** 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.)

[(e)] **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.)

[4.] **iv.** As used in [(e)1 through 3] **(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.)

[v.] **(5)** "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-[2m] **2.m** in the case of an individual**,**and under N.J.S.A. 54A:1-[2o] **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 [the] **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 [(e)3] **(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.)

[5.] **v.** (No change in text.)

[(f)] **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.

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 [page=511] **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 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.

[page=512] **(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 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. If the information is indeterminable, 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 in which the broadcast customer has viewers. If a broadcaster can [page=513] **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 programing);

(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. 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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RULE ADOPTIONS

Reporter
52 N.J.R. 1677(c)

Agency

TREASURY--TAXATION > DIVISION OF TAXATION

Administrative Code Citation

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

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)10 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)10 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)10, 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)10, 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)5 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 programing);

(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.

Tab 4

Sort	Number	Title	Type	Date Issued
6	TAM 2011- 6	Corporate Business Tax- Foreign Corporations Subject to Tax	Technical Advisory Memorandums	2023 Jul
13	TAM 2011-13R	Corporation Business Tax- Add Back of Related Member Interest Expense	Technical Advisory Memorandums	2023 Jul
22	TAM 2011-22	International Affiliate Transactions Involving Intangibles and Intellectual Property	Technical Advisory Memorandums	2023 Jul
79	TB-79(R)	Nexus for Corporation Business Tax for Privilege Periods Ending Before July 31, 2023	Technical Bulletin	2023 Sep
84	TB-84(R)	Changes to the New Jersey Corporation Business Tax	Technical Bulletin	2018 Dec
85	TB-85	Tax Conformity to IRC - 951A (GILTI) and IRC - 250 (FDII)	Technical Bulletin	2018 Dec
86	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	Technical Bulletin	2023 Nov
87	TB-87(R)	Initial Guidance for Corporation Business Tax Filers and the IRC § 163(j) Limitation	Technical Bulletin	2023 Aug
88	TB-88(R)	Combined Groups: Exclusion of Double Inclusion of GILTI and Treatment of Related Party Addbacks for Privilege Periods Ending Before July 31, 2023	Technical Bulletin	2023 Sep
89	TB-89(R)	Combined Group Filing Methods for Privilege Periods Ending Before July 31, 2023	Technical Bulletin	2023 Sep
90	TB-90(R)	Tax Credits and Combined Returns	Technical Bulletin	2019 Jun
91	TB-91(R)	Banking Corporations and Combined Returns	Technical Bulletin	2023 Nov
92	TB-92(R)	Sourcing IRC - 951A (GILTI) and IRC - 250 (FDII) for Privilege Periods Ending Before July 31, 2023	Technical Bulletin	2023 Sep
93	TB-93(R)	The Unitary Business Principle and Combined Returns	Technical Bulletin	2023 August
94	TB-94(R)	General Information on the New Net Operating Loss Regime for Tax Years Ending on and After July 31,2019	Technical Bulletin	2023 October
95	TB-95(R)	Net Operating Losses and Combined Groups	Technical Bulletin	2023 October
96	TB-96(R)	Net Deferred Tax Liability Deduction and Combined Returns	Technical Bulletin	2023 Sept
97	TB-97	Changes and Corrections to the Corporation Business Tax and Other Taxes/Fees Pursuant to P.L. 2020, C. 118	Technical Bulletin	2020 Dec
98	TB-98(R)	Federal Return and the Forms and Schedules to Include with the Corporation Business Tax Return Pursuant to P.L. 2020, C. 118	Technical Bulletin	2023 Oct
99	TB-99(R)	Income Reporting and Returns for Banking Corporations for Privilege Periods Ending on and after July 31, 2020	Technical Bulletin	2023 Nov
100	TB-100(R)	Combined Group as a Taxpayer under the Corporation Business Tax Act	Technical Bulletin	2023 Aug
101	TB-101(R)	Income Reporting and Accounting Methods of Non-U.S. Corporations Members of a Combined Group"	Technical Bulletin	2023 Oct
102	TB-102(R)	Net Operating Losses (NOLs) and Post Allocation Net Operating Losses (PNOLs) with Certain Mergers & Acquisitions	Technical Bulletin	2023 Apr
103	TB-103(R)	Guidance on New Jersey's Conformity to I.R.C. §1502 for Combined Returns	Technical Bulletin	2023 Oct
105	TB-105	Corporation Business Tax and Gross Income Tax Guidance regarding S Corporations and Qualified Subchapter S Subsidiaries		2023 Mar
106	TB-106	Cannabis Licensee Income Computation and Reporting for Corporation Business Tax and Gross Income Tax Purposes Pursuant to P.L. 2023, c. 50	Technical Bulletin	2023 Jul
107	TB-107	Changes to Corporation Business Tax, Gross Income Tax, and Other Requirements from P.L. 2023, c.96	Technical Bulletin	2023 Jul
108	TB-108(R)	Nexus for Corporation Business Tax for Privilege Periods Ending on and after July 31, 2023	Technical Bulletin	2024 Jan
109	TB-109	Combined Group Filing Methods for Privilege Periods Ending on and After July 31, 2023	Technical Bulletin	2023 Sep
110	TB-110	Corporation Business Tax GILTI Treatment for Privilege Periods Ending on and After July 31, 2023	Technical Bulletin	2023 Sep
111	TB-111	Changes to the Dividend Exclusion and the Historic Ordering of Net Operating Losses, the Dividend Exclusion, and the International Banking Facility Deduction	Technical Bulletin	2023 Oct
113	TB-113	Captive Investment Companies, Real Estate Investment Trusts, and Regulated Investment Companies and Combined Groups	Technical Bulletin	2023 Nov
114	TB-114	The New Jersey Research and Development Tax Credit	Technical Bulletin	2023 Dec

Foreign Corporations Subject to Tax

TAM 2011-6(R) – Revised July 25, 2023
Tax: Corporate Business Tax

The Business Tax Reform Act, P.L. 2002, c.40, enacted July 2, 2002 ("BTRA") made numerous amendments and supplements to the Corporation Business Tax Act ("Act"). Important changes, contained in Section I, amended N.J.S.A. 54:10A-2. Those amendments made clear that the franchise tax is due from foreign corporations "for the privilege of deriving receipts from sources within the State, or for the privilege of engaging in contacts within this State."

The amendments mandated that a taxpayer's exercise of its franchise in this state is subject to taxation in this state if the taxpayer's business activity in New Jersey is sufficient to give the state jurisdiction to impose the tax under the constitution and statutes of the United States. This change applied to privilege periods and taxable years beginning on or after January 1, 2002.

Accordingly, after the law changed effective January 2, 2002, corporations that derive receipts from sources within New Jersey or engage in contacts within New Jersey are subject to tax in New Jersey, provided that the taxpayer's business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the constitution and statutes of the United States.

In establishing new subjectivity standards under the Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq., the Business Tax Reform Act repealed the former Corporation Income Tax Act, N.J.S.A. 54:10E-1 et seq. and incorporated expansive language regarding subjectivity from the Corporations Income Tax Act into the Corporation Business Tax Act.

The New Jersey Supreme Court upheld the application of the Corporation Income Tax Act in *Avco Financial Services Consumer Discount Company One, Inc. v. Director, Division of Taxation*, 100 N.J. 27, 494 A.2d 788 (1985). (See also *First Family Mortgage Corporation of Florida v. Linda A. Durham and Mr. Linda Durham, and Attorney General of New Jersey, Intervenor-Respondent*, 108 N.J. 277, 528 A.2d 1288 (1987), citing Avco in determining that N.J.S.A. 14A:13-15, requiring foreign corporations which were not certified to do business in the State and which had not filed timely tax returns to file business activities reports with the Director of the Division of Taxation, did not violate the commerce clause).

Several important judicial opinions were issued subsequent to the enactment of the BTRA in 2002. The Division takes note of the opinion and outcome in *Tax Commissioner of the State of W. Va. v. MBNA America Bank*, N.A. 640 S.E2d 226 (W.Va. 2006), cert. denied *sub nom FIA Card Services, N.A. v. Tax Commissioner of West Virginia*, 127 S.Ct. 2997 (2007). The opinion of the highest court of West Virginia upheld against a U.S. Constitutional challenge the tax subjectivity and imposition of tax based on solicitation and receipts derived from sources within the taxing jurisdiction but received by an out of state credit card company. The New Jersey Supreme Court also upheld the imposition of Corporation Business Tax against a similar challenge by a foreign trademark holding company. *Lanco, Inc. v. Director*, 21 N.J. Tax 200 (2003), 379 N.J. Super 562, 879 A.2d 1234 (App. Div. 2005), 188 N.J. 380, 980 A.2d 176 (2006), cert. denied, 127 S.Ct. 2974 (2007).

Applying the principles of the statute as amended and the above-referenced court decisions, taxpayers performing services and domiciled outside the State that solicit business within the

State or derive receipts from sources within the State must file a Corporation Business Tax return and pay the applicable tax to New Jersey. This principle applies to all corporations, including financial corporations. A financial business corporation, a banking corporation, a credit card company or similar business that has its commercial domicile in another state is subject to tax in this State if during any year it obtains or solicits business or receives gross receipts from sources within the State. As noted above, the principles explained in this notice are applicable for privilege periods beginning on and after January 1, 2002.

It should be noted that taxpayers may continue to request an adjustment under N.J.S.A. 54:10A-8.Pursuant to N.J.S.A. 54:10A-8 and N.J.A.C. 18:7-8.3, 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 taxpayer may request an adjustment of the business allocation factor.

The Division codified these policies in N.J.A.C. 18:7-6 and N.J.A.C. 18:7-1.8. The Division intends on providing additional examples and further guidance in subsequent regulatory proposals.

Note: A Technical Advisory Memorandum ("TAM") is an informational statement of the law, regulations, or Division policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions or changes in Division policies could affect the validity of the information presented in a TAM.

Add Back of Related Member Interest Expense for Privilege Periods Ending Before July 31, 2023

TAM 2011-13R – Revised July 25, 2023
Tax: Corporation Business Tax

INTEREST ADD-BACK REQUIREMENT FOR PRIVILEGE PERIODS ENDING BEFORE JULY 31, 2023

N.J.S.A. 54:10A-4(k) (2) (I) requires corporations to add back interest expenses that were deducted as an expense and paid to a "related member." A "related member" is defined in N.J.S.A. 54:10A-4.4 and N.J.A.C.18:7-5.18(a) (4).

Note: For privilege periods ending on and after July 31, 2023, the related party addback provisions have been repealed.

EXCEPTIONS

The law establishes exceptions to this general rule.

1. "THREE PERCENT TAX RATE" EXCEPTION

N.J.S.A. 54:10A-4(k)(2)(I) provides 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 principle purpose of the transaction giving rise to the payment of the interest was not to avoid taxes otherwise due under the Revised Statutes or Title 54A of the Revised 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 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 the State."

In N.J.A.C. 18:7-5.18(a) (4) (viii), the Division interprets "rate of tax" to mean the allocation factor times the tax rate percentage. The 3% tax rate means the effective rate. This interpretation was upheld in *Beneficial New Jersey v. Div. of Taxation, No. 009886-2007 (N.J. Tax Ct. 2010).*

2. "UNREASONABLE" AND "ALTERNATIVE APPORTIONMENT METHOD" EXCEPTIONS

N.J.S.A. 54:10A-4(k)(2)(I) further provides: "A deduction shall also be permitted if the taxpayer establishes by clear and convincing evidence as determined by the Director, that the disallowance 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."

Pursuant to this section, the Director will recognize the following fact patterns as examples of situations in which a disallowance of the deduction would be "unreasonable:"

(1) The taxpayer has both a receivable and a payable from the exact same entity, which results in both interest income and interest expense. The Division will permit the interest income and interest expense to be netted so that only the excess of interest expense over interest income will be subject to the general add back rule. This exception only applies to interest income and expense related to the same entity. Interest income from one related member will not be permitted to offset the interest expense of another.

(2) There exists a "cash sweep" cash management system with related members. A cash sweep cash management system is defined as an agreement between related parties wherein one affiliate is responsible for handling all of the cash activities of the group. All cash is automatically "swept" in the bank account of the cash manager. The cash manager pays all expenses of the related parties and the cash balances are accounted for by intercompany accounts receivables and payables. If both parties to this cash sweep arrangement conduct business at arm's length, then the interest expense generated would not be subject to the general add back rule. In order to qualify, all cash must be handled through the cash sweep structure and the cash manager must charge arm's length interest rates and make a profit on its cash sweep margins;

(3) In the case of *Beneficial New Jersey v. Div. of Taxation*, No. 009886-2007 (N.J. Tax Ct. 2010), the New Jersey Tax Court issued a ruling about the "unreasonable exception." In Beneficial, the corporation (BNJ) borrowed money from its parent, HSBC Finance Corp (HSBC), which borrowed funds from unrelated third parties. HSBC charged interest on the loans to BNJ at the maximum Applicable Federal Rate. BNJ deducted the interest payments associated with these loans to arrive at New Jersey entire net income on its Corporation Business Tax returns. After auditing BNJ, the Division disallowed BNJ's interest deductions for the 2002-2004 years by adding them back pursuant to N.J.S.A. 54:10A-4(k)(2)(I);

First, the court concluded that, for purposes of the "three percent" exception, the phrase "rate of tax" meant the "effective tax rate," and that BNJ did not qualify for the "three percent" exception. Second, the court concluded that the documentation for the loan agreement between HSBC and BNJ did not satisfy the "guarantee" exception. Finally, however, in addressing the "unreasonable exception," the court determined that it would be unreasonable to deny the deduction because there was "economic substance" to the loans.

The court found there was economic substance because Beneficial of New Jersey's parent, HSBC, borrowed money and then loaned the borrowed funds to its subsidiaries, which included Beneficial of New Jersey, as HSBC received more favorable interest rates than could the subsidiaries as independent borrowers. The money that HSBC borrowed was loaned to subsidiaries other than BNJ. HSBC paid taxes on income including BNJ's interest payments, in 17 jurisdictions. The court found that, under this set of circumstances, it would be unreasonable to add back the interest deductions. The court also stated that its decision to apply the "unreasonable" exception in this case "in no way creates a general rule of applicability." Thus, such decisions will be made on a case-by-case basis, based on the totality of the circumstances;

(4) In the case of *Morgan Stanley & Co. v. Director, Div. of Taxation*, 28 N.J. Tax 197 (2014), the New Jersey Tax Court issued a ruling on the application of the "unreasonable exception." Morgan Stanley and Co., Inc. ("MS&Co") is wholly owned by Morgan Stanley ("MS"). MS&Co entered into a number of financial transactions with MS and/or MS's various subsidiaries and affiliates, including a Cash Subordination Agreement and Subordinated Revolving Credit Agreement (Subordinated Debt); an arrangement termed a "Cash Management Arrangement;" and numerous intercompany transactions. These financial transactions with related parties resulted in interest that was initially added back on MS&Co's CBT-100 return. The taxpayer filed an amended return to remove the related party interest and claimed a refund of the tax previously paid. The Division denied the refund, computed the taxpayer's interest expense add-back, and assessed additional tax on the basis that the "unreasonable exception" requires that the corporation pays tax on the interest income in another state.

The court held that a denial of the "unreasonable exception" on this basis alone was not supported under N.J.S.A. 54:10A-4(k) (2)(I) because the statute does not contain this requirement. The court determined that the Division had not adequately considered the totality of the taxpayer's facts and circumstances in its analysis of the "unreasonable exception."

The court further noted that based on the legislative intent in enacting the unreasonable exception, a taxpayer's documentation of the following situations may provide grounds for claiming that the disallowance of the deduction would be unreasonable:

1. Unfair duplicative taxation;
2. A technical failure to qualify the transactions under the statutory exceptions;
3. An inability or impediment to meet the requirements due to legal or financial constraints;
4. An unconstitutional result;
5. Transaction for all intents and purposes is an unrelated loan transaction.

3. "FOREIGN NATION" AND "CONDUIT GUARANTEE" EXCEPTIONS

Finally, N.J.S.A. 54:10A-4(k)(2)(I) provides that a deduction "shall also be permitted to the extent 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, 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 (emphasis added) (ii) to an independent lender and the taxpayer guarantees the debt on which the interest is required."

As noted in N.J.A.C. 18:7-5.18(a)3ii, the Division interprets the latter exception to mean that the interest is directly or indirectly paid, accrued or incurred to an independent lender through a related member as conduit, provided the taxpayer legally guarantees the debt on which the interest is required. Further, as noted in the discussion above related to the *Beneficial* case, the guarantee must be memorialized at the time of the loan origination.

REGULATION

N.J.A.C. 18:7-5.18 provides further definitions and examples. Exceptions to the add back of interest are claimed on Schedule G-2.

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International Affiliate Transactions Involving Intangibles and Intellectual Proper for Privilege Periods Ending Before July 31, 2023

TAM 2011-22(R) – Revised July 25, 20
Tax: Corporation Business T

This technical advisory memorandum (TAM) concerns transactions between affiliate corporations invc charges and claimed deductions for intangible expenses and costs in which the recipient or payee aff is not a U.S. income taxpayer. Nothing herein shall constitute or be construed as a waiver of, or limita upon, the Director's authority under N.J.S.A. 54:10A-8, N.J.S.A. 54:10A-10 or any other provision of the of the State of New Jersey. For privilege periods ending on and after July 31, 2023, N.J.S.A. 54:10A-4(k and N.J.S.A. 54:10A-4.4 have been repealed. Thus, the sections of this TAM related to those provisions only applicable for privilege periods ending before July 31, 2023.

DEFINITIONS: FOR PURPOSES OF THIS TAM

"Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the term "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, and the term "person" means an individual, partnership, committee, association, corporation any other organization or group of persons.

"Domestic affiliate" means a company or business entity that is: located in New Jersey or subject to N Jersey's tax laws; incorporated or organized under the laws of any state or commonwealth of the Unit States; and an "affiliate" of a "foreign parent company" or "foreign affiliate" as provided in these definitions.

"Domestic taxpayer" means "Domestic affiliate."

"Foreign affiliate" means a company or business entity that is:

- Located outside of the United States;
- Organized or incorporated under the laws of a foreign nation;
- Meets the definition of "affiliate" provided in these definitions; and
- Not a United States income taxpayer.

This definition also includes parent, subsidiary or brother-sister stock ownership and control relationships.

"Foreign parent company" means a "foreign affiliate" that is the parent company of a "domestic affiliate," in terms of stock ownership and control.

"Related entity," pursuant to N.J.S.A. 54:10A-4.4(a), means:

- 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. §318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, i the aggregate, at least 50% of the value of the taxpayer's outstanding stock; or
- 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% of the value of the taxpayer's outstanding stock; or

- A corporation, or a party related to the corporation in a manner that would require an attributi 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. §318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50% of the value of the corporation's outstanding stock. The attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. §318, shall apply for purposes of determining whether the ownership requirements of this definition have been met.

"Related member," pursuant to N.J.S.A. 54:10A-4.4 (a), means a person that, with respect to the taxpay during all or any portion of the privilege period, is:

- A related entity; or
- A component member as defined in subsection (b) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1563; or
- A person to or from whom there is attribution of stock ownership in accordance with subsectio (e) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. §1563; or
- A person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in any of the above definitions.

ADD-BACK RULE AND RELEVANT EXCEPTION(S)

Pursuant to N.J.S.A. 54:10A-4.4, in computing entire net income for the Corporation Business Tax (CBT corporate taxpayers are required to add back intangible expenses paid to related members or entities However, N.J.S.A. 54:10A-4.4 provides several exceptions to this add-back requirement including intangible expenses paid to a related member in a foreign nation that has in force a comprehensive income tax treaty with the United States. Further exceptions to the add-back requirement may be fou in N.J.A.C. 18:7-5.18 and also are addressed in TAM-13.

ARM'S LENGTH PRICING IN RELEVANT CONTEXT

In circumstances in which a domestic affiliate pays royalties or expenses to a foreign affiliate or foreig parent company for the use of intangibles in New Jersey, the Division of Taxation intends to use existi authority afforded in N.J.S.A. 54:10A-4(k)(3)[1], N.J.S.A. 54:10A-8[2], N.J.S.A. 54: 10A-10[3], and N.J.A.C. 18:7-5.10[4] to examine transactions between these affiliated companies or taxpayers to ensure that the domestic taxpayer "doing business" or "exercising its corporate franchise"[5] in New Jersey reports the appropriate amount of expenses and deductions arising from these transactions.

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1. Provides the authority to determine the period or year in which any item of income or deduction should be included in calculating a corporation's entire net income under the CBT.

2. Provides the authority to adjust the allocation factor used in calculating a taxpayer's CBT liabilities if it appears that the allocation factor employed by the taxpayer does not accurately "reflect the activity, business, receipts, capital, entire net worth or entire net income" of the taxpayer "reasonably attributable to the State."

3. Provides the authority to adjust items of income, expenses, allocation factors, and tax returns or reports to accurately reflect "a fair and reasonable determination of the amount of tax payable" in accordance with CBT laws and regulations. The section also affords the Director the ability to examine payments and compensation between affiliates (as defined in this TAM) and members of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the IRC, in addition to compelling these entities to file a consolidated return.

4. Provides further explanations and guidance relating to the authority described in N.J.S.A. 54:10A-10.

5. These terms are included in the state's CBT nexus standard as found in N.J.S.A. 54:10A-2 and N.J.A.C. 18:7-1.8. "Doing business" in the state is further defined in N.J.A.C. 18:7-1.9

This analysis is similar to that with respect to arm's length pricing requirements provided in the Intern Revenue Code (IRC) §482 and also is consistent with N.J.A.C. 18:7-5.10. Subsequently, the Director ma make appropriate adjustments to the domestic taxpayer's entire net income that reflect true income earned and expenses incurred in the State to reach "a fair and reasonable determination" of tax liabilities. A "fair and reasonable tax" is defined as one "that would have been payable by a taxpayer reporting the same transaction(s) on a separate entity basis where the parties to the transaction(s) ha independent economic interests." N.J.A.C. 18:7-5.10(a)(3).

DOCUMENTATION

To determine whether the domestic affiliate's intangible expense deductions meet the arm's length standards of IRC §482 and N.J.A.C. 18:7-5.10, the Division may request certain documentation from th domestic taxpayer pursuant to N.J.A.C. 18:7-5.10(g). This may include the following: an overview of th domestic taxpayer's business; description of its organizational structure; identification of the transfer pricing methodology selected and why such methodology was determined to be the most appropriat for transfer pricing purposes; and an explanation of the economic analysis relied upon in making the determination. Documentation satisfying the requirements of Internal Revenue Code §6662, a third party transfer pricing study, or an advanced pricing agreement (APA) approved by the Internal Reven Service will be deemed to satisfy the documentation requirements associated with this analysis. However, pursuant to N.J.A.C. 18:7-5.10 and TAM-2012-1 approved APAs may be reviewed by the Division to examine the payments made between the domestic affiliate and foreign affiliate under arr length standards referenced earlier in this TAM.

DIRECTOR'S AUTHORITY

Under authority provided in N.J.S.A. 54:10A-10, the Director may use the requested information to adjust the intangible expense deductions of the domestic taxpayer relating to payments made to a foreign affiliate or foreign parent company if a determination is made that the items as reported do n accurately reflect true income or expenses, and the economic realities of the transaction(s) in questio

Once the Division has received the requested documentation from the domestic taxpayer, it may undertake its own arm's length analysis of the transactions at issue as provided in IRC § 482 and N.J.A 18:7-5.10. If the Division determines that a subsequent adjustment must be made to reach "a fair and reasonable determination" of tax liabilities in New Jersey pursuant to N.J.S.A. 54:10A-10, it shall do so by making said adjustments to the entire net income of the domestic taxpayer, including potential disallowance of up to 100 percent of the deduction arising from the payment of royalties to the foreig affiliate or foreign parent company.

POTENTIAL DISALLOWANCE UPON FAILURE TO PROVIDE DOCUMENTATION

In the event that the domestic affiliate fails to provide the documentation referenced above to support intangible expense deductions relating to payments made to a foreign affiliate or foreign parent company, the Director may, in determining the entire net income of the domestic taxpayer, choose to disallow up to 100 percent of the deduction. In determining the entire net income of the domestic tax-payer that has failed to provide the requested documentation, the Division may contact and commence an audit of the foreign affiliate or foreign parent company to arrive at a "fair and reasonable tax."

The domestic taxpayer has 90 days from the time of request from the Division to provide documentatio to substantiate its intangible expense deduction, which can be extended for good cause or agreement between the domestic taxpayer and the Division. The Division intends to codify the contents of this TAM in a regulation, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Note: A Technical Advisory Memorandum ("TAM") is an informational statement of the law, regulations, or Division policies. is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions or changes in Division policie could affect the validity of the information presented in a TAM.

Nexus for Corporation Business Tax for Privilege Periods Ending Before July 31, 20

TB-79(R) - Revised September 5, 2023
Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised on September 5, 2023, to include links to TB-108 for information on the updated nexus standards established under P.L. 2023, c. 96, as well as the updated P.L. 86-272 guidelines established by the Multistate Tax Commission as adopted by the Division that went onto effect for privilege periods ending on and after July 31, 2023.

This Technical Bulletin provides general guidelines for determining whether the activities of a corporation create nexus with New Jersey for the purposes of imposing the Corporation Business Tax for privilege periods ending before July 31, 2023.

For privilege periods ending on and after July 31, 2023, see TB-108 for information on nexus and P.L. 86-272 standards for New Jersey purposes.

Corporation Business Tax Nexus

The New Jersey Corporation Business Tax Act requires every domestic or nonresident corporation to pay an annual franchise tax for the following privileges:

1. Having or exercising its corporate franchise in this State;
2. Deriving receipts from sources within this State;
3. Engaging in contacts within this State;
4. Doing business, having employees, owning capital or property, or maintaining an office in this State.

A foreign corporation has a corporate franchise in this State if:

1. It has registered with the New Jersey Department of Revenue and Enterprise Services; and/or
2. Holds a certificate, license, or other authorization issued by any other State department or agency authorizing the company to engage in corporate activity in this State.

In determining whether a corporation is doing business in New Jersey, consideration is given to such factors as:

1. The nature and extent of the activities of the corporation in New Jersey;
2. The location of its offices and other places of business;
3. The continuity, frequency, and regularity of the activities of the corporation in New Jersey;
4. The employment in New Jersey of agents, officers, and employees;
5. The location of the actual seat of management or control of the corporation.

Public Law 86-272

The Federal Interstate Income Act, Title 15 U.S.C.A. Section 381, "Public Law 86-272," prohibits a state from imposing a net income based tax on income of a foreign corporation earned within its borders from interstate commerce, if the corporation's only business activity within the state consists of the solicitation of orders by the corporation or its representatives of tangible personal property, the orders are sent outside the state for approval and, if approved, are filled by shipment or delivery from a point outside the state.

Note: P.L. 86-272 does not apply to services or intangible personal property.

A foreign corporation that conducts business activity in New Jersey that exceeds the protection of Public Law 86-272 is subject to the Corporation Business Tax as measured by the net income of the corporation. Even though a corporation's activities may be protected by Public Law 86-272, if it is registered or otherwise has nexus in New Jersey, it is subject to the Corporation Business Tax minimum tax and must file a Corporation Business Tax return.

In-State activities by a corporation that create nexus for Corporation Business Tax purposes and that EXCEED the protections of Public Law 86-272 include, but are not limited to:

1. Repairs, maintenance, and installations;
2. Collection or repossession activities;
3. Credit investigations;
4. Conducting training courses, seminars, or lectures for personnel (other than for personnel involved only in solicitation);
5. Providing technical assistance;
6. Resolving customer complaints for a purpose other than to ingratiate sales personnel with the customer;
7. Approving or accepting orders or securing deposits on sales;
8. Acquiring personnel for purposes other than solicitation activities;
9. Maintaining a display at a single location within New Jersey in excess of two weeks during the tax year;
10. Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;
11. Picking up or replacing damaged or returned property;
12. Owning, leasing, or maintaining in-State facilities such as a warehouse or telephone answering service;
13. Consigning tangible personal property.

More Information

General information about Corporation Business Tax and Changes to the Corporation Business Tax Act is available online.

For privilege periods ending on and after July 31, 2023, see TB-108 for information on nexus and P.L. 86-272 standards for New Jersey purposes.

See N.J.A.C. 18:7-1.6 through 1.25 for the nexus regulations.

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.

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.

Note: A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation 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

Technical Bulletin TB-85*, Tax Conformity to IRC §951A (GILTI) and IRC §250 (FDII),* is obsolete.

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. Information can be found in **TB-92***, Sourcing IRC §951A (GILTI) and IRC §250 (FDII),* which replaced TB-85(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

TB-86(R) - Revised November 1, 2023
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). P.L. 2022, c. 133 and P.L. 2023, c. 96 made various changes to the Corporation Business Tax Act impacting combined reporting. 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).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 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 elected to be taxed as C corporations for New Jersey purposes (regardless of whether the election is under N.J.S.A. 54:10A-4(ff) or N.J.S.A. 54:10A-5.22.d. See TB-105 for information about electing C corporation status.)
- Combinable Captive Insurance Companies
- Federal Qualified Subchapter S Subsidiaries that have elected to be taxed as C corporations for New Jersey purposes (regardless of whether the election is under N.J.S.A. 54:10A-4(ff) or N.J.S.A. 54:10A-5.22.d. See TB-105 for information about electing C corporation status.)
- Public utilities as defined at N.J.S.A. 54:10A-4(q) that are not excluded pursuant to N.J.S.A. 54:10A-4.6(k) (for privilege periods ending on and after July 31, 2023.)
- Captive real estate investment trusts (for privilege periods ending on and after July 31, 2023) as defined in N.J.S.A. 54:10A-4(ii). See TB-113 for more information about captive REITs.
- Captive regulated investment companies (for privilege periods ending on and after July 31, 2023) as defined in N.J.S.A. 54:A-4(jj). See TB-113 for more information about captive RICs.
- Captive investment companies (for privilege periods ending on and after July 31, 2023) as defined in N.J.S.A. 54:A-4(hh). See TB-113 for more information about captive investment companies.
- 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 or N.J.S.A. 54:10A-4.16 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. See N.J.A.C. 18:7-1.25 and N.J.A.C. 18:7- 21.1 through 21.29.

For periods ending before July 31, 2023. Although a combined group is a taxpayer and taxed as one taxpayer pursuant to N.J.S.A. 54:10A-4(h) and N.J.S.A. 54:10A-4(z); for the purposes of N.J.S.A. 54:10A-4.7(a), P.L. 86-272 protection for a member will be determined on an entity-by-entity basis. See the Notice on the Revision to Division Policy on Combined Groups and P.L. 86-272 for information concerning the 2019, 2020, and 2021 returns.

For periods ending on and after July 31, 2023 (i.e., Finnigan Years). For purposes of N.J.S.A. 54:10A-4.7.e, the group is one taxpayer. So although one member may have P.L. 86-272 protection, the combined group will not have P.L. 86-272 protection if any other member(s) exceeds the protections of P.L. 86-272 or if one of the other members has activities in New Jersey that are not protected by P.L. 86-272. Activities that are not P.L. 86-272 protected include, but are not limited to, services, sales of intangibles, sales of real estate, or sales of financial products.

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, forms NJ-CBT-1065 and Part-100 must still be filed.**

For privilege periods ending on and after July 31, 2023, unitary partnerships are not liable for paying the portion of partnership withholding (N.J.S.A. 54:10A-15.11) that is directly or indirectly (in the case of a tiered partnership) attributable the member of the combined group that is a corporate partner in the unitary partnership. The amount of the withholding attributable to the member is based on the member's distributive share of partnership income as a partner in the unitary partnership.

Statutory Excluded Entity Types:

- New Jersey S Corporations that do not elect inclusion in the combined group under N.J.S.A. 54:10A-4(ff) or did not elect to be taxed as a C corporation under N.J.S.A. 54:10A-5.22.d
- New Jersey Qualified Subchapter S Subsidiaries that do not elect inclusion in the combined group under N.J.S.A. 54:10A-4(ff) or did not elect to be taxed as a C corporation under N.J.S.A. 54:10A-5.22.d
- 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)
- Real estate investment trusts in which at least 50 percent of the shares, by vote or value, are owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion or that otherwise do not meet the definition of a captive in N.J.S.A. 54:10A-4(ii)
- Regulated investment in which at least 50 percent of the shares, by vote or value, are owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion or that otherwise do not meet the definition of a captive in N.J.S.A. 54:A-4(jj)
- Investment companies in which at least 50 percent of the shares, by vote or value, are owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion or that otherwise do not meet the definition of a captive in N.J.S.A. 54:A-4(hh)
- 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. However, per N.J.A.C. 18:7-21.3(f), a utility may petition the Director to join as a member of a combined group

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 or the Corporation Business Tax based on income 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 and New Jersey Qualified Subchapter S Subsidiaries that either do not elect inclusion in the combined group under N.J.S.A. 54:10A-4(ff) or do not elect to be taxed as C corporations for New Jersey purposes under N.J.S.A. 54:10A-5.22.d, 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

The Division requires 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 (that do not meet the definition of a captive real estate investment trust)
- Regulated Investment Companies (that do not meet the definition of a captive regulated investment company)
- Investment Companies (that do not meet the definition of a captive investment company)

These entity types are subject to the statutory minimum tax or tax on income, as applicable, if they have nexus with New Jersey.

For more details, see Subchapter 21 in the Corporation Business Tax regulations and N.J.A.C. 18:7- 21.1 through 21.29. The Division intends on amending these rules and the other parts of the Corporation Business Tax rules to reflect this and other Technical Bulletins.

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Revision Information: This Technical Bulletin was revised on November 1, 2023 to reflect the changes resulting from P.L. 2022, c. 133 and P.L. 2023, c. 96.

Guidance for Corporation Business Tax Filers on the IRC § 163(j) Limitation

TB-87(R) – August 22, 2023
Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised on August 22, 2023, to include technical corrections in the Corporation Business Tax Act that were codified in P.L. 2023, c. 96. The law changes repealed the related party addbacks but were otherwise in-line with how the Division had been treating I.R.C. §163(j). It does not change the way it is reported on New Jersey returns.

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, 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 with 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.

Additionally, New Jersey conforms to the modifications of I.R.C. §163(j) made as part of the CARES Act to the extent they are consistent with the New Jersey Corporation Business Tax Act. Specifically, New Jersey conforms to the adjusted taxable income deduction limit for the applicable periods.

The Internal Revenue Service (IRS) has posted final regulations on 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).

For privilege periods ending before July 31, 2022, N.J.S.A. 54:10A-4(k)(2)(K) states that:

(K) (i) For privilege periods beginning after December 31, 2017 and ending before July 31, 2022, 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).

(ii) For privilege periods beginning after December 31, 2017 and ending on and after July 31, 2022, the interest deduction limitation in subsection (j) of section 163 of the Internal Revenue Code (26 U.S.C. s.163), shall apply to a combined group as though the combined group filed a federal consolidated return; provided, however, for the purposes of applying the limitation in subsection (j) of section 163 of the Internal Revenue Code (26 U.S.C. s.163), with regard to affiliates that were members of the federal consolidated return but were not members of the combined group included on the New Jersey combined return, the combined group and the affiliates will also be treated as having filed one federal consolidated return.

The amount the taxpayer reported for federal purposes is the amount that must be reported for New Jersey purposes. The statutory amendments in P.L. 2023 c.96 repealed the related party addback statutes (N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4) effective July 31, 2023. For the years the related party addbacks are in effect, the 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: For periods ending before July 31, 2022, 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.

N.J.S.A. 54:10A-4.6 states in relevant part:

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.

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. For periods ending before July 31, 2023, 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. Furthermore, pursuant to N.J.S.A. 54:10A-4.6(n), the single federal consolidated return rule for purposes of I.R.C. §163(j) applies to New Jersey combined returns.

For 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 are treated 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 for the I.R.C. §163(j) limitation apply.

Note: For most New Jersey Corporation Business Tax purposes, a combined group is treated as one taxpayer pursuant to N.J.S.A. 54:10A-4(h) and N.J.S.A. 54:10A-4(z).

The members of a combined group are treated as one taxpayer for purposes of applying the 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 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 New Jersey world-wide group combined returns and New Jersey affiliated group combined returns pursuant to N.J.S.A. 54:10A-4.6(p), 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 single federal consolidated return rules 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.

For periods ending before July 31, 2023, 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 have been repealed for privilege periods ending on and after July 31, 2023. For years in which those statutes were in effect, 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 a combined group reported on the same New Jersey combined return because each provide an exception for New Jersey combined return members.

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Combined Groups: Exclusion of Double Inclusion of GILTI and Treatment of Related Party Addbacks for Privilege Periods Ending Before July 31, 2023

TB-88(R) - Revised September 12, 2023
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 for privilege periods ending before July 31, 2023. For privilege periods ending on and after July 31, 2023, see TB-110 .

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, for privilege periods ending before July 31, 2023, 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.

For privilege periods ending before July 31, 2023, 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.

For more information see N.J.A.C. 18:7-5.8; N.J.A.C. 18:7-5.19; and N.J.A.C. 18:7-21.1 through 21.29.

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 September 12, 2023, to add a link to TB-110 for information on the changes resulting from P.L. 2023, c. 96.

Combined Group Filing Methods for Privilege Periods Ending Before July 31, 2023

TB-89(R) – Revised September 5,
Tax: Corporation Busines

Combined reporting is mandatory in New Jersey for tax years ending on and after July 31, 2019 (this applies to a taxpayer whose tax year begins on and after August 1, 2018, if a full 12-month tax year of the managerial memb begins August 1, 2018, and ends July 31, 2019). This technical bulletin discusses the combined group filing meth and allocation methods for privilege periods ending **before July 31, 2023**. **For privilege periods ending on an after July 31, 2023, see TB-109.**

Combined Return Methods

A combined return is a filing method for a group of business entities in a unitary business. Determining the com group members involves imposing certain statutory limitations, which affect the treatment of income, allocatior 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 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 (se 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 b statute. See *Affiliated Group Election* below.

The elective combined return methods were created by statute for the convenience of taxpayers. Therefore, regarc whether the New Jersey combined return is filed on a water's-edge basis, world-wide group basis, or affiliated gro 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 ca 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 taxpayer has nexus with New Jersey and the managerial member of the combined return does not make th 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 alloca methods derive their names from California Franchise Tax Board cases[†]. These methods are differentiated by the 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 denomi 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 members that have nexus with New Jersey.

The *Finnigan* method includes all New Jersey allocation factor attributes in the numerator that were derived fron the members of the combined group, regardless of whether a member has nexus with New Jersey.

[†]*Matter of Joyce, Inc.,* 1966 Cal Tax LEXIS 18; and *Matter of Finnigan Corp.,* 1988 Cal Tax LEXIS 28

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.

Note: P.L. 2023, c.96 amended the combined group allocation provisions so that *Finnigan* is consistently applied to all combined return filing methods for privilege periods ending on and after July 31, 2023. See TB-109 for more information.

The Water's-Edge Group

For privilege periods beginning before July 31, 2023, the combined group determined on a water's-edge basis takes 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).

*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, but is not limited to, 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.

Note: P.L. 2023, c.96 amended the water's-edge inclusion categories so that more entities are included in the group for privilege periods ending on and after July 31, 2023. See TB-109 for more information.

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. **Although a combined group is a taxpayer and taxed as one taxpayer pursuant to N.J.S.A. 54:10A-4(h) and N.J.S.A. 54:10A-4(z); for the purposes of N.J.S.A. 54:10A-4.7(a), P.L. 86-protection for a member will be determined on an entity-by-entity basis. See the Notice on the Revision to Division Policy on Combined Groups and P.L. 86-272 for information concerning the 2019, 2020, and 2021 returns.**

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 for reasonable cause (e.g., a substantial change in ownership or members of the combined group). However, a revocation request can only be prospective. Once a return is filed, the election cannot be amended. 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 valid New Jersey 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). See TB-109 for information on for privilege periods ending on and after July 31, 2023.

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, but before July 31, 2023). 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, 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 non-U.S. corporations of their New Jersey Corporation Business Tax liability. Thus, any 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.

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 method. 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 for 2019. No amended returns changing the election or use of the mandatory default method will be permitted for the 2019 privilege period.

For more information on Non-U.S. corporations and international tax treaties see:
Income Excluded Pursuant to a Tax Treaty and CBT Returns

More Information on Nexus

Additional information on nexus is available on the Division's website, see TB-79(R), *Nexus for Corporation Business Tax for Privilege Periods Ending Before July 31, 2023*; 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).

See N.J.A.C. 18:7-21.1 through 21.29 for more information.

Note: For privilege periods ending on and after July 31, 2023, see TB-108, Nexus for Corporation Business Tax for Privilege Periods Ending on and after July 31, 2023, for more information.

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 September 5, 2023, to reflect the change in combined group filing methods as a result of P.L. 2023, c.96. This technical bulletin is only accurate for privilege periods ending before July 31, 2023. For information on combined group filing methods for privilege periods ending on and after July 31, 2023, see TB-109.

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(R) – Revised November 1, 2023
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.

Beginning with Tax Year 2023, Form BFC-1 is discontinued. These filers will use For CBT-100 or CBT-100U going forward. Banking corporations and financial business corporations that are members of a combined group have been required to be included as a member reported on the CBT-100U, so the discontinuation of the form does not impact combined filers. However, the webpage also includes information about changing EFT payment codes, which may impact combined filers. For more information, see *BFC-1 Returns Being Replaced with Form CBT-100.*

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 (checking the box on page 1 to indicate that it is filling as a "BFC-1-F Filer") 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 return (checking the box on page 1 to indicate that it is filling as a "BFC-1-F Filer") 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.

For more information, see N.J.A.C. 18:7-1.14, N.J.A.C. 18:7-12.1, and N.J.A.C. 18:7-21.25. For information on Captive Investment Companies, Real Estate Investment Trusts, and Regulated Investment Companies and Combined Groups, see TB-113.

Revision Information: This Technical Bulletin was revised on November 1, 2023, to add a link to the notice posted on the Division of Taxation's website regarding the discontinuation of Form BFC-1, which also includes information about changing EFT payment codes.

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.

SOURCING IRC §951A (GILTI) and IRC §250 (FDII) for Privilege Periods Ending Before July 31, 2023

TB-92(R) - Revised September 12, 2023
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 Replaced TB-85(R) but only applies to privilege periods ending before July 31, 2023.

P.L. 2023, c.96, which was signed into law on July 3, 2023, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT), Gross Income Tax Act (GIT), and other miscellaneous requirements, which affect the treatment for Global Intangible Low Taxed Income (GILTI), the I.R.C. s. 250(a) deduction, and Foreign-derived intangible income (FDII) for privilege periods ending on and after July 31, 2023. For information on these changes, see TB-110.

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) classified certain income that has always been included in the tax base for both Federal and New Jersey tax purposes into a special category, "Foreign Derived Intangible Income" (FDII), in order to provide corporate taxpayers an export subsidy deduction. Neither GILTI nor FDII are treated as dividends or deemed dividends for federal purposes.

For privilege periods ending before July 31, 2023, there was 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)). While FDII has been newly classified under the IRC for the purposes of qualifying for the export subsidy deduction, the income has always been in the tax base for both Federal and New Jersey tax purposes as part of ENI. Therefore, GILTI and FDII are included in ENI. GILTI and FDII are not treated as dividends or deemed dividend income for privilege periods ending before July 31, 2023; they were separate categories of income and were 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, was not applicable for privilege periods ending before July 31, 2023.

Note: Prior to the return for 2019, FDII and GILTI were 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. On the 2019-2022 returns, GILTI and FDII were 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 (Note: P.L. 2023, c. 96, repealed N.J.S.A. 54:10A-4.15).

Sourcing of GILTI and FDII under the New Jersey CBT Act

GILTI and FDII are hybrids of different income items. GILTI is 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 of such sourcing may not reflect a fair and equitable allocation. While FDII has been newly classified under the IRC as a special category of income, FDII continues to be classified, sourced, and allocated under existing New Jersey statutes and regulations. Generally speaking, GILTI and FDII are integrated with the worldwide business of the taxpayer.

GILTI and FDII, 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 amounts are included in the numerator (if applicable) and the denominator for privilege periods ending before July 31, 2023. This is to help prevent distortion to the allocation factor and arrive at a reasonable and equitable determination of New Jersey tax.

Barring an unusual set of facts and circumstances, the net GILTI will be included in the denominator only, for most taxpayers. Outside of hypothetical scenarios, the Division is not aware of any real-life situations that would require the net GILTI related amounts to be included in the numerator of the allocation factor. If a situation arises in which the net GILTI is included in the numerator based on the taxpayer's unique facts and circumstances, the taxpayer is not precluded from requesting discretionary relief under N.J.A.C. 18:7-8.3 and N.J.A.C.18:7-10.1.

Generally, 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. However, 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, the CFC's receipts are included in the denominator of the combined group allocation factor. 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. 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 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 and the FDII, and the corresponding IRC §250(a) deductions, must be reported on Schedule A. Controlled foreign corporations are 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 is excluded from the combined group's

ENI, as prescribed in TB-88(R), 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 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, CFC income, and FDII, 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 GILTI.

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 or FDII, 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 **will not complete the Schedule A-6 that was contained in the original package of forms for tax year 2018**. 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 and the net amount of the FDII, 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, and corresponding GILTI and FDII deductions, accordingly.

The net GILTI will almost exclusively be included in the denominator of the allocation factor. In rare situations that may present themselves in the future where either the net GILTI or the net FDII are included in the numerator based on the taxpayer's unique facts and circumstances, the taxpayer is not precluded from requesting discretionary relief under N.J.A.C. 18:7-8.3 and N.J.A.C.18:7-10.1.

For more information see N.J.A.C. 18:7-5.8; N.J.A.C. 18:7-5.19; and N.J.A.C. 18:7-21.1 through 21.29.

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Revision Information: This Technical Bulletin was revised on September 12, 2023, to indicate that P.L. 2023, c.96, affected the treatment for Global Intangible Low Taxed Income (GILTI), the I.R.C. s. 250(a) deduction, and Foreign-derived intangible income (FDII) for privilege periods ending on and after July 31, 2023. For information on these changes, see TB-110.

The Unitary Business Principle and Combined Returns

TB-93(R) - Revised August 14, 2023
Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised on August 14, 2023, to include the broadened definition of unitary business in N.J.S.A. 54:10A-4(gg) of the Corporation Business Tax Act, which was codified in P.L. 2023, c. 96.

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). P.L. 2023, c.96, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT). This Technical Bulletin explains the unitary business principle and the definition of unitary business for New Jersey Corporation Business Tax purposes

For periods ending on and after July 31, 2023 (highlighting added for emphasis) the definition of a unitary business is defined in N.J.S.A. 54:10A-4(gg) as:

> 'Unitary business' means, for privilege periods ending before July 31, 2023, 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. For privilege periods ending on and after July 31, 2023,"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, or 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.

As a result of the law change from an AND to an OR in the definition of a unitary business, more entities may be unitary and required to be included in the combined group. However, the tests (discussed below) for determining whether a unitary business relationship exists remain the same.

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. Additionally, the Division has published regulations on what constitutes a unitary business (see N.J.A.C. 18:7-21.2). 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.

For more information on combined reporting and the unitary business principle see N.J.A.C. 18:7-21.1 through 21.29.

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 Net Operating Loss Regime for Tax Years Ending on and After July 31, 2019

TB-94(R) – Revised October 11, 2023
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). P.L. 2023, c. 96, changed to the New Jersey Corporation Business Tax rules related to the dividend exclusion and the historic ordering of the net operating loss deduction, dividend exclusion, and international banking facility deduction. This Technical Bulletin explains various aspects of the net operating loss regime in general. Information for members of combined groups filing New Jersey combined returns see TB-95(R), *Net Operating Losses and Combined Groups*

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), as amended by P.L. 2023, c. 96 (effective for privilege periods ending on and after July 31, 2023), 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. **For privilege periods ending on and after July 31, 2023, for the purposes of computing taxable net income for a current privilege period, the amount of the prior net operating loss conversion carryover shall be subtracted from entire net income allocated to this State, after the application of paragraphs (4) and (5) of subsection (k) of this section against current privilege period income when the entire net income allocated to this State for the privilege period is greater than zero.**
>
> (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), as amended by P.L. 2023, c. 96 (effective for privilege periods ending on and after July 31, 2023), 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. For privilege periods ending

before July 31, 2023, 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. **For privilege periods ending on and after July 31, 2023, the portion of the loss that 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, after the application of paragraphs (4) and (5) of subsection (k) of this section allocated to this State; provided, however, for the purpose of computing taxable net income for the privilege period, the net operating loss carryover shall only be subtracted from entire net income allocated to this State when the entire net income allocated to this State is greater than zero.**

(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 for privilege periods ending before July 31, 2023, computed without the exclusions in paragraphs (4) and of subsection (k) of this section, and **for privilege periods ending on and after July 31, 2023, computed after the application of 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), as amended by P.L. 2023, c. 96 (effective for privilege periods ending on and after July 31, 2023), 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; provided, however, for privilege periods ending on and after July 31, 2023, when subtracting any net operating losses calculated pursuant to subsection (v) of this section or the combined group net operating losses calculated pursuant to subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6), the limitation set forth in paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172(a)(2)) shall apply, except that August 1, 2023 is substituted for the reference to January 1, 2018 in subparagraph (A) of paragraph (2) of subsection a. of Internal Revenue Code Section 172 (26 U.S.C. s.172), and July 31, 2023 is substituted for the reference to December 31, 2017 in subparagraph (B) of paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172). For privilege periods ending on and after July 31, 2023, for a combined group, before subtracting the prior net operating loss conversion carryforwards and subtracting the net operating losses of the combined group when computing the total taxable net income, the combined group shall first add together the allocated entire net income from the unitary business of the combined group and the

portion of allocated entire net income of members with activities independent of the group, and then subtract the prior net operating loss conversion carryforwards and then the net operating losses."

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 unused and unexpired net operating loss carryovers that were calculated pursuant to N.J.S.A. 54:10A-4(k)(6) are required 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 net operating loss for the current year 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.

For privilege periods ending on and after July 31, 2023, PNOLs are subtracted after deducting the current year dividend exclusions and international banking facility deduction, but only if allocated entire net income is greater than zero. This change to the historic ordering is prospective only. Taxpayers are not permitted adjust NOLs and PNOLs from privilege periods ending before July 31, 2023, using the law change from P.L. 2023, c.96.

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.

For privilege periods beginning on and after January 1, 2020, the provisions of the Internal Revenue Code, the Federal rules, limitations, and restrictions, governing Federal net operating losses and Federal net operating loss carryovers for 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, apply to New Jersey net operating loss carryovers pursuant to N.J.S.A. 54:10A-4(v) and the New Jersey net operating loss carryover provisions of N.J.S.A. 54:10A-4.6(h). The Federal rules and regulations governing Federal consolidated return net operating losses and net operating loss carryovers apply to New Jersey net operating loss carryover provisions at 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 to the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

For information on PNOLs and NOLs with certain mergers or acquisitions, see TB-102(R), Net Operating Losses (NOLs) and Post Allocation Net Operating Losses (PNOLs) with Certain Mergers & Acquisitions.

For privilege periods ending on and after July 31, 2023, the dividend exclusion and international banking facility deduction are subtractions that occur *before* determining if a taxpayer has a net operating loss that can be carried over for use in a future privilege period. Net operating loss carryover deductions are subtracted after deducting the current year dividend exclusions and international banking facility deduction but only if allocated entire net income is greater than zero. There is an 80% deduction limitation in I.R.C. s. 172(a)(2) that applies prospectively for New Jersey purposes. When a taxpayer uses NOLs generated in privilege periods beginning after July 31, 2023, these NOLs can only be deducted up to 80% of the remaining allocated entire net income after first deducting the PNOLs and pre-August 1, 2023 NOLs. The Form 500 has been revised to take this into account, starting with the 2023 CBT returns. The 80% deduction limitation does not apply to PNOLs or certain NOLs (generated in periods beginning before August 1, 2023). A combined group with allocated entire net income can deduct up to 100% of the PNOLs (to reduce the allocated entire net income) but cannot exceed the entire net income. If there is still allocated entire net income after deducting the PNOLs, the taxpayer can subtract up to 100% of the Pre-August 1, 2023 NOL carryovers (to reduce the allocated entire net income) but cannot exceed allocated entire net income. NOLs and PNOLs cannot be used to create or increase a current year loss. See TB-111, *Changes to the Dividend Exclusion and the Historic Ordering of Net Operating Losses, the Dividend Exclusion, and the International Banking Facility Deduction*.

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.

Non-U.S. Corporation Losses and Expenditures

Separate Return Filer That is a Non-U.S. Corporation. A non-U.S. corporation that is incorporated or formed in a foreign nation with a **comprehensive tax treaty** with the United States that is a separate return filer for New Jersey purposes does not include in entire net income any item of income or loss excluded or exempted from federal taxable income under the terms of the treaty and no other deduction, exclusion, or elimination is permitted for such income and loss items. This also means that the receipts attributable to such excluded items are excluded from the allocation factor. Thus, the corporation's net operating loss/loss carryover does not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(A).

A non-U.S. corporation that **filed a federal return** only includes the effectively connected income or loss reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), in entire net income. The corporation must take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the corporation's net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B).

A non-U.S. corporation that **did not file a federal return** but has nexus with New Jersey, must include its non-treaty protected U.S. source income or loss of what otherwise would be effectively connected income or loss if the corporation had been conducting a business effectively connected to the United States, as modified by the provisions of the Corporation Business Tax Act. The corporation will also take into account only items of expense and allocation factor receipts attributable to such income and not the items attributable to income that are excluded from entire net income. This means that the income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the corporation's net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B).

Affiliated Group Combined Group Post-Allocation Net Operating Losses/Loss Carryovers and Members that are Non-U.S. Corporations. A non-U.S. corporation that is incorporated or formed in a foreign nation with a **comprehensive tax treaty** with the United States that is a member of an New Jersey affiliated group combined return does not include in entire net income any item of income or loss excluded or exempted from federal taxable income under the terms of the treaty and no other deduction, exclusion, or elimination is permitted for such income and loss items. This also means that the receipts

attributable to such excluded items are excluded from the allocation factor. Thus, the affiliated group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(A) and N.J.S.A. 54:10A-4.6.b.

A non-U.S. corporation that **filed a federal return** that is a member of a New Jersey affiliated group combined return generally only includes in entire net income the member's effectively connected income or loss reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act. The member and the combined group will also take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income, and the receipts are excluded from the allocation factor. Thus, the affiliated group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B) and N.J.S.A. 54:10A-4.6.b.

Water's Edge Combined Group Post-Allocation Net Operating Losses/Loss Carryovers and Members That are Non-U.S. Corporations. A non-U.S. corporation that is incorporated or formed in a foreign nation with a **comprehensive tax treaty** with the United States that is a member of a New Jersey water's-edge group combined return does not include in entire net income any item of income or loss excluded or exempted from federal taxable income under the terms of the treaty, and no other deduction, exclusion, or elimination will be permitted for such income and loss items. This also means that the receipts attributable to such excluded items are excluded from the allocation factor. Thus, the water's-edge group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(A) and N.J.S.A. 54:10A-4.6.b.

A non-U.S. corporation **that filed a federal return** and that is a member of a New Jersey water's-edge group combined return generally only includes in entire net income the member's effectively connected income or loss reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act. The member and the combined group will also take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the water's-edge group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B) and N.J.S.A. 54:10A-4.6.b.

A non-U.S. corporation that **did not file a federal return** and that is a member of a New Jersey water's-edge group combined return generally only includes in entire net income its non-treaty protected U.S. source income or loss of what otherwise would be effectively connected income or loss if the member had been conducting a business effectively connected to the United States, as modified by the provisions of the Corporation Business Tax Act. The member and the combined group will also take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the water's-edge group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18)(B) and N.J.S.A. 54:10A-4.6.b.

World-wide Combined Group Post-Allocation Net Operating Losses/Loss Carryovers and Members that are Non-U.S. Corporations. When making a world-wide group election, the combined group must include all members and 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). The combined group includes all of the income and attributes of such members without regard to any exemption or

exclusion from federal taxable income under the terms of a tax treaty. The members that are non-U.S. corporations are treated the same as U.S. corporations and allowed any federal deductions that are allowed under the Corporation Business Tax Act. Thus, world-wide losses and expenses are includable even if they were not included for federal purposes or they had been protected by treaty. Therefore the combined group net operating loss/loss carryover would be based on world-wide losses. See N.J.S.A. 54:10A-4(kk) and N.J.S.A. 54:10A-4.11.

Net Operating Loss Adjustments

P.L. 2023, c.96 clarified the Director's ability to make adjustments to net operating losses for closed years beginning with net operating losses generated in privilege periods ending on or after July 31, 2022, but limited the ability to make adjustments to 10 years after the return was filed.

More Information

For more information see N.J.A.C. 18:7-5.14; N.J.A.C. 18:7-5.21; N.J.A.C. 18:7-21.10; N.J.A.C. 18:7-21.11; and N.J.A.C. 18:7-21.27.

For more information on the changes to the ordering rules for net operating losses and dividends, see TB-111, *Changes to the Dividend Exclusion and the Historic Ordering of Net Operating Losses, the Dividend Exclusion, and the International Banking Facility Deduction.*

Information on net operating losses for combined groups can be found in TB-95, *Net Operating Losses and Combined Groups.*

The Division of Taxation is in the process of updating the 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 October 11, 2023, to include the changes affecting net operating loss deductions as a result of the enactment of P.L. 2023, c.96.

Net Operating Losses and Combined Groups

TB-95(R) - Revised October 11, 2023

Tax: Corporation Business Tax

P.L. 2018, c. 48, and P.L. 2018, c. 131, (and subsequently amended by P.L. 2020, c. 118, and P.L. 2023, c. 96) 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 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. P.L. 2023, c. 96, changed to the New Jersey Corporation Business Tax rules related to the dividend exclusion and the historic ordering of the net operating loss deduction, dividend exclusion, and international banking facility deduction. 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(R), *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.)

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 loss conversion carryovers (PNOLs), and combined group post-allocation net operating loss carryovers. All combined groups must determine entire net income, current year combined group net operating losses, prior net operating loss carryovers, combined group post-allocation net operating loss carryovers, tax credits, and other tax attributes in accordance with N.J.S.A. 54:10A-4.6. For more information, see N.J.A.C. 18:7-5.21 and N.J.A.C. 18:7-21.1 through 21.29.

Prior Net Operating Loss Conversion Carryovers (PNOLs) and Post-Allocation Net Operating Losses (NOLs) in a Combined Return Context. N.J.S.A. 54:10A-4.6, as amended by P.L. 2020, c. 118 and P.L. 2023, c. 96, 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) For privilege periods ending before July 31, 2023, a 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. For privilege periods ending on and after July 31, 2023, the remaining balance of prior net operating loss conversion carryover deductions of the members of the combined group shall be pooled together and shall be allowed to offset the entire net income allocated to this State of either: the combined group for which the corporation is a member; or the corporation that created the prior net operating loss conversion carryover, provided that the corporation departs the combined group before the corporation's respective prior net operating loss conversion carryover has been completely used.

(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 before the net operating loss carryover computed under subsection h. of this section.

(3) For privilege periods ending before July 31, 2023, 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. **For privilege periods ending on and after July 31, 2023, the director shall provide regulations establishing rules on pooling members' prior net operating loss conversion carryovers and tracing members' prior net operating loss conversion carryovers in the event a member departs the combined group before the member's prior net operating loss conversion carryovers are completely used.**

(4) For privilege periods ending before the members of a combined group pool their prior net operating loss conversion carryovers for usage by the combined group, a member of the 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 combined group or by a member of the 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)(a) 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), but ending before July 31, 2023, 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).

(b) For privilege periods ending on and after July 31, 2023, if the computation of a combined group's entire net income allocated to this State results in a net operating loss, a combined 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)(a) 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), but ending before July 31, 2023, 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.

(b) Where a combined group has a net operating loss carryover derived from a loss incurred by the combined group in a privilege period ending on or after July 31, 2023, then the combined group may use the net operating loss carryover. Any amount of net operating loss carryover that is deducted by the combined group shall reduce the amount of net operating loss carryover that may be carried over by the combined group.

(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 for privilege periods ending before July 31, 2023. For privilege periods ending on and after July 31, 2023, such carryover may (a) be pooled with the combined group net operating loss carryover for use by the combined group or (b) be used by the taxable member that generated the carryover for that member's activities that are independent of the unitary business of the combined group; provided, however, **the combined group and the members of the combined group shall use tracing protocols for all net operating loss carryovers, as may be prescribed by regulations promulgated by the director.**

(4) A net operating loss carryover or, for privilege periods ending on and after July 31, 2023, a combined group 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.

(6) For privilege periods ending on and after July 31, 2023, each taxable member of a combined group shall track that member's proportionate share of any combined group net operating loss carryovers used.

...

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. [*emphasis added*]

Taxable Net Income is defined in N.J.S.A. 54:10A-4(w), as amended by P.L. 2023, c. 96 (effective for privilege periods ending on and after July 31, 2023), states that: "'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; provided, however, for privilege periods ending on and after July 31, 2023, when subtracting any net operating losses calculated pursuant to subsection (v) of this section or the combined group net operating losses calculated pursuant to subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6), the limitation set forth in paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172(a)(2)) shall apply, except that August 1, 2023 is substituted for the reference to January 1, 2018 in subparagraph (A) of paragraph (2) of subsection a. of Internal Revenue Code Section 172 (26 U.S.C. s.172), and July 31, 2023 is substituted for the reference to December 31, 2017 in subparagraph (B) of paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172). **For privilege periods ending on and after July 31, 2023, for a combined group, before subtracting the prior net operating loss conversion carryforwards and subtracting the net operating losses of the combined group when computing the total taxable net income, the combined group shall first add together the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group, and then subtract the prior net operating loss conversion carryforwards and then the net operating losses."** [*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(R), *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 total combined group amount of the allocated entire net income before the PNOLs and NOLs as reported on 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.

For periods ending before July 31, 2023 – If the total combined group amount of the allocated entire net income before the PNOLs and NOLs as reported on the New Jersey combined return was positive (i.e., income), a member could use their own PNOLs to offset their portion of the group's allocated entire net income. Members were not permitted to share PNOLs pursuant to N.J.S.A. 54:10A-4.6. The member was required to apply its own PNOLs before it could apply a combined group post-allocation net operating loss conversion carryover. However, if the member's portion of allocated entire net income was still more than zero after subtracting the PNOLs, the member could 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.

For periods ending on and after July 31, 2023 – The remaining balance of the unused unexpired PNOLs of the group members are pooled to be used by the combined group against the group's allocated entire net income. If the total combined group amount of the allocated entire net income before the PNOLs and NOLs as reported on the New Jersey combined return is positive (i.e., income), the group can use the PNOLs to offset the group's allocated entire net income. The combined group must apply the PNOLs before applying a combined group post-allocation net operating loss conversion carryover. However, if the group's allocated entire net income is still greater than zero after subtracting the PNOLs, the group can then subtract the combined group's post-allocation net operating loss carryovers. Since the PNOLs are pooled, combined group members are no longer permitted to buy and sell PNOLs to each other. The combined group and the members of the combined group are required to keep track of all PNOLs and NOLs of the members and the combined group pursuant to N.J.S.A. 54:10A-4.6.g(3) and N.J.S.A. 54:10A-4.6.h(3).

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 allocated entire net income before the PNOLs and NOLs on the New Jersey return is negative (i.e., a loss), that amount is the combined group's post-

allocation net operating loss that is carried over by the combined group and its taxable members. For privilege periods ending on and after July 31, 2023, the post-allocation net operating losses/loss carryovers are applied on a group level (i.e., pooled). These losses can be carried over for a maximum of 20 privilege periods following the year the loss was generated. If a taxable member leaves the combined group, they are entitled to their respective share of the combined group post-allocation net operating loss in addition to their post-allocation net operating losses that were not from the combined group, this amount becomes their carryover for subsequent periods. The combined group cannot use the portion of the net operating loss carryovers of a member that left the group.

Note: For privilege periods ending *before* July 31, 2023, combined group net operating losses and combined group net operating loss carryovers could not offset a member's income from activities that were independent of the unitary business of the combined group. Conversely, net operating losses and net operating loss carryovers generated by a member's activities that were independent of the combined group generally could not offset the combined group entire net income. However, for privilege periods ending on and after July 31, 2023, this is no longer true. PNOLs and NOLs are pooled and applied on a group level.

For privilege periods beginning on and after January 1, 2020 – The provisions of the Internal Revenue Code, the Federal rules, 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, apply to New Jersey net operating loss carryovers pursuant to N.J.S.A. 54:10A-4(v) and the New Jersey net operating loss carryover provisions of N.J.S.A. 54:10A-4.6.h. The federal rules and regulations governing Federal consolidated return net operating losses and net operating loss carryovers apply to New Jersey net operating loss carryover provisions at 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 to the extent consistent with the Corporation Business Tax Act. See also N.J.S.A. 54:10A-4.5.c and N.J.S.A. 54:10A-4.6.m.

For information on PNOLs and NOLs with certain mergers or acquisitions, see TB-102(R), *Net Operating Losses (NOLs) and Post Allocation Net Operating Losses (PNOLs) with Certain Mergers & Acquisitions*.

For periods ending before July 31, 2023 – Combined group net operating losses and combined group net operating loss carryovers could not be used to offset a member's income from activities that were independent of the unitary business of the combined group. Net operating losses and net operating loss carryovers generated by a member's activities that were independent of the combined group generally could not be used to offset the combined group entire net income.

For privilege periods ending on and after July 31, 2023 – The dividend exclusion and international banking facility deduction are subtractions that occur before determining if a taxpayer has a net operating loss that can be carried over for use in a future privilege period. The PNOL and NOL carryover deductions are subtracted after deducting the current year dividend exclusions and international banking facility deduction but only if allocated entire net income is greater than zero. The combined group must add together the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group and then subtract the prior net operating loss conversion carryforwards and then the net operating losses. The combined group and the members of the combined group are required to keep track of all PNOLs and NOLs of the members and the combined group pursuant to N.J.S.A. 54:10A-4.6.g(3) and N.J.S.A. 54:10A-4.6.h(3).

In the context of a combined return, the 80% deduction limitation in I.R.C. s. 172(a)(2) applies at the combined group level. When the combined group uses the NOLs (of the members or the group) generated in privilege periods beginning after July 31, 2023, these NOLs can only be deducted up to 80%

of the remaining allocated entire net income after first deducting the PNOLs and pre-August 1, 2023 NOLs. The Form 500U has been revised to take this into account beginning in Tax Year 2023. The 80% deduction limitation does not apply to PNOLs or NOLs generated in periods beginning before August 1, 2023. A combined group with allocated entire net income can deduct up to 100% of the PNOLs (to reduce the allocated entire net income) but the PNOLs deducted cannot exceed the allocated entire net income. If there is still allocated entire net income after deducting the PNOLs, the combined group can deduct up to 100% of the pre-August 1, 2023, NOL carryovers (to reduce the allocated entire net income) but the pre-August 1, 2023, NOLs cannot exceed allocated entire net income. NOLs and PNOLs cannot be used to create or increase a current year loss.

Sharing vs. Pooling of Net Operating Losses

For Privilege Periods *Ending Before July 31, 2023*, Sharing Combined Group Post-Allocation Net Operating Losses/Loss Carryovers

For privilege periods ending before July 31, 2023, taxable members could ***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 became a taxable member of the combined group, then the other taxable members could share their respective portion of the combined group post-allocation net operating loss carryovers with that new taxable member. If a taxable member left the combined group, the taxable member took its portion of the combined group post-allocation net operating loss carryovers for its own use outside the combined group, and the combined group was not allowed to use that portion of the combined group post-allocation net operating loss carryovers.

When a new taxpayer joins an established combined group, the new member brings with them any separate post-allocation net operating loss carryovers that they have from previously filed New Jersey Corporation Business Tax returns. For privilege periods ending before July 31, 2023, these carryovers could only be used by the new member and could not 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 could not 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 was positive for the year (any privilege periods ending before July 31, 2023), 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 had income from separate activities that were reported on Schedule X, the member used its separate post-allocation net operating loss carryovers to offset that income.

Previously, combined group post-allocation net operating loss carryovers could only be shared with members that were part of the same combined New Jersey return when the losses were generated. Thus, if multiple members joined 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 could 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.

This has changed for privilege periods ending on or after July 31, 2023, see below for more information.

For Privilege Periods *Ending on and After July 31, 2023*, Pooling Combined Group and Member Post-Allocation Net Operating Losses/Loss Carryovers

The combined group post-allocation net operating losses and the net operating loss carryovers of the taxable members of the combined group are pooled together with the combined group net operating

loss carryover for use by the combined group or by the taxable member that generated the net operating loss carryover for such member's activities that are independent of the unitary business of the combined group.

When a new taxpayer joins an established combined group that is filing New Jersey combined returns, the new member's post-allocation net operating loss carryovers are pooled with the combined group's post-allocation net operating loss carryovers.

The taxable members of the combined group must track their proportionate share of the combined group net operating loss carryovers used. If the taxable member departs the combined group and continues to be a taxpayer for the purposes of the Corporation Business Tax Act, the taxable member is entitled to take its respective portion of the combined group net operating loss carryover. The combined group cannot use such portion of the net operating loss carryover.

The combined group must add the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group. Information on deducting PNOLs and NOLs and the 80% NOL deduction limitation for privilege periods ending on and after July 31, 2023, can be found in the *Combined Group Post-Allocation Net Operating Losses/Loss Carryovers* section, above.

Calculation of NOLs in Relation to the Combined Group Filing Method Used

Affiliated Group Basis Combined Returns and Post-Allocation Net Operating Losses/Loss Carryovers for Privilege Periods Ending on and After July 31, 2023

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 Schedule X is inapplicable. In years that the affiliated group basis combined return is filed, there would be the pool for PNOLs and the pool for post-allocation net operating losses and post-allocation net operating loss carryovers.

A non-U.S. corporation that is incorporated or formed in a foreign nation with a **comprehensive tax treaty** with the United States that is a member of an New Jersey affiliated group combined return does not include in entire net income any item of income or loss excluded or exempted from federal taxable income under the terms of the treaty and no other deduction, exclusion, or elimination is permitted for such income and loss items. This also means that the receipts attributable to such excluded items are excluded from the allocation factor. Thus, the affiliated group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18) and N.J.S.A. 54:10A-4.6.b.

A non-U.S. corporation **that filed a federal return** that is a member of a New Jersey affiliated group combined return generally only includes in entire net income the member's effectively connected income or loss reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act. The member and the combined group will also take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income, and the receipts are excluded from the allocation factor. Thus, the affiliated group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18) and N.J.S.A. 54:10A-4.6.b.

Water's Edge Combined Group Post-Allocation Net Operating Losses/Loss Carryovers and Members that are Non-U.S. Corporations. A non-U.S. corporation that is incorporated or formed in a foreign

nation with a **comprehensive tax treaty** with the United States that is a member of a New Jersey water's-edge group combined return does not include in entire net income any item of income or loss excluded or exempted from federal taxable income under the terms of the treaty, and no other deduction, exclusion, or elimination will be permitted for such income and loss items. This also means that the receipts attributable to such excluded items are excluded from the allocation factor. Thus, the water's-edge group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18) and N.J.S.A. 54:10A-4.6.b.

A non-U.S. corporation **that filed a federal return** and that is a member of a New Jersey water's-edge group combined return generally only includes in entire net income the member's effectively connected income or loss reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act. The member and the combined group will also take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the water's-edge group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18) and N.J.S.A. 54:10A-4.6.b.

A non-U.S. corporation that **did not file a federal return** and that is a member of a New Jersey water's-edge group combined return generally only includes in entire net income its non-treaty protected U.S. source income or loss of what otherwise would be effectively connected income or loss if the member had been conducting a business effectively connected to the United States, as modified by the provisions of the Corporation Business Tax Act. The member and the combined group will also take into account only items of expense and allocation factor receipts attributable to such income, and not the items attributable to income that are excluded from entire net income. This means that income that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the receipts are excluded from the allocation factor. Thus, the water's-edge group's combined group net operating loss/loss carryover would not include excluded losses or excluded expenses. See N.J.S.A. 54:10A-4(k)(18) and N.J.S.A. 54:10A-4.6.b.

World-Wide Combined Group Post-Allocation Net Operating Losses/Loss Carryovers and Members that are Non-U.S. Corporations. When making a world-wide group election, the combined group must include all members and 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). The combined group includes all of the income and attributes of such members without regard to any exemption or exclusion from federal taxable income under the terms of a tax treaty. The members that are non-U.S. corporations are treated the same as U.S. corporations and allowed any federal deductions that are allowed under the Corporation Business Tax Act. Thus, world-wide losses and expenses are includable even if they were not included for federal purposes or they had been protected by treaty. Therefore, the combined group net operating loss/loss carryover would be based on world-wide losses. See N.J.S.A. 54:10A-4(kk) and N.J.S.A. 54:10A-4.11.

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 Schedule A of the CBT-100U.

For privilege periods ending *before* July 31, 2023, if a partially included member had an allocated entire net loss on the Schedule X, this loss became the member's post-allocation net operating loss from its activities. This was a separate net operating loss consistent with N.J.S.A. 54:10A-4(v) and was required to be used as if it was a separate return loss. The member could not 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 could only be claimed and/or used on Schedule X while the member was part of the combined group.

If a partially included member had allocated entire net income on Schedule X, the member could use their PNOLs to offset the separate activity income. If the member's Schedule X allocated entire net income was still greater than zero after subtracting its PNOLs, the member could then subtracts 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.

For privilege periods ending on and after July 31, 2023, the combined group post-allocation net operating losses and the net operating loss carryovers of the taxable members of the combined group are pooled together with the combined group net operating loss carryover for use by the entire combined group, but may also be used by the taxable member that generated the net operating loss carryovers independent of the combined group. The combined group adds together the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group, then subtracts the PNOLs and NOLs accordingly. Information on deducting PNOLs and NOLs and the 80% NOL deduction limitation for privilege periods ending on and after July 31, 2023, can be found in the Combined Group Post-Allocation Net Operating Losses/Loss Carryovers section, above.

Net Operating Loss Adjustments

N.J.S.A. 54:49-6 clarified the Director's ability to make adjustments to net operating losses for closed years beginning with net operating losses generated in privilege periods ending on or after July 31, 2022, but limited the ability to make adjustments to 10 years after the return was filed.

More Information

For more information see N.J.A.C. 18:7-5.14; N.J.A.C. 18:7-5.21; N.J.A.C. 18:7-21.10; N.J.A.C. 18:7-21.11; and N.J.A.C. 18:7-21.27.

For more information see TB-111, *Changes to the Dividend Exclusion and the Historic Ordering of Net Operating Losses, the Dividend Exclusion, and the International Banking Facility Deduction.*

The Division of Taxation is in the process of updating the 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 October 11, 2023, to include the changes affecting net operating loss deductions as a result of the enactment of P.L. 2023, c.96.

Net Deferred Tax Liability Deduction and Combined Returns

TB-96(R) – Revised September 19, 2023
Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised on September 19, 2023, to include law changes that govern the Net Deferred Tax Liability Deduction that were codified in P.L. 2023, c. 96. The law does not change when taxpayers can begin taking the deduction or the full amount of the deduction but does affect the amount that can be claimed and the amount of privilege periods over which the deduction will be claimed.

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. P.L. 2023, c. 96, made a series of amendments to the deduction. This bulletin explains the Net Deferred Tax Liability Deduction and addresses specific questions that the Division has received.

N.J.S.A. 54:10A-4(k)(16) as amended by P.L. 2023, c. 96 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)(i) Beginning with the combined group's first privilege period 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, according to the schedule provided by subsubparagraphs (ii) and (iii) of this subparagraph (E). 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.

(ii) For group privilege periods beginning on and after January 1, 2023, but before January 1, 2030, the combined group may deduct one percent 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, during a group privilege period. 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.

(iii) For group privilege periods beginning on and after January 1, 2030, the combined group may deduct up to five percent of any remaining unused amount of the deduction during the group privilege period, until the group privilege period in which the total deduction amount has been fully utilized. 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.

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 Applications

Publicly traded companies and their affiliates (subsidiaries) whose deferred tax positions were negatively affected as a direct result of the change to mandatory combined reporting were eligible to submit a claim for a Net Deferred Tax Liability Deduction (NDTLD). Applications (Form DT-1, New Jersey Corporation Business Tax Statement of Net Deferred Tax Liability Deduction) were required to be uploaded through the New Jersey Online Notice Response Service (NJ ONRS) on or before July 1, 2020. Taxpayers must include a copy of their completed Form DT-1 with their CBT-100U when claiming the deduction. **If a combined group never timely applied for the deduction, the combined group is not entitled to the deduction.**

Financial statements must have been 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 have been prepared in accordance with generally accepted accounting principles.

Changes to the Net Deferred Tax Liability Allowable Deduction Amount

P.L. 2023, c. 96 amended the net deferred tax liability deduction. While the deduction can still be taken for privilege periods beginning on and after January 1, 2023, the allowable deduction amount will be calculated differently than originally legislated. The deduction can be taken over a minimum of 27 group privilege periods (instead of the originally legislated 10 group privilege periods). There is no requirement that the periods be consecutive. There are two deduction periods: one for group privilege periods beginning on or after January 1, 2023, but before January 1, 2030, and another for group privilege periods beginning on or after January 1, 2030. The amount that can be claimed on the tax return is governed by the deduction percentage for that period. If an entity cannot use the deduction in a particular group privilege period because of the income limitation in N.J.S.A. 54:10A-4(k)(16)(G), the balance is carried forward for use in a future period but the total amount used in a given period cannot exceed the allowable deduction percentage for that privilege period.

For the first deduction period (group privilege periods beginning on or after January 1, 2023, but before January 1, 2030), the deduction is limited to 1% per period of the total NDTLD amount for the first 7 group privilege periods.

For the second deduction period (privilege periods beginning on or after January 1, 2030), the deduction is limited to 5% per period of the total remaining NDTLD until fully used.

The 1% and 5% amounts are calculated once at the beginning of each deduction period. They are not recalculated each time a deduction is claimed on the tax return. This means that for the first group

privilege period beginning on or after January 1, 2030, to calculate the amount of the allowable deduction for each period, you deduct the amount that was used by the combined group during the previously deduction period from the total NDTLD and then multiply the remainder by 5%. This will give you the amount that you deduct each group privilege period starting with the group privilege period beginning on or after January 1, 2030, until the deduction is fully used.

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. **In the case of a merger or split-off, what happens to the NDTLD?**
   The NDTLD survives a merger or split-off. In the case of a merger, the deduction amount is the unused total of the NDTLD that both entities had applied for with the Division. If the group splits into two separate groups, the total remaining unused amount of the deduction must be prorated between the groups. Copies of the DT-1s that were filed must be included with the tax returns and, if applicable, a copy of any proration calculation.

2. **The combined group has a loss for the privilege period, can the combined group use the net deferred tax liability deduction?**
   No. If there is no income, the combined group cannot use the net deferred tax liability deduction. However, the net deferred tax liability deduction does not expire and can be carried forward for use in a future privilege period.

   Note: If the combined group had income that was less than the amount of the calculated deduction for any given deduction period, the group can use a portion of the deduction amount and carry the balance forward for use in a future privilege period.

3. **I have an unused net deferred tax liability deduction carryover amount, may I use it along with the allotted current privilege period unused net deferred tax liability deduction amount if the entire net income of the combined group after other State modifications exceeds the allotted current privilege period unused net deferred tax liability deduction amount?**
   No. However, as the deduction does not expire, if a portion of the deduction cannot be completely used in the period, the combined group may carry over the unused amount of the deduction into a future period for use after the original periods for which the 1% and 5% deduction amounts were taken. The carried over amounts being used by the combined group cannot exceed 5% of the total deduction when deducted.

4. **We submitted Form DT-1 before the deadline of July 1, 2020. Line 7 of the form shows an amount for us to use annually over a 10-year period beginning on or after January 1, 2023. Is this the amount we should use?**
   No. P.L. 2023, c.96 changed the percent of the deduction that can be claimed and the number of privilege periods over which the deduction can be claimed. Eligible applicants must use the amount recorded on line 6 of Form DT-1 to calculate their NDTLD percentages for each of the deduction periods.

5. **Can the Division provide an example of how to calculate the deduction amounts?**
   Example: Group A timely applied for a net deferred tax liability deduction totaling $100 million with the Division. To start this example, let's say that the group has an entire net income of $8,500,000 annually and they are a calendar year filer.

   For the first deduction period (group privilege periods beginning on January 1, 2023, but before January 1, 2030), Group A would be entitled to a $1,000,000 per group privilege period deduction for a total of $7,000,000 the first 7 group privilege periods.

For the second deduction period (privilege periods beginning on or after January 1, 2030), Group A would be entitled to a $4,650,000 deduction (($100M -$7M)*0.05) per group privilege period.

Now let's change the example and say that for Tax Year 2029, Group A had a net operating loss (all other facts remain the same). This means that instead of using $7,000,000 of their NDTLD in the first 7 group privilege periods, Group A only used $6,000,000.

Since Group A was unable to deplete the total NDTLD calculated for the first deduction period in this example, the unused amount is carried forward and becomes part of the calculation for the second deduction period. Meaning that for the second deduction period (privilege periods beginning on or after January 1, 2030), Group A would be entitled to a $4,700,000 deduction (($100M -$6M)*0.05) per group privilege period.

If during the second deduction period Group A cannot use any or all of its $4,700,000 deduction in a given privilege period, the balance is carried forward for use in a future period. The number of privilege periods over which the deduction will be used is increased if there is a balance carried forward in the second deduction period. The deduction for each privilege period is not recalculated.

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.

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.

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 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 less than 30 days for a filing window. 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:

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 Required to be Included with the Corporation Business Tax Return

TB-98(R) – Revised October 12, 2023

Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised to include that Form 8833 and Form 7205 are items that are required to be submitted as part of a full and complete New Jersey return if a non-US corporation has treaty protected items of income.

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. (Note: Corporations that are not required to file federal returns must attach pro-formas, including any required Forms/Schedules, showing what they would have reported for federal purposes had they had been required to file a federal return.):

- Form 851
- Form 1118
- Form 1125-A
- Form 1125-E
- Form 4562
- Form 4797
- Form 5471
- Form 5472
- Form 7205
- Form 8833
- 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. See N.J.A.C. 18:7-11.17A for more information.

All other federal forms and schedules not listed above must be made available to Division of Taxation staff upon request.

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Income Reporting and Returns for Banking Corporations for Privilege Periods Ending on and after July 31, 2020

TB-99(R) - Revised November 1, 2023

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 transitionary 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 transitionary short period return, and subsequently file its New Jersey corporation business tax returns on a fiscal year basis. Otherwise, such banking corporations shall file transitionary 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 transitionary 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 transitionary 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 transitionary 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 transitionary 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 transitionary 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 transitionary 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.

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.

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 Tax Year 2023, Form BFC-1 is discontinued. Banking corporations and financial business corporations that are members of a combined group have been required to be included as a member reported on the CBT-100U, so the discontinuation of the form does not impact combined filers. However, the webpage also includes information about changing EFT payment codes, which may impact combined filers. For more information, see *BFC-1 Returns Being Replaced with Form CBT-100.*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.

For more information, see N.J.A.C. 18:7-1.14, N.J.A.C. 18:7-12.1, and N.J.A.C. 18:7-21.25. For information on Captive Investment Companies, Real Estate Investment Trusts, and Regulated Investment Companies and Combined Groups, see TB-113.

Revision Information: This Technical Bulletin was revised on November 1, 2023, to add a link to the notice posted on the Division of Taxation's website regarding the discontinuation of Form BFC-1, which also includes information about changing EFT payment codes.

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The Combined Group as a Taxpayer under the Corporation Business Tax Act

TB-100(R) – Revised August 22, 2023
Tax: Corporation Business Tax

Beginning with tax year 2019, New Jersey mandated combined reporting. Subsequently, P.L. 2020, c. 118 (Chapter 118) and P.L. 2023, c. 96 (Chapter 96), 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 is 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
For privilege periods Ending Before July 31, 2023 – Although a combined group is a taxpayer and taxed as one taxpayer pursuant to N.J.S.A. 54:10A-4(h) and N.J.S.A. 54:10A-4(z); for the purposes of N.J.S.A. 54:10A-4.7(a), P.L. 86-272 protection for a member will be determined on an entity-by-entity basis. See the Notice on the Revision to Division Policy on Combined Groups and P.L. 86-272 for information concerning the 2019, 2020, and 2021 returns. This policy does not apply to privilege periods ending on and after July 31, 2023.

For privilege periods Ending on and After July 31, 2023 – Regardless of the filing method, a combined group is a taxpayer and taxed as one taxpayer pursuant to N.J.S.A. 54:10A-4(h); N.J.S.A. 54:10A-4(z); and for purposes of N.J.S.A. 54:10A-4.7.e, New Jersey follows the *Finnigan* method for sourcing receipts.

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 either refundable to the member that earned the credit or a member can share the refundable credit with other members. 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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Revision Information: This Technical Bulletin was revised, to reflect the P.L. 2023, c.96, mandates the use of the *Finnigan* method for sourcing receipts of combined groups.

Income Reporting and Accounting Methods of Non-U.S. Corporations Members of a Combined Group

TB-101(R) - Revised October 13, 2023
Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised to include links to information about the changes for non-U.S. corporations claiming treaty protection that were codified in P.L. 2023, c. 96.

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 when 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(R)).

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.

If there are material differences in accounting methods between U.S. GAAP and IFRS that cause a material numerical discrepancy, taxpayers should maintain explanations in their books, records, and work-papers, which will be available upon request if the Division of Taxation asks for such information. Taxpayers will not be penalized merely due to differences between U.S. GAAP and IFRS.

Note: In most instances, taxpayers will use either IFRS or GAAP. However, there are some taxpayers with multi-national operations that are required to use multi-GAAP reporting in order to meet their reporting obligations with multiple financial regulators. Taxpayers cannot deviate from their accounting method that was used for federal purposes.

More Information

TB-94(R), *General Information on the Net Operating Loss Regime for Tax Years Ending on and After July 31, 2019*

TB-95(R), *Net Operating Losses and Combined Groups*

TB-107, *Changes to Corporation Business Tax, Gross Income Tax, and Other Requirements from P.L. 2023, c.96*

TB-109, *Combined Group Filing Methods for Privilege Periods Ending on and After July 31, 2023*

Also see N.J.A.C. 18:7-5.2 and N.J.A.C. 18:7-21.1 through 21.29. The Division of Taxation is in the process of updating 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 Operating Losses (NOLs) and Post Allocation Net Operating Losses (PNOLs) with Certain Mergers & Acquisitions

TB-102(R) - Revised April 20, 2023

Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised to include references to the promulgated rules.

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).

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.).*

* 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.

To satisfy the notification requirements and to receive the stamped certificate of attestation attesting that the PNOLs and NOLs are not extinguished please contact:

New Jersey Division of Taxation
Grants & Credits Unit
PO Box 269
Trenton NJ 08695-0269

Promulgated Rules. For additional information, see N.J.A.C. 18:7-5.14; N.J.A.C. 18:7-5.21; N.J.A.C. 18:7-21.10; N.J.A.C. 18:7-21.11; and N.J.A.C. 18:7-21.27..

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Guidance on New Jersey's Conformity to I.R.C. §1502 for Combined Returns

TB-103(R) - Revised October 13, 2023

Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised to include information on the changes that were codified in P.L. 2023, c. 96.

Beginning with tax year 2019, New Jersey mandated combined reporting. Subsequently, P.L. 2020, c. 118, and P.L. 2023, c. 96, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act.

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. Additionally, the Division also adopted rules discussing this topic, see N.J.A.C. 18:7-21.27.

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 or CBT-100U (and Form BFC-1 in privilege periods ending before July 31, 2023), 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 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: Information on the rules and limitations of NOLs, including changes to the order in which the NOLs can be deducted for privilege periods ending on and after July 31, 2023, can be found in TB-94(R), TB-95(R), and TB-111.

The NOL-DRD ordering rules found in 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-4.6(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) for privilege periods ending before July 31, 2023, prior to the repeal of N.J.S.A. 54:10A-4.15 per P.L. 2023, c. 96. None of the federal rules governing federal special deductions apply for privilege periods ending on and after July 31, 2023. See TB-110, TB-92(R), and TB-88(R) for more information.

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.

More Information. See N.J.S.A. 18:7-5.19 and N.J.A.C. 18:7-21.27. The Division of Taxation is in the process of updating regulations addressing the topics covered by this Technical Bulletin.

Additional information on tax treaties, effectively connected income, and general filing method information for combined groups can be found in TB-109, TB-94(R), TB-95(R), and the online notice titled *Income Excluded Pursuant to a Tax Treaty and CBT Returns*.

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Corporation Business Tax and Gross Income Tax Guidance regarding S Corporations and Qualified Subchapter S Subsidiaries

TB-105 - Issued March 31, 2023

Tax: Corporation Business Tax and Gross Income Tax

P.L. 2022, c. 133, which was signed into law on December 22, 2022, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax and Gross Income Tax Acts, as well as other miscellaneous requirements. This Technical Bulletin discusses the changes to the Corporation Business Tax procedures for S corporations and Qualified Subchapter S Subsidiaries resulting from this law.

For privilege periods beginning on or after December 22, 2022, the law eliminates the requirement for a separate New Jersey S corporation election for a federal S corporation. The business must be registered as a corporation with the Division of Revenue and Enterprise Services and provide proof that they have a federal S status. In addition, the shareholders must consent to the New Jersey tax treatment of the entity.

Shareholder Consent

The law requires three different types of consents. Of these three types of consents, only the Shareholder Jurisdictional Consent is required to be submitted.

1. *Shareholder Jurisdictional Consent.* This consent is required to be submitted pursuant to N.J.S.A. 54:10A-5.22.b by all newly formed S corporations (or QSSSs). If a shareholder fails to consent to be taxed as a New Jersey S corporation (or QSSS), the S corporation (or QSSS) is obligated to fulfill the New Jersey tax requirements on behalf of the nonconsenting shareholder. The Shareholder Jurisdictional Consent will need to be filed. The Division of Revenue and Enterprise Services (DORES) and the Division of Taxation are working in tandem to create procedures through which this process will occur. This Technical Bulletin will be updated as soon as information is available. Please continue to check back for updates on submitting this consent

2. *C Corporation Tax Status Election Consent.* This is a shareholder consent to the election to be taxed as a C corporation for New Jersey purposes. It is not submitted to DORES or the Division of Taxation. It is a record of the votes taken by the shareholders in which they all consent to C Corporation tax status for New Jersey purposes. Taxpayers must retain proof of this consent and provide it to the Division of Taxation or DORES if requested.

3. *Revocation of C Corporation Tax Status Election Consent.* This is a shareholder consent to undo the C Corporation Tax Status Election in order to be treated as a New Jersey S corporation (or QSSS) (i.e., revoking a previous C Corporation Tax Status Election). This consent is not submitted to DORES or the Division of Taxation. It is a record of the votes taken by the shareholders holding more than 50% of the shares of stock of the federal S corporation in which they consent to New Jersey S corporation (or QSSS) status after the C Corporation Tax Status Election was made. Taxpayers must retain proof of this consent and provide it to the Division of Taxation or DORES if requested.

S Corporations and Qualified Subchapter S Subsidiaries with Federal Acceptance Letters Dated ON AND AFTER DECEMBER 22, 2022

The law eliminates the requirement for a separate New Jersey election if the entity has been approved as either a federal S corporation or Qualified Subchapter S Subsidiary (QSSS). The taxpayer must be registered as a corporation with the Division of Revenue and Enterprise Services and must provide proof that they received federal S corporation status. Any S corporation (or QSSS) doing business in New Jersey, or having or exercising its franchise in New Jersey, or deriving receipts, engaging in contracts, or employing or owning capital or property in New Jersey, or registered to do business in New Jersey, that does not elect to be taxed as a C corporation for New Jersey purposes will be taxed as a New Jersey S corporation (or QSSS). The S corporation is required to file a Shareholder Jurisdictional Consent (see Shareholder Consent above for more information).

New Jersey S corporations (and QSSSs) file Form CBT-100S. If a federal S corporation (or QSSS) wants to be treated as a C corporation for New Jersey purposes (i.e., hybrid corporation), the shareholders must provide consent (see "The Process for C Corporation Tax Status Election" below for more information).

S Corporations and Qualified Subchapter S Subsidiaries with Federal Acceptance Letters Dated BEFORE DECEMBER 22, 2022

The change in the New Jersey S corporation (and QSSS) procedures is effective for privilege periods beginning on or after December 22, 2022. For privilege periods after that, a federal S corporation (or QSSS) can file as a New Jersey S corporation (or QSSS) even if they did not previously make the New Jersey election. They must submit the Shareholder Jurisdictional Consent and proof of their federal S corporation status. However, to be treated as a New Jersey S corporation (or QSSS) for privilege periods beginning before December 22, 2022, the corporation must make a retroactive election.

Any federal S corporation (or QSSS) that never elected that status for New Jersey purposes for periods beginning before December 22, 2022, will need to make an affirmative New Jersey S corporation (or QSSS) election for those periods. The retroactive election is filed online through the Division of Revenue and Enterprise Services' website. Note: the S corporation (or QSSS) does not need to include any full-year privilege period that begins on or after December 22, 2022, in the retroactive S corporation election process.

The Process for the C Corporation Tax Status Election

A federal S corporation (or QSSS) can elect to be a hybrid corporation (a hybrid corporation is a federal S corporation/QSSS but New Jersey C corporation) under N.J.S.A. 54:10A-5.22.d. If 100% of the shareholders consent to this decision, the entity may make the C Corporation Tax Status Election. The corporation makes estimated payments as though it was a C corporation and files the applicable Corporation Business Tax return (meaning a return other than Form CBT-100S) indicating that the entity is a hybrid corporation (federal S corporation/New Jersey C corporation) in the appropriate section of the return (page 1 of Form CBT-100 or on the Members and Affiliates Schedule portion of Form CBT-100U). Pursuant to N.J.S.A. 54:10A-5.22.d, the federal S corporation (or QSSS) has until the later of the original due date (or the extended due date, if applicable) of the tax return to decide to be taxed as a hybrid corporation.

As the S corporation (or QSSS) has until the later of the original due date or extended due date, if applicable, of the return to elect hybrid corporation status, this is also the last day for shareholders to consent to the C Corporation Tax Status Election.

Note: While the entity has until the due date to decide which form to file, the forms must be filed by the deadline to avoid late filing penalties. New Jersey Corporation Business Tax returns are

due 30 days after the original due date of the federal corporate income tax return. In general this is the 15th day of the fourth month following the close of the privilege period for S corporations (or QSSSs) and the 15th day of the fifth month following the close of the privilege period for C corporations.

S Corporations (and QSSSs) that were Hybrid Corporations for New Jersey Purposes prior to December 22, 2022. A federal S corporation (or QSSS) that decided to be taxed as a C corporation for New Jersey purposes (i.e., hybrid corporation) may continue to be taxed as such by filing the applicable Corporation Business Tax return (other than Form CBT-100S) indicating that the entity is a hybrid corporation in the appropriate section of the return (page 1 of Form CBT-100 or on the Members and Affiliates Schedule portion of Form CBT-100U).

If these hybrid corporations decide in a subsequent period to be a New Jersey S corporation or New Jersey QSSS, they will need to submit their Shareholder Jurisdictional Consent and proof of their federal S corporation status.

The Process for Revoking the C Corporation Tax Status Election
The C Corporation Tax Status Election (a federal S corporation or (QSSS) that elected to be taxed as a C corporation (hybrid corporation status) for New Jersey purposes) can be revoked if the shareholders holding more than 50% of the shares of stock of the federal S corporation consent to New Jersey S corporation (or QSSS) status. To be effective on the first day of the privilege period, the Revocation of C Corporation tax status must be finalized on or before the 15th day of the third month of the privilege period. If the Revocation of C Corporation tax status is made after that, the revocation will be effective for the following privilege period, unless the shareholders revoke the revocation before December 31 of the current year.

An S corporation or QSSS that is a member of a combined return revokes its C corporation tax status by noting on the combined return the date the member left the combined group and files a short period CBT-100S for the months after the revocation in addition to retaining a record of the shareholder vote to revoke the C Corporation Tax Status Election.

New Jersey Conformity to Federal Rules and Revenue Procedures Regarding Mergers and Reorganizations
For privilege periods beginning prior to December 22, 2022, entities that became federal S corporations (and QSSSs) as a result of a merger or reorganization were required to proactively elect New Jersey S corporation (and QSSS) status. New Jersey S corporation (and QSSS) status was not automatic.

For mergers or reorganizations on or after December 22, 2022, New Jersey generally conforms to the federal rules and revenue procedures regarding mergers and reorganizations. There is no longer a requirement to make an affirmative New Jersey S corporation (or QSSS) status election provided the entity has federal S corporation (or QSSS) status. As a reminder, the business must update their registration information with the Division of Revenue and Enterprise Services. See *www.nj.gov/treasury/revenue/*

Combined Groups and S Corporations and Qualified Subchapter S Subsidiaries
An S corporation (or QSSS) that chooses C corporation tax status pursuant to N.J.S.A. 54:10A-5.22.b, is subject to the statutes and rules governing combined reporting. For information on whether the corporation would need to be included as a member of a combined group, see N.J.S.A. 54:10A-4(z); N.J.S.A. 54:10A-4(dd); N.J.S.A. 54:10A-4.11; and N.J.A.C. 18:7-21.1 through 21.29.

Alternatively, an S corporation (or QSSS) can make an election under N.J.S.A. 54:10A-4(ff) instead of N.J.S.A. 54:10A-5.22.d, and an election under N.J.S.A. 54:10A-4(ff) results in an S corporation (or QSSS) being included as a member of a combined group and taxed as a C corporation (have hybrid corporation status). For more information on combined groups and combined reporting, see the Corporation Business Tax Reform webpage.

Tax Treatment for Gross Income Tax Purposes of S Corporations and Qualified Subchapter S Subsidiaries that are Hybrid Corporations for New Jersey Purposes
The Gross Income Tax treatment of a corporation that is a federal S corporation that is taxed as a C corporation for New Jersey purposes (i.e., a hybrid corporation) is discussed in Publication GIT-9S.

Additional Information
The Division of Revenue and Enterprise Services and the Division of Taxation are working in tandem to create procedures through which taxpayers will provide proof that they received federal S corporation (or QSSS) status and a process to submit the Shareholder Jurisdictional Consent. This publication will be updated as information becomes available.

Answers to Frequently Asked Questions regarding P.L. 2022, c. 133, New Jersey S Corporation Procedural Changes, can be found online.

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Cannabis Licensee Income Computation and Reporting for Corporation Business Tax and Gross Income Tax Purposes Pursuant to P.L. 2023, c. 50

TB-106 - Issued July 6, 2023
Tax: Corporation Business Tax
Gross Income Tax

Income computation and reporting for New Jersey cannabis licensees was revised under P.L. 2023, c. 50, which was signed into law on May 8, 2023. Changes were made to both the Corporation Business Tax Act and the Gross Income Tax Act and apply to tax years beginning on and after January 1, 2023. The purpose of this Technical Bulletin is to provide an overview of these changes.

Corporation Business Tax Cannabis Licensees
For tax years beginning on and after January 1, 2023, the income of a registered cannabis licensee is computed as though 26 U.S.C. s.280E does not apply. Thus, these taxpayers can deduct an amount equal to the expenditures that would have been eligible to be claimed as a federal income tax deduction but were disallowed for federal purposes because cannabis is a controlled substance under federal law. Furthermore, these taxpayers can deduct any expenditures that otherwise would have qualified as a qualified research expenditures pursuant to section 174 of the Internal Revenue Code. Taxpayers must still include a copy of their federal return as filed with the IRS. In addition, the taxpayer must include a rider detailing their computations as though 26 U.S.C. s.280E did not apply.

A registered cannabis licensee that claims a qualified research expense as a deduction on their New Jersey Corporation Business Tax return, may also claim that expense for purpose of the New Jersey Research and Development Tax Credit on Form 306, even though such expenses were disallowed for the federal research and development tax credit. Taxpayers must include a detailed rider explaining the calculations.

Gross Income Tax Cannabis Licensees
Net profits from a business income, distributive share of partnership income, and S corporation income, earned by registered cannabis licensees are computed as though 26 U.S.C. s.280E does not apply. Thus, these taxpayers can deduct an amount equal to any expenditure that otherwise would have been eligible to be claimed as a deduction for federal purposes but were disallowed because cannabis is a controlled substance under federal law.

As the Pass-Through Business Alternative Income Tax (PTE, also called BAIT) is part of the Gross Income Tax Act. Cannabis licensees must compute the BAIT/PTE taking into account the P.L. 2023, c. 50 changes. Thus, when computing the BAIT/PTE, these pass-through entities may also deduct an amount equal to any expenditure that would otherwise be eligible to be claimed as though the deduction had been allowed federally but is currently disallowed federally because cannabis is a controlled substance under federal law.

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Other Information
For general information on recreational cannabis and licensed cannabis establishments, see TB-104.

Changes to Corporation Business Tax, Gross Income Tax, and Other Requirements from P.L. 2023, c.96

TB-107 - Issued July 11, 2023
Tax: Corporation Business Tax
Gross Income Tax

P.L. 2023, c.96, which was signed into law on July 3, 2023, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT) and Gross Income Tax Act (GIT) and also implements other miscellaneous requirements. This Technical Bulletin summarizes the changes/requirements and categorizes them by effective date. Note: The Division is in the process of revising existing publications, drafting new publications, and updating the regulations and tax forms to incorporate the information summarized below. Please continue to check the website for updates.

Effective for privilege periods ending on and after July 31, 2022:

Changes to the Net Deferred Tax Liability Deduction — While the net deferred tax liability (NDTL) deduction can still be taken for privilege periods beginning on and after January 1, 2023, the allowable deduction amount will be calculated differently than originally legislated. The deduction will be taken over a minimum of 27 group privilege periods but there is no requirement that the periods be consecutive. If an entity cannot use the deduction in a particular group privilege period because of the income limitation in N.J.S.A. 54:10A-4(k)(16)(G), the balance is carried forward for use in a future period but the total amount used in a given period cannot exceed the allowable deduction percentage for that period.

There are two deduction periods: one for group privilege periods beginning on or after January 1, 2023 but before January 1, 2030, and another for group privilege periods beginning on or after January 1, 2030. For the first deduction period (group privilege periods beginning on or after January 1, 2023 but before January 1, 2030), the deduction is limited to one percent of the total NDTL deduction per period for the first seven group privilege periods. For the second deduction period (group privilege periods beginning on or after January 1, 2030), the deduction is limited to five percent of any remaining NDTL deduction per period until fully used. The one percent and five percent amounts are calculated once at the beginning of each deduction period.

Non-U.S. Corporations Claiming Treaty Protection (other than world-wide group members) — A non-U.S. corporation that is incorporated or formed in a foreign nation with a comprehensive tax treaty with the United States does not include any item of income (or loss) excluded or exempted from federal taxable income under the terms of the treaty in entire net income. Deductions, exclusions, or eliminations are **not** permitted for any excluded income (loss). The receipts attributable to such excluded items are also excluded from the allocation factor.

Income of Non-U.S. Corporations that are not Members of a World-Wide Group Combined Return — A non-U.S. corporation that is not a member of a world-wide group combined return must include its effectively connected income on its New Jersey return that was reported for federal purposes that is not protected by a tax treaty. Such non-U.S. corporation does not have

to add back world-wide income that was not included for federal purposes. For a non-U.S. corporation that did not file a federal return, the corporation only reports its non-treaty protected U.S. source income that would be effectively connected income had the corporation been conducting a business effectively connected to the U.S. Only the receipts and expenses attributable to such income (loss) amounts are included. For allocation factor purposes, only receipts attributable to effectively connected income of that non-U.S. corporation would be included. This means that any receipts not attributable to effectively connected income are excluded from the allocation factor.

World-Wide Basis and World-Wide Group Defined — P.L. 2023, c.96 added a definition for "world-wide basis" and "world-wide group" for purposes of combined reporting. A *world-wide group* includes all members of the combined group regardless of where they are located or formed. The *world-wide basis* includes all of the income and attributes of such members regardless of whether they file federal returns. The members must include all income regardless of any exemption or exclusion provided by a tax treaty. In the case of a member that is a non-U.S. corporation, the member is allowed to take deductions that are allowable to a U.S. corporation.

Timing of Deduction of New Jersey Qualified Research Expenditures — Taxpayers may deduct the full value of the New Jersey qualified research expenditures in the same year as the New Jersey Research and Development Tax Credit (N.J.S.A. 54:10A-5.24).

Conformance to the Regulations for the Treatment of the IRC §163(j) Limit — N.J.S.A. 54:10A-4(k)(2)(K) was amended to codify by statute the rules set forth in TB-87(R) and N.J.A.C. 18:7-5.22.

Clarification of Net Operating Loss Adjustments —P.L. 2023, c.96 clarified the Director's ability to make adjustments to net operating losses for closed years, but limited the ability to make adjustments to 10 years after the return was filed.

Effective for tax years beginning on and after January 1, 2023:

Gross Income Tax (business receipts) and Corporation Business Tax Sourcing Uniformity — P.L. 2023, c.96 prospectively mandates that the sourcing rules for business receipts (not individual taxpayer's compensation) for Gross Income Tax (GIT) purposes will follow the Corporation Business Tax (CBT) sourcing rules. Thus, if a taxpayer that is subject to the GIT Act engages in a trade or business (regardless of business form) or is a partner in a partnership or shareholder of an S corporation that conducts business operations partly inside and partly outside New Jersey, and the portion of the New Jersey income cannot readily or accurately be ascertained, the income must be sourced in a manner consistent with the provisions of N.J.S.A. 54:10A-6 through N.J.S.A. 54:10A-10.

The result is that for GIT purposes business receipts, other than the individual taxpayer's compensation as an employee, are sourced using a single sales factor formula (instead of the historic three-factor formula) and service receipts are sourced using market sourcing rules (instead of cost of performance rules). N.J.S.A. 54:10A-6.1 applies when determining whether business income is operational income and allocated or non-operational income and specifically assigned. Additionally, this also means that the Director may exercise Section 8 Relief on business income for GIT purposes (N.J.S.A. 54:10A-8) in the same manner as is done for CBT

purposes on a case-by-case basis. Please continue to check the Division's website as we will be posting information on tax sourcing of receipts from business income as soon as it becomes available. The Business Allocation Schedule (Form NJ-NRA) will also be updated for tax year 2023. For more information on the CBT sourcing rules, see N.J.A.C. 18:7-7.1 through N.J.A.C. 18:7-10.1.

Effective for privilege periods ending on and after July 31, 2023:

Clarification of Deriving Receipts for Corporation Business Tax Nexus Purposes — P.L. 2023, c.96 adopts a bright-line threshold for economic nexus. For privilege periods ending on and after July 31, 2023, a non-New Jersey corporation will be deemed to have substantial nexus if it derives New Jersey receipts in excess of $100,000 or has 200 or more separate transactions delivered to customers in this State during the corporation's taxable year (in accordance with N.J.S.A. 54:10A-6). This is in addition to the other ways a corporation may have nexus with the State. For more information on nexus, see N.J.A.C. 18:7-1.6 through 1.25. The Division will be posting additional information on this topic. Please continue to check the website for updates.

Finnigan Method Required for all Combined Groups — All combined groups are required to use the *Finnigan Method* for sourcing receipts. A combined group is treated as one taxpayer for purposes of sourcing the unitary receipts the combined group. Therefore, the numerator of the New Jersey allocation factor is based on all of the combined group members' New Jersey receipts.

Changes to the Treatment of GILTI and the I.R.C. §250 Deduction — N.J.S.A. 54:10A-4.15 was repealed. GILTI income is prospectively treated as a dividend and may be excluded as set forth in N.J.S.A. 54:10A-4(k)(5) or may be eliminated under N.J.S.A. 54:10A-4.6.d. The I.R.C. §250 deductions for GILTI and FDII are no longer allowed. Publications that contain existing information on this topic will be updated and new information will be posted. Please continue to check the website for updates.

Changes to Calculating Taxable Net Income — For all taxpayers, for purposes of computing taxable net income, as prescribed by N.J.S.A. 54:10A-4(w), the I.R.C. §172(a)(2) limitation applies to net operating losses calculated pursuant to N.J.S.A. 54:10A-4(v) and N.J.S.A. 54:10A-4.6(h). For a combined group, the I.R.C. §172(a)(2) limitation applies at the combined group level. Additionally, when computing the total taxable net income for a combined group, the combined group must first add the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group before subtracting the prior net operating loss conversion carryforwards and the net operating losses.

Changes to the Net Operating Loss Sharing Rules for Combined Groups — Under N.J.S.A. 54:10A-4.6(g), the remaining unused unexpired prior net operating loss conversion carryovers ("PNOLS") of combined group members have been pooled into a prior net operating loss conversion carryovers pool for the combined group. Under, N.J.S.A. 54:10A-4.6(h), the net operating loss carryovers of combined group members have been pooled into a net operating loss carryover pool for the combined group. The prior net operating loss conversion carryover pool and net operating loss carryover pool are separate pools.

Changes to the Historic Ordering of Certain Exclusions and Deductions— The dividend exclusion (DRD) and international banking facility deduction (IBF) are now calculated pre-allocation. The prior net operating loss conversion carryover deduction and net operating losses/net operating loss carryovers are calculated post-allocation. The historic limitation (preventing the DRD and IBF from increasing net operating losses) is no longer applicable.

Changes to the Dividend Exclusion (DRD) — This exclusion applies after the State additions but before the State deductions to entire net income and before the allocation of entire net income. Dividends (and deemed dividends) from 80 percent or more owned separate entity subsidiaries are 100 percent excluded. Dividends (and deemed dividends) from more than 50 percent but less than 80 percent owned separate entity subsidiaries are 50 percent excluded. However, for purposes of the exclusion, N.J.S.A. 54:10A-4(k)(5)(F)(ii) has a claw-back provision that requires the exclusion to be reduced by 5 percent of all dividends (and deemed dividends) received by the taxpayer during the privilege period. Dividends and deemed dividends distributed between combined group members that are included in the same New Jersey combined return are eliminated. The claw-back provision does not apply to intercompany dividend (and deemed dividend) transactions between members of the same group filing a New Jersey combined return.

New Entities Included as Members of the Combined Group — P.L. 2023, c.96 requires real estate investment trusts, investment companies, and regulated investment companies that meet statutorily enumerated definitions of a "captive" to be included as members of the combined group and taxed as C corporations, which means disallowing the benefits provided to those entities including the special apportionment treatment prescribed under N.J.S.A. 54:10A-5(d) and deductions that would be allowed under the Internal Revenue Code only for those classes of entities. **Note:** Real estate investment trusts, investment companies, and regulated investment companies of which at least 50 percent of the shares, by vote or value, are owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion or that otherwise do not meet the definition of a captive real estate investment trust, investment company, or regulated investment company are still excluded from the combined group and are not subject to these changes.

Additional Clarity for Corporation Business Tax Due Dates — P.L. 2023, c.96 clarifies that the due date of the New Jersey return is the 15th day of the month following the month of the original due date of the federal return (or the 15th day of the month following the month of the extended due date of the federal return in the case of a taxpayer that received an extension for federal purposes) for the close of the taxpayer's privilege period, or part thereof.

Changes to the Water's-Edge Group — P.L. 2023, c.96 amends the categories for determining when an entity is included as a member of water's-edge group to clarify that the second inclusion category/prong is applicable to non-U.S. corporations. Additionally the law replaces the fourth inclusion category/prong, which had required corporations with New Jersey income and nexus to be included in the water's-edge group (N.J.S.A. 54:10A-4.11.a(4) with a new category (N.J.S.A. 54:10A-4.11.a(5)) requiring that all other corporations not included in the other three inclusion categories/prongs are required to be included as a member of the water's-edge group if the corporations have effectively connected income (or loss) with the U.S. Such member that is included as a result of the new inclusion category/prong is included in the combined group only to the extent of its effectively connected income or loss with the U.S. taking into account items of expense and allocation factors associated with such effectively connected income or loss, and not taking into account the amounts that are not attributable to the U.S. effectively connected income or loss.

Unitary Partnerships and the Nonresident Partner Partnership Withholding — P.L. 2023, c.96 clarifies that unitary partnerships are exempt from paying the portion of the partnership withholding tax (N.J.S.A. 54:10A-15.11) that is directly or indirectly (in the case of a tiered partnership) attributable to the member of the combined group that is a corporate partner in the unitary partnership. The amount exempt from the withholding attributable to the member is based on the member's distributive share of partnership income as a partner in the unitary partnership.

Definition of Unitary Business Amended — P.L. 2023, c.96 expands the definition of unitary business to include business entities under common ownership that are: "sufficiently interdependent, integrated, **or** 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." Thus, for privilege periods ending on and after July 31, 2023, additional entities may be unitary and required to be included as a member of the combined group. However, this amendment does not change the fact that a unitary business determination requires a qualitative and quantitative analysis based on the facts and circumstances of the business entities.

Change in Duration of the Managerial Member — P.L. 2023, c.96 changes the term that a member is required to serve as a managerial member from 10 privilege periods to six privilege periods (current privilege period plus the successive five privilege periods).

Increase in Installment Payment Safe Harbor Amounts — P.L. 2023, c.96 increases the installment payment safe harbor in N.J.S.A. 54:10A-15.2 from $500 to $1,500. Additionally, the law sets forth the safe harbor amount for combined groups by applying the $1,500 amount by taxable member in the aggregate. For example, if a combined group had three taxable members, the safe harbor amount would equal $4,500.

Installment Payment Underpayment Date Change — P.L. 2023, c.96 changes the underpayment date in N.J.S.A. 54:10A-15.4 to coincide with the same month as the due date of the New Jersey Corporation Business Tax returns to the 15th day of the 5th month after the close of the fiscal or calendar accounting year (i.e., 15th day of the month following the month of the original due date of the federal return). P.L. 2023, c.96 also provides that a taxpayer may petition the Director of the Division of Taxation to have such penalties and interest waived due to undue hardship, good cause shown, or other reasons as may be provided for waiving penalties and interest in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

Related Party Addbacks No Longer Applicable —The statutory amendments sunset the related party addback statutes (N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4).

Clarification on Late Filing Penalties — The statutory amendments made technical clarifications to the words in N.J.S.A. 54:49-4, but did not change the meaning or application of the statute.

Estimated Payment Relief — For Corporation Business Tax and Gross Income Tax taxpayers impacted by the statutory amendments, no penalties or interest shall accrue for underpayment of tax as a result of the provisions of P.L. 2023, c.96 applying to privilege periods ending on or after July 31, 2023 (that began on January 1, 2023 in the case of Gross Income Tax taxpayers), but ending before January 1, 2024, that create an additional tax liability as a result of the statutory amendments. However, the additional estimated payments shall be made by the later of the second next estimated payment due date subsequent to the enactment of P.L. 2023 c.96 or the second estimated payment due date after January 1, 2024.

Please continue to monitor the Division's website as more information will be posted as it becomes available.

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Nexus for Corporation Business Tax for Privilege Periods Ending on and after July 31, 2023

TB-108(R) - Revised January 18, 2024
Tax: Corporation Business Tax

P.L. 2023, c.96, which was signed into law on July 3, 2023, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT) and Gross Income Tax Act (GIT) and it also implements other miscellaneous requirements. The law enacted a bright-line economic nexus standard. This Technical Bulletin provides general guidelines for determining whether the activities of a corporation create nexus with New Jersey for the purposes of imposing the Corporation Business Tax for privilege periods ending on and after July 31, 2023.

Note: For information on nexus for privilege periods ending **before** July 31, 2023, see TB-79(R).

Corporation Business Tax Nexus

The New Jersey Corporation Business Tax Act requires every domestic or foreign corporation to pay an annual franchise tax for having or exercising its corporate franchise in this State or for the following privileges:

1. Existing under the laws of this State; or
2. In the case of a foreign corporation:
   i. Holding a general Certificate of Authority to do business in this State issued by the Division of Revenue and Enterprise Services;
   ii. Holding a certificate, license, or other authorization issued by any other State department or agency, authorizing the company to engage in corporate activity within this State;
   iii. Doing business in this State;
   iv. Employing or owning capital in this State;
   v. Employing or owning property in this State;
   vi. Maintaining an office in this State;
   vii. Deriving receipts from sources within this State that meet the thresholds for bright-line economic nexus;
   viii. Engaging in contacts within this State; or
   ix. Maintaining a stock of goods in New Jersey and making deliveries to customers from such stock.

In determining whether a corporation is **doing business** in New Jersey, consideration is given to such factors as:

1. The nature and extent of the activities of the corporation in New Jersey;
2. The location of its offices and other places of business;
3. The continuity, frequency, and regularity of the activities of the corporation in New Jersey;
4. The employment in New Jersey of agents, officers, and employees;

5. The location of the actual seat of management or control of the corporation.

Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization within the State shall be deemed to be "doing business" for the purposes of the Corporation Business Tax Act. In determining whether a corporation is "doing business," it is immaterial whether its activities result in a profit or a loss.

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

A foreign corporation that falls into any of the taxable categories is subject to the Corporation Business Tax, regardless of whether the business is wholly or partly in interstate commerce. A financial business corporation, banking corporation, credit card company, or similar business that has its commercial domicile in another state is subject to Corporation Business Tax in New Jersey if it obtains or solicits business or derives receipts from sources within this State during the year.

A foreign corporation will not be deemed to be doing business or employing or owning capital or property in this State for the purposes of the Act by reason of the following:

1. The maintenance of cash balances with banks or trust companies in New Jersey;
2. The ownership of shares of stock or securities kept in New Jersey in a safe deposit box, safe, vault, or other receptacle rented for the purpose, or 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;
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; and
4. Any combination of the foregoing activities.

Bright-Line Economic Nexus

Section 6 of P.L. 2023, c.96, provides a bright-line economic nexus standard. In addition to the existing rules for determining nexus, a business is deemed to have substantial nexus and is subject to the taxes imposed under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) if:

(1) The corporation derives receipts from sources within this State, pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.45:10A-10), in excess of $100,000 during the corporation's fiscal or calendar year; or

(2) The corporation has 200 or more separate transactions delivered to customers in this State during the corporation's fiscal or calendar year. For the purposes of this paragraph, for any transaction that is a service transaction, "delivered to a customer" shall mean where the benefit is received within the meaning of paragraph (4) of subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6).

The economic thresholds apply to any taxpayer subject to the Corporation Business Tax regardless of filing method. A member of a combined group is a taxable member if they meet

the thresholds set forth in Section 6 of P.L. 2023, c. 96. For information on the application to disregarded entities, see Disregarded Entities and Nexus Below.

When determining whether receipts and transactions are sourced to New Jersey for the purposes of Section 6 of P.L. 2023, c. 96, the statute follows sourcing rules prescribed in N.J.S.A. 54:10A-6 through N.J.S.A. 54:10A-10 (see also N.J.A.C. 18:7-8.1 through N.J.A.C. 18:7-8.17). Service receipts and transactions are sourced according to the market based sourcing rules set forth at N.J.A.C. 18:7-8.10A. The rule (N.J.A.C. 18:7-8.12(e)) for determining whether a receipt is integrated in the business is applicable for nexus purposes. The rules for determining whether the business income is operational income (and allocated) or nonoperational income (and specifically assigned) apply. Non-operational income that is specifically assigned to a state other than New Jersey is not a New Jersey receipt. See N.J.S.A. 54:10A-6.1 and N.J.A.C. 18:7-8.17 for more information.

For New Jersey Corporation Business Tax purposes, entire net income and corresponding receipts are linked to federal taxable income and receipts reported for federal purposes. Taxpayers must use the same method of accounting for State tax purposes that they use for federal tax purposes and include such receipts unless there are items that are excluded/exempt for Corporation Business Tax purposes (see N.J.S.A. 54:10A-4(k); N.J.S.A. 54:10A-6; N.J.A.C. 18:7-5.1(b); N.J.A.C. 18:7-5.4 and N.J.S.A. 18:7-8.7(c)). Thus, excluded receipts and transactions do not count for the purposes of determining nexus.

If a corporation does not meet the bright-line economic nexus thresholds, a corporation could still have nexus if it meets any of the other nexus requirements (see N.J.S.A. 54:10A-2; N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.25) or any case law. If a taxpayer did not previously have nexus under N.J.S.A. 54:10A-2, but now does have nexus under Section 6 of P.L. 2023, c. 96, they must file a Corporation Business Tax return and pay the required tax. However, if a taxpayer does not have nexus under any of the statutes, regulations, or case law, then the taxpayer does not have nexus with the State and will not be required to file a Corporation Business Tax return.

For corporate partners that are unitary with a partnership that has New Jersey receipts or transactions with New Jersey customers, the corporate partner will have nexus with New Jersey if the corporate partner's proportionate share of the partnership's activities in New Jersey satisfy the bright-line economic thresholds set forth in Section 6 of P.L. 2023, c. 96. Corporate partners and unitary partnerships use the flow-through method of accounting and the nexus determination is based on the corporate partner's proportionate share of the partnership's activities. For more information on partnership methods of accounting, see N.J.A.C. 18:7-7.6.

Nexus in the Context of Combined Reporting

For 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 member of a combined group may have nexus with New Jersey by deriving New Jersey receipts from the unitary business or may have nexus independent of the combined group. Such member is a taxable member of the combined group.

For privilege periods ending on and after July 31, 2023, a member may also be a taxable member if the corporation is deriving receipts from sources within this State that meet the threshold for bright-line economic nexus (see N.J.S.A. 54:10A-6). This remains true whether such

receipts are the member's own receipts or are receipts derived from intercompany transactions with other members of the combined group regardless of whether the receipts are eliminated.

For privilege periods ending on and after July 31, 2023, all combined groups must use the *Finnigan* method to allocate receipts. Thus, the New Jersey receipts of all the members of the combined group that were not eliminated pursuant to N.J.S.A. 54:10A-4.7.c must be included in the numerator.

Nexus and Tax Treaties

With the exception of tax returns filed using the world-wide group filing method, New Jersey follows federal tax treaties. Non-U.S. corporations that are members of a world-wide group combined return must include their treaty protected income (or loss) and are taxable members if they have nexus with New Jersey. For all other filers, income that is exempt from federal tax under a U.S. treaty with a foreign country will be exempt from New Jersey Corporation Business Tax. A non-U.S. corporation with tax treaty protection, that is a member of a water's-edge combined group or an affiliated group, will be a taxable member if it has nexus with New Jersey, although the items of treaty protected income (or loss) is excluded from the income of the combined group. If a non-U.S. corporation, that is a separate return filer, has nexus with New Jersey and all of its income (or loss) are protected by a tax treaty, the corporation is still required to file a return and pay the Corporation Business Tax minimum tax.

Disregarded Entities and Nexus

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. The attributes and activities of a disregarded entity are treated as that of the owner's and are included in the attributes activities of the owner for both federal tax purposes and New Jersey Corporation Business Tax purposes. Thus, when evaluating whether a taxpayer has nexus with New Jersey, the attributes and activities of the disregarded entity are included as the taxpayer's attributes and activities for determining whether the taxpayer has nexus.

Public Law 86-272

The Federal Interstate Income Act, Title 15 U.S.C.A. Section 381, "Public Law 86-272," prohibits a state from imposing a net income based tax on income of a foreign corporation earned within its borders from interstate commerce, if the corporation's only business activity within the state consists of the solicitation of orders by the corporation or its representatives of tangible personal property, the orders are sent outside the state for approval and, if approved, are filled by shipment or delivery from a point outside the state. In order for the in-State activities of the foreign corporation to meet the PL 86-272 standard, the activities must either be limited solely to speech or conduct that invites an order OR be ancillary activities related to the requests for an order.

Note: P.L. 86-272 does not apply to services or intangible personal property.

Sales and activities involving financial products, financial instruments, and financial services are not P.L. 86-272 protected because they are not tangible personal property. Thus, if a financial business corporation, banking corporation, credit card company, or similar business has nexus with New Jersey, the taxpayer is subject to Corporation Business Tax in this State based on or measured by income.

Note: The offering, soliciting, selling, accepting, or buying of digital assets such as virtual currency or non-fungible tokens (NFTs) and/or offering of services pertaining to them is the offering and selling of financial products, financial instruments, and financial services and is not P.L. 86-272 protected.

A foreign corporation that conducts business activity in New Jersey that exceeds the protection of Public Law 86-272 is subject to the Corporation Business Tax as measured by the net income of the corporation. Even though a corporation's activities may be protected by Public Law 86-272, if it is registered or otherwise has nexus in New Jersey, it is subject to the Corporation Business Tax minimum tax and must file a Corporation Business Tax return.

Independent contractors may solicit or make sales or maintain an office without subjecting a company to liability for Corporation Business Tax based on or measured by income. Sales representatives who represent a single principal are not considered independent contractors. A corporation is subject to an income-based tax if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

Combined Groups. As all combined groups are now required to use the *Finnigan method*, the combined group cannot claim P.L. 86-272 protection if one of the members either has activities that are not protected by P.L. 86-272 or that exceed the protections of P.L. 86-272.

In-State activities by a corporation that EXCEED the protections of Public Law 86-272 include, but are not limited to:

1. Repairs, maintenance, and installations;
2. Collection or repossession activities;
3. Credit investigations;
4. Conducting training courses, seminars, or lectures for personnel (other than for personnel involved only in solicitation);
5. Providing technical assistance;
6. Resolving customer complaints for a purpose other than to ingratiate sales personnel with the customer;
7. Approving or accepting orders or securing deposits on sales;
8. Acquiring personnel for purposes other than solicitation activities;
9. Maintaining a display at a single location within New Jersey in excess of two weeks during the tax year;
10. Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;
11. Picking up or replacing damaged or returned property;

12. Owning, leasing, or maintaining in-State facilities such as a warehouse or telephone answering service;
13. Consigning tangible personal property;
14. Soliciting credit cards and other financial products and services to New Jersey customers;
15. The offering, soliciting, selling, accepting, or buying of digital assets such as virtual currency or non-fungible tokens (NFTs) and/or the offering of services pertaining to them is the offering and selling of financial products, financial instruments, and financial services and is not P.L. 86-272 protected;
16. Offering, selling, providing maintenance, or performing such duties under a warranty or extended warranty service contract for the performance of services under the contract through any means, whether in person or through the internet;
17. Contracting with a marketplace facilitator to facilitate the sale of the taxpayer's products on the facilitator's online marketplace where the marketplace facilitator maintains the corporation's products at fulfillment centers in this State;
18. Transmitting code or electronic instructions through the internet to repair or upgrade products as part of a service subscription purchased by the customer or as part of a warranty (or extended warranty) service contract purchased by the customer;
19. Placing software or ancillary data (e.g., apps or "internet cookies") on computers and devices in New Jersey to gather market or product research that is packaged and sold to data-brokers or other third parties;
20. Selling internet advertising services to New Jersey business customers where the taxpayer provides targeted advertising to specific New Jersey individuals using information the taxpayer mined from software or ancillary data (e.g., apps or "internet cookies") that was placed on computers and devices in New Jersey by the taxpayer on individuals' devices;
21. Providing certain types of post-sales assistance through an electronic chat, email, or application that customers access through the company's website. Some examples include but are not limited to: chat rooms for troubleshooting problems, complaint resolution, or an internet help desk for technical support whereby the customer can talk to a service representative who may conduct repair services remotely;
22. Contracting with in-State customers to stream (but not download) videos and music to electronic devices;
23. Contracting with in-State customers for subscription services;
24. Contracting with in-State customers to provide business services such a quality control, manufacturing production line maintenance, research and development, product design, logistics, regulatory, and/or other types of services through the internet-connected devices, computers, and/or machines, whereby the application is installed on the customer's devices, computers, and/or machines that functions through the internet connection between the customer and the taxpayer, where the services are conducted on the taxpayer's computers and the data is transmitted back to the customer's devices, computers, and/or machines based on information received from the customer's in-State devices, computers, and/or machines.

25. Inviting and/or accepting applications for employment through an internet-based platform that are specifically targeted to in-State residents or for in-State job positions other than for sales positions.

In-State activities by a corporation that <u>DO NOT EXCEED</u> the protections of Public Law 86-272 include, but are not limited to:

1. Soliciting through advertising;
2. Carrying samples and promotional materials for display or distribution without charge;
3. Providing vehicles to sales personnel for their use in conducting protected activities, regardless of whether the vehicle is owned or leased and/or registered (or not) in New Jersey;
4. Checking customer inventories without charge;
5. Maintaining a display at a single location for less than two weeks during the tax year;
6. Recruiting, training, or evaluation of sales personnel;
7. Soliciting orders from an in-State sales employee's in-home work space that is not paid for by the company;
8. Mediating customer complaints in order to ingratiate sales personnel with the customer;
9. Posting frequently asked questions (FAQs) on a webpage to assist customers or potential customers;
10. Placing software or ancillary data (e.g., apps or "internet cookies") on computers and devices in New Jersey that are ancillary to the solicitation of orders that are **neither** sold to data-brokers or other third parties **nor** used for the purposes of gathering data to sell services to business customers of the taxpayer;
11. Offering only tangible personal property for sale on a website that enables customers to search for items, read product descriptions, select items for purchase, choose delivery options, and pay for the items without having the taxpayer engage in any other in-State business activities or any of the activities that pierce the taxpayer's P.L. 86-272 protection;
12. Accepting electronic payment using a credit card or another electronic payment method (e.g., Bitpay, Paypal, Venmo, or Zelle) for the purchase of tangible personal property on the taxpayer's online store, but not when the taxpayer receives a digital asset as payment and resells it as part of the taxpayer's business to in-State customers;
13. Inviting and/or accepting applications for employment through an internet-based platform if the only positions being offered in State for are sales jobs where the employee only conducts a solicitation function and non-solicitation job positions in State are not being offered.

Note: A corporation that does not exceed the protections of Public Law 86-272 is not subject to the income component of the New Jersey Corporation Business Tax, however, it is still subject to the statutory minimum tax.

Voluntary Disclosure Program

Taxpayers who discover they have business activities that create nexus for New Jersey tax purposes are encouraged to voluntarily register and bring their accounts into compliance by disclosing past tax liabilities. Information about the State's Voluntary Disclosure Program is available on the Division's website.

More Information

General information about Corporation Business Tax and Changes to the Corporation Business Tax Act is available online.

See N.J.A.C. 18:7-1.6 through 1.25 for the nexus regulations.

For information on nexus for privilege periods ending **before** July 31, 2023, see TB-79(R).

Revision Information

This Technical Bulletin was revised on January 18, 2024, to correct a typographical error.

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 for Privilege Periods Ending on and After July 3

TB-109 - Issued September 5, 2023
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). P.L. 2023, c.96, made a series of substantive revisions to the combined reporting regime.

This Technical Bulletin discusses combined reporting allocation method, income reporting, and filing methods **effective for privilege periods ending on and after July 31, 2023**. For information about combined reporting methods for periods ending before July 31, 2023, see TB-89(R).

Allocation Method for Combined Returns

For privilege periods ending on and after July 31, 2023, New Jersey has adopted the *Finnigan* method as the allocation method for all combined groups (see N.J.S.A. 54:10A-4.7.e and N.J.S.A. 54:10A-4.11.c). Additionally, the combined group is treated as one taxpayer for purposes of sourcing the unitary receipts. Under the *Finnigan* method, the allocation factor attributes in the numerator are derived from all of the members of the combined group, regardless of whether a member has nexus with New Jersey.

Note: For combined returns filed for privilege periods ending **before** July 31, 2023, the allocation method was tied to the filing method (see TB-89(R) for more information on allocation methods for previous years).

Combined Return Methods

Determining the combined group members involves imposing certain statutory limitations, which affect the treatment of income, allocation factors, and tax attributes. The three Combined Return Methods available to use in New Jersey are:

- World-wide
- Water's-edge
- Affiliated

Regardless of the filing method chosen, a combined group calculates 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.

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. The water's-edge combined group does not take into account the incomes and allocation factors of the 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, incorporated or formed under the laws of a foreign nation, 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) Any member wherever incorporated or formed not already included by any of the other paragraphs of this subsection, if such member has effectively connected income or loss within the meaning of the federal Internal Revenue Code (as modified by the provisions of the Corporation Business Tax Act (1945), P.L. 1945, c.162 (C.54:10A-1 et seq.)). For any member that is included pursuant to this paragraph, the member shall be included in the combined group only to the extent of its effectively connected income or loss, taking into account items of expense and allocation factors associated with such effectively connected income or loss.

*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, but is not limited to, 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 with clear and convincing evidence that an item of income from the service is not related to the intangible property, the item will be excluded.

If a member was not included as part of the combined group under (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 effectively connected income or loss within the meaning of the federal Internal Revenue Code (as modified by the provisions of the Corporation Business Tax Act (1945), P.L. 1945, c.162 (C.54:10A-1 et seq.)). The member will be included in the combined group only to the extent of its effectively connected income or loss,

taking into account items of expense and allocation factors associated with such effectively connected income or loss.

Non-U.S. Corporation Claiming Treaty Protection as a Member of a Water's-Edge Combined Group. A non-U.S. corporation that is incorporated or formed in a foreign nation with a comprehensive tax treaty with the United States does not include in entire net income any item of income (or loss) excluded or exempted from federal taxable income under the terms of the treaty. Deductions, exclusions, or eliminations are **not** permitted for any excluded income (loss). The receipts attributable to such excluded items are also excluded from the allocation factor.

Note: The same treatment applies to tax treaties with reciprocal provisions for other nation's tax treaties with the U.S. (e.g., E.U. member nation tax treaties with the U.S.).

Income of a Non-U.S. Corporation that is a Member of a Water's-Edge Combined Group. For a non-U.S corporation, only the member's effectively connected income (or loss) reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act (1945), P.L. 1945, c.162 (C.54:10A-1 et seq.), is included in entire net income of the combined group. The member and the combined group will only include items of expense and allocation factor receipts attributable to that income of that member and not the member's other items attributable to excluded income of that member. The income (loss) of that member that is not included in entire net income and the receipts and expenses attributable to excluded income are excluded from entire net income and the allocation factor.

Note: If the member **did not** file a federal return, the New Jersey return will include the member's non-treaty protected U.S. source income (or loss) that would be effectively connected income (or loss) as if the member had been conducting a business effectively connected to the United States, as modified by the provisions of the Corporation Business Tax Act (1945), P.L. 1945, c.162 (C.54:10A-1 et seq.). The receipts and expenses attributable to any excluded income (loss) are also excluded from entire net income and from the allocation factor.

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 for reasonable cause (e.g., a substantial change in ownership or members of the combined group). However, a revocation request can only be prospective. Once a return is filed, the election cannot be amended.

Note: Original returns are considered timely if they are filed by the original due date or by the extended due date if a taxpayer has a valid New Jersey extension.

One-time Exception to Change a Combined Return Election Method Made Before Tax Year 2023. As a result of the P.L. 2023, c.96 law changes, the Division of Taxation is providing a one-

time exception to prospectively allow a change to the combined group's filing method on the 2023 Form CBT-100U. The filing method election selected on a previously filed Form CBT-100U will not be binding. Any election the combined group makes on their 2023 Form 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).

Note: No retroactive change(s) in filing status will be permitted for tax years prior to 2023. The one-time exception to change filing status applies prospectively only.

World-Wide Group Election

When making a world-wide group election, the combined group must include all members and 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). The combined group must include all of the income and attributes of such members without regard to the terms of a tax treaty (i.e., they include the treaty protected income). However, members that are non-U.S. corporations are allowed any deductions that are allowed under the federal Internal Revenue Code that are allowable under the Corporation Business Tax Act (1945), P.L. 1945, c.162 (C.54:10A-1 et seq.), that would apply to a U.S. corporation but for which the member (as a non-U.S. corporation) would ordinarily be prohibited for federal corporation income tax purposes because said income was either not included in federal taxable income for any reason or because said corporation is a non-U.S. corporation. See N.J.S.A. 54:10A-4(kk) and N.J.S.A. 54:10A-4.11.

Affiliated Group Election

An affiliated group elective combined return includes the true U.S. footprint of a multinational business enterprise without having to potentially file multiple combined returns.

Note: A unitary business relationship is required for inclusion in both the water's-edge combined and world-wide group combined returns. However, the affiliated group combined return method does not require the existence of a unitary business relationship.

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.

Note: In most cases, the New Jersey affiliated group combined return constitutes the multinational corporation's entire U.S. footprint. However, by statute, non-U.S. corporations that do not file a federal return cannot be included in a New Jersey affiliated group combined return.

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 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.

Note: Non-U.S. corporations that do not file a federal return cannot be included in a New Jersey affiliated group combined return.

Income of Non-U.S. Corporations That Meet the Definition of U.S. Domestic Corporations for Purposes of the New Jersey Affiliated Group Election. For a non-U.S. corporation that is a member of an affiliated group because it files a federal return and has effectively connected income, only the member's effectively connected income (or loss) reported for federal purposes, as modified by the provisions of the Corporation Business Tax Act (1945), P.L. 1945, c.162 (C.54:10A-1 et seq.) is included in entire net income of the combined group. The member and the combined group will only include such items of expense and allocation factor receipts attributable to that income of that member, and not the member's other items attributable to excluded income of that member. The income (loss) of that member that is not included in entire net income, and the receipts and expenses attributable to excluded income are excluded from entire net income and the allocation factor.

Non-U.S. Corporation Claiming Treaty Protection as a Member of an Affiliated Group Election. A non-U.S. corporation that is a member of a New Jersey affiliated group that is

incorporated or formed in a foreign nation with a comprehensive tax treaty with the United States does not include in entire net income any item of income (or loss) excluded or exempted from federal taxable income under the terms of the treaty. Deduction, exclusion, or elimination are not permitted for such excluded income (loss). The receipts attributable to such excluded items are excluded from the allocation factor.

Penalty Relief

As a result of the enactment of P.L. 2022, c. 133 , and P.L. 2023, c.96, and in accordance with N.J.S.A. 54:10A-4.11(b), the Division will not penalize taxpayers for filing their 2019, 2020, 2021, or 2022 returns following applicable year return instructions or the information provided in the Technical Bulletins or the web-notices. Taxpayers will not be penalized if they choose a different combined group filing method option when they file their 2023 CBT-100U return.

The Division will not assess taxpayers for the P.L. 2023, c.96, changes that were otherwise different than the 2019, 2020, 2021, or 2022 CBT-100U return instructions and the Technical Bulletins for the 2019, 2020, 2021, or 2022 returns the taxpayer filed.

More Information on Nexus

Additional information on nexus for privilege periods ending on and after July 31, 2023, is available on the Division's website. See TB-108, Nexus for Corporation Business Tax for Privilege Periods Ending on and after July 31, 2023, which is available on the Division's website. Also see N.J.A.C. 18:7-21.1 through 21.29 for more information.

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Corporation Business Tax GILTI Treatment for Privilege Periods Ending on and After July 31, 2023

TB-110 - Issued September 12, 2023
Tax: Corporation Business Tax

P.L. 2023, c.96, which was signed into law on July 3, 2023, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT), Gross Income Tax Act (GIT), and other miscellaneous requirements. This Technical Bulletin discusses the changes to the CBT treatment for Global Intangible Low Taxed Income (GILTI), I.R.C. s. 250(a) deduction, and Foreign-derived intangible income (FDII). For the treatment of these items for privilege periods ending before July 31, 2023, see TB-92(R) and TB-88(R).

GILTI is Treated as a Dividend

Effective for privilege periods ending on and after July 31, 2023, GILTI income is treated as a dividend for New Jersey purposes and is reported on the dividends and other inclusions line (line 4 of Schedule A, Part I). GILTI may be excluded (dividend exclusion) as set forth in N.J.S.A. 54:10A-4(k)(5) or may be eliminated (intercompany eliminations) under N.J.S.A. 54:10A-4.6.d. The I.R.C. §250 deductions for GILTI and FDII are no longer allowed as N.J.S.A. 54:10A-4.15 has been repealed. The gross amount of FDII is included in ENI for Corporation Business Tax purposes.

Dividend Exclusion and GILTI

The dividend exclusion applies after the New Jersey additions but before New Jersey deductions to ENI. For privilege periods ending on and after July 31, 2023, the dividend exclusion is a pre-allocation exclusion.

Dividends and deemed dividends (reported on Schedule A) from 80% or more owned subsidiaries are 100% excluded from ENI. Dividends and deemed dividends from more than 50% but less than 80% owned subsidiaries that were included in the taxpayer's gross income on Schedule A are 50% excluded. However, P.L. 2023, c. 96 added a claw-back provision for the purposes of the exclusion (see N.J.S.A. 54:10A-4(k)(5)(F)(ii)). The claw-back provision requires that the taxpayer's entire dividend exclusion be reduced by 5% of all dividends and deemed dividends received by the taxpayer during the same privilege period (claw-back provision).

Combined Group Filers – Intercompany dividends and deemed dividends distributed between combined group members that are eliminated above the dividend exclusion line on the tax return are not eligible for the dividend exclusion. The claw-back provision in N.J.S.A. 54:10A-4(k)(5)(F)(ii) does not apply to these intercompany dividend (and deemed dividend) transactions.

CFC Income that Generated the GILTI

For non-U.S. corporations that are members of a water's-edge combined group or elective affiliated group, treaty protected income and the non-effectively connected income (i.e., income that is not connected to the U.S. business) of a non-U.S. corporation is excluded from ENI. Consequently, such items of income are not eligible for exclusion or elimination as they were not included in ENI in the first place. However, worldwide groups are required to include worldwide income regardless of tax treaties. Thus, there could be differing impacts depending on the method that is filed.

Reporting GILTI and FDII on Schedule J

When calculating the allocation factor on Schedule J, GILTI (not excluded from ENI) will only be included in the denominator for most taxpayers. The Division is not aware of any real-life situations that would require the GILTI to be included in the numerator of the allocation factor. If a taxpayer includes an amount in the numerator, they must include a rider with the return detailing the addition. 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 unless the CFCs are members of the combined group. The gross amount of the FDII will be included in the denominator.

When a CFC is included as members of the combined group on the same New Jersey combined return as a taxpayer that is required to include the GILTI in income for federal purposes, the CFC's receipts are included in the denominator of the combined group allocation factor. 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. If the CFC is not included in the same combined return as the taxpayer that was required to include the GILTI in income for federal purposes then the combined group denominator does not include the CFC's receipts.

Separate Return Filers – The GILTI and FDII must be reported on Schedule A. Taxpayers must include the GILTI (not excluded by N.J.S.A. 54:10A-4(k)(5)) and the gross FDII amounts in the allocation factor on Schedule J. The CFC's receipts are not included in the allocation factor on Schedule J. The I.R.C. § 250 deductions for GILTI and FDII are not allowed.

Water's-Edge Basis or Affiliated Group Elective Basis where a CFC is NOT included in the combined group – The GILTI and FDII must be reported on Schedule A. Taxpayers must include the GILTI (not excluded by N.J.S.A. 54:10A-4(k)(5)) and the gross FDII amounts in the allocation factor on Schedule J. The CFC's receipts are not included on Schedule J. The I.R.C. § 250 deductions for GILTI and FDII are not allowed.

Water's-Edge Basis where a CFC is included in the combined group – The GILTI, CFC income, and FDII must be reported on Schedule A as part of the combined group's ENI. If the underlying income of the CFC that generated the GILTI was excluded from ENI (either as the result of a tax treaty or because the income was not effectively connected to a business in the U.S.), the portion of GILTI attributable to these excluded amounts are not eliminated or excluded a second time. Only the portion of the receipts attributable to GILTI that has not been excluded or eliminated is included in Schedule J. The combined group must include the gross FDII amount in the allocation factor on Schedule J. The I.R.C. § 250 deductions for GILTI and FDII are not allowed.

World-Wide Group Elective Basis where a CFC is included in the combined group – The GILTI, CFC income, and FDII, must be reported on Schedule A as part of the combined group's ENI. Taxpayers must include the CFC's receipts in the allocation factor on Schedule J. However, if the GILTI is eliminated from ENI, it would not be included as part of the allocation factor on Schedule J. The combined group must include the gross FDII amount in the allocation factor on Schedule J. The I.R.C. § 250 deductions for GILTI and FDII are not allowed.

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 GILTI or FDII then that income must be reported on Schedule X in the same manner as a separate return filer (as described above). This reporting is in lieu of filing a separate return to report the separate portion of the member's business operations.

See N.J.A.C. 18:7-5.2; N.J.A.C. 18:7-5.18; N.J.A.C. 18:7-5.19; N.J.A.C. 18:7-21.7; N.J.A.C. 18:7-21.27

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

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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.

Changes to the Dividend Exclusion and the Historic Ordering of Net Operating Losses, the Dividend Exclusion, and the International Banking Facility Deduction

TB-111 - Issued October 11, 2023

Tax: Corporation Business Tax

P.L. 2023, c. 96, which was signed into law on July 3, 2023, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT), Gross Income Tax Act (GIT), and other miscellaneous requirements. This Technical Bulletin discusses the changes to the New Jersey Corporation Business Tax rules related to the dividend exclusion, and the historic ordering of the net operating loss deduction, dividend exclusion, and international banking facility deduction.

The New Ordering Rules

Effective for privilege periods ending on and after July 31, 2023, the dividend exclusion (DRD) and international banking facility deduction (IBF) are now calculated pre-allocation. The prior net operating loss conversion carryover deduction (PNOLs) and net operating losses/net operating loss carryovers (NOLs) are calculated post-allocation. The historic ordering limitation (preventing the DRD and IBF from increasing net operating losses) that existed from 1986 to privilege periods ending prior to July 31, 2023, is not applicable to new net operating losses. The change in historic ordering is prospective only. Taxpayers cannot adjust NOLs and PNOLs from privilege periods ending before July 31, 2023, under the provisions of P.L. 2023, c. 96.

For privilege periods ending on and after July 31, 2023, PNOLs and NOLs are subtracted after deducting the current year exclusions and deductions if the allocated entire net income is greater than zero. As a result of the change in the ordering rules, there no longer is an income limit for applying either the DRD exclusion or IBF deduction. Thus, the DRD exclusion and the IBF deduction can exceed entire net income, which may generate or increase the current year loss.

Note: NOLs are subject to the I.R.C. §172(a)(2) limitation pursuant to N.J.S.A. 54:10A-4(w).

The Dividend Exclusion

For privilege periods ending on and after July 31, 2023, the dividend exclusion is applied to entire net income after New Jersey additions but before New Jersey deductions and before the allocation of entire net income. Dividends (and deemed dividends) from 80% or more owned separate entity subsidiaries are 100% excluded. Dividends (and deemed dividends) from more than 50% but less than 80% owned separate entity subsidiaries are 50% excluded. However, N.J.S.A. 54:10A-4(k)(5)(F)(ii) requires the exclusion to be reduced by 5% of all dividends (and deemed dividends) received by the taxpayer during the privilege period.

Note: Beginning with privilege periods ending on and after July 31, 2023, GILTI is treated as a dividend for New Jersey purposes and can be included in the DRD, if applicable. No IRC § 250 deduction is allowed for either GILTI or FDII. FDII is not a dividend and is not included in the DRD. See TB-110, *Corporation Business Tax GILTI Treatment for Privilege Periods Ending After July 31, 2023,* for more information.

Dividends (and deemed dividends) distributed between combined group members that are included in the same New Jersey combined return are eliminated. The claw-back provision in N.J.S.A. 54:10A-4(k)(5)(F)(ii) does not apply to intercompany dividends (and deemed dividends) between members of the same group filing a New Jersey combined return.

Dividends and Deemed Dividends Received by a Non-U.S. Corporation

Separate Return, Water's-Edge, and Affiliated Group Filers – There are 2 situations in which the DRD cannot be utilized by a non-U.S. corporation that receives dividends (and deemed dividends) from its separate return subsidiaries. First, if the non-U.S. corporation was formed in a foreign nation that has an income tax treaty with the U.S., and under the terms of the treaty those dividends (and deemed dividends) are excluded from income for federal tax purposes and New Jersey purposes, the DRD cannot be utilized. Second, if the non-U.S. corporation's dividends (and deemed dividends) are not part of its effectively connected income, the DRD cannot be utilized. When dividends (and deemed dividends) are not included in the non-U.S. corporation's entire net income, the non-U.S. corporation cannot include them as part of the DRD.

World-wide Group Filers – If a non-U.S. corporation receives dividends (and deemed dividends) from its separate return subsidiaries, the DRD is applicable to these dividends (and deemed dividends) on a return in which the non-U.S. corporation is a member of a combined group that elected to file on a worldwide group basis. This is a result of N.J.S.A. 54:10A-4(kk), which requires that a non-U.S. corporation include all of its world-wide income in the entire net income of the combined group, including its income that is otherwise protected by a treaty.

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Captive Investment Companies, Real Estate Investment Trusts, and Regulated Investment Companies and Combined Groups

TB-113 - Issued November 1, 2023
Tax: Corporation Business Tax

P.L. 2023, c. 96, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT). This Technical Bulletin discusses the changes to the CBT treatment for Investment Companies, Real Estate Investment Trusts, and Regulated Investment Companies in relation to combined groups, the exclusion of such entities from the group if they are owned by a bank or a savings & loan association with $15 billion or less in assets, and return filing procedures.

"Captive" Versions of Investment Companies, Regulated Investment Companies, and Real Estate Investment Trusts are Included Entity Types for Combined Reporting

For privilege periods ending *before* July 31, 2023, investment companies, regulated investment companies, and real estate investment trusts were required to file separate returns and could take advantage of the tax benefits provided to those entities under the law. Effective for privilege periods ending *on and after* July 31, 2023, the Corporation Business Tax Act was amended to require the inclusion of investment companies, regulated investment companies, and real estate investment trusts meeting the statutory definition of "captive" versions of those entities as members of the combined group and taxed as C corporations. Additionally, the "captives" must add back any deductions and expenses that are only permitted to investment companies, regulated investment companies, and real estate investment trusts under the Internal Revenue Code.

Captive Investment Company, Regulated Investment Company, and Real Estate Investment Trust Defined - N.J.S.A. 54:10A-4(hh), (ii), and (jj) state:

(hh) **"Captive investment company"** shall mean, for privilege periods ending on and after July 31, 2023, an investment company that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than an investment company, that is not exempt from federal income tax. **For purposes of this subsection, a captive investment company shall not include any captive investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion.**

For privilege periods ending on and after July 31, 2023, any voting stock in an investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code, shall not be taken into account for purposes of determining whether an investment company is a captive regulated investment company.

For privilege periods ending on and after July 31, 2023, a captive investment company shall be taxed in the same manner as a C corporation, and subsection d. of section 5 of P.L. 1945, c. 162 (C. 54:10A-5) shall not apply. A captive investment company shall not be permitted to claim any deductions or expenses that were permitted for federal purposes, solely as a result of the entity being an investment company, when computing federal taxable net income. A captive investment company shall be a member of a combined group and shall be included as a member on the combined return.

(ii) **"Captive real estate investment trust"** shall mean, for privilege periods ending on and after July 31, 2023, a real estate investment trust that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the Internal Revenue Code, is not exempt from federal income tax, and is not a real estate investment

trust. **For purposes of this subsection, a captive real estate investment trust shall not include any captive real estate investment trust of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion.**

For privilege periods ending on and after July 23, 2023, any voting stock in a real estate investment trust that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code (26 U.S.C. s.817), shall not be taken into account for purposes of determining whether a real estate investment trust is a captive real estate investment trust. For purposes of this subsection, an association taxable as a corporation shall not include any listed Australian property trust or any qualified foreign entity.

For privilege periods ending on and after July 31, 2023, a captive real estate investment trust shall be taxed in the same manner as a C corporation, and subsection d. of section 5 of P.L.1945, c.162 (C.54:10A-5) shall not apply. A captive real estate investment trust shall not be permitted to claim any deductions or expenses that were permitted for federal purposes, solely as a result of the entity being a real estate investment trust, when computing federal taxable net income. A captive real estate investment trust shall be a member of a combined group and shall be included as a member on the combined return.

As used in this subsection:
"Australian property trust" means an Australian unit trust that is registered as a managed investment scheme under the Australian Corporations Act, and in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market; or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests of shares of the trust.

"Qualified foreign entity" means a corporation, trust, association, or partnership that is organized outside the laws of the United States and that satisfies the following criteria:

(1) At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined at subparagraph (B) of paragraph (5) of subsection (c) of section 856 of the Internal Revenue Code (26 U.S.C. s.856), including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States Government securities;

(2) The entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;

(3) The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;

(4) No more than 10 percent of the voting power or value in the entity is held directly, indirectly, or constructively by a single entity or individual, or the shares or certificates of beneficial interests of the entity are regularly traded on an established securities market; and

(5) The entity is organized in a country that has a tax treaty with the United States.

(jj) **"Captive regulated investment company"** shall mean, for privilege periods ending on and after July 31, 2023, a regulated investment company that is not regularly traded on an established securities market, and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than a regulated investment company, that is not exempt from federal income tax. **For purposes of this subsection, a captive regulated investment company shall not include any captive regulated investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion.**

For privilege periods ending on and after July 31, 2023, any voting stock in a regulated investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code (26 U.S.C. s.817), shall not be taken into account for purposes of determining whether a regulated investment company is a captive regulated investment company.

For privilege periods ending on and after July 31, 2023, a captive regulated investment company shall be taxed in the same manner as a C corporation and subsection d. of section 5 of P.L.1945, c.162 (C.54:10A-5) shall not apply. A captive real estate investment company shall not be permitted to claim any deductions or expenses that were permitted for federal purposes, solely as a result of the entity being a regulated investment company, when computing federal taxable net income. A captive regulated investment company shall be a member of a combined group and shall be included as a member on the combined return. *(Emphasis added.)*

Inclusion Exception for a Real Estate Investment Trust, Regulated Investment Company, or Investment Company Owned by Banks or Savings & Loan Associations

N.J.S.A. 54:10A-4(hh), (ii), and (jj) include an exception from inclusion as members in the combined group for real estate investment trusts, investment companies, and regulated investment companies of which at least 50 percent of the shares, by vote or value, are owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings & loan association with assets of $15 billion or less. If the state or federally chartered bank, savings bank, or savings & loan association has assets that exceed $15 billion during the group privilege period, the real estate investment trusts, investment companies, and regulated investment companies that meet the definition of "captive" must be included as members of the combined group filing a combined return.

Investment companies, regulated investment companies, and real estate investment trusts that do not meet the definition of "captive" **or** whose parent meets the exception for a bank (or savings & loan association) with assets of $15 billion or less, during group privilege period will continue to file separate returns, and will receive the benefits provided to such entities at N.J.S.A. 54:10A-5(d).

The exception for a bank (or savings & loan association) with assets of $15 billion or less found in N.J.S.A. 54:10A-4(hh), (ii), and (jj) **does not apply to the banks or the savings & loan associations themselves**. The bank (or savings & loan association) exception applies to the "captive" investment companies, "captive" regulated investment companies, and "captive" real estate investment trusts owned by the banks or the savings & loan associations. Banks and saving & loan associations are required to be included as members of a combined group filing combined returns, even if the investment companies, regulated investment companies, and real estate investment trusts can be excluded.

Determining the Value of the Assets for Purposes of the Bank or Savings & Loan Association Exception

In determining whether the bank's (or savings & loan association's) assets exceed $15 billion for the group privilege period for the purposes of N.J.S.A. 54:10A-4(hh), (ii), and (jj), the corporation will use an annual average value of its assets. The collective asset values must be reported and measured for this purpose following the same method of accounting used for financial and regulatory reporting to the regulatory authorities governing banks and financial institutions (e.g., FDIC, Federal Reserve, etc.). In most instances, this means the annual average assets based on the bank's quarterly reports filed with the regulatory authorities reported in accordance with U.S. G.A.A.P. or I.F.R.S. For example, Bank A's quarterly reports filed with the FDIC and Federal Reserve reported assets of $15 billion in Q1, $16 billion in Q2, $20 billion in Q3, and $18 billion in Q4. Bank A's annual average assets were $17.25 billion (add the asset values from each of the four quarterly reports together and then divide by four).

However, there are some instances in which an annual average of the assets may not be the best measure for determining whether the investment companies, regulated investment companies, and real estate investment trusts must be included as "captives," which include the following:

1. *Mergers or Acquisitions Occurring During the Final Month of the Privilege Period* – If there is a merger or acquisition occurring during the last month of the group privilege period that involves two or more banks (or savings & loan associations) and the combined annual average assets exceed $15 billion, the bank (or savings & loan association) can use the average value of the assets during the preceding eleven months in the group privilege period.

2. *Mergers or Acquisitions Occurring During the First Eleven Months of the Privilege Period* – If there is a merger or acquisition occurring during the first eleven months of the group privilege period that involves two or more banks (or savings & loan associations) and the combined annual average of the assets exceed $15 billion, a different calculation needs to be made. The surviving bank will use a weighted average value of the assets from the pre-merger months and the post-merger months to determine whether its assets exceed the annual $15 billion limit.

3. *Mergers into a New Corporation in the Context of a Combined Group* – Regardless of whether two combined groups are merging or a combined group is reorganizing its business structure, if the banks (or savings & loan associations) merge into a newly created entity that is also a bank (or savings & loan association) that is the surviving entity in the merger, then the assets of the non-surviving entity are treated as the assets of the new entity. Thus, for the months during the privilege period, each bank would determine its own average assets for the months the non-surviving entities existed during the period and not for the full 12 months. If the new corporation is the new managerial member of the combined group, the combined group must update its managerial member information instead of requesting a new NU number.

4. *Mergers into a New Corporation in the Context of Banks Previously Filing a Separate Returns* - If two previously unrelated separate return filing banks (or savings & loan associations) merge into a newly created entity ("NewCo") that is also a bank (or savings & loan association) that is the surviving entity in the merger, then the assets of the two non-surviving entities are treated as the assets of the newly created entity. The two non-surviving banks would file short period returns for the months prior to the merger, and each bank would determine its own average assets for the months prior to the merger. If, as a result of the merger. NewCo's assets exceed $15 billion for its privilege period, then it would file a combined return with its "captives." In addition, NewCo must register as the managerial member of the combined group.

5. *Abnormal Market Increases or Losses* – If there is a temporary (less than 30 days) abnormal market fluctuation that results in the value of the bank's (or savings & loan association's) assets temporarily increasing or decreasing , the annual average asset values may be calculated without including the temporary abnormal increase or decrease in assets values.

6. *Unforeseeable Events: Total Loss* – If an event, such as a natural disaster (Act of God), nationalization by a government, war, civil unrest, or riot, results in the bank (or savings & loan association) having to write-off certain assets as a total loss during the group privilege period, the bank (or savings & loan association) must include the value of the impacted assets in the same manner as it is required to report for financial and regulatory reporting purposes. For example, a bank owns $2 billion commercial bonds in an insurance company and during the group privilege period a Category 4 hurricane directly hits the areas where the insurance company insures the

majority of its customers' risks resulting in the insurance company declaring insolvency and the bonds to be worth *negative* $1 billion. As a result, the bank has to report the *negative* $1 billion as the asset value of the bonds for the group privilege period for financial and regulatory purposes. For the group privilege period, the bank would report the value of the bonds as *negative* $1 billion.

7. *Unforeseeable Events: Mark-Down* – If an event, such as a natural disaster (Act of God), nationalization by a government, war, civil unrest, or riot, results in the bank (or savings & loan association) having to mark-down the value of the assets impacted by the event, the bank (or savings & loan association) must include the value of the impacted assets in the same manner as it is required to report for financial and regulatory reporting purposes. For example, a bank owns commercial real estate in County A valued at $150 million and a drought caused a riot which damaged but did not destroy the real estate. As a result, the bank had to mark-down the value of the building to $140 million for financial and regulatory reporting purposes. For the group privilege period, the bank would report the asset value of the real estate at $140 million.

Return Filing Procedures

Banks (or savings & loan associations) and the captive investment companies, captive regulated investment companies, or captive real estate investment trusts are subject to the rules of combined reporting, and ordinarily are included as members of a New Jersey combined return (form CBT-100U). However, there are some instances in which banks and savings & loan associations may have previously filed separate returns for periods ending before July 31, 2023, but as a result of the law changes must now file combined returns.

If the annual average value of the bank's (or savings & loan association's) assets *exceed $15 billion* for the privilege period, the bank (or savings & loan association) and its captive investment companies, captive regulated investment companies, and captive real estate investment trusts must file a New Jersey combined return. If the bank (or savings & loan association) *is not already a member of a combined group*, it must register as the managerial member and the group privilege period will be the bank's (or savings & loan association's) 12-month privilege period. However, if the bank (or savings & loan association) *is a member* of an existing combined group, the group privilege period follows that of the managerial member.

If the bank's (or saving & loan association's) assets are *$15 billion or less* for the privilege period, and the bank (or saving & loan association) is not part of a combined group, then the bank (or savings & loan association) and its investment companies, regulated investment companies, and real estate investment trusts each file separate returns. However, if the bank (or savings & loan association) *is a member* of a combined group, the bank (or savings & loan association) will continue to be a member of the combined group, and the investment companies, regulated investment companies, and real estate investment trusts owned by the bank (or savings & loan association) will file separate returns for the privilege period.

Note: Form BFC-1 was discontinued. Banking corporations and financial corporations that are separate return filers must file Form CBT-100.

Captives Aligning Income Reporting with the Combined Group Privilege Period

Investment companies, regulated investment companies, and real estate investment trusts that are part of a combined group that are "captives," cannot file a separate return except to align the income reporting for the group privilege period. If the "captives" have a different privilege period than the group privilege period, the investment companies, regulated investment companies, or real estate investment trusts must file short period returns for the months preceding the start of the group privilege period. If they have a different federal tax year than the group privilege period, the income of the investment companies, regulated investment companies, and real estate investment trusts occurring during the months of the

group privilege period must be reported on the combined return, and a short period return must be filed for months preceding the investment companies, regulated investment companies, and real estate investment trusts being included as members of the combined group

If in a subsequent group privilege period the investment companies, regulated investment companies and real estate investment trusts were excluded from the combined group, due to their parents meeting the exception for bank and savings & loan associations with assets valued at $15 billion or less, then the investment companies, regulated investment companies, and real estate investment trusts would file separate returns. However, the investment companies, regulated investment companies, and real estate investment trusts will maintain the same 12-month reporting period that these entities had while they were members of the combined group, even if the months differ from the entity's tax year months for federal purposes. This is so that if/when the bank's (or savings & loan association's) average annual assets exceed $15 billion in a subsequent group privilege period, these investment companies, regulated investment companies, and real estate investment trusts will not have to file short period returns to subsequently realign their income reporting with the combined group for New Jersey purposes.

Filings Required in the Event of a Merger or Acquisition

Whether investment companies, regulated investment companies, and real estate investment trusts are included in the combined group or file separate returns varies depending on the value of the assets of the bank (or savings & loan association) owner and the timing of the merger or acquisition. The following examples illustrate whether the investment companies, regulated investment companies, and real estate investment trusts file as part of the combined group or file separate returns:

Example 1

Bank A is a member of Combined Group A. The value of Bank A's assets are $15.5 billion at the start of the group privilege period. Bank A owns REIT A and Investment Co A. Bank B is a member of Combined Group B. The value of Bank B's assets are $10 billion at the start of the group privilege period. Bank B owns RIC B. Combined Group A acquires Combined Group B on August 1. Shortly thereafter, Bank B is merged into Bank A. Note: The average value of Bank A's assets for the 12 month group privilege period exceeds $15 billion. The average value of Bank B's assets for the pre-merger and acquisition months is less than $15 billion.

Combined Group A files a combined return for the full 12-month group privilege period on which REIT A and Investment Co A are included as members of the combined group as "captives." Combined Group B will file a short period combined return for the months January 1 through July 31. For the period of August 1 through December 31 they will be included as members of Combined Group A's combined return. RIC B will file a separate short period return for the months January 1 through July 31. For the period of August 1 through December 31, RIC B will be included as a member of Combined Group A since Bank A's average assets exceed $15 billion.

Example 2

Bank C is a member of Combined Group C. The value of Bank C's assets are $12.5 billion at the start of the group privilege period. Bank C owns REIT C and Investment Co C. Bank D is a member of Combined Group D. Bank D owns RIC D. The value of Bank D's assets are $11 billion at the start of the group privilege period. Combined Group C acquires Combined Group D on December 1. Shortly thereafter, Bank D is merged into Bank C. Combined Group C files a combined return for the full 12-month group privilege period.

Combined Group D will file a short period combined return for the months January 1 through November 30. For the period of December 1 through December 31 they will be included as members of Combined Group C's combined return. As the merger and acquisition happened in the last month of the group privilege period and Bank C' and Bank D's average value of their respective assets was less

than $15 billion during the preceding 11 months, REIT C, Investment Co C, and Regulated Investment Co D are not included as "captives" for the group privilege period. REIT C, Investment Co C, and RIC D will file separate returns for the full 12-month period beginning January 1 and ending December 31. In the subsequent group privilege period for Combined Group C, REIT C, Investment Co C, and Regulated Investment Co D will be included as members of the combined group since they are "captives," assuming Bank C's average asset value for the group privilege period is in excess of $15 billion.

Example 3

Same facts as in Example 2 above, except Bank D also owns REIT D and Investment Co D. Shortly after the December 1 acquisition, REIT D and Investment Co D merged into REIT C and Investment Co C, respectively.

Combined Group C files a combined return for the full 12-month group privilege period. Combined Group D will file a short period combined return for the months January 1 through November 30. For the period of December 1 through December 31, they will be included as members of Combined Group C's combined return. As the merger and acquisition happened in the last month of the group privilege period and Bank C' and Bank D's average value of their respective assets was less than $15 billion during the preceding 11 months, REIT C, Investment Co C, Investment Co D, and REIT D, are not included as "captives" for the group privilege period and must file separate returns for the period. However, REIT D and Investment Co D will file short period returns for the months prior to the merging into REIT C and Investment Co C (i.e., January 1 through November 30). Assuming the average annual assets of Bank C remains in excess of $15 billion during the subsequent group privilege period for Combined Group C, REIT C and Investment Co C will be included as members of the Combined Group C since they are "captives."

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The New Jersey Research and Development Tax Credit

TB-114 - Issued December 22, 2023
Tax: Corporation Business Tax
Gross Income Tax

This Technical Bulletin explains certain aspects of research performed in New Jersey and related issues for both Corporation Business Tax and Gross Income Tax taxpayers.

For New Jersey purposes, there is a Corporation Business Tax R&D credit (N.J.S.A. 54:10A-5.24) and, if applicable, a deduction for qualified research expenditures and payments. While there is no such credit for the purposes of either the New Jersey Gross Income Tax or the Pass-Through Business Alternative Income Tax (BAIT), there is a deduction for qualified research expenditures and payments.

The New Jersey Corporation Business Tax R&D Credit

N.J.S.A. 54:10A-5.24 states:

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 in accordance with section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41. 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.

For federal purposes, a taxpayer is allowed an income tax credit for certain qualified research and development expenditures and research payments as long as the requirements of IRC § 174 and IRC § 41 are both met. Additionally, a qualified small business can elect a separate federal payroll credit instead of the federal corporate income tax credit under IRC § 41(h) and IRC § 3111(f). IRC § 280C and certain other provisions of the Internal Revenue Code require the reduction of the federal research and development credit and reduction of the deductible research and development expenditures and research payments when the taxpayer opts for other federal credits.

For purposes of the New Jersey Corporation Business Tax R&D credit, the federal rules and case law on IRC § 174 and IRC § 41 are applicable, except when the statutory limitations in N.J.S.A. 54:10A-5.24, N.J.S.A. 54:10A-4(k)(11), other New Jersey credits preventing the double use of expenses for multiple credits, the Corporation Business Tax Act, or New Jersey case law governing specific issues on the New Jersey R&D Credit differ. N.J.S.A. 54:10A-5.24.a(2) limits the New Jersey R&D credit to only qualifying research expenditures and payments in New Jersey. The New Jersey R&D credit also expressly limits the expenses used in calculating the credit cannot be used for calculating specific other New Jersey credits and vice versa. The New Jersey R&D credit is for all Corporation Business Tax taxpayers, regardless of whether the entity is a corporation, S corporation, Qualified Subchapter S subsidiary, partnership, or disregarded entity (see below for information on these specific entities).

If the qualifying research expenditures were not used to calculate the federal research and development credit but were used to calculate other New Jersey credits for which the taxpayer is prohibited from double counting the expenditures, and the taxpayer subsequently files an amended federal return to claim the federal research and development credit, the taxpayer cannot use those expenditures to claim the New Jersey R&D credit.

Substantiation Requirements. Substantiation is necessary to ensure the research expenditures and payments are for research performed in New Jersey and that they are not being double counted toward other New Jersey credits.

For tax years beginning before January 1, 2018, the New Jersey R&D credit was calculated based on the federal research and development credit under IRC § 41 in effect on June 30, 1992. Taxpayers were limited to calculating the New Jersey R&D credit using the traditional method or if that was impractical or unavailable, the taxpayer would have to use the start-up method. For more information on the New Jersey R&D credit for tax years beginning before January 1, 2018, see N.J.A.C. 18:7-3.23.

If a taxpayer is filing an amended return to claim the New Jersey R&D credit, they must use Form 306 for the appropriate tax year. For example, a taxpayer cannot use a 2022 Form 306 to claim a tax year 2017 R&D credit. Copies of prior year forms can be found online.

Note: See ANJ-1, *New Jersey Taxpayers' Bill of Rights* for information on the statute of limitations.

For tax years beginning on and after January 1, 2018, taxpayers must use the same method that was used for claiming the federal research and development credit for corporate income tax purposes, except that the New Jersey R&D credit is limited to 10% of the qualifying research expenditures in New Jersey and 10% of the basic research payments for research in New Jersey. Basic research payments paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the taxable year (including as contributions) to an energy research consortium in New Jersey also qualify. The New Jersey R&D credit is not refundable.

If a taxpayer is filing an amended return to claim the New Jersey R&D credit, they must use Form 306 for the appropriate tax year. For example, a taxpayer cannot use a 2023 Form 306 to claim a tax year 2019 R&D credit. Copies of prior year forms can be found online.

Note: See ANJ-1, *New Jersey Taxpayers' Bill of Rights* for information on the statute of limitations.

The current federal limitations set forth in the current I.R.C. § 41 for tax years beginning on and after January 1, 2018 (as a result of P.L. 2018, c. 48) apply to the New Jersey R&D Credit, limited to research expenditures and research payments in New Jersey. See also N.J.A.C. 18:7-3.23A.

Taxpayers must use the same method for calculating the New Jersey R&D credit that was used for federal purposes on their federal return. If a taxpayer files an amended federal return changing the method used or adjusting the amount of credit claimed, the taxpayer must file an amended New Jersey Corporation Business Tax return reflecting such change. If the Internal Revenue Service makes adjustments to the amount of qualifying expenses, the taxpayer must reflect these adjustments by filing an amended New Jersey Corporation Business Tax return. Adjustments made for qualifying expenses for the federal research and development credit will not increase or decrease the New Jersey R&D credit if the expenses are not for research conducted in New Jersey.

For purposes of the New Jersey R&D credit, gross receipts 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 the purposes of the federal research and development 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.

For tax years 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 IRC § 41(h)(3) that were disallowed for federal purposes because the taxpayer made an election for the federal payroll tax credit, are allowed for purposes of calculating the New Jersey R&D credit. For all other federal credits that a taxpayer elects to take instead of the federal research and development credit, if the taxpayer is

required to reduce their amount of qualified research expenditures and research payments for the federal credit and/or that are deducted from taxable income, those expenditures and payments cannot be used for the New Jersey R&D credit and cannot be deducted from entire net income. See N.J.S.A 54:10A-4(k).

Federal Orphan Drug Credit

If the taxpayer elects to take the federal orphan drug credit (IRC § 45C) instead of the federal research and development credit, those otherwise qualified expenses and payments are not permitted to be used for the New Jersey R&D credit. In addition, if the taxpayer is required to reduce their amount of deductible research expenditures deducted for federal purposes, they are not allowed to deduct those federally disallowed amounts for New Jersey purposes.

New Jersey R&D Credit Carryovers

In general, the New Jersey R&D credit can be carried forward for seven tax years. However, certain taxpayers in specified qualifying industries performing qualifying research in fields such as advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology, as defined at N.J.S.A. 54:10A-5.24b.b, are eligible for a 15-year carry forward.

New Jersey R&D Credits of Combined Group Members

For purposes of New Jersey R&D credit, the 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. Taxable members of a combined group may share their tax credits and tax credit carryovers with other taxable members of the combined group that are included on the same New Jersey combined return. For more information, see TB-90; N.J.A.C. 18:7-3.23A; and N.J.A.C. 18:7-21.12.

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.

Situations in Which Research Expenditure Location Hard to Quantify

If a taxpayer has research conducted both inside 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 research 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.

For a combined group filing either a mandatory or elective New Jersey combined return, if the combined group has research both inside 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 research 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. See N.J.A.C. 18:7-3.23A and TB-90 for more information.

Corporate Partners and Partnerships

The corporate partner is entitled to their proportionate share of the New Jersey R&D credit. The partnership completes Part I, Part II, either Part III or Part IV (depending on the credit method), and Part V of Form 306 and attaches it to the NJ-CBT-1065 in order to claim the credit. However, the credit is not useable by the partnership itself. The partnership includes a copy of Form 306, along with a statement which includes the corporate partner's share of the qualifying activities for the credit and share of the credit on the Schedule NJK-1, Part IV, Supplemental Information, which is provided to the corporate partner. The corporate partner must attach this information to the Corporation Business Tax return, along with copies of Form 306. See N.J.A.C. 18:7-3.23A and N.J.A.C. 18:7-7.6. **Note:** Parts VI and VII of Form 306 do not apply to partnerships completing the form. These sections will be completed by the corporate partners when they file Form 306 claiming their portion of the credit for CBT purposes.

S Corporations and Qualified Subchapter S Subsidiaries

New Jersey S Corporations and New Jersey Qualified Subchapter S Subsidiaries (QSSS) that claimed a federal research and development credit for qualifying research expenditures and/or research payments in New Jersey are also entitled to the New Jersey R&D credit. However, as the QSSS's tax attributes are reported as part of the parent S corporation's tax return, the parent S corporation is the entity that claims the New Jersey R&D credit and includes the QSSS's qualifying research expenditures and research payments in New Jersey as part of the expenditures and payments on Form 306. The credit form must be accompanied by a rider with a break out of research expenditures and research payments by entity.

Since the New Jersey R&D credit cannot reduce the tax below the statutory minimum tax, the New Jersey R&D credit is generally carried forward for use in a future period when the S corporation or QSSS is taxed on income. For example, when the New Jersey S corporation or QSSS elects to be taxed as C corporations or elects to be included as members of a combined group.

Note: A federal S corporation (or QSSS) that elects to be treated as a C corporation for New Jersey purposes is called a hybrid corporation. If an entity elects to be a hybrid corporation, they do not follow the information in this section and will instead follow the general information for corporations above.

Disregarded Entities and Corporate Owners

The assets and tax attributes of a disregarded entity are that of the owner and are reported on the owner's New Jersey tax return. In situations in which the owner is a corporation and the disregarded entity had qualifying research expenditures and/or research payments in New Jersey, those amounts must be reported as part of the amounts being claimed on the corporation's Form 306 filed with the Corporation Business Tax return.

New Jersey Cannabis Licensees Filing Corporation Business Tax Returns

A registered cannabis licensee can deduct any expenditures that would have qualified as a qualified research expenditures pursuant to section 174 of the Internal Revenue Code but were disallowed for federal purposes because cannabis is a controlled substance under federal law. Taxpayers must include a copy of their federal return as filed with the IRS. In addition, the taxpayer must include a rider detailing their computations as though 26 U.S.C. s.280E did not apply. The taxpayer may also claim that expense for purpose of the New Jersey Research and Development Tax credit on Form 306, even though such expenses were disallowed for the federal research and development tax credit. Taxpayers must include a detailed rider explaining the calculations.

Statute of Limitations for Claiming the New Jersey R&D Credit

For New Jersey Corporation Business Tax purposes, taxpayers are required to complete Form 306 when claiming the New Jersey R&D credit. Form 306 must be submitted with the original timely filed Corporation Business Tax return or timely filed amended return. There is a four-year statute of limitations for both refunds and assessments for tax returns. Taxpayers cannot claim unused carryovers of the New Jersey R&D credit in subsequent years if Form 306 was never filed as part of a timely filed original or amended return. Additionally, the Division cannot adjust New Jersey R&D credit carryovers that were earned in periods beyond the statute of limitation. The P.L. 2023, c. 96, amendments to N.J.S.A. 54:49-6 only apply to net operating losses. See: N.J.S.A. 54:49-6; N.J.S.A. 54:49-14; and N.J.A.C. 18:7-13.8.

Deducting the Research Expenditures and Research Payments for Corporation Business Tax (CBT) Purposes

N.J.S.A. 54:10A-4(k)(11) states:

> (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; provided, however, for privilege periods beginning on and after January 1, 2022, a deduction for research and experimental expenditures shall be allowed during the same privilege period for which a credit is claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), notwithstanding the timing schedule required by the federal Internal Revenue Code of 1986, 26 U.S.C. s.174, for the deduction of specified research and experimental expenditures.

The statute applies to all New Jersey Corporation Business Tax (CBT) taxpayers. While N.J.S.A. 54:10A-4(k)(11) does not apply to non-New Jersey research expenditures and research payments, the statute requires that the taxpayer claim both the New Jersey R&D credit and federal research and development credit in order to deduct their qualifying New Jersey research expenditures and research payments. If the taxpayer claimed both the New Jersey R&D credit and federal research and development credit for the privilege period, the taxpayer can deduct the their qualifying New Jersey research expenditures and research payments in the same year as the taxpayer claimed the New Jersey R&D credit.

Note: The New Jersey qualified research expenditures and payments are recorded on Form 306 at Part I, line 1; Part II, line 2; and *either* Part III, line 9; or Part IV, line 20, depending on the credit calculation method used. These items are eligible to be deducted in the same period as the credit pursuant to N.J.S.A. 54:10A-4(k)(11). Thus, depending on the credit calculation method used, taxpayers will deduct *either* the sum of lines 1, 2, and 9 **or** the sum of lines 1, 2, and 20.

If a taxpayer claimed the New Jersey R&D credit but did not claim the federal research and development credit, N.J.S.A. 54:10A-4(k)(11) requires the add back of the qualified research expenditures and payments used to claim the New Jersey R&D credit.

New Jersey follows the federal amortization and capitalization rules set forth in IRC § 174 for non-New Jersey research expenditures and research payments because N.J.S.A. 54:10A-4(k)(11) does not apply to non-New Jersey research expenditures and research payments. Therefore, taxpayers must use the amounts reported as federal taxable income at line 28 of the 1120 (line 29 of Form 1120-F or line 22 of Form 1120S) when filing their New Jersey return.

See the chart showing the *Impact of N.J.S.A. 54:10A-4(k)(11) on NJ Qualified Research Expenditures (QREs) Deducted*.

Deducting the Research Expenditures and Research Payments for Gross Income Tax (GIT) and Pass-Through Business Alternative Income Tax (BAIT) Purposes

The New Jersey Gross Income Tax (GIT) Act does not have a specific credit or deduction for IRC § 174 research and development expenses. However, the GIT flow-through business categories of income are reported as a net amount. If an IRC § 174 expense meets the deductibility standard of an ordinary business expense, taxpayers are allowed to deduct these research expenses incurred in connection with the trade or business against the income. Whether or not the activity constitutes a business expense for the purposes of GIT will depend on the specific facts in each case.

In most instances, research expenses are ordinary and necessary for a business to survive and grow. Generally, a taxpayer may deduct research and development expenses in connection with IRC § 174 for New Jersey GIT purposes, as long as the research and development occurs in the ordinary course of the trade or business. Taxpayers must use the same method of accounting for New Jersey GIT purposes that they used for federal purposes. In addition, taxpayers must use the same timing schedule as they were required to use for federal purposes. See N.J.S.A. 54A:8-3(c).

Cannabis Licensees filing GIT or Pass-Through Business Alternative Income Tax (BAIT). A registered cannabis licensee can deduct any expenditures that otherwise would have qualified as a qualified research expenditures pursuant to section 174 of the Internal Revenue Code but is currently disallowed federally because cannabis is a controlled substance under federal law. Taxpayers must include a copy of their federal return as filed with the IRS. In addition, the taxpayer must include a rider detailing their computations as though 26 U.S.C. s.280E did not apply. See TB-106 for additional information.

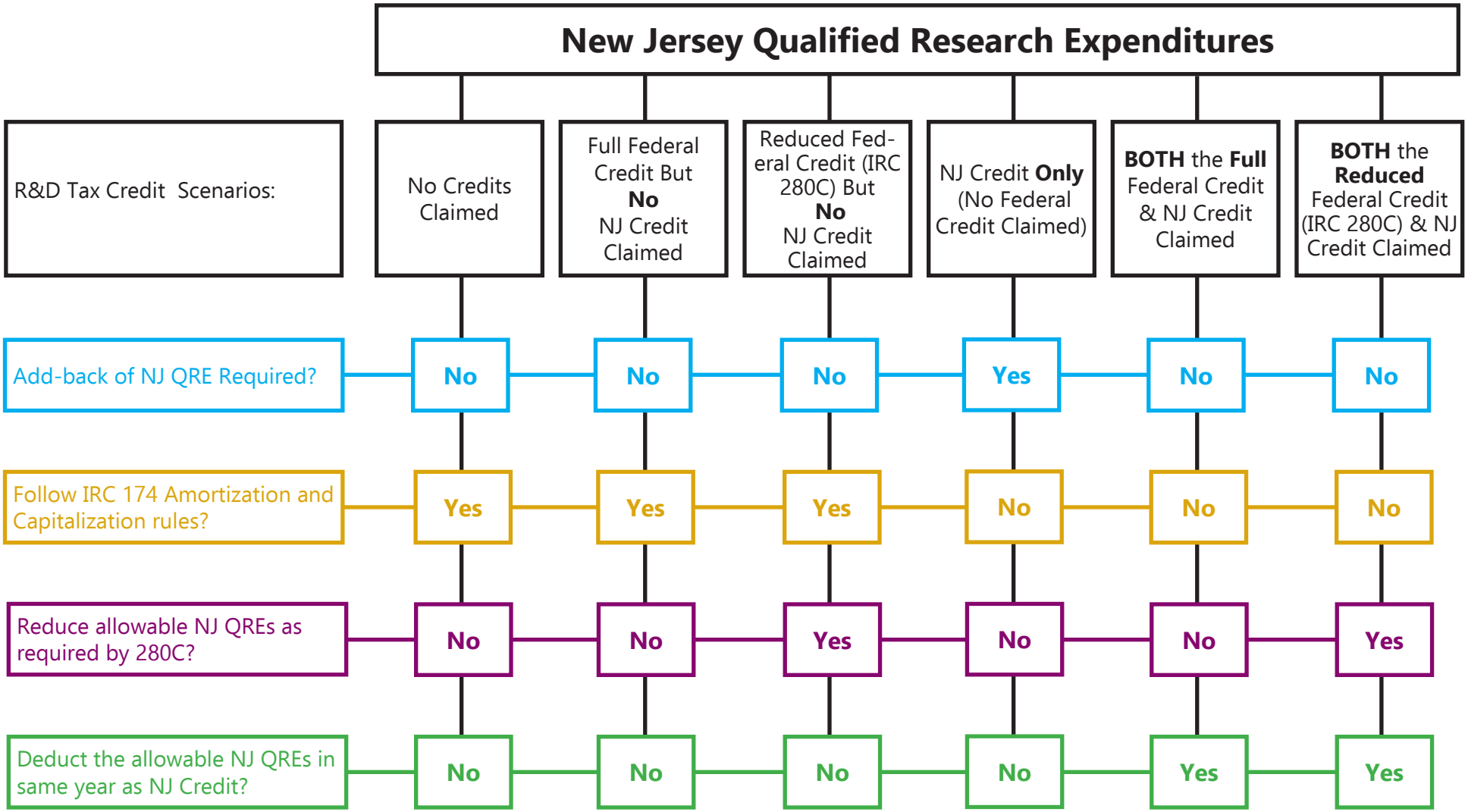
Pass-Through Business Alternative Income Tax (PTE/BAIT) is part of the GIT Act. Therefore, a member's share of distributive proceeds is based on the information reported on the entity's NJ-1065 or CBT-100S.

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.

Impact of N.J.S.A. 54:10A-4(k)(11) on NJ Qualified Research Expenditures (QREs) Deducted

(Not Applicable to Cannabis Licensees)

Note: New Jersey follows IRC 280C. Thus, if a taxpayer opts to take a reduced federal research credit as a result of an election under IRC 280C, the NJ QREs disallowed under IRC 280C for federal purposes are disallowed for New Jersey purposes.



Tab 5

New Jersey Corporation Business Tax Unitary Return

2019
CBT-100U

For Tax Years Ending On or After
July 31, 2019, Through June 30, 2020

Tax year beginning _____, ____, and ending _____, ____

Unitary ID Number **NU**	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 ☐	Business Contact Name _____
Check applicable filing method (see instructions Default ☐ Water's-Edge Election ☐ Affiliated Grou ☐ World-Wide Election Period _____ of 6	Email _____ 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 grou

	Managerial Member (1)	Member 2...
Unitary ID Number	**NU**	**NU**
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		
If the answer to any of the following questions for a member is "yes," check the box in the appropriate member column.		
1. Is member is inactive? If yes, complete Schedule I.	☐	☐
2. Does member have nexus with New Jersey?	☐	☐
3. (a) Is only a portion of the business included in the combined group entire net income? If yes, complete lines 3b and 3c.	☐	☐
(b) Is the partially included member also included as a member of another New Jersey combined return?	☐	☐
(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)	☐	☐
4. Is member a banking corporation?	☐	☐
5. Is member a financial corporation? (See instructions.)	☐	☐
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?	☐	☐
7. Is member a federal 1120S filer	☐	☐
8. Has member made a New Jersey S Corporation Election?	☐	☐
9. Does member own any Qualified Subchapter S Subsidiaries	☐	☐
10. Is member a combinable captive insurance company?	☐	☐
11. Is member a partner in a partnership?	☐	☐
12. Is member an owner of a disregarded entity?	☐	☐
13. Is member a licensee under the Casino Control Act?	☐	☐
14. Does member own or lease real or tangible property in New Jersey?	☐	☐
15. Does member have payroll in New Jersey?	☐	☐
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.	☐	☐

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 ncluded 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 ersey 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.					
Additions						
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.					
Deductions						
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...
Taxable Net Income/(Loss) Calculation						
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. **Member's Share of Combined Group Taxable Net Income –** 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. EITHER/OR a) Urban Enterprise Zone Employee Tax Credit from Form 300 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				
PNOL Deduction and Carryover 1. Form 500U, Section A, line 6 minus line 8	1.			
NOL Deduction and Carryover 2. Form 500U, Section B, line 9 minus line 11	2.			
Interest and Intangible Costs and Expenses 3. Schedule G, Part I, line b	3.			
4. Schedule G, Part II, line b	4.			
Schedule J Information – Water's-Edge and World-Wide Returns 5. Schedule J, line 8	5.			
6. Schedule J, line 9	6.			
7. Schedule J, line 11	7.			
Schedule J Information – Affiliated Group Retur 8. Schedule J, line 6	8.			
9. Schedule J, line 7	9.			
10. Schedule J, line 9	10.			
Net Operational Income Information 11. Schedule O, Part III, line 31	11.			
Dividend Exclusion Information 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 membe '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. *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.					
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.					
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.					

		(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
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.					

PART II – End 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. 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.					
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.					
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		**NU**	**NU**
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		**NU**	**NU**
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 Jerse	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 Retur

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 Jerse	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 Jerse		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 Jerse		Deposit Balances or Receipts	Percentages
Taxing District	County		
Member's Total Deposit Balances or Receipts.....			
Member's Total Percentages.....			

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	
Enter total of column 7 here and on page 1, line 10										

*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.				
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 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	
Enter total of column 7 here and on page 1, line 10										

*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.				
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...
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		**NU**	**NU**
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.		

Include Federal Form 4562 and Federal Depreciation Worksheet

Modification at Schedule A, Part II, line 9 or line 12 – Depreciation and Certain Safe Harbor Lease Transactions

Additions			
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.		
Deductions			
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. **ADJUSTMENT** – 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. **Current tax year's PNOL deduction** – 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. **Current tax year's Post Allocation NOL deduction –** 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		**NU**	**NU**
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

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 r - turns. This includes Forms CBT-100U, CBT-200-T, and CBT-150. Payments must also be made electronically. Electronic filing benefit 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 co - mon 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 ater's-Edge basis. The managerial member of a combined group may make an election to have the group file on a orld-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 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 – 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 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 manag - rial 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 d - rect 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 pr - duces 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 b 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 ele - tive.** 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 sit - ation, the combined group must file a wate 's-edge or world-wide group combined return.

An affiliated group election by the U.S. domestic affiliate cor - ration 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 co - bined 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 retur

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.

NEW FOR 2019

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 Inactivit , 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 CB -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 CB -100U will automatically receive a six-month extension only if they have paid at least 90% of the tax liability and timely filed Form CB -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 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, 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 Penalt . 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 wa 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 authorit . 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 o 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 Schedul

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 file

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 filling 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. Supe . 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 th member.

Part II – Modifications to Entire Net Incom

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 incom
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 From 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 Corp - ration 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 membe '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 Jerse 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.

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 metho 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 nonoperational 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 taxpaye '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 met od 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 stat - torily prescribed by N.J.S.A. 54:10A-4.11.c, and filers must co - plete 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 membe '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 ta - ing 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 numbe , 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, chiropodists, 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 membe 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 affil - ated 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

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 **NU**	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 ☐

Check applicable filing method (see instructions)

Default
☐ Water's-Edge

Election
☐ Affiliated Group ☐ World-Wide
Election Period _____ of 6

Business Contact Name _____

Email _____

Phone Number (_____) _____

1. Total Amount of Tax of Combined Group – Enter amount from line 5, column (a) of Schedule A, Part III	1.	XXXXXXXXXXXXXXXXXXXX
2. Total Tax Credits Used by Combined Group – Enter amount from line 6, column (a) of Schedule A, Part III (see instructions)	2.	XXXXXXXXXXXXXXXXXXXX
3. TOTAL COMBINED GROUP CBT TAX LIABILITY – Enter amount from line 7, column (a) of Schedule A, Part III	3.	XXXXXXXXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXXXXXXXX
5. Total Combined Group Tax Due – Enter amount from line 9b, col. (a) of Schedule A, Part III (see instructions)	5.	XXXXXXXXXXXXXXXXXXXX
6. Reserved for future use	6.	
7. Professional Corporation Fees (from combined group column of Schedule PC, line 9)	7.	XXXXXXXXXXXXXXXXXXXX
8. TOTAL TAX AND PROFESSIONAL CORPORATION FEES – Add lines 5 and 7	8.	XXXXXXXXXXXXXXXXXXXX
9. Payments and Credits (from Schedule E, line 4)	9.	XXXXXXXXXXXXXXXXXXXX
10. Payments made by partnerships on behalf of member (include copies of all NJK-1s)	10.	XXXXXXXXXXXXXXXXXXXX
11. a. Total Refundable Tax Credits to applicable members that earned the credits	11a.	XXXXXXXXXXXXXXXXXXXX
b. Total Refundable Tax Credit to be refunded to individual members	11b.	XXXXXXXXXXXXXXXXXXXX
c. Balance of Refundable Tax Credit to be applied to the group	11c.	XXXXXXXXXXXXXXXXXXXX
12. Total Payments and Credits – Add lines 9, 10, and 11c	12.	XXXXXXXXXXXXXXXXXXXX
13. Balance of Tax Due – If line 12 is less than line 8, subtract line 12 from line 8	13.	XXXXXXXXXXXXXXXXXXXX
14. Penalty and Interest Due (see instructions)	14.	XXXXXXXXXXXXXXXXXXXX
15. Total Balance Due – Add line 13 and line 14	15.	XXXXXXXXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXXXXXXXX
17. Amount of line 16 to be Refunded	17.	XXXXXXXXXXXXXXXXXXXX
18. Amount of line 16 to be Credited to 2021 Tax Return	18.	XXXXXXXXXXXXXXXXXXXX

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	**NU**	**NU**
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		
If the answer to any of the following questions for a member is "yes," check the box in the appropriate member column.		
1. Is member inactive? If yes, complete Schedule I.	☐	☐
2. Does member have nexus with New Jersey?	☐	☐
3. a. Is only a portion of the business included in the combined group entire net income? If yes, complete lines 3b and 3c.	☐	☐
b. Is the partially included member also included as a member of another New Jersey combined return?	☐	☐
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)	☐	☐
4. Is member a banking corporation?	☐	☐
5. Is member a financial corporation? (See instructions.)	☐	☐
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?	☐	☐
7. Is member a federal 1120-S filer?	☐	☐
8. Has member made a New Jersey S Corporation Election?	☐	☐
9. Does member own any Qualified Subchapter S Subsidiaries?	☐	☐
10. Is member a combinable captive insurance company?	☐	☐
11. Is member a partner in a partnership?	☐	☐
12. Is member an owner of a disregarded entity?	☐	☐
13. Is member a licensee under the Casino Control Act?	☐	☐
14. Does member own or lease real or tangible property in New Jersey?	☐	☐
15. Does member have payroll in New Jersey?	☐	☐
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 instructions for federal Schedule UTP.	☐	☐

Annual General Questionnaire (See Instructions)

Unitary ID Number **NU**

1. a. Enter total number of members in the group ..... a. XXXXXXXXXXXXX
   b. Enter number of taxable group members..... b. XXXXXXXXXXXXX
   c. Enter number of nontaxable group members ..... c. XXXXXXXXXXXXX
   d. Enter number of related parties or affiliates that are not included in the combined return ..... d. XXXXXXXXXXXXX

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						
Income						
1. a. Gross receipts or sales everywhere	1a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Less: returns and allowances	1b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Balance – Subtract line 1b from line 1a	1c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Less: Cost of goods sold (from Schedule A-2, line 8) (include copy of federal 1125-A)	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Gross profit – Subtract line 2 from line 1c	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. a. Dividends	4a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Gross Foreign Derived Intangible Income (see instructions) (include copy of federal Form 8993)	4b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Gross Global Intangible Low-Taxed Income (see instructions) (include copy of federal Form 8992)	4c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Interest	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Gross rents	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Gross royalties	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Capital gain net income (include a copy of federal Schedule D)	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
9. Net gain or (loss) (from federal Form 4797, include a copy)	9.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Other income (see instructions) (include schedule(s))	10.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
11. **Total Income** – Add lines 3 through 10	11.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Deductions						
12. Compensation of officers (from Schedule F) (include copy of federal 1125-E)	12.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
13. Salaries and wages (less employment credits)	13.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
14. Repairs (Do not include capital expenditures)	14.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
15. Bad debts	15.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
16. Rents	16.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
17. Taxes and licenses	17.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
18. Interest (see instructions)	18.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
19. Charitable contributions (see instructions)	19.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
20. Depreciation (from federal Form 4562, include a copy) less depreciation claimed elsewhere on return	20.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
21. Depletion	21.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
22. Advertising	22.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
23. Pension, profit-sharing plans, etc.	23.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
24. Employee benefit programs	24.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
25. Reserved for future use	25.					
26. Other deductions (attach schedule)	26.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
27. **Total Deductions** - Add lines 12 through 26	27.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX			XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Taxable income/(loss) of combined group – Subtract line 1b from line 1a	1c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Additions						
2. Income of a non-U.S. corporation member not included in line 1	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Other federally exempt income not included in line 1 (see instructions)	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Interest on federal, state, municipal, and other obligations not included in line 1 (see instructions)	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. New Jersey State and other states taxes deducted in line 1 (see instructions)	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Related party interest addback (from Schedule G, Part I)	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Related party intangible expenses and costs addback (from Schedule G, Part II) (see instructions)	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Reserved for future use	8.					
9. Depreciation modification being added to income (from Schedule S)	9.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Other additions. Explain on separate rider (see instructions)	10.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
11. Taxable income/(loss) with additions – Add line 1c through line 10	11.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Deductions						
12. Depreciation modification being subtracted from income (from Schedule S)	12.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
13. Previously Taxed Dividends (from Schedule PT)	13.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Enter the I.R.C. § 250(a) deduction amount allowed federally for FDII if FDII income is included on line 1c above	14b.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Net GILTI previously taxed by New Jersey not deducted or excluded elsewhere	14c.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
15. I.R.C. § 78 Gross-up included in line 1 (do not include dividends that were excluded/ deducted elsewhere)	15.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
16. Reserved for future use	16.					
17. a. Elimination of nonoperational activity (from Schedule O, Part I)	17a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Elimination of nonunitary partnership income/loss (from Schedule P-1, Part II, line 4)	17b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
18. Other deductions. Explain on separate rider (see instructions)	18.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
19. Total deductions – Add line 12 through line 18	19.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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...
Taxable Net Income/(Loss) Calculation						
20. Entire Net Income/(Loss) Subtotal – Subtract line 19 from line 11	20.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
21. Group allocation factor (from Schedule J, line 9)	21.	XXXXXXXXXXXXX				
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.	XXXXXXXXXXXXX				
23. Net operating loss deduction (from Form 500U, Section C, line 3) (amount entered cannot be more than amount on line 22)	23.	XXXXXXXXXXXXX				
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.	XXXXXXXXXXXXX				
25. Allocated Dividend Exclusion (from Schedule R) (see instructions) (amount entered cannot be more than amount on line 24)	25.	XXXXXXXXXXXXX				
26. Allocated entire net income subtotal – Subtract line 25 from line 24	26.	XXXXXXXXXXXXX				
27. a. I.B.F. Exclusion	27a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Allocated I.B.F. Exclusion – Multiply line 27a, column (a), by the group allocation factor (line 21)	27b.	XXXXXXXXXXXXX				
28. **Combined Group Taxable Net Income/(Loss) –** Subtract line 27b from line 26	28.	XXXXXXXXXXXXX				

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.	XXXXXXXXXXXXX				
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.	XXXXXXXXXXXXX			XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. a. New Jersey nonoperational income from Schedule O, Part III	3a.	XXXXXXXXXXXXX			XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Nonunitary partnership income (from Schedule P-1, Part II, line 5)	3b.	XXXXXXXXXXXXX			XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Tax Base – Add lines 1, 2, 3a, and 3b.	4.	XXXXXXXXXXXXX				
5. Amount of Tax – For the combined group, multiply line 4, column (a) by the applicable tax rate (see instructions)	5.	XXXXXXXXXXXXX				
6. Tax Credits (from Schedule A-3, Part I, line 28)	6.	XXXXXXXXXXXXX				
7. CBT TAX LIABILITY – Subtract line 6 from line 5	7.	XXXXXXXXXXXXX				
8. Total surtax of combined group (from combined group column of Schedule A-5, Part II, line 5)	8.	XXXXXXXXXXXXX				
9. a. Multiply $2,000 by the number of taxable members and enter the result	9a.	XXXXXXXXXXXXX				
b. Tax Due – Add line 8 to the greater of line 7 or line 9a.	9b.	XXXXXXXXXXXXX				

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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Purchases	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Cost of labor	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Additional section 263A costs	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Other costs (include schedule)	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Total – Add lines 1 through 5	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Inventory at end of year	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Cost of goods sold – Subtract line 7 from line 6. Include here and on Schedule A, Part I, line 2	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Angel Investor Tax Credit from Form 321	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Business Employment Incentive Program Tax Credit from Form 324	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. EITHER/OR a) Urban Enterprise Zone Employee Tax Credit from Form 300 b) Urban Enterprise Zone Investment Tax Credit from Form 301	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Redevelopment Authority Project Tax Credit from Form 302	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Manufacturing Equipment and Employment Investment Tax Credit from Form 305	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Research and Development Tax Credit from Form 306	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Neighborhood Revitalization State Tax Credit from Form 311	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
9. Effluent Equipment Tax Credit from Form 312	9.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Economic Recovery Tax Credit from Form 313	10.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
11. AMA Tax Credit from Form 315	11.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
12. Business Retention and Relocation Tax Credit from Form 316	12.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
13. Sheltered Workshop Tax Credit from Form 317	13.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
14. Film Production Tax Credit from Form 318	14.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
15. Urban Transit Hub Tax Credit from Form 319	15.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
16. Grow NJ Tax Credit from Form 320	16.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
17. Wind Energy Facility Tax Credit from Form 322	17.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
18. Residential Economic Redevelopment and Growth Tax Credit from Form 323	18.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
19. Public Infrastructure Tax Credit from Form 325	19.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
20. Reserved for future use	20.			
21. Film and Digital Media Tax Credit from Form 327	21.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
22. Tax Credit for Employers of Employees With Impairments from Form 328	22.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
23. Pass-Through Business Alternative Income Tax Credit from Form 329	23.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
24. Apprenticeship Program Tax Credit from Form 330	24.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
25. Tax Credit for Employer of Organ/Bone Marrow Donor from Form 331	25.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
26. Tiered Subsidiary Dividend Pyramid Tax Credit from Form 332	26.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
27. Other Tax Credit (see instructions)	27.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
28. Total tax credits – Add lines 1 through 27. Include here and on Schedule A, Part III, line 6	28.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
PART II – Refundable Tax Credits				
1. Refundable portion of New Jobs Investment Tax Credit from Form 304	1.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Refundable portion of Angel Investor Tax Credit from Form 321	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Refundable portion of Business Employment Incentive Program Tax Credit from Form 324	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Other Tax Credit to be refunded	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Total Refundable Tax Credit to be refunded to individual members. Enter here and on page 1, line 11b	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Balance of Refundable Tax Credit to be applied to the group. Enter here and on page 1, line 11c	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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				
PNOL Deduction Carryover 1. Form 500U, Section A, line 6 minus line 8b (for group) or line 6 minus line 8a (for members)	1.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Post Allocation NOL Carryover 2. Form 500U, Section B, line 6 minus lines 10 and 12 of the member's column	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Interest and Intangible Costs and Expenses 3. Schedule G, Part I, line b	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Schedule G, Part II, line b	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Schedule J Information 5. Reserved for future use	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Reserved for future use	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Reserved for future use	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Schedule J, line 6c	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
9. Schedule J, line 7c	9.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Schedule J, line 9	10.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Net Operational Income Information 11. Schedule O, Part III, line 31	11.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Dividend Exclusion Information 12. Schedule R, line 6	12.	XXXXXXXXXXXXX		
13. Schedule R, line 8	13.	XXXXXXXXXXXXX		
14. Schedule R, line 10	14.	XXXXXXXXXXXXX		

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.	XXXXXXXXXXXXXX		
2. Surtax on combined group taxable net income – Muliply line 1 by the applicable surtax rate (see instructions).	2.	XXXXXXXXXXXXXX		
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.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
4. Balance of combined group surtax – Subtract line 3 from line 2	4.	XXXXXXXXXXXXXX		
PART II – Member's Surtax				
1. a. Balance of combined group surtax (from Part I, line 4)	1a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
b. Divide line 1a by the group allocation factor from the combined group column of Schedule J, line 9	1b.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
c. Member's share of combined group surtax – Muliply line 1b of the member's column by member's allocation factor from Schedule J, line 9	1c.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
2. a. Member's Taxable Net Income from Separate Activities (from Schedule X)(If zero or less, enter zero)	2a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
b. Surtax on member's independent taxable net income – Multiply line 2a of the member by the applicable surtax rate (see instructions)	2b.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
3. Total member's surtax – Add line 1c and line 2b	3.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXX		

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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Trade notes and accounts receivable	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
a. Reserve for bad debts	2a.	(XXXXXXXXXXXXX)	XXXXXXXXXXXXX	(XXXXXXXXXXXXX)	(XXXXXXXXXXXXX)	(XXXXXXXXXXXXX)
3. Loans to stockholders/affiliates	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Stock of subsidiaries	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Corporate stocks	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Bonds, mortgages, and notes	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. New Jersey state and local government obligations	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. All other government obligations	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
9. Patents and copyrights	9.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Deferred charges	10.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
11. Goodwill	11.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
12. All other intangible personal property (itemize)	12.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
13. *Total intangible personal property* (total lines 1 to 12)	13.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
14. Land	14.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
15. Buildings and other improvements	15.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
a. Less accumulated depreciation	15a.	(XXXXXXXXXXXXX)	XXXXXXXXXXXXX	(XXXXXXXXXXXXX)	(XXXXXXXXXXXXX)	(XXXXXXXXXXXXX)
16. Machinery and equipment	16.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
a. Less accumulated depreciation	16a.	(XXXXXXXXXXXXX)	XXXXXXXXXXXXX	(XXXXXXXXXXXXX)	(XXXXXXXXXXXXX)	(XXXXXXXXXXXXX)
17. Inventories	17.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
18. All other tangible personal property (net) (itemize on rider)	18.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
19. *Total real and tangible personal property* (total lines 14 to 18)	19.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
20. Total assets (add lines 13 and 19)	20.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Liabilities and Stockholder's Equity						
21. Accounts payable	21.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
22. Mortgages, notes, bonds payable in less than 1 year (include schedule)	22.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
23. Other current liabilities (include schedule)	23.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

		(a) Group Combined	(b) Eliminations and Adjustments	(c) Subtotal (Before Eliminations & Adjustments)	Managerial Member (1)	Member 2...
24. Loans from stockholders/affiliates	24.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
25. Mortgages, notes, bonds payable in 1 year or more (include schedule)	25.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
26. Other liabilities (include schedule)	26.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
27. Capital stock: (a) Preferred stock	27a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
(b) Common stock	27b.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
28. Paid-in or capital surplus	28.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
29. Retained earnings – appropriated (include schedule)	29.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
30. Retained earnings – unappropriated	30.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
31. Adjustments to shareholders' equity (include schedule)	31.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
32. Less cost of treasury stock	32.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
33. Total liabilities and stockholder's equity (total lines 21 to 32)	33.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX

PART II – End 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. 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.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
19. Total real and tangible personal property (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
24. Loans from stockholders/affiliates	24.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
25. Mortgages, notes, bonds payable in 1 year or more (include schedule)	25.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
26. Other liabilities (include schedule)	26.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
27. Capital stock: (a) Preferred stock	27a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
(b) Common stock	27b.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
28. Paid-in or capital surplus	28.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
29. Retained earnings – appropriated (include schedule)	29.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
30. Retained earnings – unappropriated	30.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
31. Adjustments to shareholders' equity (include schedule)	31.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
32. Less cost of treasury stock	32.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
33. Total liabilities and stockholder's equity (total lines 21 to 32)	33.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX

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		**NU**	**NU**
Member FEIN			
Member Name			
1. Net income/(loss) per books	1.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
2. Federal income tax per books	2.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
3. Excess of capital losses over capital gains	3.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
4. Income subject to tax not recorded on books this year (itemize for each member) _____ _____	4.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
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	XXXXXXXXXXXXXXXXXXXX
6. Total of lines 1 through 5	6.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
7. Income recorded on books this year not included on this return (itemize for each member) (a) Tax-exempt interest $_____ (b) _____ (c) _____	7.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
8. Deductions on this tax return not charged against book income this year (itemize for each member) (a) Depreciation $_____ (b) Contributions Carryover $_____	8.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
9. Total of lines 7 and 8	9.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
10. Income (Schedule A, Part I, line 28) – line 6 less 9	10.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX

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		**NU**	**NU**
Member FEIN			
Member Name			
1. Balance at beginning of year	1.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
2. Net income/(loss) per books	2.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
3. Other increases (itemize) _____ _____	3.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
4. Total of lines 1, 2, and 3	4.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
5. Distributions (a) Cash $_____ (b) Stock $_____ (c) Property $_____	5.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
6. Other decreases (itemize) _____ _____	6.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
7. Total of lines 5 and 6	7.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
8. Balance end of year – line 4 less 7	8.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX

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	
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX

1. Total compensation of officers	XXXXXXXXXXXXXXXXXXX
2. Less: Compensation of officers claimed elsewhere on the return	XXXXXXXXXXXXXXXXXXX
3 Balance of compensation of officers (include here and on Schedule A, Part I, line 12)	XXXXXXXXXXXXXXXXXXX

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	
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX

1. Total compensation of officers	XXXXXXXXXXXXXXXXXXX
2. Less: Compensation of officers claimed elsewhere on the return	XXXXXXXXXXXXXXXXXXX
3. Balance of compensation of officers (include here and on Schedule A, Part I, line 12)	XXXXXXXXXXXXXXXXXXX

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
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX

a. Total amount of interest deducted	XXXXXXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions)	(XXXXXXXXXXXXXXXXXXXXX)
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)	XXXXXXXXXXXXXXXXXXXXX

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
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX

a. Total amount of intangible expenses and costs deducted	XXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions)	(XXXXXXXXXXXXXXXXX)
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)	XXXXXXXXXXXXXXXXX

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
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX

a. Total amount of interest deducted	XXXXXXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions)	(XXXXXXXXXXXXXXXXXXXXX)
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)	XXXXXXXXXXXXXXXXXXXXX

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
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX

a. Total amount of intangible expenses and costs deducted	XXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions)	(XXXXXXXXXXXXXXXXX)
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)	XXXXXXXXXXXXXXXXX

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	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
2. Other States & U.S. Possessions	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
3. City and Local Taxes	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
4. Taxes Paid to Foreign Countries*	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
5. Total	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
6. Combine lines 5(a) and 5(b)		XXXXXXXXXXX				
7. Sales & Use Taxes Paid by a Utility Vendor (see instr.)		XXXXXXXXXXX				
8. Add lines 6 and 7		XXXXXXXXXXX				
9. Federal Taxes				XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
10. Total (Combine line 5 and line 9)	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX

* 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	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
2. Other States & U.S. Possessions	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
3. City and Local Taxes	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
4. Taxes Paid to Foreign Countries*	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
5. Total	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
6. Combine lines 5(a) and 5(b)		XXXXXXXXXXX				
7. Sales & Use Taxes Paid by a Utility Vendor (see instr.)		XXXXXXXXXXX				
8. Add lines 6 and 7		XXXXXXXXXXX				
9. Federal Taxes				XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
10. Total (Combine line 5 and line 9)	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX

* 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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. From services if the benefit of the service is received in New Jersey..	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. From rentals of property situated in New Jersey.....	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. From royalties for the use in NJ of patents, copyrights, and trademarks..	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. All other business receipts earned in New Jersey (see instructions).....	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. a. Total New Jersey receipts (total of lines 1 through 5)	6a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Intercompany eliminations.....	6b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Net New Jersey receipts – Subtract line 6b from line 6a.....	6c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. a. Total receipts from all sales, services, rentals, royalties, and other business transactions everywhere	7a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Intercompany eliminations.....	7b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Net receipts from everywhere – Subtract line 7b from line 7a.....	7c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Group Denominator (enter amount from combined group column of line 7c).....	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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			
Taxing District	County	Deposit Balances or Receipts	Percentages
		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

Member 2...

Unitary ID Number **NU**

Member FEIN

Member Name

Office Locations in New Jersey			
Taxing District	County	Deposit Balances or Receipts	Percentages
		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	
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
Enter total of column 7 here and on page 1, line 10										XXXXXXXXXXXXXXX
*Taxpayers using a separate accounting method must complete Part II.										XXXXXXXXXXXXXXX

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	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
2.		XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
3.		XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
4.	Total column 2. Enter amount here and Schedule A, Part II, line 17b			XXXXXXXXXXXXXXXX
5.	Total column 4. Enter amount here and Schedule A, Part III, line 3b			XXXXXXXXXXXXXXXX

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	
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
Enter total of column 7 here and on page 1, line 10										XXXXXXXXXXXXXXX
*Taxpayers using a separate accounting method must complete Part II.										XXXXXXXXXXXXXXX

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	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
2.		XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
3.		XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
4.	Total column 2. Enter amount here and Schedule A, Part II, line 17b			XXXXXXXXXXXXXXXX
5.	Total column 4. Enter amount here and Schedule A, Part III, line 3b			XXXXXXXXXXXXXXXX

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?			XXXXXXXXXXXXX	XXXXXXXXXXXXX

* 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.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Multiply line 1a by $150	1b.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. a. Enter number of nonresident professionals without physical nexus with New Jersey	2a.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Multiply line 2a by $150 and multiply the result by the allocation factor of the PC	2b.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Total Fee Due – Add line 1b and line 2b	3.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Installment Payment – 50% of line 3	4.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Total Fee Due (line 3 plus line 4)	5.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Less prior year 50% installment payment and credit (if applicable)	6.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Balance of Fee Due (line 5 minus line 6).	7.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Credit to next year's Professional Corporation Fee. If line 7 is less than zero, enter the amount here	8.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
b. Previously taxed dividends – Enter amount from Schedule PT, Section D, line 3	1b.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
2. Dividends eligible for dividend exclusion – Subtract line 1b from line 1a	2.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
3. a. Enter amount from 80% or more owned domestic subsidiaries	3a.	XXXXXXXXXXXXXX		
b. Enter amount from 80% or more owned foreign subsidiaries	3b.	XXXXXXXXXXXXXX		
c. Total dividend income from 80% or more owned subsidiaries – Add line 3a and line 3b	3c.	XXXXXXXXXXXXXX		
4. Multiply line 3c by .95	4.	XXXXXXXXXXXXXX		
5. Subtract line 3c from the combined group column of line 2	5.	XXXXXXXXXXXXXX		
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.	XXXXXXXXXXXXXX		
7. Subtract line 6 from line 5	7.	XXXXXXXXXXXXXX		
8. Multiply line 7 by 50% (include here and on Schedule A-4, line 13)	8.	XXXXXXXXXXXXXX		
9. Reserved for future use	9.			
10. DIVIDEND EXCLUSION: Add line 4 and 8 (include here and on Schedule A-4, line 14)	10.	XXXXXXXXXXXXXX		
11. Group allocation factor (from Schedule J, line 9)	11.	XXXXXXXXXXXXXX		
12. ALLOCATED DIVIDEND EXCLUSION: Multiply line 10 by line 11 (include here and on Schedule A, Part II, line 25, column (a))	12.	XXXXXXXXXXXXXX		

Schedule S — Depreciation and Safe Harbor Leasing

		Managerial Member (1)	Member 2...
Unitary ID Number		**NU**	**NU**
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
Include Federal Form 4562 and Federal Depreciation Worksheet			
Modification at Schedule A, Part II, line 9 or line 12 – Depreciation and Certain Safe Harbor Lease Transactions			
Additions			
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
Deductions			
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. **ADJUSTMENT** – 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	**NU**	**NU**	**NU**
Member FEIN	**NU**		
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.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Enter the portion of line 1 previously deducted (see instructions)	2.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Enter the portion of line 1 that expired	3.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Enter the portion of line 1 that is used on current period Schedule X	4.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. a. Enter the amount from Schedule A, Part II, line 20, column (a)	7a.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Multiply line 7a by the member's allocation factor from Schedule J, line 9, and enter the result	7b.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. a. **Current tax year's PNOL deduction** – Enter the lesser of line 6 or line 7b here and on line 8 of Section B	8a.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Group Total – Enter the total of line 8a member columns here and on line 1 of Section C	8b.	XXXXXXXXXXXXX		

*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 5 of Section B (see instructions).

Section B – Post Allocation Net Operating Losses (NOLs) For Tax Years Ending ON AND AFTER July 31, 2019

		Group Combined	Managerial Member (1)	Member 2...
1. Post Allocation Net Operating Loss Carryover – Enter the amount from Form 500U-PA, line 21	1.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
2. Enter the portion of line 1 previously deducted (see instructions)	2.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
5. Enter the amount of any adjustments required under provisions of the federal Internal Revenue Code (see instructions)	5.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
6. Post Allocation NOL Available – Subtract lines 2, 3, 4, and 5 from line 1 (if zero or less, enter zero) (see instructions) (include rider detailing any adjustments).	6.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
7. a. Enter the amount from Schedule A, Part II, line 20, column (a)	7a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
b. Multiply line 7a by the member's allocation factor from Schedule J, line 9, and enter the result	7b.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
8. Enter the PNOL claimed on line 8a, Section A	8.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
9. Taxable Net Income subject to Post-Allocation Net Operating Loss (NOL) deduction by member – Subtract line 8 from line 7b	9.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
10. Amount of member's current year NOL. Enter the lesser of line 6 or line 9 (see instruction)	10		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
11. Post-Allocation Net Operating Loss carryover available for sharing – Subtract line 10 from line 6 (see instructions)	11.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
12. Amount of NOL carryover **shared** with other taxable members (cannot exceed line 11)(see instructions)*	12.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
13. Amount of NOL carryover **received** from other taxable members (cannot exceed line 9 less line 10)(see instruction)*	13.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
14. Current tax year's NOL carryover deduction – Add line 10 and line 13 (total cannot exceed line 9)(see instruction) Enter the combined group total on line 2 of Section C	14.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX

* If members share/receive post-allocation net operating losses with each other, include a rider detailing the transactions. Only net operating loss (NOL) carryovers derived from the unitary business of the combined group may 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 (N.J.S.A. 54:10A-4.6.h). The taxpayer cannot share the NOL carryovers with members of the combined group that were not included on 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.

Section C – Total Net Operating Loss Deduction

1. Current tax year's PNOL deduction (from Section A, line 8b)	1.	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
2. Current tax year's NOL deduction (from the combined group column of Section B, line 14)	2.	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
3. Total Net Operating Losses used in current tax year – Add lines 1 and 2. Enter here and on Schedule A, Part II, line 23	3.	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

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		**NU**	**NU**
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.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	11b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 11b by the allocation factor in Part I	11c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
12. (a) Tax Period Ending	12a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	12b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 12b by the allocation factor in Part I	12c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
13. (a) Tax Period Ending	13a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	13b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 13b by the allocation factor in Part I	13c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
14. (a) Tax Period Ending	14a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	14b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 14b by the allocation factor in Part I	14c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
15. (a) Tax Period Ending	15a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	15b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 15b by the allocation factor in Part I	15c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
16. (a) Tax Period Ending	16a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	16b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 16b by the allocation factor in Part I	16c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
17. (a) Tax Period Ending	17a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	17b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 17b by the allocation factor in Part I	17c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
18. (a) Tax Period Ending	18a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	18b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 18b by the allocation factor in Part I	18c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
19. (a) Tax Period Ending	19a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	19b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 19b by the allocation factor in Part I	19c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
20. (a) Tax Period Ending	20a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	20b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 20b by the allocation factor in Part I	20c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
21. Total Converted Prior Net Operating Losses	21.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX

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-notices.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 a 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/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

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.

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 filling 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.

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 carrybacks 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

2021
CBT-100U

DO NOT MAIL THIS FORM

New Jersey Corporation Business Tax Unitary Return

For Tax Years Ending On or After July 31, 2021, Through June 30, 2022

Tax year beginning _____, ____, and ending _____, ____

Unitary ID Number **NU**	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: ☐ Amended Enter Amended code: ☐☐ If code 10, enter reason: _____	Business Contact Name_____ Email_____ Phone Number (_____) _____
Check applicable filing method (see instructions) Default: ☐ Water's-Edge Election: ☐ Affiliated Group ☐ World-Wide Election Period _____ of 6	Check if combined group is claiming P.L. 86-272 (see instructions): ☐

1. Total Amount of Tax of Combined Group – Enter amount from line 5, column (a) of Schedule A, Part III	1.	XXXXXXXXXXXXXXXXXXXX
2. Total Tax Credits Used by Combined Group – Enter amount from line 6, column (a) of Schedule A, Part III (see instructions)	2.	XXXXXXXXXXXXXXXXXXXX
3. TOTAL COMBINED GROUP CBT TAX LIABILITY – Enter amount from line 7, column (a) of Schedule A, Part III	3.	XXXXXXXXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXXXXXXXX
5. Total Combined Group Tax Due – Enter amount from line 9b, col. (a) of Schedule A, Part III (see instructions)	5.	XXXXXXXXXXXXXXXXXXXX
6. Installment Payments – Only applies if line 5 is $500 or less (see instructions)	6.	XXXXXXXXXXXXXXXXXXXX
7. Professional Corporation Fees (from combined group column of Schedule PC, line 9)	7.	XXXXXXXXXXXXXXXXXXXX
8. TOTAL TAX AND PROFESSIONAL CORPORATION FEES – Add lines 5, 6, and 7	8.	XXXXXXXXXXXXXXXXXXXX
9. Payments and Credits (see instructions)	9.	XXXXXXXXXXXXXXXXXXXX
10. Payments made by partnerships on behalf of member (include copies of all NJK-1s)	10.	XXXXXXXXXXXXXXXXXXXX
11. a. Total Refundable Tax Credits to applicable members that earned the credits	11a.	XXXXXXXXXXXXXXXXXXXX
b. Total Refundable Tax Credit to be refunded to individual members	11b.	XXXXXXXXXXXXXXXXXXXX
c. Balance of Refundable Tax Credit to be applied to the group	11c.	XXXXXXXXXXXXXXXXXXXX
12. Total Payments and Credits – Add lines 9, 10, and 11c	12.	XXXXXXXXXXXXXXXXXXXX
13. Balance of Tax Due – If line 12 is less than line 8, subtract line 12 from line 8	13.	XXXXXXXXXXXXXXXXXXXX
14. Penalty and Interest Due (see instructions)	14.	XXXXXXXXXXXXXXXXXXXX
15. Total Balance Due – Add line 13 and line 14	15.	XXXXXXXXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXXXXXXXX
17. Amount of line 16 to be Refunded	17.	XXXXXXXXXXXXXXXXXXXX
18. Amount of line 16 to be Credited to 2022 Tax Return	18.	XXXXXXXXXXXXXXXXXXXX

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. I understand that pursuant to N.J.S.A. 54:10A-14(a), I must include copies of the federal return(s), forms, and schedules with my New Jersey return. 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		**NU**	**NU**
Enter total number of members in the group			
Enter number of taxable group members			
Enter number of nontaxable group members			
Enter number of related parties or affiliates that are not included in the combined return			
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			
If the answer to any of the following questions for a member is "yes," check the box in the appropriate member column.			
1. Is member inactive? If yes, complete Schedule I.		☐	☐
2. Does member have nexus with New Jersey?		☐	☐
3. Is member a banking corporation?		☐	☐
4. Is member a financial corporation? (See instructions.)		☐	☐
5. 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?		☐	☐
6. Is the member a New Jersey S Corporation or Qualified Subchapter S Subsidiary		☐	☐
7. Is member a combinable captive insurance company?		☐	☐
8. Is member an owner of a disregarded entity? If yes, attach a rider detailing ownership.		☐	☐
9. Is member a licensee under the Casino Control Act?		☐	☐
10. Does the member own beneficially, or control, a majority of the stock of any corporation not included as a member of the combined group or 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? Check the box in the member column and enclose 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.		☐	☐

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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Less: returns and allowances	1b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Balance – Subtract line 1b from line 1a	1c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Less: Cost of goods sold (from Schedule A-2, line 8)	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Gross profit – Subtract line 2 from line 1c	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. a. Dividends	4a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Gross Foreign Derived Intangible Income (see instructions) (include copy of federal Form 8993)	4b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Gross Global Intangible Low-Taxed Income (see instructions) (include copy of federal Form 8992)	4c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Interest	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Gross rents	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Gross royalties	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Capital gain net income (include a copy of federal Schedule D)	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
9. Net gain or (loss) (from federal Form 4797, include a copy)	9.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Other income (see instructions) (include schedule(s))	10.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
11. **Total Income** – Add lines 3 through 10	11.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Deductions						
12. Compensation of officers (from Schedule F)	12.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
13. Salaries and wages (less employment credits)	13.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
14. Repairs (Do not include capital expenditures)	14.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
15. Bad debts	15.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
16. Rents	16.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
17. Taxes and licenses	17.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
18. Interest (see instructions)	18.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
19. Charitable contributions (see instructions)	19.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
20. Depreciation (from federal Form 4562, include a copy) less depreciation claimed elsewhere on return	20.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
21. Depletion	21.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
22. Advertising	22.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
23. Pension, profit-sharing plans, etc.	23.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
24. Employee benefit programs	24.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
25. Reserved for future use	25.					
26. Other deductions (attach schedule)	26.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
27. **Total Deductions** - Add lines 12 through 26	27.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX			XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Taxable income/(loss) of combined group – Subtract line 1b from line 1a	1c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Additions						
2. Income of a non-U.S. corporation member not included in line 1	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Other federally exempt income not included in line 1 (see instructions)	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Interest on federal, state, municipal, and other obligations not included in line 1 (see instructions)	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. New Jersey State and other states' taxes deducted in line 1 (see instructions)	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Related party interest addback (from Schedule G, Part I)	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Related party intangible expenses and costs addback (from Schedule G, Part II) (see instructions)	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Reserved for future use	8.					
9. Depreciation modification being added to income (from Schedule S)	9.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Other additions. Explain on separate rider (see instructions)	10.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
11. Taxable income/(loss) with additions – Add line 1c through line 10	11.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Deductions						
12. Depreciation modification being subtracted from income (from Schedule S)	12.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
13. Previously Taxed Dividends (from Schedule PT)	13.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Enter the I.R.C. § 250(a) deduction amount allowed federally for FDII if FDII income is included on line 1c above	14b.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Net GILTI previously taxed by New Jersey not deducted or excluded elsewhere	14c.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
15. I.R.C. § 78 Gross-up included in line 1 (do not include dividends that were excluded/ deducted elsewhere)	15.	XXXXXXXXXXXXX		XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
16. Reserved for future use	16.					
17. a. Elimination of nonoperational activity (from Schedule O, Part I)	17a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Elimination of nonunitary partnership income/loss (from Schedule P-1, Part II, line 4)	17b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
18. Other deductions. Explain on separate rider (see instructions)	18.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
19. Total deductions – Add line 12 through line 18	19.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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...
Taxable Net Income/(Loss) Calculation						
20. Entire Net Income/(Loss) Subtotal – Subtract line 19 from line 11	20.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
21. Group allocation factor (from Schedule J, line 9)	21.	XXXXXXXXXXXXX				
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.	XXXXXXXXXXXXX				
23. Net operating loss deduction (from Form 500U, Section C, line 3) (amount entered cannot be more than amount on line 22)	23.	XXXXXXXXXXXXX				
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.	XXXXXXXXXXXXX				
25. Allocated Dividend Exclusion (from Schedule R) (see instructions) (amount entered cannot be more than amount on line 24)	25.	XXXXXXXXXXXXX				
26. Allocated entire net income subtotal – Subtract line 25 from line 24	26.	XXXXXXXXXXXXX				
27. a. I.B.F. Exclusion	27a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Allocated I.B.F. Exclusion – Multiply line 27a, column (a), by the group allocation factor (line 21)	27b.	XXXXXXXXXXXXX				
28. **Combined Group Taxable Net Income –** Subtract line 27b from line 26	28.	XXXXXXXXXXXXX				

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.	XXXXXXXXXXXXX				
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.	XXXXXXXXXXXXX			XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. a. New Jersey nonoperational income from Schedule O, Part III	3a.	XXXXXXXXXXXXX			XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Nonunitary partnership income (from Schedule P-1, Part II, line 5)	3b.	XXXXXXXXXXXXX			XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Tax Base – Add lines 1, 2, 3a, and 3b.	4.	XXXXXXXXXXXXX				
5. Amount of Tax – For the combined group, multiply line 4, column (a) by the applicable tax rate (see instructions)	5.	XXXXXXXXXXXXX				
6. Tax Credits (from combined group column of Schedule A-3, Part I, line 28)	6.	XXXXXXXXXXXXX				
7. CBT TAX LIABILITY – Subtract line 6 from line 5	7.	XXXXXXXXXXXXX				
8. Total surtax of combined group (from combined group column of Schedule A-5, Part II, line 5)	8.	XXXXXXXXXXXXX				
9. a. Multiply $2,000 by the number of taxable members and enter the result	9a.	XXXXXXXXXXXXX				
b. Tax Due – Add line 8 to the greater of line 7 or line 9a.	9b.	XXXXXXXXXXXXX				

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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Purchases	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Cost of labor	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Additional section 263A costs	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Other costs (include schedule)	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Total – Add lines 1 through 5	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Inventory at end of year	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Cost of goods sold – Subtract line 7 from line 6. Include here and on Schedule A, Part I, line 2	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Angel Investor Tax Credit from Form 321	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Business Employment Incentive Program Tax Credit from Form 324	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Enter Total. Member can only claim one. See instr. a) Urban Enterprise Zone Employee Tax Credit from Form 300 b) Urban Enterprise Zone Investment Tax Credit from Form 301	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Redevelopment Authority Project Tax Credit from Form 302	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Manufacturing Equipment and Employment Investment Tax Credit from Form 305	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Research and Development Tax Credit from Form 306	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Neighborhood Revitalization State Tax Credit from Form 311	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
9. Effluent Equipment Tax Credit from Form 312	9.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Economic Recovery Tax Credit from Form 313	10.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
11. AMA Tax Credit from Form 315	11.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
12. Business Retention and Relocation Tax Credit from Form 316	12.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
13. Sheltered Workshop Tax Credit from Form 317	13.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
14. Film Production Tax Credit from Form 318	14.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
15. Urban Transit Hub Tax Credit from Form 319	15.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
16. Grow NJ Tax Credit from Form 320	16.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
17. Wind Energy Facility Tax Credit from Form 322	17.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
18. Residential Economic Redevelopment and Growth Tax Credit from Form 323	18.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
19. Public Infrastructure Tax Credit from Form 325	19.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
20. Reserved for future use	20.			
21. Film and Digital Media Tax Credit from Form 327	21.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
22. Tax Credit for Employers of Employees With Impairments from Form 328	22.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
23. Pass-Through Business Alternative Income Tax Credit from Form 329	23.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
24. Apprenticeship Program Tax Credit from Form 330	24.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
25. Tax Credit for Employer of Organ/Bone Marrow Donor from Form 331	25.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
26. Tiered Subsidiary Dividend Pyramid Tax Credit from Form 332	26.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
27. Other Tax Credit (see instructions)	27.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
28. Total tax credits – Add lines 1 through 27. Include here and on Schedule A, Part III, line 6	28.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

PART II – Refundable Tax Credits

1. Refundable portion of New Jobs Investment Tax Credit from Form 304	1.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Refundable portion of Angel Investor Tax Credit from Form 321	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Refundable portion of Business Employment Incentive Program Tax Credit from Form 324	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Other Tax Credit to be refunded	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Total Refundable Tax Credit to be refunded to individual members. Enter here and on page 1, line 11b	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Balance of Refundable Tax Credit to be applied to the group. Enter here and on page 1, line 11c	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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				
PNOL Deduction Carryover 1. Form 500U, Section A, line 6 minus line 8b (for group) or line 6 minus line 8a (for members)	1.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Post Allocation NOL Carryover 2. Form 500U, Section B, line 6 minus lines 10 and 12 of the member's column	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Interest and Intangible Costs and Expenses 3. Schedule G, Part I, line b	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Schedule G, Part II, line b	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Schedule J Information 5. Reserved for future use	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Reserved for future use	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. Reserved for future use	7.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Schedule J, line 6c	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
9. Schedule J, line 7c	9.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Schedule J, line 9	10.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Net Operational Income Information 11. Schedule O, Part III, line 31	11.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
Dividend Exclusion Information 12. Schedule R, line 6	12.	XXXXXXXXXXXXX		
13. Schedule R, line 8	13.	XXXXXXXXXXXXX		
14. Schedule R, line 10	14.	XXXXXXXXXXXXX		

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.	XXXXXXXXXXXXXX		
2. Surtax on combined group taxable net income – Muliply line 1 by the applicable surtax rate (see instructions).	2.	XXXXXXXXXXXXXX		
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.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
4. Balance of combined group surtax – Subtract line 3 from line 2	4.	XXXXXXXXXXXXXX		
PART II – Member's Surtax				
1. a. Balance of combined group surtax (from Part I, line 4)	1a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
b. Divide line 1a by the group allocation factor from the combined group column of Schedule J, line 9	1b.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
c. Member's share of combined group surtax – Muliply line 1b of the member's column by member's allocation factor from Schedule J, line 9	1c.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
2. a. Member's Taxable Net Income from Separate Activities (from Schedule X)(If zero or less, enter zero)	2a.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
b. Surtax on member's independent taxable net income – Multiply line 2a of the member by the applicable surtax rate (see instructions)	2b.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
3. Total member's surtax – Add line 1c and line 2b	3.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXX		

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 F

Managerial Member 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.

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	
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
					XXXXXXXXXXXXXXXXXXX
1. Total compensation of officers					XXXXXXXXXXXXXXXXXXX
2. Less: Compensation of officers claimed elsewhere on the return					XXXXXXXXXXXXXXXXXXX
3 Balance of compensation of officers					XXXXXXXXXXXXXXXXXXX

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
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
a. Total amount of interest deducted			XXXXXXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions)			(XXXXXXXXXXXXXXXXXXXXX)
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)			XXXXXXXXXXXXXXXXXXXXX

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
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
a. Total amount of intangible expenses and costs deducted				XXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions)				(XXXXXXXXXXXXXXXXX)
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)				XXXXXXXXXXXXXXXXX

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
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
			XXXXXXXXXXXXXXXXXXXXX
a. Total amount of interest deducted			XXXXXXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions)			(XXXXXXXXXXXXXXXXXXXXX)
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)			XXXXXXXXXXXXXXXXXXXXX

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
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
				XXXXXXXXXXXXXXXXX
a. Total amount of intangible expenses and costs deducted				XXXXXXXXXXXXXXXXX
b. Subtract: Exceptions (see instructions)				(XXXXXXXXXXXXXXXXX)
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)				XXXXXXXXXXXXXXXXX

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	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
2. Other States & U.S. Possessions	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
3. City and Local Taxes	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
4. Taxes Paid to Foreign Countries*	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
5. Total	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
6. Combine lines 5(a) and 5(b)		XXXXXXXXXXX				
7. Sales & Use Taxes Paid by a Utility Vendor (see instr.)		XXXXXXXXXXX				
8. Add lines 6 and 7		XXXXXXXXXXX				
9. Federal Taxes				XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
10. Total (Combine line 5 and line 9)	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX

* 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	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
2. Other States & U.S. Possessions	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
3. City and Local Taxes	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
4. Taxes Paid to Foreign Countries*	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
5. Total	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
6. Combine lines 5(a) and 5(b)		XXXXXXXXXXX				
7. Sales & Use Taxes Paid by a Utility Vendor (see instr.)		XXXXXXXXXXX				
8. Add lines 6 and 7		XXXXXXXXXXX				
9. Federal Taxes				XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX
10. Total (Combine line 5 and line 9)	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX	XXXXXXXXXXX

* 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.

Is 50% or more of the group's income derived from transportation of freight by air or ground?..... Yes ☐ OR No ☐

Receipts		Group Combined	Managerial Member (1)	Member 2...
1. From sales of tangible personal property shipped to points within NJ ..	1.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. From services if the benefit of the service is received in New Jersey..	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. From rentals of property situated in New Jersey.....	3.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. From royalties for the use in NJ of patents, copyrights, and trademarks..	4.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. All other business receipts earned in New Jersey (see instructions).....	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. a. Total New Jersey receipts (total of lines 1 through 5)	6a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Intercompany eliminations.....	6b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Net New Jersey receipts – Subtract line 6b from line 6a.....	6c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. a. Total receipts from all sales, services, rentals, royalties, and other business transactions everywhere	7a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Intercompany eliminations.....	7b.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
c. Net receipts from everywhere – Subtract line 7b from line 7a.....	7c.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Group Denominator (enter amount from combined group column of line 7c).....	8.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

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			
Taxing District	County	Deposit Balances or Receipts	Percentages
		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

Member 2...

Unitary ID Number **NU**

Member FEIN

Member Name

Office Locations in New Jersey			
Taxing District	County	Deposit Balances or Receipts	Percentages
		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	
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
Enter total of column 7 here and on page 1, line 10										XXXXXXXXXXXXXXX

*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	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
2.		XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
3.		XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
4.	Total column 2. Enter amount here and Schedule A, Part II, line 17b			XXXXXXXXXXXXXXXX
5.	Total column 4. Enter amount here and Schedule A, Part III, line 3b			XXXXXXXXXXXXXXXX

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	
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
										XXXXXXXXXXXXXXX
Enter total of column 7 here and on page 1, line 10										XXXXXXXXXXXXXXX

*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	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
2.		XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
3.		XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXXXX
4.	Total column 2. Enter amount here and Schedule A, Part II, line 17b			XXXXXXXXXXXXXXXX
5.	Total column 4. Enter amount here and Schedule A, Part III, line 3b			XXXXXXXXXXXXXXXX

If additional space is needed, include a rider.

Schedule PC **Per Capita Licensed Professional Fee**

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?			XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
* 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.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
b. Multiply line 1a by $150	1b.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
2. a. Enter number of nonresident professionals without physical nexus with New Jersey	2a.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
b. Multiply line 2a by $150 and multiply the result by the allocation factor of the PC	2b.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
3. Total Fee Due – Add line 1b and line 2b	3.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
4. Installment Payment – 50% of line 3	4.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
5. Total Fee Due (line 3 plus line 4)	5.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
6. Less prior year 50% installment payment and credit (if applicable)	6.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
7. Balance of Fee Due (line 5 minus line 6).	7.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
8. Credit to next year's Professional Corporation Fee. If line 7 is less than zero, enter the amount here	8.		XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
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.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX

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.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
b. Previously taxed dividends – Enter amount from Schedule PT, Section D, line 3	1b.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
2. Dividends eligible for dividend exclusion – Subtract line 1b from line 1a	2.	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX	XXXXXXXXXXXXXX
3. a. Enter amount from 80% or more owned domestic subsidiaries	3a.	XXXXXXXXXXXXXX		
b. Enter amount from 80% or more owned foreign subsidiaries	3b.	XXXXXXXXXXXXXX		
c. Total dividend income from 80% or more owned subsidiaries – Add line 3a and line 3b	3c.	XXXXXXXXXXXXXX		
4. Multiply line 3c by .95	4.	XXXXXXXXXXXXXX		
5. Subtract line 3c from the combined group column of line 2	5.	XXXXXXXXXXXXXX		
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.	XXXXXXXXXXXXXX		
7. Subtract line 6 from line 5	7.	XXXXXXXXXXXXXX		
8. Multiply line 7 by 50% (include here and on Schedule A-4, line 13)	8.	XXXXXXXXXXXXXX		
9. Reserved for future use	9.			
10. DIVIDEND EXCLUSION: Add line 4 and 8 (include here and on Schedule A-4, line 14)	10.	XXXXXXXXXXXXXX		
11. Group allocation factor (from Schedule J, line 9)	11.	XXXXXXXXXXXXXX		
12. ALLOCATED DIVIDEND EXCLUSION: Multiply line 10 by line 11 (include here and on Schedule A, Part II, line 25, column (a))	12.	XXXXXXXXXXXXXX		

Schedule S — Depreciation and Safe Harbor Leasing

		Managerial Member (1)	Member 2...
Unitary ID Number		**NU**	**NU**
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
Include Federal Form 4562 and Federal Depreciation Worksheet			
Modification at Schedule A, Part II, line 9 or line 12 – Depreciation and Certain Safe Harbor Lease Transactions			
Additions			
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
Deductions			
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. **ADJUSTMENT** – 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	**NU**	**NU**	**NU**
Member FEIN	**NU**		
Member Name			

Section A – Computation of Prior Net Operating Losses (PNOL) Deduction from periods ending PRIOR to July 31, 2019

Complete this section only if the allocated entire net income/(loss) from Schedule A, Part II, line 22, column (a) is positive (income).

Are **ANY** members using a Prior Net Operating Loss (PNOL) Conversion Carryover? **No** – Check the box in the group combined column. Enter zero on Section C, line 1 and continue with Section B. **Yes** – Check the box for each member that is **NOT** using a PNOL Conversion Carryover. For every member **USING** a PNOL Conversion Carryover, continue with Section A, line 1.		☐	☐	☐
1. Prior Net Operating Loss Conversion Carryover (PNOL) – Enter the amount from Form 500U-P, Part II, line 21	1.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Enter the portion of line 1 previously deducted (see instructions)	2.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
3. Enter the portion of line 1 that expired	3.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
4. Enter the portion of line 1 that is used on current period Schedule X	4.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. a. Enter the amount from Schedule A, Part II, line 20, column (a)	7a.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Multiply line 7a by the member's allocation factor from Schedule J, line 9, and enter the result	7b.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. a. **Current tax year's PNOL deduction** – Enter the lesser of line 6 or line 7b here and on line 8 of Section B	8a.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Group Total – Enter the total of line 8a member columns here and on line 1 of Section C	8b.	XXXXXXXXXXXXX		

*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 5 of Section B (see instructions).

Section B – Post Allocation Net Operating Losses (NOLs) For Tax Years Ending ON AND AFTER July 31, 2019

		Group Combined	Managerial Member (1)	Member 2...
1. Post Allocation Net Operating Loss Carryover – Enter the amount from Form 500U-PA, line 21	1.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
2. Enter the portion of line 1 previously deducted (see instructions)	2.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
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.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
5. Enter the amount of any adjustments required under provisions of the federal Internal Revenue Code (see instructions)	5.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
6. Post Allocation NOL Available – Subtract lines 2, 3, 4, and 5 from line 1 (if zero or less, enter zero) (see instructions) (include rider detailing any adjustments).	6.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
7. a. Enter the amount from Schedule A, Part II, line 20, column (a)	7a.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX
b. Multiply line 7a by the member's allocation factor from Schedule J, line 9, and enter the result	7b.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
8. Enter the PNOL claimed on line 8a, Section A	8.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
9. Taxable Net Income subject to Post-Allocation Net Operating Loss (NOL) deduction by member – Subtract line 8 from line 7b	9.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
10. Amount of member's current year NOL. Enter the lesser of line 6 or line 9 (see instruction)	10		XXXXXXXXXXXXX	XXXXXXXXXXXXX
11. Post-Allocation Net Operating Loss carryover available for sharing – Subtract line 10 from line 6 (see instructions)	11.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
12. Amount of NOL carryover **shared** with other taxable members (cannot exceed line 11)(see instructions)*	12.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
13. Amount of NOL carryover **received** from other taxable members (cannot exceed line 9 less line 10)(see instruction)*	13.		XXXXXXXXXXXXX	XXXXXXXXXXXXX
14. Current tax year's NOL carryover deduction – Add line 10 and line 13 (total cannot exceed line 9)(see instruction) Enter the combined group total on line 2 of Section C	14.	XXXXXXXXXXXXX	XXXXXXXXXXXXX	XXXXXXXXXXXXX

*If members share/receive post-allocation net operating losses with each other, include a rider detailing the transactions. A taxpayer cannot share NOLs from separate activities independent of the group.

Section C – Total Net Operating Loss Deduction

1. Current tax year's PNOL deduction (from Section A, line 8b)	1.	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
2. Current tax year's NOL deduction (from the combined group column of Section B, line 14)	2.	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
3. Total Net Operating Losses used in current tax year – Add lines 1 and 2. Enter here and on Schedule A, Part II, line 23	3.	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

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		**NU**	**NU**
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.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	11b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 11b by the allocation factor in Part I	11c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
12. (a) Tax Period Ending	12a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	12b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 12b by the allocation factor in Part I	12c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
13. (a) Tax Period Ending	13a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	13b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 13b by the allocation factor in Part I	13c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
14. (a) Tax Period Ending	14a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	14b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 14b by the allocation factor in Part I	14c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
15. (a) Tax Period Ending	15a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	15b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 15b by the allocation factor in Part I	15c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
16. (a) Tax Period Ending	16a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	16b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 16b by the allocation factor in Part I	16c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
17. (a) Tax Period Ending	17a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	17b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 17b by the allocation factor in Part I	17c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
18. (a) Tax Period Ending	18a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	18b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 18b by the allocation factor in Part I	18c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
19. (a) Tax Period Ending	19a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	19b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 19b by the allocation factor in Part I	19c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
20. (a) Tax Period Ending	20a.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(b) Prior Net Operating Loss	20b.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
(c) Converted Prior Net Operating Loss Carryover – Multiply line 20b by the allocation factor in Part I	20c.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
21. Total Converted Prior Net Operating Losses	21.	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX

Form 500U-PA Post Allocation Net Operating Loss Carryovers (NOL) For Tax Periods Ending ON AND AFTER July 31, 2019

		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

Revision to Division Policy on Combined Groups and P.L. 86-272

Since the publication of these instructions, the Division has revised its policy on the treatment of members of a combined group that are claiming P.L. 86-272. For information, see notice.

CBT-100U

State of New Jersey

Division of Taxation — Corporation Business Tax

Instructions for Corporation Business Tax Unitary Return
(Form CBT-100U – 2021)

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 the Division's website 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

This is the last year that Form CBT-100U will exist in this format. It will be replaced with the new standardized return (Form CBT-1) next year.

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. For more information, see TB-98(R), *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).

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.*

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. If the entire combined group is claiming immunity from tax pursuant to P.L. 86-272, each member must complete Schedule N, Nexus – Immune Activity Declaration and the Nexus Questionnaire. In addition the combined group must complete 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. 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. Check the box on page 1 to indicate the entire combined group is claiming P.L. 86-272.

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. A New Jersey S corporation that elects to be included as a member on a New Jersey Combined Return is treated in the same manner as a hybrid corporation (i.e. a non-electing Federal S corporation that is a C corporation for CBT purposes), and does not need to file a CBT-100S for the privilege periods that the New Jersey S corporation elects to be a member of the combined group. See GIT-9S, *Income From S Corporations* for more information on hybrid corporations.

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: 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 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. Include a copy of Schedule X if completed. See Schedule X instructions for more information.

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 a 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

2021 Accounting Periods and Due Dates

The 2021 Corporation Business Tax return should only be used for accounting periods ending on and after July 31, 2021, through June 30, 2022.

In general, the New Jersey Corporation Business Tax returns and payments, except estimated payments, are due 30 days after the original due date of the federal corporate income tax return. For the administrative convenience of both the Division and taxpayers, Corporation Business Tax returns filed by the 15th day of the fifth month following the close of the privilege period are considered timely even if that date is more than 30 days after the federal due date. 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 2021 CBT-100U forms and payments:

If accounting period ends on:	July 31, 2021	Aug. 31, 2021	Sept. 30, 2021	Oct. 31, 2021	Nov. 30, 2021	Dec. 31, 2021
Due date for filing is:	Dec. 15, 2021	Jan. 15, 2022	Feb. 15, 2022	Mar. 15, 2022	Apr. 15, 2022	May 15, 2022
If accounting period ends on:	Jan. 31, 2022	Feb. 28, 2022	Mar. 31, 2022	Apr. 30, 2022	May 31, 2022	June 30, 2022
Due date for filing is:	June 15, 2022	July 15, 2022	Aug. 15, 2022	Sept. 15, 2022	Oct. 15, 2022	Nov. 15, 2022

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 Division is aware that taxpayers cannot properly input dates for 52-53 week accounting years. In this case, taxpayers will need to contact the Division for assistance.

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 on a separate return. 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, call (609) 292-9292 and select option #6, fax (609) 984-6681, 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

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 11% 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.

If filing an amended return, enter the applicable code in the boxes provided. If using code 10, "Other," enter the reason in the lines provided. If more space is needed, include a rider.

1. Change in allocation factor
2. IRS audit
3. Amended federal 1120 filed
4. To take credit for payments/payments made by a partnership
5. Adjustments to ENI
6. To change credit request to refund request or refund request to credit request
7. Change in filing period
8. Change in tax credits reported
9. Adding or subtracting a combined return member
10. Other

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.

Check the box to indicate the **entire** combined group is claiming P.L. 86-272. 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.

If claiming P.L. 86-272, Schedule N, Nexus – Immune Activity Declaration and the Nexus Questionaire, must be completed for each member. In addition the combined group must complete 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. P.L. 86-272

filers are not subject to the surtax imposed by N.J.S.A. 54:10A-5.41.

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 6 – Installment Payments
The managerial member is required to make installment payments of estimated tax on behalf of the combined group. The requirement for making these payments is based on the amount of the total tax liability shown on the most recent return. Any payment not made under the NU number must be transferred. Visit the Division's website for more information.

- **If the 2021 Total Tax Liability is greater than $500,** the managerial member must make installment payments toward 2022. These payments are to be made electronically on Form CBT-150 and are due on or before the 15th day of the 4th, 6th, 9th and 12th months of the tax year. If the combined group has gross receipts greater than or equal to $50,000,000 must make installment payments on the 15th day of the 4th, 6th, and 12th months of the tax year. Information on making these payments can be found on the Division's website.

- **If the 2021 Total Tax Liability is $500 or less,** installment payments may be made as indicated above **OR** in lieu of making installment payments, the managerial member may make a payment of 50% of the 2021 total tax liability. For a combined group that qualifies and want to take advantage of this option, enter on line 6, 50% of the amount on line 5. This will become part of the payment to be made with the 2021 return and installment payments will not be required. This payment should be claimed as a credit when filing the 2022 return. There are rare instances where tax credits can take the combined group's total tax liability below to $500 or less. The only way a combined group could use this estimated payment method is if it claims such tax credit(s).

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, 6, and 7.

Line 9 – Payments and Credits
Include on this line:

- Installment tax payments made for 2021;
- Amounts paid with tentative return (form CBT-200-T);
- Any overpayment from the preceding tax return that the taxpayer elected to have credited to the current year's tax. Do not include any amount of the overpayment that the taxpayer elected to have refunded;.

Note: Professional corporation installment payments from the prior year may not be used to offset any current year tax liability and are **not** eligible for refund.

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 and to acknowledge that they understand they are required to include copies of their federal return(s), forms, and schedules. 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. If necessary, include a rider detailing the requested information. 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.

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 filling 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 5 – Interest
Include a copy of federal Form 8916A if it was completed.

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 18 – Interest
Include a copy of federal Form 8916A and/or federal Form 8990 if completed.

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. See Technical Bulletin, TB-98, *Federal Return and the Forms and Schedules to Include with the Corporation Business Tax Return Pursuant to P.L. 2020, C. 118.*

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, Belgium, 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. If less than zero, enter zero.

Part III – Calculation of Tax Credits, Minimum Tax and Surtax, and Group Tax

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 federal Form 1125-A. Include Form 1125-A with the return.

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.

FYI

Taxpayers must include the appropriate credit form in the year the credit was earned even if they are not claiming the credit on their tax return.

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 the "Other" line in the appropriate section of Schedule A-3.

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. All lines must be completed as applicable.

Schedule A-5
Computation of Group and Member Surtax
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

NEW FOR 2021 Schedule B has been discontinued. The Division will use data from federal Form 1120, Schedule L.

Schedule C and Schedule C-1

NEW FOR 2021 Schedules C and C-1 have been discontinued. The Division will use data from federal Form 1120, Schedules M-1, M-2, and M-3.

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

NEW FOR 2021 Schedule E has been discontinued. If a member has overpayments from a previously filed separate return or that made payments under their own account the managerial member for must provide a spreadsheet separate from the return. Please visit the Division's website for more information.

Schedule F

Corporate Officers – General Information and Compensation

NEW FOR 2021 Provide all applicable information for each corporate officer from the managerial member's corporation regardless of whether compensation was received. The data reported on Schedule F must match amounts reported on federal Form 1125-E. Include Form 1125-E with your return.

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.

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.

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.

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).

Note: Licenses acquired through vocational training and/or apprenticeships within those trades are not considered licensed professionals. Examples include plumbers, electricians, HVAC technicians, cosmetologists, fire and burglar alarm services, acupuncturists, hair stylists, elevator, escalator, and moving walkway mechanics, locksmiths, and court reporters.

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

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, 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.

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 carrybacks are allowed.**

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).

Note: PNOLs expire 20 privilege periods after the loss was originally generated. **PNOLs cannot be shared.**

If any members had a PNOL, check the box marked "Yes" for those members that are NOT using a PNOL and begin Form 500 at Section A, line 1 for every member that IS USING a PNOL.

If no members are claiming a PNOL Check the "No" box in the group combined column. Enter zero on Section C, line 1 and continue with Section B.

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.

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

Form 500U-P was designed to help taxpayers transition to the new net operating loss regime. Taxpayers were required to convert these losses using the allocation factor from the last privilege period ending before July 31, 2019. A copy of this form must be included with the taxpayer's return each year until the losses are used up or expired but is not recomputed each year.

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 Energy Facility 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

State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION

Dear Taxpayer,

The year 2021 has continued to deliver challenges not seen in generations. Through it all, the Division has remained committed to our mission of administering the State's tax laws uniformly, equitably, and efficiently.

To that end, we paused the roll out of a standardized return. This has allowed us more time to collaborate both internally and with our stakeholders on how to best collect the data for the new format. The Division anticipates releasing a standardized return for tax year 2022, which will be used instead of Forms CBT-100, BFC-1, or CBT-100U.

This collaboration has shed some light on some of the areas of the return that taxpayers find redundant. While the Division intends to address more of the concerns in the standardized return, this year's tax return was updated with any changes that could be incorporated without too much manipulation. This includes removing Schedules B, C, and C-1. The Division will be using the Federal data in lieu of collecting the same information on our State-specific schedules. In addition, Schedule A-GR has been removed. The same information appears on Schedule J. So all filers, regardless of whether they're nonallocating or only subject to the minimum tax, will need to complete Schedule J for 2021.

Many of the Executive Orders affecting Corporation Business Tax (CBT) that were signed in response to the pandemic are expiring. One EO that I want to make sure you are aware expired on October 1, 2021, is the waiver period for CBT nexus for teleworking employees. New Jersey had temporarily waived the CBT nexus standard, which is generally met if an out-of-State corporation has an employee working in New Jersey. As long as an out-of-State corporation did not meet any of the factors giving rise to nexus other than employees working from home in New Jersey solely due to the pandemic, New Jersey did not consider the out-of-State corporation to have nexus for CBT purposes during the waiver time period.

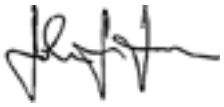
I think it's also important to remind you that expenses paid for with Paycheck Protection Program (PPP) Loans are deductible and forgiven loans are excluded from CBT. See Loan and Grant Information for more information.

As you file this year's return, look for the "New for 2021" graphic throughout the instructions, which highlights this year's tax changes.

Lastly, I want to make sure that all taxpayers are aware of the New Jersey Economic Recovery Act of 2020. This legislation created or revised certain economic programs in the State. I encourage taxpayers to review the Act and see if they're eligible for any of the various incentives.

As we continue through this unprecedented time, I can assure you that the Division will continue to do its best to be responsive to the needs of our taxpayers. We are all on this journey together as we navigate through this global pandemic. We hope that all your employees, colleagues, and families remain safe and healthy during this time.

Sincerely,



John Ficara
Acting Director
Division of Taxation

Schedule G-2
(3-21)

Claim for Exceptions to Disallowed Interest and Intangible Expenses and Costs
For Tax Years Beginning on or After January 1, 2018

Name as Shown on Return	Federal ID Number	Unitary ID number, if applicable
		NU

Part I Exceptions to the Addback of Interest

Note: A copy of the return from the state, possession, or foreign nation on which the related member reported interest income must be submitted with the taxpayer's return. If more space is needed, enclose a schedule listing the information.

Exception 1 Amounts Paid, Accrued, or Incurred to a Related Member(s) in a Foreign Nation that has a Comprehensive Treaty with the United States

1. Was any interest included on Schedule G, Part I of the CBT-100, CBT-100U, CBT-100S, or BFC-1 directly or indirectly paid, accrued, or incurred to a related member in a foreign nation that has a comprehensive income tax treaty with the United States?

◯ Yes. Complete the following schedule. ◯ No. You do not qualify for this exception.

Name of Related Member	Name of Nation	Description of Treaty	Allocation Factor	Nation's Rate of Tax	Tax Paid	Amount Allowed to Deduct
(a) Total – Enter here and on line 1 of the Total Exceptions Chart for Part I						

Exception 2

Interest paid to a related member that 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 and which jurisdiction includes as a measure of the tax the interest received from the related member and applies a rate of tax to the interest received by the related member equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State.

If claiming this exception for more than one related member, complete Exception 2 for each related member and enter the total for all related members in the Total Exceptions Chart.

Name of Related Member _____

FID # of Related Member _____

Fiscal Period of Related Member _____

Name of the state, possession, or foreign nation in which the related member is subject to a tax on net income or receipts _____

Amount of interest income included in the measure of net income or gross receipts subject to tax by the state, possession, or foreign nation _____

	Column A	Column B	Column C
1. Enter the amount of interest claimed by the taxpayer as deductible and reported as income or receipts subject to tax by the related member			
2. Enter the taxpayer's allocation factor from Schedule J, line 1h of the CBT-100, CBT-100S, or BFC-1 or Schedule J, line 9 of the CBT-100U. If non-allocating, enter 1.00			
3. Enter the tax rate used to compute line 2 of the CBT-100, CBT-100S, or BFC-1 or Schedule A, Part III, line 5 of CBT-100U			
4. Multiply column A, line 2 by column A, line 3 and enter the result here			
5. Enter the tax rate applied to the net income or receipts from the return of the related member filed in the state, possession, or foreign nation of the related member on which the interest income is being reported			
6. Enter the related member's allocation factor from the return filed in the state, possession, or foreign nation on which the interest income is being reported. If non-allocating, enter 1.00			
7. Multiply column A, line 5 by column A, line 6 and enter the result			
8. Subtract column B, line 7 from column B, line 4 and enter result			
9. Exception Amount. If the amount on column B, line 8 is greater than .03, enter zero in column C, line 9. If the amount on column B, line 8 is equal to or less than .03, enter amount from column C, line 1 in column C, line 9 and on line 2 of the Total Exceptions Chart for Part I			

Exception 3 Interest Paid, Accrued, or Incurred to Related Corporations Filing in New Jersey

If claiming this exception for more than one related member, complete Exception 3 for each related member and enter the total for all related members in the Total Exceptions Chart.

Name of Related Member _____

FID # of Related Member _____

Fiscal Period of Related Member _____

1. Was any interest expense included in Schedule G, Part I of this return directly or indirectly paid, accrued, or incurred to the above related member and included in a New Jersey CBT-100, CBT-100U, CBT-100S, or BFC-1 filed by the related member?
   ◯ Yes. Answer question 2. ◯ No. You do not qualify for this exception.
2. Was the tax liability reported on the related member's New Jersey CBT-100, CBT-100U, CBT-100S, or BFC-1 greater than the statutory minimum tax?
   ◯ Yes. Complete the following schedule. ◯ No. You do not qualify for this exception.

	Column A Taxpayer	Column B Related Member
1. Enter in column A and column B the amount of interest claimed by the taxpayer as being deductible		
2. Enter entire net income of related member from Schedule A, Part II, line 20 of the CBT-100, CBT-100U (member's column), or BFC-1 or Schedule A, Part I, line 38 of CBT-100S. If the amount on line 2 is zero or less, stop here. The exception amount to be entered on line 8 is zero. Otherwise, go to line 3		
3. Enter the lesser of line 1, column B or line 2, column B		
4. Enter the respective allocation factors from Schedule J, line 1h of the CBT-100, CBT-100S, or BFC-1 or Schedule J, line 9 of CBT-100U. If non-allocating, enter 1.00		
5. Multiply line 1 by line 4 for column A and line 3 by line 4 for column B. Enter the result here		
6. Enter the respective tax rates used to compute line 2 of the CBT-100, CBT-100S, or BFC-1 or Schedule A, Part III, line 5 of CBT-100U		
7. Multiply line 5 by line 6 and enter the result		
8. Exception Amount. If line 7, column B is greater than line 7, column A, enter the amount from line 1, column A. Otherwise, divide the amount on line 7, column B by line 6, column A, and divide the result by line 4, column A. Enter here and on line 3 of the Total Exceptions Chart for Part I.		

Exception 4 Interest Paid, Accrued, or Incurred to an Independent Lender

1. Was any interest listed on Schedule G, Part I of the New Jersey CBT-100, CBT-100U, CBT-100S, or BFC-1 directly or indirectly paid, accrued, or incurred to an independent lender?
   ◯ Yes. Answer question 2. ◯ No. You do not qualify for this exception.
2. Is the debt upon which the interest is required guaranteed by the taxpayer filing this return?
   ◯ Yes. Complete the following schedule. ◯ No. You do not qualify for this exception.

Name of Independent Lender	Amount of Indebtedness	Amount Deducted
(a) Total – Enter here and on line 4 of the Total Exceptions Chart for Part I		

A copy of the loan agreement evidencing the guarantee of the debt by the taxpayer must also be submitted with this return.

Total Exceptions Chart for Part I

1. Exception 1 – Enter amount from line (a) of Schedule G-2, Part I, Exception 1	
2. Exception 2 – Enter amount from line 9 of Schedule G-2, Part I, Exception 2	
3. Exception 3 – Enter amount from line 8 of Schedule G-2, Part I, Exception 3	
4. Exception 4 – Enter amount from line (a) of Schedule G-2, Part I, Exception 4	
5. Total Part I Exceptions – Add lines 1, 2, 3, and 4. Enter total here and on line (b) of Schedule G, Part I	

Part II Exceptions to the Addback of Intangible Expenses and Costs

Note: Claim for an exception to the requirement to add back to entire net income intangible expenses and costs including intangible interest expenses and costs, paid, accrued, or incurred to a related member(s). If more space is needed, enclose a schedule listing the information.

Exception 1 Amounts Paid, Accrued, or Incurred to a Related Member(s) in a Foreign Nation that has a Comprehensive Treaty with the United States

1. Were any of the intangible expenses and costs, including intangible interest expenses and costs reported on Schedule G, Part II of the CBT-100, CBT-100-U, CBT-100S, or BFC-1 directly or indirectly paid, accrued, or incurred to a related member in a foreign nation that has a comprehensive income tax treaty with the United States?

◯ Yes. Complete the following schedule. ◯ No. You do not qualify for this exception.

Name of Related Member	Name of Nation	Description of Treaty	Allocation Factor	Country's Rate of Tax	Tax Paid	Amount Allowed to Deduct
(a) Total – Enter here and on line 1 of the Total Exceptions Chart for Part II						

Exception 2 Intangible Expenses and Costs Paid, Accrued, or Incurred to Related Corporations Filing in New Jersey

If claiming this exception for more than one related member, complete Exception 2 for each related member and enter the total for all related members in the Total Exceptions Chart.

Name of Related Member:_____

FID # of Related Member:_____

Fiscal Period of Related Member:_____

1. Were any of the intangible expenses and costs including intangible interest expenses and costs reported on Schedule G, Part II of the CBT-100, CBT-100U, CBT-100S, or BFC-1 directly or indirectly paid, accrued, or incurred to the above related member and included in a New Jersey CBT-100, CBT-100U, CBT-100S, or BFC-1, filed by the related member?

◯ Yes. Answer question 2. ◯ No. You do not qualify for this exception.

2. Was the tax liability of the related member greater than the statutory minimum tax?

◯ Yes. Complete the following schedule. ◯ No. You do not qualify for this exception.

	Column A Taxpayer	Column B Related Member
1. Enter in column A and column B the amount of intangible expenses and costs claimed by the taxpayer as being deductible		
2. Enter entire net income of related member from Schedule A, Part II, line 20 of the CBT-100, CBT-100U (member's column), or BFC-1 or Schedule A, Part I, line 38 of CBT-100S. If the amount on line 2 is zero or less, stop here. The exception amount to be entered on line 8 is zero. Otherwise, go to line 3		
3. Enter the lesser of line 1, column B or line 2, column B		
4. Enter the respective allocation factors from Schedule J, line 1h of the CBT-100, CBT-100S, or BFC-1 or Schedule J, line 9 of the CBT-100U. If non-allocating, enter 1.00		
5. Multiply line 1 by line 4 for column A and line 3 by line 4 for column B. Enter the result		
6. Enter the respective tax rates used to compute line 2 of the New Jersey CBT-100, CBT-100S, or BFC-1 or Schedule A, Part III, line 5 of CBT-100U		
7. Multiply line 5 by line 6 and enter the result		
8. Exception Amount. If line 7, column B is greater than line 7, column A, enter the amount from line 1, column A. Otherwise, divide the amount on line 7, column B by line 6, column A, and divide the result by line 4, column A. Enter result here and on line 2 of the Total Exceptions Chart for Part II.		

Total Exceptions Chart for Part II

1. Exception 1 – Enter amount from line (a) of Schedule G-2, Part II, Exception 1	
2. Exception 2 – Enter amount from line 8 of Schedule G-2, Part II, Exception 2	
3. Total Part II Exceptions – Add lines 1 and 2. Enter total here and on line (b) of Schedule G, Part II	

Instructions for Schedule G-2

For definitions of a related member, intangible expenses and costs, intangible interest expenses and costs, and intangible property, see the instructions for Schedule G of Form CBT-100, CBT-100U, CBT-100S, or BFC-1.

For tax years beginning on or after January 1, 2018, **the treaty exceptions are limited** pursuant to P.L. 2018, c. 48.

Note: If there are transactions between members of a combined group that are included on the same New Jersey combined return, and those amounts are reported on Schedule A, they are also eliminated on Schedule A. No exception is required.

Part I

Exception 1

Complete the schedule if the taxpayer included any interest expense on Schedule G, Part I of the CBT-100, CBT-100U or CBT-100S (or the BFC-1, if applicable) that was directly or indirectly paid, accrued, or incurred to a related member in a foreign nation that has in force a comprehensive income tax treaty with the United States pursuant to P.L. 2018, c. 48 and:

(1) The related member was subject to tax in the foreign nation on a tax base that included the payment 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.

Exception 2

Complete the schedule if the taxpayer included any interest expense on Schedule G, Part I of the CBT-100, CBT-100U, or CBT-100S (or the BFC-1, if applicable) that was directly or indirectly paid, accrued, or incurred to a related member and for which the payment of such interest:

(1) Was not to avoid taxes otherwise due under Title 54 of the Revised Statutes of Title 54A of the New Jersey Statutes;

(2) Was paid pursuant to arm's length contracts at an arm's length rate of interest; and

(3) (a) 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;

(b) A measure of the tax includes the interest received from the related member;

(c) 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.

A copy of the return from the state, possession, or foreign nation on which the related member reported interest income must be submitted with the taxpayer's return.

Exception 3

Complete the schedule if the taxpayer included any interest expense on Schedule G, Part I of the CBT-100, CBT-100U, or CBT-100S (or the BFC-1, if applicable) that was directly or indirectly paid, accrued, or incurred to a related member that is a corporation that files a Corporation Business Tax return in New Jersey, and such member included those amounts in its entire net income.

If claiming this exception for more than one related member, complete Exception 3 for each related member, and enter the total for all related members in the Total Exceptions Chart for Part I.

If an exception to the disallowance of the interest expense was determined under Exception 1 and/or 2, an exception under this provision for that related member is not available.

Exception 4

Complete the schedule if the taxpayer included any interest expense on Schedule G, Part I of the CBT-100, CBT-100U, or CBT-100S (or the BFC-1, if applicable) that was directly or indirectly paid, accrued, or incurred to a independent lender, and the taxpayer filing this return guarantees the debt on which the interest is required.

Part II

Exception 1

Complete the schedule if the taxpayer included any intangible expenses and costs including intangible interest expenses and costs on Schedule G, Part II of the CBT-100, CBT-100U, or CBT-100S (or the BFC-1, if applicable) that were directly or indirectly paid, accrued, or incurred to a related member in a foreign nation that has in force a comprehensive income tax treaty with the United States and:

(1) The related member was subject to tax in the foreign nation on a tax base that included the payment 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.

Exception 2

Complete the schedule if the taxpayer included any intangible expenses and costs including intangible interest expenses and costs on Schedule G, Part II of the CBT-100, CBT-100U, or CBT-100S (or the BFC-1, if applicable) that were directly or indirectly paid, accrued, or incurred to a related member that is a corporation that files a Corporation Business Tax return in New Jersey, and such member has included those amounts in its entire net income.

If claiming this exception for more than one related member, complete Exception 2 for each related member, and enter the total for all related members in the Total Exceptions Chart for Part II.

Notes:

Any other exceptions cannot be made on the return. The amounts paid to related members as reported on line (a) of Schedule G, Part I and/or Part II, must be included in the amount reported on line (c) of Schedule G, Part I and/or Part II.

A separate Claim for Refund (Form A-3730) stipulating all the facts and providing all applicable evidence to support the taxpayer's claim, must be submitted in order to request any other exception.

Statement of Estimated Tax for Corporations (Separate or Combined Filers) Instructions

Who Must File

Taxpayers whose prior year tax liability is greater than $500 must make four 25% estimated tax payments in the fourth, sixth, ninth and 12th months of its accounting period towards the current year's tax, except for taxpayers with gross receipts of $50 million or more for the prior privilege period must make installment payments as follows: 25% in the 4th month, 50% in the 6th month and 25% in the 12th month. A taxpayer whose prior year tax liability is $500 from CBT-100 or CBT-100U or $375 from CBT-100S, may, in lieu of making these estimated tax payments, make a single estimated tax payment of 50% of the prior year's tax liability. This option must be made and the 50% payment must be remitted no later than the original due date of the prior year's tax return.

Electronic Filing Mandate

All taxpayers and tax preparers must file Corporation Business Tax returns and make payments electronically. This mandate includes all estimated payments. Visit the Division's website or check with your software provider to see if they support these filings.

How to Determine Your Estimated Tax

Computation of the estimated tax should be made on the basis of a full accounting period. Taxpayers should determine their expected liabilities on the basis of circumstances existing at the time prescribed for filing. Use the estimated tax worksheet on page 3 or 4, whichever is applicable, for computing each installment due.

Estimated Tax Worksheet

A worksheet is provided to assist in computing the amounts of installment payments due for any taxpayer required to file a statement.

Overpayment Credit From CBT-100, CBT-100U, or CBT-100S

If the prior year's return is overpaid and the taxpayer elected to apply that overpayment as a credit to the current tax year, take credit for that amount when calculating the estimated payments. However, if the taxpayer elected to have any portion or all of the overpayment on the prior year's return refunded, this amount cannot be claimed as a credit.

Calendar Year and Fiscal Year Taxpayers

All taxpayers should enter the appropriate tax year to which the remittance should be credited. Fiscal year taxpayers must also enter the beginning and ending dates of their accounting period.

Underpayment of Estimated Tax

Any taxpayer who is required to file a statement of estimated tax must file each estimate together with remittance covering the estimated tax due on the required due date. Failure to remit such estimated payment or making an underpayment of such tax or any installment thereof, will result in the imposition of interest at an annual rate of 3% above the average predominant prime rate for each month or part of a month that the underpayment exists. The average predominant prime rate to be used 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 the payment was due or as redetermined by the Director in accordance with N.J.S.A. 54:48-2. The interest rates assessed by the Division of Taxation are published on the Division's website.

In general, a taxpayer will be considered as having underpaid if the total amount of the estimated tax payments for the tax year are less than 90% of the total tax liability reported on the current year's tax return and less than 100% of the total tax liability reported on the prior year's tax return. The addition to the tax on any underpayment of any installment payment is computed on form CBT-160-A or CBT-160-B, whichever is applicable, and must be paid with the return.

When to File

The appropriate estimated tax payment due dates for both calendar and fiscal year taxpayers can be found in the Calendar of Due Dates on page 2.

How to Pay

You must pay your New Jersey estimated Corporation Business Tax electronically by e-check, electronic funds transfer (EFT), or credit card. Go to the Division of Taxation's website. Taxpayers that do not have access to the internet can call the Division's Customer Service Center at (609) 292-6400.

If you are not currently enrolled in the Electronic Funds Transfer program with the Division of Revenue and Enterprise Services, visit their website at: *www.state.nj.us/treasury/taxation/online.shtml.*

Calendar of Due Dates*				
For Your Current Tax Year Ended	Installment Due Dates			
	Voucher 1	Voucher 2	Voucher 3	Voucher 4
12/31	4/15	6/15	9/15	12/15
1/31	5/15	7/15	10/15	1/15
2/28	6/15	8/15	11/15	2/15
3/31	7/15	9/15	12/15	3/15
4/30	8/15	10/15	1/15	4/15
5/31	9/15	11/15	2/15	5/15
6/30	10/15	12/15	3/15	6/15
7/31	11/15	1/15	4/15	7/15
8/31	12/15	2/15	5/15	8/15
9/30	1/15	3/15	6/15	9/15
10/31	2/15	4/15	7/15	10/15
11/30	3/15	5/15	8/15	11/15

*If the due date falls on a weekend or a legal holiday, the payment is due on the following business day.

Amount of Installments Due. For taxpayers with gross receipts less than $50 million in the prior privilege period, a 25% installment payment of the current accounting year's estimated tax liability must be submitted with each of the four vouchers on or before the 15th day of the fourth, sixth, ninth, and 12th months of that year. Taxpayers with gross receipts of $50 million or more for the prior privilege period must pay a 25% installment in the fourth month, a 50% installment in the sixth month and a 25% installment in the 12th month. If any due date prescribed for filing these installment vouchers falls on a Saturday, Sunday, or a legal holiday recognized by the State of New Jersey, the next succeeding business day will be considered the due date.

Estimated Tax Worksheet for Taxpayers With Gross Receipts Less Than $50,000,000 in the Prior Privilege Period

(Keep for your records – DO NOT FILE)

1.	Total estimated tax for the current year	1. _____
2.	Voucher 1 due (enter 25% of line 1)	2. _____
3.	Voucher 2 due (enter 25% of line 1)	3. _____
4.	Voucher 3 due (enter 25% of line 1)	4. _____
5.	Voucher 4 due (enter 25% of line 1)	5. _____

Record of Estimated Tax Payments

Voucher Number	(a) Date	(b) Amount	(c) Overpayment Credit From Last Year's Return	(d) Total Amount Paid and Credited For This Installment (Add (b) and (c))
1				
2				
3				
4				
Total				

Amended Computation (Use if your estimated tax changes after you have filed one or more estimated tax vouchers.)

1. Enter the amended estimated tax ..... _____
2. Less (a) Amount of overpayment credit from last year's return (see instructions) ..... _____
   (b) Previous estimated tax payment(s) made this year:
   From Voucher 1 ..... _____
   From Voucher 2 ..... _____
   From Voucher 3 ..... _____
   (c) Total lines 2a and 2b ..... _____
3. Unpaid balance (subtract line 2c from line 1) ..... _____
4. Unpaid balance to be paid as follows:
   (a) On Voucher 2 if unused – 50% of amended estimated tax (line 1) less payments made (line 2c) ..... _____
   (b) On Voucher 3 if unused – 75% of amended estimated tax (line 1) less payments made ..... _____
   (c) On Voucher 4 – 100% of amended estimated tax (line 1) less payments made ..... _____
   (d) Total of lines 4a, 4b, and 4c ..... _____
5. Subtract line 4d from line 3. (If result is not zero, review calculations) ..... _____

Estimated Tax Worksheet for Taxpayers With Gross Receipts of $50,000,000 or More in the Prior Privilege Period

(Keep for your records – DO NOT FILE)

1. Total estimated tax for the current year ..... 1. _____
2. Voucher 1 due (enter 25% of line 1) ..... 2. _____
3. Voucher 2 due (enter 50% of line 1) ..... 3. _____
4. Voucher 4 due (enter 25% of line 1) ..... 4. _____

Record of Estimated Tax Payments

Voucher Number	(a) Date	(b) Amount	(c) Overpayment Credit From Last Year's Return	(d) Total Amount Paid and Credited For This Installment (Add (b) and (c))
1				
2				
4				
Total				

Amended Computation (Use if your estimated tax changes after you have filed one or more estimated tax vouchers.)

1. Enter the amended estimated tax..... _____
2. Less (a) Amount of overpayment credit from last year's return (see instructions)..... _____
   (b) Previous estimated tax payment(s) made this year:
   From Voucher 1..... _____
   From Voucher 2..... _____
   (c) Total lines 2a and 2b..... _____
3. Unpaid balance (subtract line 2c from line 1)..... _____
4. Unpaid balance to be paid as follows:
   (a) On Voucher 2 if unused – 75% of amended estimated tax (line 1) less payments made (line 2c)..... _____
   (b) On Voucher 4 – 100% of amended estimated tax (line 1) less payments made..... _____
   (c) Total of lines 4a and 4b ..... _____
5. Subtract line 4c from line 3. (If result is not zero, review calculations)..... _____

CBA-1
(03-10, R-4, ct)

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:

	YES Month/Year	NO X
If "YES" insert first date (month and year) in yes box. If "NO" insert "X" in no box		
1. Conduct any type of activity or engage in any interrelationships within New Jersey?		
2. Derive Income from sources located in New Jersey? If yes, specify: Type _____ Approximate amount $_____ ……..		
3. Solicit sales in New Jersey? If yes, specify: ☐ For product ☐ By In-State Reps., etc. ☐ Internet or Electronic Means ☐ For services ☐ By mail or phone only .. ……...……		
4. If you have in-state solicitation of product is sales acceptance and/or approval: ☐ By salesman at New Jersey customer ☐ At corporate office located outside of New Jersey ……..……		
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 .....…….….		
6. Own, rent or lease any type of property located in New Jersey either for your own or other use? ..……		
7. Do you license the use of intangible rights to clients located in New Jersey? …….		
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? …….……..		
9. Deliver goods to points in New Jersey? ☐ Your own trucks ☐ Common Carrier If delivered in your own truck, do you assist in set-up, installation or pick up of damages, returned or replaced goods? …….		
10. Perform any type of service in New Jersey, not related to solicitation of sales?		
11. Do you own or lease any vehicles which are registered in New Jersey? If yes, are they assigned to: ☐ Salespeople only ☐ Salespeople and others ☐ Others …….		
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: _____		

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.) …… ☐ YES ☐ NO

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

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.

SUBMIT COMPLETED FORM TO:
NJ DIVISION OF TAXATION OFFICE
AUDIT BRANCH
3 John Fitch Way 2nd Floor
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.

CBT-M
(**9-21**)

State of New Jersey
PNOL/NOL Merger/Acquisition Certificate in Cases of Regulatory Delay

Submit this form only if there is a regulatory delay by an agency other than the Division of Taxation.

(Print or Type)

Section I – Corporation/Combined Group Information

Entity/Group Name | Federal Employer ID Number

Managerial Member Name (if applicable) | NU# (if applicable)

Current Street Address

City, Town, Post Office | State | ZIP Code

Section II – Merged/Acquired Entity Information

(If combined group complete below using the managerial member information and include a rider detailing each individual member's information)

Entity/Group Name | Federal Employer ID Number

Managerial Member Name (if applicable) | NU# (if applicable)

Current Street Address

City, Town, Post Office | State | ZIP Code

Section III – Division of Taxation Certification

This certificate form with the raised seal of the New Jersey Division of Taxation at the bottom right hand corner attests that pursuant to N.J.S.A. 54:10A-4.5(b)(3) the Division of Taxation has certified that the net operating loss carryovers and prior net operating loss conversion carryovers survived the merger or acquisition after a regulatory delay in the approval of the merger or acquisition by governmental authorities other than the Division of Taxation.

By affixing the Seal of the Director, Division of Taxation, this date

_____
(Date)

the Division of Taxation has authorized this certificate.

Original approved certificate must be kept on file with the taxpayer. A copy of the certificate and any accompanying riders must be included with the Corporation Business Tax Return.

PNOL/NOL Merger/Acquisition Certificate Pursuant to N.J.S.A. 54:10A-4.5(b)(3)

Instructions

Purpose: On or after November 4, 2020, 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) for certain mergers and acquisitions. In such situations, the combined group/corporation(s) must notify the Director of the regulatory delay and document which New Jersey combined group the entity(ies) will be joining upon approval of the merger or acquisition. Once the acquisition or merger is approved by the federal or 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 PNOL/NOL Merger/Acquisition Certificate is issued on a group basis for the transaction.

How to Apply:
To apply complete Sections I and II of the certificate form. The PNOL/NOL Merger/Acquisition Certificate is issued on a group basis for the transaction, thus only one certificate needs to be completed and submitted to the Division for the specific transaction.

In Section I (Corporation/Combined Group Information) enter the requested information. For an existing combined group also enter the managerial member name and NU number. If a member other than the managerial member was the acquiring/surviving corporation the managerial member of the combined group must attach a rider listing the member and providing an explanation.

In Section II (Merged/Acquired Entity Information) enter the requested information. For a combined group where multiple members have PNOLS and/or NOLs attach a rider listing each of the members.

Note: The PNOL/NOL Merger/Acquisition Certificate is issued on a group basis for the transaction.

When submitting the certificate, include a cover letter stating the reason for the regulatory delay (including the name of the regulatory authority), the date merger or acquisition was originally supposed to occur, and the actual date the merger or acquisition was approved after the regulatory delay. If the delay was due to litigation, include the case name and docket number. The entities applying for the certificate have 180 days to notify the Division of Taxation of the approval of the merger or acquisition by the federal or state authorities.

PNOL/NOL Merger/Acquisition requests should be mailed to:

New Jersey Division of Taxation
Grants & Credits Unit
PO Box 269
Trenton, NJ 08695-0269

For overnight delivery with a carrier other than USPS Express:

NJ Division of Taxation
Grants & Credits Unit
3 John Fitch Way, 8th Floor
Trenton, NJ 08611

CITT-1
(7-21)

State of New Jersey
Divison of Taxation

Controlling Interest Transfer Tax

Read Instructions Before Completing This Return

Part 1 Transferor Information (Seller)

1. Name and Address of Transferor

2. SSN or Federal ID Number of Transferor	3. NJ Registration Number (if any) of Transferor	4. Unitary ID Number of Transferor (if applicable)

5. ☐ Check here if more than one transferor and attach a rider providing the same information for all transferors.

Part 2 Transferee Information (Purchaser)

1. Name and Address of Transferee

2. SSN or Federal ID Number of Transferee	3. NJ Registration Number (if any) of Transferee	4. Unitary ID Number of Transferee (if applicable)

5. ☐ Check box if more than one transferee and attach a rider providing the same information for all transferees.

Part 3 Transfer Information

1. Name and Address of Entity in which controlling interest was transferred

2. Federal ID Number of Entity	3. NJ Registration Number (if any) of Entity	4. Unitary ID Number of Entity (if applicable)

5. This entity is a: ☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other (specify) _____

6. Enter name of state under whose laws entity is organized	7. Date of transfer of controlling interest in entity	8. Interest transferred on date indicated in 7

9. ☐ If the controlling interest transfer was made in a series of transfers, check box and attach a rider describing earlier transfers.

10. ☐ Check box if the classification as a Class 4A commercial property is questionable or in dispute. You must complete Form CITT-1, pay the tax due, and attach a rider explaining the issue. See instructions for information about claiming a refund after the issue is resolved.

Part 4 Exemption Claim Information

Enter the exemption(s) the buyer is claiming and provide an explanation. If claiming multiple exemptions, or if you need more space, attach a rider. (See instructions.)

Part 5 Direct owners of NJ Class 4A commercial property indirectly owned by the entity in which a controlling interest was transferred

Name	Business Address	Social Security Number or Federal Employee ID Number

Part 6 Series of Transactions that either the Transferor or Transferee have participated in within the past 6 months

Name	Business Address	Social Security Number or Federal Employee ID Number

Name of Transferor	Transferor's Tax ID Number	Date of Transfer

Part 7 Tax Calculation A **Use if NJ Class 4A commercial property is owned directly or indirectly by the entity in which a controlling interest was transferred**

	Location of Real Property	Town	Check if Exempt	County/Muni Code	Column A Consideration	Column B Tax Rate	Tax (Col. A x Col. B)
1.	Street Address / Owner ID		☐			1%	
2.	Street Address / Owner ID		☐			1%	
3.	Street Address / Owner ID		☐			1%	
4.	Total Tax (include amounts from any attached riders). Enter here and on Part 9, Line 1						

Part 8 Tax Calculation B **Use if NJ Class 4A commercial property is owned directly or indirectly by the entity in which a controlling interest was transferred and the entity also owns an interest in other property, real or personal**

	Location of Real Property	Check if Exempt	County/Muni Code	Column A Assessed Value	Column B Director's Ratio	Column C Equalized Value	Column D Multiply Column C by 1%	Column E Ownership Percentage	Tax (Col. D x Col. E)
1.	Street Address / Town / Owner ID	☐							
2.	Street Address / Town / Owner ID	☐							
3.	Street Address / Town / Owner ID	☐							
4.	Total Tax (include amounts from any attached riders). Enter here and on Part 9, Line 2								

Part 9 Computation of Amount due and Payable

1. Enter amount from Part 7, line 4	1.		00
2. Enter amount from Part 8, line 4	2.		00
3. Tax due (enter the amount from line 1 or line 2, or the total of both if applicable)	3.		00
4. Penalties and interest due	4.		00
5. Total amount due (add lines 3 and 4)	5.		00

SIGN HERE

Keep a copy of this return for your records

I declare under penalty of law that I have examined this return (including any accompanying schedules and statements), and to the best of my knowledge and belief, it is true, complete, and correct. I understand the penalty for willfully delivering a false return is a fine of not more than $5,000, or imprisonment for not more than five years, or both. The declaration of a paid preparer other than the taxpayer is based on all information of which the preparer has any knowledge.

Signature of Principal Officer | Title | Date

Print name of Principal Officer | ( ) Phone Number

I authorize the Division of Taxation to discuss my return and enclosures with my preparer (below) ☐

Paid Preparer's Signature | Date | Preparer's SSN or PTIN

Firm's Name and Address | FEIN

Controlling Interest Transfer Tax

The tax is imposed on certain transfers of a controlling interest in an entity possessing Class 4A commercial real property when the consideration is in excess of $1 million. The tax is paid by the purchaser. See N.J.S.A. 54:15C-1.

The sale or transfer of a controlling interest subject to taxation may occur in one transaction or in a series of transactions. New Jersey considers transactions that occur within six months of each other to be a series of transactions constituting a single sale or transfer, unless the contrary is established to the satisfaction of the Director. One purchaser or a group of purchasers acting in concert may accomplish a sale or transfer subject to tax. Purchasers that are related parties are presumed to be acting in concert, unless the contrary is established to the satisfaction of the Director.

Definitions

"Consideration" means the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer including the remaining amount of any prior mortgage to which the transfer is subject or that is to be assumed and agreed to be paid by the purchaser.

"Controlling interest" means, in the case of a corporation, more than 50% of the total combined voting power of all classes of stock of that corporation, and in the case of an entity that is a partnership, association, trust, or other organization, more than 50% of the beneficial ownership of classified real property of that partnership, association, trust, or other organization.

"Equalized Assessed Value" means the assessed value of the property in the year that the transfer is made divided by the Director's equalization ratio, which changes each year based on a sales study. The Director, Division of Taxation, pursuant to N.J.S.A. 54:1-35.1, publishes it annually on or before October 1. The resulting amount is the equalized assessed value. Since assessed value, which is the value on the tax roles, does not change very often, the calculation is needed to approximate the current fair market value of the property.

"Related parties" means parties that have the relationship necessary for attribution of constructive ownership of stock pursuant I.R.C. § 318 and members of an affiliated group or a controlled group pursuant to I.R.C. § 1504 or I.R.C. § 1563.

"Class 4A commercial property" means any kind of income-producing real property other than property classified as vacant land, residential property, farm property, industrial properties, and apartments. If you are unsure about the classification of the real property or its assessed value, contact the local tax assessor's office.

Calculation of the Tax

There are two different methods for calculating the tax. The method used depends on the circumstances. The purchaser is responsible for the tax under both methods.

The first method applies if consideration exceeding $1 million is paid for controlling interest in an entity, and that entity possesses, directly or indirectly, a controlling interest in Class 4A commercial property but does not own an interest in any other type of property. In this situation, the tax is 1% of the consideration paid.

The second method applies if a controlling interest in an entity is sold or transferred and the entity possesses, directly or indirectly, a controlling interest in Class 4A commercial property and an interest in other property, real or personal. In this second method, the equalized assessed value of the Class 4A commercial property, not the amount of consideration paid for the controlling interest itself, is used to calculate the tax. In this situation, the tax is paid only if the equalized assessed value of the Class 4A commercial property exceeds $1 million. The tax is 1% of the equalized assessed value of the Class 4A commercial property multiplied by the ownership percentage transferred. Thus, the tax is measured by the portion of the equalized assessed value that is proportional to the percentage of the total interest in the property transferred.

Note: For transfers of a controlling interest involving an entity-owned property where the classification of property is in dispute or the property classification as Class 4A commercial property is questionable, the controlling interest transfer tax must still be paid. However, if the property classification is subsequently retroactively changed to a property classification other than Class 4A commercial property after the transfer and the CITT-1 is filed and payment made, the taxpayer may submit a claim for refund on Form A-3730. For such properties, attach a rider to the CITT-1 explaining why the property classification is in dispute or is questionable.

Filing and Record Keeping

On or before the last day of the month following the month when the sale or transfer of a controlling interest was completed, the purchaser/transferee must file Form CITT-1 with the Director, Division of Taxation. Payment of the tax must accompany the CITT-1. A copy of Form CITT-1 must accompany the purchaser/transferee's tax return filed with New Jersey. Form CITT-1 does not need to be submitted when the transferred entity does not directly or indirectly own Class 4A commercial property. The purchaser/transferee must supply a copy of the CITT-1 to the seller/transferor and a copy of such return must be included with the seller/transferor's New Jersey tax return.

If sale or transfer of a controlling interest in an entity occurs, the entity must keep a record of every transfer of a controlling interest in its stock or in its capital, profits, or beneficial interests.

When an exemption box is checked on Form CITT-1, Part 7 or Part 8, you must still complete Part 7 or Part 8 as though the tax was due. The exemption form CITT-1E has been replaced with Part 4, Exemption Claim Information, on the CITT-1 return.

The State Uniform Tax Procedure Law governs the administration of the Controlling Interest Transfer Tax.

Riders. When attaching a rider for the applicable line, spreadsheets or narratives (depending on the purpose of the line), are acceptable formats with the corresponding part, line, and columns (if applicable) clearly labeled.

CITT-1 Instructions

Part 1
Enter the requested information for the transferor (seller).

Part 2
Enter the requested information for the transferee (purchaser).

Part 3
Enter the requested information for the entity in which the controlling interest was transferred. If the answer to question 9 and/or 10 is yes, attach a rider.

Part 4
Certain transactions are exempt from the Controlling Interest Transfer Tax. See N.J.S.A. 54:15C-1(c). Enter the exemption(s) the buyer is claiming and provide an explanation. If claiming multiple exemptions, or if you need more space, attach a rider.

Exemptions include the following sales or transfers:

- By or to the United States of America, the State of New Jersey, or any instrumentality, agency or subdivision thereof;
- To a purchaser that is recognized as qualified under IRC 501(c)(3);
- Having the characteristics listed in N.J.S.A. 46:15-10, which concerns deeds excluded from additional recording fee;
- That is subject to the fee imposed by N.J.S.A. 46:15-7.2 concerning the fee for the transfer of real property
  Note: Such properties subject to the buyer fee for a deed transfer include class 2 “residential”; class 3A “farm property (regular)” but only if the property includes a building or structure intended or suited for residential use, and any other real property, regardless of class, that is effectively transferred to the same grantee in conjunction with the class 3A property; a cooperative unit as defined in N.J.S.A. 46:8D-3; or class 4A commercial property;
- Incidental to a corporate merger or acquisition in which the equalized assessed value of the real property is less than 20% of the total value of all assets exchanged in the merger or acquisition. This exemption applies where the equalized assessed value of the Class 4A commercial property in New Jersey is less than 20% of the total value in the transfer;
- For transfers entered into on and after January 1, 2021, if it is an intercompany transfer between combined group members as part of the unitary business, as those terms are used in section 4 of P.L.1945, c.162 (C.54:10A-4). See N.J.S.A. 54:10A-4(z); N.J.S.A. 54:10A-4(gg); and TB-93 for more information.

Part 5
Complete this portion only if the Class 4A commercial property is indirectly owned by the entity being transferred. List the name, business address, and Social Security number or federal employee ID number of all direct owners of New Jersey real property indirectly owned by the entity in which a controlling interest was transferred. If more space is needed, attach a rider.

Part 6
List all transactions in which either the transferor or transferee has participated within the past 6 months. Include the name, business address, and Social Security number or federal employee ID number of all parties. If more space is needed, attach a rider.

Part 7
Enter the requested information if the entity in which a controlling interest is being transferred owns NJ Class 4A commercial property, either directly or indirectly, but does not own an interest in other type of property.

Check the box if the transaction is exempt (see instructions for Part 4). Also enter the county/municipality code. Enter the code for the municipality where the taxes are paid.

Enter the consideration in column A. Multiply column A by the tax rate in column B and enter the result in the tax column. Enter the total of the tax column on line 4 and on Part 9, line 1.

Part 8
Enter the requested information if the entity in which a controlling interest is being transferred owns NJ Class 4A commercial property, either directly or indirectly, and also owns an interest in another type of property.

Check the box if the transaction is exempt (see instructions for Part 4). Also enter the county/municipality code. Enter the code for the municipality where the taxes are paid.

Column A – Enter the assessed value of the real property.

Column B – Enter the director's ratio.

Column C – Divide column A by column B and enter the result. This is the equalized assessed value. If the amount in column C is over $1 million, tax is due.

Column D – Multiply column C by 1% and enter result.

Column E – Enter the applicable ownership percentage of the entity. Enter 100% if the entire ownership is transferred.

Multiply column D by column E and enter in the tax column. Enter the total of the tax column on line 4 and on Part 9, line 2.

Part 9

Calculate the amount of tax due along with any penalties and interest.

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.

Make check payable to Treasurer, State of New Jersey. Mail the completed return, attached schedule, and check to:

State of New Jersey
Division of Taxation
Revenue Processing Center
PO Box 629
Trenton, New Jersey 08646-0629

SCHEDULE
NJ-K-1
(Form CBT-100S)
2021

State of New Jersey
Division of Taxation
Shareholder's Share of Income/Loss

For Calendar Year 2021, or tax year beginning _____, _____ and ending _____, _____

Shareholder's identifying number	Federal employer identification number
Shareholder's name, address, and ZIP Code	Corporation's name, address, and ZIP Code

See instructions and reverse side

Part I

1. Shareholder's percentage of stock ownership for tax year ..... _____%
2. Shareholder ..... ☐ resident ☐ nonresident
3. Shareholder ..... ☐ consenting ☐ nonconsenting
4. Check applicable box: ..... ☐ Final NJ-K-1 ☐ Amended NJ-K-1
5. Date the shareholder's stock was fully disposed ..... _____

Part II

1. S Income/Loss allocated to NJ ..... _____
2. S Income/Loss not allocated to NJ ..... _____
3. Pro rata share of S Corporation Income/Loss (line 1 plus line 2) .... _____
4. Gain/Loss on disposition of assets allocated to NJ ..... _____
5. Gain/Loss on disposition of assets not allocated to NJ ..... _____
6. Total Gain/Loss from disposition of assets (line 4 plus line 5) ..... _____
7. Total payments made on behalf of shareholder ..... _____
8. Distributions ..... _____

Shareholder: Follow the reporting instructions contained in your NJ Income Tax return packet and in publication GIT-9S, *Income From S Corporations*.

This schedule must be included with your NJ Income Tax return.

Part III Shareholder's NJ Accumulated Adjustments Account

	New Jersey AAA	Non New Jersey AAA
1. Beginning balance		
2. Income/Loss		
3. Other Income/Loss		
4. Other reductions		
5. Total lines 1-4		
6. Distributions		
7. Ending Balance (line 5 minus line 6)		

Part IV Shareholder's NJ Earnings and Profits Account

1. Beginning balance ..... _____
2. Additions/Adjustments ..... _____
3. Dividends received ..... _____
4. Ending balance (line 1 plus line 2 minus line 3) ..... _____

Part V

1. Interest paid to shareholder (per 1099-INT) ..... _____
2. Indebtedness:
   a. From corporation to shareholder: ..... _____
   b. From shareholder to corporation: ..... _____
3. Shareholder's HEZ deduction: ..... _____

INSTRUCTIONS FOR SCHEDULE NJ-K-1

For additional information see publication GIT-9S, *Income From S Corporations*
(Available on the Division's website)

PART I

Line 1 Shareholder's percentage of stock ownership as reported on federal 1120-S.

Line 2 Indicate shareholder's residency status at year's end.

Line 3 Indicate whether shareholder is a consenting or nonconsenting shareholder.

Line 4 If applicable, indicate if this schedule is a final or amended NJ-K-1.

Line 5 Enter date shareholder received final distribution (cash and/or property).

PART II

Line 1 Enter shareholder's share of New Jersey allocated S corporation income/loss from Part III, line 8 of Schedule K or from Part III, line 8, column A of Schedule K Liquidated.

New Jersey S corporations that claim a credit for taxes paid to other jurisdictions in accordance with N.J.A.C. 18:7-8.3 will report 100% of the shareholder's net pro rata share as allocated to New Jersey.

Line 2 Enter shareholder's share of S corporation income/loss not allocated to New Jersey from Part III, line 9 of Schedule K or from Part III, line 9, column A of Schedule K Liquidated.

Line 4 Enter shareholder's share of New Jersey allocated income, gains/losses from disposition of assets from Part III, line 8, column B of Schedule K Liquidated.

Line 5 Enter shareholder's share of income, gains/losses from disposition of assets not allocated to New Jersey from Part III, line 9, column B of Schedule K Liquidated.

Line 7 Enter total payments made on behalf of the shareholder as reported in Part VII, column F of Schedule K or in Part VII, column (H) of Schedule K Liquidated.

Line 8 Enter distributions shareholder received during the year as reported in Part V, VI, or VII, of Schedule K or Schedule K Liquidated.

PART III

Lines 1–7 Enter shareholder's share of New Jersey Accumulated Adjustments (AAA) from Part IV-A, Schedule K or Schedule K Liquidated.

PART IV

Lines 1–4 Enter shareholder's share of New Jersey Earnings and Profits from Part IV-B, Schedule K or Schedule K Liquidated.

PART V

Line 1 Enter the amount of any interest paid to the shareholder that should be reported by the S corporation on federal Form 1099-INT. Include any other interest paid to the shareholder that was deducted by the S corporation in arriving at income reflected in Part II, line 8 of Schedule K or Schedule K Liquidated.

Line 2 a. Enter the total amount of the corporation's indebtedness to the shareholder at year's end or prior to final distribution.

b. Enter the total amount of the shareholder's indebtedness to the corporation at year's end or prior to final distribution.

Line 3 If a New Jersey electing S corporation is a qualified primary care medical or dental practice located in or within 5 miles of a Health Enterprise Zone (HEZ), the corporation must determine if the shareholders are entitled to an HEZ deduction and the amount. The shareholder's deduction is entered on the shareholder's Schedule NJ-K-1 and deducted on the shareholder's Gross Income Tax return. See the Division's website, *nj.gov/taxation,* for qualification and calculation information.

NOTE: A New Jersey electing S corporation doing business in New Jersey may file a NJ-1080-C composite return on behalf of its qualified nonresident shareholders who elect to be included in the composite filing. Every participating shareholder must make the election to be part of the composite return in writing each year by using Form NJ-1080E, Election to Participate in Composite Return, or a form substantially similar.

Schedule A-7

Gross Income Test for Financial Businesses That are Members of a Combined Group

Qualifying financial businesses should use this schedule as a worksheet and keep for their records.

This schedule is used to determine whether a member qualifies as a Financial Business Corporation. For the purpose of making this computation, column 1 shall be the sum of the amounts reported on line 1a and lines 4 through 10 of Schedule A, Part I, Form CBT-100U, adjusted for interest on federal, State, municipal and other obligations not included on line 5 of Schedule A, Part I and the dividend exclusion. Column 2 is the gross income included in column 1 that was derived from the following financial activities:

1) Discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt;
2) Buying and selling exchange;
3) Making of or dealing in secured or unsecured loans and discounts;
4) Dealing in securities or shares of corporate stock by purchasing and selling such securities and stock without recourse, solely upon the order and for the account of customers;
5) Investing and reinvesting in marketable obligations evidencing indebtedness of any person, co-partnership, association, or corporation in the form of bonds, notes, or debentures commonly known as investment securities; or
6) 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.
7) Certain leasing transactions that approximate secured loans by meeting each of the following requirements:
   i. Lessor must look primarily to the creditworthiness of the lessee in order to recover its investment.
   ii. Lessor may not rely on repetitious leasing of the same property.
   iii. The lease must be a net lease.
   iv. The lessor must recover its full investment plus its cost of financing through the rental payments, tax benefits, and the residual value of the property.

See N.J.A.C. 18:7-1.16(b) for additional information regarding leasing transactions.

Unitary ID Number

Member FEIN

Member Name

Part I **From the corresponding lines in the member's column of Schedule A, Part I, Form CBT-100U,**		Column 1 Gross Income Overall	Column 2 Gross Income Financial Activities
Line 1a	Gross receipts		
Line 4a	Dividends		
Line 4b	Foreign Derived Intangible Income		
Line 4c	Global Intangible Low-Taxed Income		
Line 5	Interest		
Line 6	Gross rents		
Line 7	Gross royalties		
Line 8	Capital gain net income		
Line 9	Net gain or loss from federal Form 4797		
Line 10	Other income		
Part II			
Line 11	TOTAL – Add lines 1 through 10 in Part I		
Line 12	Interest on federal, State, municipal and other obligations not included on line 28, Part I of Schedule A		
Line 13	Subtotal – Add lines 11 and 12		
Line 14	Allocation factor from the member's column of Schedule J, line 9		
Line 15	Allocated Subtotal – Multiply line 13 by the allocation factor on line 14		
Line 16	a. Allocated dividend exclusion from Schedule R, line 12		
	b. Divide line 16a by the group allocation factor from the combined group column of Schedule J, line 9		
	c. Member's share of allocated dividend exclusion – Multiply line 16b by the member's allocation factor from the member's column of Schedule J, line 9		
Line 17	Subtotal – Subtract line 16c from line 15		
Line 18	Reserved for future use		
Line 19	GROSS INCOME – Enter amount from line 17		

Divide the gross income from column 2 by the gross income from column 1 and enter the result _____%

If the resulting percentage **is less than 75%,** the corporation **does not qualify** as a Financial Business. Do not check the box at line 4 of the Members and Affiliates Schedule.

If the resulting percentage **is 75% or more,** the corporation qualifies as a Financial Business. Check the box at line 4 of the Members and Affiliates Schedule and complete the member's section of Schedule L, apportioning the financial business in New Jersey consistent with N.J.S.A. 54:10A-38 (section 38 of the Corporation Business Tax Act).

Schedule PT
(3-21)

Previously Taxed Dividends

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable
		NU

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 CBT-100, CBT-100S, 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 of Forms CBT-100, CBT-100S, or BFC-1 or on Schedule R, line 1(b) 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, or Sched A, Part I, line 28 of the CBT-100S) (if zero or less, enter zero)	5.	

Note: Current year I.R.C. §951A and I.R.C. §250(b) amounts are not dividends nor are they deemed dividends; they are their own category of income.

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 taxpayer's 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. To prevent the same dividends from being taxed twice, Schedule PT allows taxpayers an additional exclusion if they provide documentation substantiating that they 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-100S, CBT-100U, 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 no 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-100S, 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-100S, CBT-100U, or BFC-1.

Note: Current year I.R.C. §951A and I.R.C. §250(b) amounts are not dividends nor are they deemed dividends; they are their own category of income.

Schedule I

State of New Jersey
Division of Taxation

CERTIFICATE OF INACTIVITY

For Use With Form CBT-100U ONLY

For the period beginning _____ , _____ , and ending _____ , _____

Unitary ID Number	Member FEIN	Member Name

(NOTE: Include this schedule with the member's CBT-100U)

I certify that during the period covered by the tax return with which this schedule is included, the above named member had no business activities, no income, no assets, and additionally, in the case of a New Jersey S Corporation, made no distributions, and did not have any change in ownership.

Note: By entering the name of the authorized officer of the corporation, the officer is e-signing this certificate.

E-Signature of Corporate Officer | Title | Date

E-Signature of Duly Authorized Officer of Managerial Member | Date

INSTRUCTIONS

In lieu of providing information for the entire CBT-100U tax return for an inactive member, that member may complete this schedule. The member must also be included in and complete the Members and Affiliates Schedule, the Annual General Questionnaire, and Schedules A (Parts I, II, and III), A-2, A-3, and A-4 of the CBT-100U in order to fulfill its filing obligations with the State of New Jersey. If all the members are inactive, also complete page 1 of the CBT-100U. An inactive member is a member that, during the entire period covered by the tax return, did not conduct any business, did not have any income, receipts, or expenses, did not own any assets, and additionally, for New Jersey S corporations, did not make any distributions, and did not have any change in ownership.

This schedule and the applicable pages from the Corporation Business Tax Unitary Return must be filed annually by the taxpayer. Schedule I must be signed by an officer of the corporation who is authorized to attest to the truth of the statements contained therein, and by an authorized officer of the managerial member.

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 calculated 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, Schedule A, Part II, line 1b) (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. Reserved for future use	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.	
(c) Net GILTI previously taxed by New Jersey not deducted or excluded elsewhere	14c.	
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 28)	22.	
23. Net operating loss deduction (from Schedule X, Part III, Section C, line 3) (Amount entered cannot be more than amount on line 22)	23.	
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.	
25. Allocated Dividend Exclusion (From Schedule X, Part IV, line 13) (Amount entered cannot be more than amount on line 24)	25.	
26. Allocated entire net income subtotal – Subtract line 25 from line 24	26.	
27. (a) I.B.F. Exclusion (see instructions)	27a.	
(b) Allocated I.B.F. Exclusion – Multiply line 27a by line 21	27b.	
28. **Taxable net income –** Subtract line 27b from line 26. (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.)	28.	
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 ☐ No ☐

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 (divide line 6 by line 7). Carry the fraction to six decimal places. Do not express as a percent. Enter 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

Does the taxpayer have any Prior Net Operating Loss Conversion Carryovers (see instructions)? ☐ Yes. Begin Form 500 at Section A, line 1. OR ☐ No. Enter zero on Schedule A, Part 2, line 23 and continue with Section B.

Section A – Computation of Prior Net Operating Losses (PNOL) Deduction from periods ending PRIOR to July 31, 2019

Complete this 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	1.	
2. Enter the portion of line 1 deducted on Schedule X or Form 500U in a previous year (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 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. **Current tax year's PNOL deduction** – Enter the lesser of line 6 or line 7 here and on Section C, line 1	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 2 that is used on Form 500U (see instructions)	5.	
6. Enter the amount of any adjustments required under provisions of the federal Internal Revenue Code (see instructions)	6.	
7. Post Allocation NOL available – Subtract lines 3, 4, 5, and 6 from line 2 (if zero or less, enter zero)	7.	
8. Enter the allocated net income from Schedule X, Part I, line 22	8.	
9. Enter PNOL claimed on Section A, line 8	9.	
10. Taxable Net Income subject to Post Allocation Net Operating Loss (NOL) deduction – Subtract line 9 from line 8	10.	
11. **Current tax year's NOL deduction** – Enter the lesser of line 7 or line 10 here and on Section C, line 2	11.	

Note: A taxpayer cannot share 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.

Section C – Total Net Operating Loss Deduction

1. Current tax year's PNOL deduction (from Section A, line 8)	1.	
2. Current tax year's NOL deduction (from Section B, line 11)	2.	
3. Total Net Operating Losses used in current tax year – Add lines 1 and 2. Enter here and on Schedule X, Part I, line 23	3.	

Part IV – Schedule R

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. Reserved for future use	10.	
11. DIVIDEND EXCLUSION: Add lines 5 and 9	11.	
12. Allocation factor from current Schedule X, Part II, line 8 (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 25)	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 that 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, and 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.

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.

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. § 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.

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 From 8993 (federal Form 8993 must be submitted).

Lines 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 this schedule. Attach a rider detailing the amount of GILTI that was previously taxed and the years in which the tax was paid.

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 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 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 8.

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 line 22 is less than zero, 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 and 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 23.

Line 23 – Net operating loss (NOL) deduction. Use Schedule X, Part III to calculate the member's PNOLs and their separate return and separate activity NOLs. Enter the amount from Schedule X, Part III, Section C, line 3. Do not enter more than the amount on line 22.

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. 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 allocated dividend exclusion. Enter the amount from Schedule X, Part IV, line 13. Do not enter more than the amount on line 24.

Line 26 – Allocated entire net income subtotal. Subtract line 25 from line 24 and enter the result.

Line 27a – 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 28 – Taxable net income. Subtract line 27b from line 26. (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 that 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

NEW FOR 2021

If the taxpayer had any PNOL, check the box marked "Yes" and begin Form 500 at Section A, line 1.

If the taxpayer had no PNOL, check the box marked "No." Enter zero on Schedule A, Part II, line 23 and continue with Section B.

If the amount on Schedule X, Part I, line 22 is positive (i.e., income), use Part III to calculate the amount of the member's PNOLs and their separate return and separate activity NOLs that can be used to reduce their allocated entire net income on Schedule X.

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.

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).

Section A – Computation of prior net operating losses (PNOL) deduction from periods ending PRIOR to July 31, 2019

This section only applies to loss carryovers from periods ending prior to July 31, 2019. Any unused and unexpired net operating loss carryovers 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. PNOLs can be carried forward for the 20 privilege periods following the period the loss was generated and must be deducted before any NOLs can be deducted.

Line 1 – Prior net operating loss conversion carryover (PNOL). Enter the total from Form 500U-P, Part II, line 21.

Line 2 – PNOL previously deducted. Enter the portion of line 1 deducted in a previous year on either Schedule X or Form 500U. Taxpayers cannot use the same PNOL twice.

Line 3 – Expired PNOL. Enter the portion of line 1 that has expired.

Line 4 – PNOL used on Form 500U. Enter the portion of line 1 that is used on the current period 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. 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 6.

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. If the amount is zero or less, enter zero.

Line 8 – Current tax year's PNOL deduction. Enter the lesser of line 6 or line 7 here and on Section C, line 1.

Section B

This section only applies to loss carryovers from periods ending on and after July 31, 2019. Post allocation NOLs can be carried forward for 20 privilege periods and can only be deducted after all PNOLs have been deducted. No carrybacks are allowed.

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).

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 2 that is used on Form 500U. Taxpayers cannot use the same NOL twice.

Line 6 – Adjustments under I.R.C. 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, only enter the excess here.

Line 7 – Post allocation NOL available. Subtract lines 3, 4, 5, and 6 from line 2. If zero or less, enter zero.

Line 8 – Allocated net income. Enter amount from Schedule X, Part I, line 22.

Line 9 – PNOL claimed. Enter amount from Section A, line 8.

Line 10 – Taxable net income subject to post allocation NOL deduction. Subtract line 9 from line 8.

Line 11 – Current tax year's NOL deduction. Enter the lesser of line 7 or line 10 here and on Section C, line 2.

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.

Members cannot include the following as part of the dividend exclusion:

- Money market fund or REIT income;
- GILTI 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.

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.

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, may also apply to members completing Schedule X. See Schedule PT for more information. The schedule is available on the Division's website.

Schedule N
(11-21)

Nexus – Immune Activity Declaration\

For tax year beginning _____, _____ and ending _____, _____

Corporation Name	Federal ID Number	Unitary ID Number, if applicable
		NU

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 (member), 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 affiliated 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.

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 answers 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.

Schedule O
(11-21)

Nonoperational Activity

Corporation Name	Federal ID Number	Unitary ID Number, if applicable
		NU

Part I 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 programs	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 29a 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, or BFC-1 or Schedule A, Part I, line 37b of Form CBT-100S.		36.	36.

Part II 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.					
	12.					
	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).

Part III 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 1	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 programs	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 schedule of computation (see Instruction 5). Carry total to Schedule A, Part III of the CBT-100, CBT-100U, BFC-1, 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:			

Instructions for Schedule O

Purpose

Schedule O must be completed and included with the Corporation Business Tax return (Form CBT-100, CBT-100U, CBT-100S, or BFC-1) 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 when 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.

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, or BFC-1. 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. **Lines 4 through 11** reflect the revenues, gains, or losses generated by nonoperational assets.

   b. **Lines 12 through 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 the applicable lines of Schedule A (Part II of Forms CBT-100, CBT-100U, or BFC-1, or Part I of CBT-100S).

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 27, 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** is the sum of lines 30a, 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** is 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, or BFC-1 or Schedule A, Part I, line 37b of Form CBT-100S.

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.

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.

Part III

1. Part III details and computes the applicable amounts of New Jersey Corporation Business Tax due on

nonoperational activities 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 nonoperational 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, or BFC-1. 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, or BFC-1 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.

FORM 304
(10-21)
2021

New Jersey Corporation Business Tax
New Jobs Investment Tax Credit

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable
		NU

Read the instructions before completing this form

Combined Return Filers

☐ The taxpayer is included as a taxable member on a New Jersey combined return. See instructions.
Fill in oval if member is **not** sharing its credit with other members of the group. ⬭

Part I Qualifications

1. Has the taxpayer invested in property purchased for new or expanded business facilities that created at least 5 new jobs in New Jersey for small or mid-sized business taxpayers (50 for other taxpayers) with median income of at least $44,450 for tax years beginning in 2014, or $45,100 for tax years beginning in 2015, or $44,800 for tax years beginning in 2016, or $45,350 for tax years beginning in 2017, or $46,350 for tax years beginning in 2018, or $47,400 for tax years beginning in 2019, or $48,100 for tax years beginning in 2020 ☐ YES ☐ NO
2. Has the average book value of all real and tangible personal property in New Jersey of the taxpayer increased over the prior tax year? ☐ YES ☐ NO
3. Is the average employment of the taxpayer in New Jersey in the first tax year of the tax credit greater than that of the prior tax year? ☐ YES ☐ NO

Note: If the answer to any of the above questions is "NO," do not complete the rest of this form. The taxpayer does **not** qualify for this tax credit. Otherwise, go to Part II.

Part II Calculation of the New Jobs Investment Tax Credit

Note: All items pertain only to New Jersey factors. Refer to the specific line item instructions for Part II before completing this section.

4. Enter the amounts of the qualified investments made during the current tax year: (a) 3-year life _____ x 0.35	4a.	
(b) 5-year life _____ x 0.70	4b.	
(c) 7-year or more life _____ x 1.00	4c.	
5. Add lines 4a through 4c	5.	
6. (a) Enter the average New Jersey employment for this tax year	6a.	
(b) Enter the average New Jersey employment for last tax year	6b.	
(c) Subtract line 6b from line 6a	6c.	
(d) Divide line 6a by 2	6d.	
(e) Enter the number of eligible new jobs. (see instruction)	6e.	
(f) Enter the lesser of lines 6c, 6d, or 6e	6f.	
7. New Jobs Factor (see instruction): (a) Small or mid-sized business taxpayers divide line 6(f) by 5 with no remainder. Other taxpayers divide line 6f by 50 with no remainder	7a.	
(b) For small or mid-sized business taxpayers, multiply line 7a by 0.01. For other taxpayers, multiply line 7a by 0.005	7b.	
(c) For small or mid-sized business taxpayers, enter the lesser of 0.20 or line 7b. For other taxpayers, enter the lesser of 0.10 or line 7b	7c.	
8. Maximum annual credit – Multiply line 5 x line 7c x 0.20	8.	
9. Prior year qualified investment (see instruction) Enter the maximum annual credit as determined on line 8 of this form for: (a) First prior tax year	9a.	
(b) Second prior tax year	9b.	
(c) Third prior tax year	9c.	
(d) Fourth prior tax year	9d.	
10. Total annual credit – Add line 8 and lines 9(a) through (d)	10.	

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Part III **Calculation of the Allowable Credit Amount**
(Combined return filers DO NOT complete Part III. Continue with Part IV.)

11.	Compensation of all employees in New Jersey attributable to the qualified investment	11.	
12.	Total compensation of all employees in New Jersey	12.	
13.	Divide line 11 by line 12	13.	
14.	Enter tax liability from page 1, line 2 of CBT-100, CBT-100S, or BFC-1	14.	
15.	Multiply line 14 by line 13	15.	
16.	Enter the required minimum tax liability (see instructions)	16.	
17.	Subtract line 16 from line 15	17.	
18.	Enter 50% of the reduced tax liability entered on line 15	18.	
19.	Enter the lesser of line 17 or line 18	19.	
20.	Other tax credits used by taxpayer on current year's return: (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	20.	
21.	Subtract line 20 from line 19. If zero or less, enter zero	21.	
22.	Allowable credit for the current tax period. Enter the lesser of line 10 or line 21 here and on Part I, Schedule A-3 of the CBT-100, CBT-100S, or BFC-1	22.	
23.	Amount of credit available to be refunded (subtract line 22 from line 10).	23.	
24.	Property taxes attributable to qualified investment (see instructions): (a) Property tax paid on new property **or** Total N.J. property tax paid _____ multiplied by line 13	24a.	
	(b) Imputed property tax on new property (15% of rent) _____ **or** imputed property tax on all rented property in N.J. (15% of rent) _____ multiplied by line 13	24b.	
	(c) Add lines 24a and 24b	24c.	
25.	Enter 50% (.50) of line 24c	25.	
26.	Refund request. Enter the lesser of line 23 or line 25. Enter here and in Part II, Schedule A-3 of the CBT-100, CBT-100S, or BFC-1	26.	

Note: There is no carryover provision for this tax credit.

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Part IV Calculation of Allowable Credit Amount – Combined Return Filers ONLY

Section A – ALL Combined Return Filers

27.	Compensation of all the member's employees in New Jersey attributable to the qualified investment	27.	
28.	Total compensation of all the member's employees in New Jersey	28.	
29.	Divide line 27 by line 28	29.	
30.	Enter the group tax liability from Schedule A, Part III, line 5 column (a) of CBT-100U	30.	
31.	Multiply line 30 by line 29	31.	
32.	Aggregate minimum tax of combined group members (see instructions)	32.	
33.	Subtract line 32 from line 31	33.	
34.	Enter 50% of the reduced tax liability entered on line 31	34.	
35.	Enter the lesser of line 33 or line 34	35.	
36.	Other tax credits used by combined group on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	36.	
37.	Subtract line 36 from line 35. If zero or less, enter zero	37.	
38.	Allowable credit for the current tax period. Enter the lesser of line 10 or line line 37. **If sharing,** also enter in the member's column of Part I, Schedule A-3 of the CBT-100U	38.	

If SHARING credit, complete line 39–42.
If NOT sharing credit, skip line 39–42 and complete Section B.

39.	Amount of credit available to be refunded (subtract line 38 from line 10).	39.	
40.	Property taxes attributable to qualified investment (see instructions): (a) Property tax paid on new property **or** Total N.J. property tax paid _____ multiplied by line 29	40a.	
	(b) Imputed property tax on new property (15% of rent) _____ **or** imputed property tax on all rented property in N.J. (15% of rent) _____ multiplied by line 29	40b.	
	(c) Add lines 40a and 40b	40c.	
41.	Enter 50% (.50) of line 40c	41.	
42.	Refund request. Enter the lesser of line 39 or line 41 here and in Part II, Schedule A-3 of the CBT-100U	42.	

Section B – Combined Return Filers NOT Sharing Credit

43.	a) Enter combined group tax liability from line 30	43a.			
	b) Divide line 43a by the combined group allocation factor from Schedule J, line 9	43b.			
	c) Member's share of combined group tax liability – Multiply line 43b by member's allocation factor from Schedule J, line 9			43c.	
44.	Multiply line 43c by line 29			44.	
45.	Enter the required minimum tax liability			45.	2,000
46.	Subtract line 45 from line 44			46.	
47.	Enter 50% of the reduced tax liability entered on line 44			47.	
48.	Enter the lesser of line 46 or line 47			48.	
49.	Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total			49.	
50.	Subtract line 49 from line 48. If zero or less, enter zero			50.	
51.	Allowable credit for the current tax period. Enter the lesser of line 38 or line 50 here and in the member's column of Part I, Schedule A-3 of the CBT-100U			51.	
52.	Amount of credit available to be refunded (subtract line 51 from line 10).			52.	
53.	Property taxes attributable to qualified investment (see instructions): (a) Property tax paid on new property **or** Total N.J. property tax paid _____ multiplied by line 29			53a.	
	(b) Imputed property tax on new property (15% of rent) _____ **or** imputed property tax on all rented property in N.J. (15% of rent) _____ multiplied by line 29			53b.	
	(c) Add lines 53a and 53b			53c.	
54.	Enter 50% (.50) of line 53c			54.	
55.	Refund request. Enter the lesser of line 52 or line 54 here and in Part II, Schedule A-3 of the CBT-100U			55.	

Note: There is no carryover provision for this tax credit.

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Part V Certification

The following certifications are required in accordance with N.J.S.A. 54:10A-5.9 of the New Jobs Investment Tax Credit Act.

1. For qualified investments made during the current tax year, the taxpayer certifies that the number of new jobs reported on line 6e of Part II, is a reasonable estimate of the number of new jobs directly attributable to the qualified investment; and
2. For qualified investments made in prior years for which a New Jobs Investment Tax Credit was claimed, the taxpayer certifies:

(a) The new jobs factor for: the first prior year _____
the second prior year _____
the third prior year _____
the fourth prior year _____

(b) The maximum annual tax credit for: the first prior year _____
the second prior year _____
the third prior year _____
the fourth prior year _____

(c) That the qualified investment property continues to be used in the business or has been disposed of after the expiration of its recovery period; and

(d) That the new jobs used in the calculation of the new jobs factor continue to qualify as eligible new jobs as defined for the purposes of this credit.

_____

(Signature of Duly Authorized Officer of Taxpayer) (Date)

Note: If the taxpayer is unable to make the above certifications, amended returns must be filed reflecting the correct new jobs factors and qualified investments for all affected tax years.

Instructions for Form 304
New Jobs Investment Tax Credit

The New Jobs Investment Tax Credit is available for investment in new or expanded business facilities that create new jobs in New Jersey. Investments that qualify for this tax credit must be placed in service or use during tax years beginning after July 7, 1993. The investment must create at least 5 new jobs (50 new jobs for large businesses) with a median annual compensation of the threshold amount established for the particular tax year. Also, to claim this tax credit, the average book value of all real and tangible personal property in New Jersey must have increased over the prior year.

The New Jobs Investment Tax Credit is taken in five equal annual installments. The annual credit cannot exceed 50% of that portion of the Corporation Business Tax liability that is attributable to and the direct result of the taxpayer's qualified investment and cannot reduce the tax liability below the statutory minimum. Although there is no carryover provision for this tax credit, the amount of the unused annual credit may be refunded to the taxpayer subject to certain limitations.

Parts III and IV are used to calculate the allowable credit and carryover. Taxpayers filing Forms CBT-100, CBT-100S, or BFC-1 complete Part III and CBT-100U filers complete Part IV.

Taxpayers must include the appropriate credit form in the year the credit was earned even if they are not claiming the credit on their tax return.

Definitions

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 during tax years beginning after July 7, 1993, but only to the extent of a taxpayer's qualified investment in such improvements or additions.

New Business Facility means a business facility that:

a) Is employed by a taxpayer in the conduct of a business that is subject to the New Jersey Corporation Business Tax Act, N.J.S.A. 54:10A-1 et seq. A business facility does not qualify if the taxpayer's only activity with respect to such facility is to lease it to another person.

b) Is purchased and placed in service or use during tax years beginning after July 7, 1993;

c) Was not purchased by a taxpayer from a related person;

d) Was not in service or use during the 90-day period immediately prior to transfer of the title to the facility.

New Employee means a New Jersey resident, hired to fill a regular, permanent position that did not exist prior to the qualified investment, and would not exist but for the qualified investment. The employee must be unrelated to the taxpayer and must not have been in its employ during the six months prior to the date that the qualified investment is placed in service or use. Temporary or seasonal employees are not considered new employees for the purposes of this tax credit. The position held by the employee may be full time or part time. Full time means employment for at least 140 hours per month at a wage not less than the State or federal minimum wage. Part time means customarily performing such duties at least 20 hours per week for at least six months during the tax year. The hours of part-time employees shall be aggregated to determine the number of full-time equivalent jobs for the purposes of determining the number of eligible new jobs to be used in the computation of the new jobs factor. The taxpayer cannot claim a credit for the number of new employees that exceeds either the increase in the taxpayer's average employment in New Jersey for the tax year, or one-half of the taxpayer's average employment in New Jersey for the tax year. Also, individuals included in the determination of the Urban Enterprise Zone Employees Tax Credit or the Redevelopment Authority Project Tax Credit must be excluded in the determination of this tax credit.

Qualified Investments are those real and tangible personal property investments purchased for business relocation or expansion in New Jersey. Such investments **include only:**

1. Improvements to real property placed in service or use during tax years beginning after July 7, 1993;
2. Tangible personal property with respect to which depreciation with a recovery period of three or more years is allowable;
3. Tangible personal property moved by the taxpayer into New Jersey provided that the property has a remaining recovery period of three or more years.

Examples of qualified investments **may not include:**

1. Property with respect to which the taxpayer's only activity is to lease it to another person;
2. 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;
3. Airplanes;
4. Property primarily used outside New Jersey;
5. Property that is acquired incident to the purchase of the stock or assets of the seller;
6. Property for which the cost or consideration cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use.

Small or Mid-Sized Business Taxpayer means a taxpayer that has the following annual payroll and annual gross receipts amounts:

Tax Year Beginning In	Payroll	Gross Receipts
2014	$6,599,500 or less	$13,199,150 or less
2015	$6,701,750 or less	$13,403,650 or less
2016	$6,660,800 or less	$13,321,800 or less
2017	$6,744,000 or less	$13,488,200 or less
2018	$6,899,800 or less	$13,799,850 or less
2019	$7,060,400 or less	$14,121,100 or less
2020	$7,166,600 or less	$14,333,500 or less
2021	$7,277,816 or less	$14,555,936 or less

Aggregate Annual Credit

The aggregate annual credit allowed for a tax year is the sum of:

1) One-fifth of the annual credit amount calculated for prior tax years plus
2) One-fifth of the annual credit amount calculated for the current tax year.

This amount is calculated in Part II of Form 304.

Tax Credit Limitations

The New Jobs Investment Tax Credit is allowed as a credit against that portion of the taxpayer's Corporation Business Tax liability for the tax year that 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 required statutory minimum.

If any amount of the aggregate annual credit remains after the above limitations are applied, that amount may be refunded to the taxpayer. The amount of the refund cannot exceed 50% of the sum of the property taxes paid in the tax year and the implicit property taxes paid through rent or lease payments that are attributable to and the direct result of the taxpayer's qualified investment. If the taxpayer is unable to ascertain these amounts, the attributable property tax amounts shall be determined by multiplying the total New Jersey property taxes paid by a fraction, the numerator of which is the compensation paid to New Jersey employees whose positions are directly attributable to the qualified investment. The denominator is all New Jersey compensation paid for the tax year.

If any credit for the tax year remains, the amount shall be forfeited. There is no carryover provision for this tax credit.

Certification and Record Keeping

The taxpayer must certify for every year during the five-year period of the credit that the number of new jobs created is as reported on the current and prior year tax credit forms, and that the qualified investment property has not been disposed of prior to the end of its depreciable life.

The taxpayer must maintain sufficient records for each item of qualified property to establish:

1) Its identity;
2) Its actual or reasonably determined cost;
3) Its straight-line depreciation life;
4) The month and the 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.

Specific Instructions for Form 304

Combined Return Filers – If filing a combined return, this form must be completed by the member that earned the credit. All combined return filers must check the combined return filers box at the top of the form and complete Part IV, Section A.

Members Opting Not to Share. In general, tax credits are earned by a member of the combined group and are shareable with the combined group. However, members are not required to share their credits. See N.J.S.A. 54:10A-4.6.i and TB-90(R), *Tax Credits and Combined Returns.* In addition to Section A, members that choose not to share must also complete Part IV, Section B and fill in the oval at the top of the form to indicate they are not sharing the credit.

Part I – Qualifications

The taxpayer must meet the qualifications listed in Part I. If the answer to any of the questions is "no," the taxpayer does not qualify for the tax credit.

Part II – Calculation of the New Jobs Investment Tax Credit

Line 4 – Classify property purchased by its depreciable life for federal tax purposes.

Line 6e – The number of eligible new jobs must reflect the number of new employees (see definitions) hired by the taxpayer during the tax year. To determine this number, the taxpayer should rank the new employees by annual compensation. If the middle employee's annual compensation is less than the required median compensation of $48,100 for tax years beginning in 2020, then the lowest ranking jobs should be deleted from the list until the middle employee's annual compensation is at least the required median compensation amount. If there are an even number on the list, the top half must be greater than the required median compensation amount. The final number of new employees on this list is the number of eligible new jobs to be reported on line 6(e), Part II.

Line 7a – Taxpayers who qualify as "small or mid-sized business taxpayers" (see definitions) must divide the amount on line 6(f) by 5. All other taxpayers must divide the amount on line 6(f) by 50.

Line 9 – Report the maximum annual credit calculated for qualified investments made in prior tax years. The appropriate amount can be found on line 8 of the Form 304 that was filed for the particular tax year.

Part III – Calculation of the Allowable Credit Amount (for CBT-100, CBT-100S, and BFC-1 Filers only)

For CBT-100, CBT-100S, and BFC-1 filers, the total and allowable New Jobs Investment Tax Credit for the current year is calculated in Part III. Combined return filers do not complete Part III, and must complete Part IV instead. The amount of this credit cannot exceed 50% of that portion of the Corporation Business Tax liability that is attributable to and the direct result of the taxpayer's qualified investment and cannot reduce the tax liability below the statutory minimum.

Line 11 – Include the compensation of employees attributable to all the qualified investments comprising the Aggregate Annual Credit on Part II, line 10.

Line 16 – The required minimum tax liability is as follows:

New Jersey Gross Receipts	CBT-100/ BFC-1	CBT-100S
Less than $100,000	$ 500	$ 375
$100,000 or more but less than $250,000	750	562
$250,000 or more but less than $500,000	1,000	750
$500,000 or more but less than $1,000,000	1,500	1,000
$1,000,000 or more	2,000	1,500

If a taxpayer is filing a separate return and is a member of an affiliated 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.

Line 20 – Taxpayers claiming multiple credits must list any credits already applied to the tax liability to ensure accuracy of the calculation for maximum credit allowable.

Lines 23 through 26 – If any unused credit remains after applying the limitations indicated above, the excess may be refunded to the taxpayer. The amount of the refund is calculated in this section.

Lines 24a and 24b – Report the amount of property taxes paid and the amount of implicit property taxes paid through rent or lease payments that were attributable to and the direct result of the taxpayer's qualified investment. If the taxpayer is unable to ascertain these amounts, they will be determined by multiplying the total amount of New Jersey property taxes paid and the total amount of implicit New Jersey property taxes paid by the fraction that was determined on line 13.

The priorities set forth in this Corporation Business Tax form follow N.J.A.C. 18:7-3.17.

Part IV – Calculation of the Allowable Credit Amount for Combined Return Filers

For CBT-100U filers, the total and allowable New Jobs Investment Tax Credit for the current year is calculated in Part IV. All combined return filers must complete Section A. Members that choose not to share their credit must also complete section B.

Section A – To be completed by ALL combined return filers
This section calculates the amount of credit allowable for the group. If a member chooses not to share their credit with the group, Section A must still be completed to ensure the credit allowed for the member does not exceed the amount that would otherwise be allowed against the group tax liability.

The amount of the credit calculated in this section cannot exceed 50% of the portion of the group tax liability that is attributable to and the direct result of the member's qualified investment and cannot reduce the tax liability to an amount less than the aggregate statutory minimum tax of the group members.

Line 27 – Include the compensation of employees attributable to all the qualified investments comprising the Aggregate Annual Credit on Part II, line 10.

Line 32 – Multiply the number of taxable group members by $2,000 and enter the result.

Line 36 – Combined groups claiming multiple credits must list any credits already applied to the group tax liability to ensure accuracy of the calculation for maximum credit allowable.

Lines 39 through 42 – If any unused credit remains after applying the limitations indicated above, the excess may be refunded to the taxpayer. The amount of the refund is calculated in this section.

Lines 40a and 40b – Report the amount of property taxes paid and the amount of implicit property taxes paid through rent or lease payments that were attributable to and the direct result of the member's qualified investment. If the member is unable to ascertain these amounts, they will be determined by multiplying the total amount of New Jersey property taxes paid and the total amount of implicit New Jersey property taxes paid by the fraction that was determined on line 29.

Section B
This section is used to calculate the amount of credit allowable for members that choose not to share their credit with the group. Section B is completed based on the member's share of the group tax liability. The amount of the credit calculated in this section cannot exceed 50% of the portion of the member's share of the group tax liability that is attributable to and the direct result of the member's qualified investment and cannot reduce the tax liability to an amount less than $2,000. The amount of the credit is also limited to the amount that would otherwise be allowed against the group tax liability if the member had been sharing the credit.

Line 49 – Members claiming multiple credits must list any credits already applied to the member's tax liability to ensure accuracy of the calculation for maximum credit allowable.

Lines 52–55 – See Section A instructions for lines 39–42 and lines 40a–40b.

Part V – Certification

This section must be completed for each tax year during the five-year credit period for a qualified investment. If the taxpayer is unable to make the certifications, amended returns must be filed reflecting the correct new jobs factors and qualified investments for all affected tax years.

FORM 305
(10-21)
2021

New Jersey Corporation Business Tax
Manufacturing Equipment and Employment
Investment Tax Credit

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable
		NU

Read the instructions before completing this form.

Combined Return Filers

☐ The taxpayer is included as a taxable member on a New Jersey combined return. See instructions. Fill in oval if member is **not** sharing its credit with other members of the group. ⬭

Part I Credit Calculation for Investment in Qualified Equipment in New Jersey in the CURRENT YEAR

1. Enter the cost of qualified equipment placed in service in N.J. during the current year	1.	
2. Enter 2% (.02) or 4% (.04) of line 1, whichever applies	2.	
3. Enter the lesser of line 2 or $1,000,000	3.	
If you have prior years' manufacturing equipment investments combined with increased employment, complete Parts II and/or III. Otherwise, go to Part IV.		

Part II Employment Investment Tax Credit Calculation for Investment in Qualified Equipment in New Jersey Made ONE YEAR PRIOR to the Current Tax Year

4. Average number of N.J. employees in the current year (Measurement Year)	4.	
5. Average number of N.J. employees in the tax year prior to the year that qualified equipment was placed in service in N.J. (Base Year)	5.	
6. Subtract line 5 from line 4 (if zero or less, enter zero on line 10)	6.	
7. Multiply line 6 by $1,000	7.	
8. Enter the cost of qualified equipment placed in service in N.J. **one year prior** to the current tax year (from line 1, Form 305 of prior year)	8.	
9. Enter 3% of line 8	9.	
10. Enter the lesser of line 7 or line 9	10.	

Part III Employment Investment Tax Credit Calculation for Investment in Qualified Equipment in New Jersey Made TWO YEARS PRIOR to the Current Tax Year

11. Average number of N.J. employees in the prior tax year (Measurement Year)	11.	
12. Average number of N.J. employees in the tax year prior to the year that qualified equipment was placed in service in N.J. (Base Year)	12.	
13. Subtract line 12 from line 11 (if zero or less, enter zero on line 17)	13.	
14. Multiply line 13 by $1,000	14.	
15. Enter the cost of qualified equipment placed in service in N.J. **two years prior** to the current tax year (from line 1, Form 305, 2 years prior)	15.	
16. Enter 3% of line 15	16.	
17. Enter the lesser of line 14 or line 16	17.	

Part IV Calculation of the Available Credit

18. Enter the total of the amounts on lines 3, 10, and 17	18.	
19. Manufacturing Equipment and Employment Investment Tax Credit carried over from prior year	19.	
20. Total credit available. Add line 18 and line 19	20.	

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Part V Calculation of Allowable Credit Amount and Carryover
(Combined return filers DO NOT complete Part V. Continue with Part VI.)

21. Enter tax liability from page 1, line 2 of CBT-100, CBT-100S, or BFC-1	21.	
22. Enter the required minimum tax liability (see instructions)	22.	
23. Subtract line 22 from line 21	23.	
24. Enter 50% of the tax liability reported on line 21	24.	
25. Enter the lesser of line 23 or line 24	25.	
26. Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	26.	
27. Subtract line 26 from line 25. If zero or less, enter zero	27.	
28. Allowable credit for the current tax period. Enter the lesser of line 20 or line 27 here and on Part I, Schedule A-3 of the CBT-100, CBT-100S, or BFC-1	28.	
29. Amount of credit carryover to following year's return (subtract line 28 from line 20)	29.	

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Part VI Calculation of Allowable Credit Amount and Carryover – Combined Return Filers ONLY

Section A – ALL Combined Return Filers

30. Enter the group tax liability from Schedule A, Part III, line 5, column (a) of CBT-100U	30.	
31. Enter the aggregate minimum tax of combined group members (see instructions)	31.	
32. Subtract line 31 from line 30	32.	
33. Enter 50% of the tax liability reported on line 30	33.	
34. Enter the lesser of line 32 or line 33	34.	
35. Other tax credits used by combined group on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	35.	
36. Subtract line 35 from line 34. If zero or less, enter zero	36.	
37. Allowable credit for the current tax period. Enter the lesser of line 20 or line 36. **If sharing,** also enter in the member's column of Part I, Schedule A-3 of the CBT-100U	37.	
If SHARING credit, complete line 38. **If NOT sharing credit, skip line 38 and complete Section B.**		
38. Amount of credit carryover to following year's return (subtract line 37 from line 20)	38.	

Section B – Combined Return Filers NOT Sharing Credit

39. a) Enter combined group tax liability from line 30	39a.			
b) Divide line 39a by the combined group allocation factor from Schedule J, line 9	39b.			
c) Member's share of combined group tax liability – Multiply line 39b by member's allocation factor from Schedule J, line 9			39c.	
40. Required minimum tax liability			40.	2,000
41. Subtract line 40 from line 39c			41.	
42. Enter 50% of the tax liability reported on line 39c			42.	
43. Enter the lesser of line 41 or line 42			43.	
44. Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total			44.	
45. Subtract line 44 from line 43. If zero or less, enter zero			45.	
46. Allowable credit for the current tax period. Enter the lesser of line 37 or line 45 here and in the member's column of Part I, Schedule A-3 of the CBT-100U			46.	
47. Amount of credit carryover to following year's return (subtract line 46 from line 20)			47.	

Instructions for Form 305
Manufacturing Equipment and Employment Investment Tax Credit

Purpose
The purpose of the Manufacturing Equipment and Employment Investment Tax Credit is to encourage investment in certain manufacturing equipment in New Jersey and to provide the taxpayer with incentive to increase employment at New Jersey locations by employing New Jersey residents.

A taxpayer must invest in qualified manufacturing equipment in its tax year beginning on or after January 1, 1994, to qualify for this tax credit. Such investment has the benefit of allowing a tax credit computation for the tax year in which the investment was made as well as each of the following two tax years. The tax credit computation for the first year is based on the cost of the qualified manufacturing equipment placed in service in New Jersey during that tax year. This portion of the credit is calculated in Part I. The computations for the two following tax years are based on the average increase in New Jersey residents employed in New Jersey subject to a limitation based on the cost of the investment made in the first year. The portion of the tax credit for the two tax years following the year of investment are calculated in Parts II and III of this schedule. The credit allowable for any given year cannot exceed an amount that would reduce the total tax liability below the statutory minimum.

Parts I, II, and III of this schedule relate to qualified investments made during three different tax years. Although it is possible after the initial investment year that more than one part can be completed, at no time should more than one part be completed with respect to the same investment. Refer to the example on page 2.

Parts V and VI are used to calculate the allowable credit and carryover. Taxpayers filing Forms CBT-100, CBT-100S, or BFC-1 complete Part V and CBT-100U filers complete Part VI.

FYI

Taxpayers must include the appropriate credit form in the year the credit was earned even if they are not claiming the credit on their tax return.

Manufacturing Equipment Tax Credit
The **Manufacturing Equipment** portion is limited to 2% of the investment credit base of qualified equipment placed in service in the tax year, up to a maximum credit for the tax year of $1,000,000, provided however, with respect to qualified equipment placed in service during privilege periods beginning on and after July 1, 2004, 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 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 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.

Qualified Equipment
Qualified equipment means machinery, apparatus, or equipment acquired by purchase or lease 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 in N.J.S.A. 54:32B-8.13(a), having a useful life of four or more years, and placed in service in New Jersey 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 also includes property that a company may transfer from an out-of-State facility to a location within New Jersey. If a corporation moves equipment that otherwise would qualify for the credit from a location outside the state to a location within the state of New Jersey, such equipment would be eligible for the credit.

For purposes of the credit, property shall be considered placed in service or use in New Jersey 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. For transferred equipment, depreciation would continue that started when the property was originally placed in service outside the State. The equipment is not disqualified from the credit because depreciation did not start in New Jersey, or
2. The tax year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

Machinery, apparatus, or equipment is directly used in production only when used to initiate, sustain, or terminate the transformation of raw materials into finished products. Property leased or licensed by the lessee to another taxpayer is not qualified equipment.

Nonqualifying Equipment
Examples of qualified equipment **may not** include:

1. Motor vehicles or other off-premise transportation equipment;
2. Airplanes;
3. Property located or primarily used outside New Jersey;
4. Equipment or parts with a useful life of less than four years;
5. Tangible personal property that the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use;
6. Property or equipment purchased from related persons or affiliated entities (unless expressly waived by the Director, Division of Taxation);
7. Property acquired incident to the purchase of stock or assets of another entity that has already been used by that entity for manufacturing or processing in New Jersey;
8. Equipment for which either a New Jobs Investment Tax Credit or a Research and Development Tax Credit has been claimed;
9. Any tangible personal property placed in service prior to the start of the tax year commencing in Calendar Year 1994;
10. Property not directly attributable to manufacturing, processing, or refining.
11. Property not directly attributable to the generation of electricity or thermal energy.

Investment Credit Base (Net Cost of Qualified Equipment)
Net Cost is the net monetary consideration provided for acquisition of title and/or ownership to the subject property. 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 shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

The cost of leased equipment to the lessee is the minimum amount required by the lease agreement to be paid over the term of the lease,

excluding amounts to be paid after the expiration of the useful life of the equipment. Lease renewals, subleases, or assignments shall not be considered.

Employment Investment Tax Credit

The **Employment Investment** portion is valid for each of the two tax years next succeeding the tax year for which the Manufacturing Equipment Credit is allowed, but is limited 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 increase in the average number of qualified employees.

Employees and Employee Equivalents

Full-time employee means a New Jersey domiciled resident working for the taxpayer for at least 140 hours per month at a wage not less than the State or federal minimum wage. In calculating the average, part-time employee hours may be aggregated to determine **full-time equivalents** (140 hours equals one full-time employee equivalent) provided the part-time employee has worked for the taxpayer for at least 20 hours per week for at least six months during the tax year, as defined in N.J.S.A. 54:10A-5.17.

The calculations in Parts II and III of Form 305 are based on the increase in the average number of full-time employees and employee equivalents residing and domiciled in New Jersey employed at work locations in New Jersey from the employment base year to the employment measurement year.

Example:

2017	2018	2019	2020
• Average of 125 employees and equivalents • Not an eligible year for credit	• Average of 140 employees and equivalents • Investment of $3,000,000 • Complete Part I for $3,000,000 investment made in 2018 • Part II not applicable • Part III not applicable	• Average of 150 employees and equivalents • Investment of $2,000,000 • Complete Part I for $2,000,000 investment made in 2019 • Complete Part II for increase in employment due to 2018 investment • Average employee increase of 25 pertaining to 2018 investment* • Part III not applicable	• Average of 160 employees and equivalents • No new investment • Part I not applicable • Complete Part II for increase in employment due to 2019 investment • Average employee increase of 20 pertaining to 2019 investment** • Complete Part III for increase in employment due to 2018 investment • Average employee increase of 25 pertaining to 2018 investment*

* For 2019 Part II and 2020 Part III the Base Year is 2017 (the year preceding the 2018 investment) and the Measurement Year is 2019 (the year following the 2018 investment).

** For 2020 Part II the Base Year is 2018 (the year preceding the 2019 investment).

Base Year is the tax year **immediately preceding** the year in which the qualified investment was made.

Measurement Year is the tax year **immediately following** the year in which the qualified investment was made.

Credit Carryover

The amount of credit that cannot be applied for the tax year due to the applicable limitations may be carried over to the seven tax years following a credit's tax year. Note, however, that a taxpayer may not carry over any amount of unused credit to a tax year during which a corporate acquisition, with respect to which a taxpayer was a target corporation, occurred or during which the taxpayer was a party to a merger or a consolidation.

Record Keeping

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.

Credit Recapture

Credit attributable to property that is disposed of or ceases to be qualified equipment prior to the end of its categorized useful life shall be calculated based on the following ratios:

3-YEAR PROPERTY	ALL OTHER PROPERTY
Number of months of qualified use / 36	Number of months of qualified use / 60

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 tax liability for any period in which the credit was applied,

then the amount of unpaid liability shall be considered a deficiency. The taxpayer would then be required to file an amended return.

Specific Instructions for Form 305

Combined Return Filers

If filing a combined return, this form must be completed by the member that earned the credit. All combined return filers must check the combined return filers box at the top of the form and complete Part VI, Section A.

Members Opting Not to Share. In general, tax credits are earned by a member of the combined group and are shareable with the combined group. However, members are not required to share their credits. See N.J.S.A. 54:10A-4.6.i and TB-90(R), *Tax Credits and Combined Returns.* In addition to Section A, members that choose not to share must also complete Part VI, Section B and fill in the oval at the top of the form to indicate they are not sharing the credit.

Calculation of Credit

Part I – Credit Calculation for Investment in Qualified Equipment in New Jersey in the *Current Year*

The tax credit computed in this section applies to purchases of qualified manufacturing equipment made during the current tax year.

Line 2 – Refer to the Manufacturing Equipment Tax Credit instruction on page 1 for information regarding the use of 2% or 4%.

Part II – Employment Investment Tax Credit Calculation for Investment in Qualified Equipment in New Jersey Made *1 Year Prior* to the Current Tax Year

The tax credit computed in this section is based on the average increase in New Jersey residents employed by the taxpayer at New Jersey locations subject to a limitation of 3% of the cost of the qualified manufacturing equipment purchased in the prior tax year.

Line 4 – Enter the average number of full-time New Jersey residents employed in the current year.

Line 5 – Enter the average number of full-time New Jersey residents employed in the tax year prior to the year that qualified equipment was placed in service in New Jersey (two years prior to the current tax year).

Part III – Employment Investment Tax Credit Calculation for Investment in Qualified Equipment in New Jersey Made *2 Years Prior* to the Current Tax Year.

The tax credit computed in this section is based on the average increase in New Jersey residents employed by the taxpayer at New Jersey locations subject to a limitation of 3% of the cost of the qualified manufacturing equipment purchased two years prior to the current tax year.

Line 11 – Enter the average number of full-time New Jersey residents employed in the prior tax year.

Line 12 – Enter the average number of full-time New Jersey residents employed in the tax year prior to the year that qualified equipment was placed in service in New Jersey (three years prior to the current tax year).

Line 13 – Subtract line 12 from line 11 (if zero or less, enter zero on line 17). The number of employees on line 13 should be equal to the number of employees reported on line 6, Part II of the prior year.

Part V – Calculation of the Allowable Credit Amount and Carryover (for CBT-100, CBT-100S, and BFC-1 Filers only)

For CBT-100, CBT-100S, and BFC-1 filers, the allowable Manufacturing Equipment and Employment Investment Tax Credit for the current year is calculated in Part V. Combined return filers do **not** complete Part V, and must complete Part VI instead. The amount of the credits applied cannot exceed 50% of the tax liability otherwise due and cannot reduce the tax liability to an amount less than the statutory minimum.

Line 22 – The minimum tax is assessed based on the New Jersey Gross Receipts as follows:

New Jersey Gross Receipts	CBT-100/ BFC-1	CBT-100S
Less than $100,000	$ 500	$ 375
$100,000 or more but less than $250,000	750	562
$250,000 or more but less than $500,000	1,000	750
$500,000 or more but less than $1,000,000	1,500	1,000
$1,000,000 or more	2,000	1,500

If a taxpayer is filing a separate return and is a member of an affiliated 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.

Line 26 – Taxpayers claiming multiple credits must list any credits already applied to the tax liability to ensure accuracy of the calculation for maximum credit allowable.

Part VI – Calculation of the Allowable Credit Amount and Carryover for Combined Return Filers

For CBT-100U filers, the total and allowable Manufacturing Equipment and Employment Investment Tax Credit for the current year is calculated in Part VI. All combined return filers must complete Section A. Members that choose not to share their credit must also complete section B.

Section A – To be completed by ALL combined return filers
This section calculates the amount of credit allowable for the group. If a member chooses not to share their credit with the group, Section A must still be completed to ensure the credit allowed for the member does not exceed the amount that would otherwise be allowed against the group tax liability.

The amount of the credit calculated in this section cannot exceed 50% of the group tax liability otherwise due and cannot reduce the tax liability to an amount less than the aggregate statutory minimum tax of the group members.

Line 31 – Multiply the number of taxable group members by $2,000 and enter the result.

Line 35 – Combined groups claiming multiple credits must list any credits already applied to the group tax liability to ensure accuracy of the calculation for maximum credit allowable.

Section B
This section is used to calculate the amount of credit allowable for members that choose **not** to share their credit with the group. Section B is completed based on the member's share of the group tax liability. The amount of the credit calculated in this section cannot exceed 50% of the member's tax liability otherwise due and cannot reduce the tax liability to an amount less than $2,000. The amount of the credit is also limited to the amount that would otherwise be allowed against the group tax liability if the member had been sharing the credit.

Line 44 – Members claiming multiple credits must list any credits already applied to the member's tax liability to ensure accuracy of the calculation for maximum credit allowable.

FORM 306
(10-21)
2021

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 prior privilege periods or tax years on this form.

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Read the instructions before completing this form

Note: Amounts 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, the New Jobs Investment Tax Credit, or the Angel Investor Tax Credit.

Attach copy of federal Form 6765 as filed with the IRS

Combined Return Filers

☐ The taxpayer is included as a taxable member on a New Jersey combined return. See instructions.
Fill in oval if member is **not** sharing its credit with other members of the group. ⬭

Part I Credit Calculation for Amounts Paid or Incurred to Energy Consortia

1. Enter certain amounts paid or incurred to energy consortia	1.	

Part II Credit Calculation for Basic Research Payments

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.	

For New Jersey purposes, you must use the same method that you used to calculate qualified research expense portion of your federal credit.

1. Did you calculate the qualified research expense portion of your federal credit using the regular credit method?
   - ☐ Yes. Complete Part III.
   - ☐ No. Continue to question 2.
2. Did you use the alternative simplified credit method to calculate your credit for federal purposes?
   - ☐ Yes. Complete Part IV (do not make any entries in Part III).
   - ☐ No. You must have used one of the two federal calculation methods in order to complete this form.

Part III Credit Calculation for Qualified Research Expenses

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-based 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.	

Part IV Credit Calculation for Qualified Research Expenses (Alternative Simplified Credit Method)

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 **NU**

Part V Total Research and Development Tax Credit

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.	

Part VI Calculation of the Allowable Credit Amount and Carryover
(Combined return filers DO NOT complete Part VI. Continue with Part VII.)

31. Enter tax liability from page 1, line 2 of CBT-100, CBT-100S, or BFC-1	31.	
32. Enter the required minimum tax liability (see instructions)	32.	
33. Subtract line 32 from line 31	33.	
34. Other tax credits used by taxpayer on current year's return (see instructions): (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 tax period. Enter the lesser of line 30 or line 35 here and on Part I, Schedule A-3 of the CBT-100, CBT-100S, or BFC-1	36.	

Note: Generally, this credit may be carried over for 7 years following the credit's privilege period or tax year; however, certain types of research qualify for a 15 year carryover. See instructions for more information.

37. Amount of credit carryover to following year's return (subtract line 36 from line 30)	37.	

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Part VII Calculation of Allowable Credit Amount and Carryover – Combined Return Filers ONLY

Section A – ALL Combined Return Filers

38. Enter the group tax liability from Schedule A, Part III, line 5, column (a) of Form CBT-100U	38.	
39. Enter the aggregate minimum tax of combined group members (see instructions)	39.	
40. Subtract line 39 from line 38	40.	
41. Other tax credits used by this taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	41.	
42. Subtract line 41 from line 40. If zero or less, enter zero	42.	
43. Allowable credit for the current tax period. Enter the lesser of line 30 or line 42. **If sharing,** also enter in the member's column of Part I, Schedule A-3 of the CBT-100U	43.	
If SHARING credit, complete line 44. **If NOT sharing credit, skip line 44 and complete Section B.** 44. Amount of credit carryover to following year's return (subtract line 43 from line 30)	44.	

Section B – Combined Return Filers NOT Sharing Credit

45. a) Enter combined group tax liability from line 38	45a.			
b) Divide line 45a by the combined group allocation factor from Schedule J, line 9	45b.			
c) Member's share of combined group tax liability – Multiply line 45b by member's allocation factor from Schedule J, line 9			45c.	
46. Required minimum tax liability			46.	2,000
47. Subtract line 46 from line 45c			47	
48. Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total			48.	
49. Subtract line 48 from line 47. If zero or less, enter zero			49.	
50. Allowable credit for the current tax period. Enter the lesser of line 43 or line 49 here and in the member's column of Part I, Schedule A-3 of the CBT-100U			50.	
51. Amount of credit carryover to following year's return (subtract line 50 from line 30)			51.	

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 and pursuant to N.J.S.A. 54:10A-5.24(d), which was added as part of P.L. 2020, c. 118. These changes were prospective only. If you are filing a return for a privilege period or tax year beginning prior to 2020, you must use the version of Form 306 that corresponds with the tax period for which you are filing. Previous versions are 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 tax years beginning on and after January 1, 2020, a qualified small business within the meaning of section 41(h)(3) of the federal Internal Revenue Code (26 U.S.C. s.41) can include qualified expenses and payments used for the separate federal payroll credit under I.R.C. § 3111(f) to calculate their New Jersey R&D credit (see N.J.S.A. 54:10A-5.24(d)).

  Note: Taxpayers cannot recalculate their R&D credit for prior years. The qualified expenses and payments used for the separate federal payroll credit under I.R.C. § 3111(f), can only be included in the R&D credit calculation for tax years beginning on and after January 1, 2020. Additionally, if the qualified expenses and payments are used in the calculation of another New Jersey Corporation Business Tax credit, those amounts cannot be used to calculate the R&D credit.

- 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. Each members must complete a separate schedule to claim their portion of the New Jersey R&D credit. Members of the same consolidated group must use the same credit calculation method
- 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.

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. Parts VI and VII are used to calculate the allowable credit and carryover. Taxpayers filing Forms CBT-100, CBT-100S, or BFC-1 complete Part VI and CBT-100U filers complete Part VII.

FYI

Taxpayers must include the appropriate credit form in the year the credit was earned even if they are not claiming the credit on their tax return.

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 or Part VII, as applicable.

Combined Return Filers

If filing a combined return, the form must be completed by the member that earned (purchased) the credit. All combined return filers must check the combined return filers box at the top of the form and complete Part VII, Section A.

Members Opting Not to Share. In general, tax credits are earned by a member of the combined group and are shareable with the combined group. However, members are not required to share their credits. See N.J.S.A. 54:10A-4.6.i and TB-90(R), *Tax Credits and Combined Returns*. In addition to Section A, members that choose not to share must also complete Part VII, Section B and fill in the oval at the top of the form to indicate they are not sharing 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 2 – 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 2. 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 2.

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.

Do not include expenses and payments that were taken as part of the federal Orphan Drug Credit to calculate the New Jersey R&D Credit.

Note: Amounts 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, the New Jobs Investment Tax Credit, or the Angel Investor 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 depends on whether you are an existing company or a start-up company. The fixed-base percentage for all companies (existing and start-up) must be rounded to the nearest 1/100th of 1% (i.e., four decimal places) and cannot exceed 16%. Any subsequent change to the federal fixed based percentages will also be reflected here.

Start-Up Company

A start-up company is a taxpayer that had both gross receipts and qualified research expenses either:

- For the first time in a tax year beginning after 1983, or
- For fewer than 3 tax years beginning after 1983 and before 1989.

For start-up companies with qualified research expenses for tax years beginning after 1993, the fixed-base percentage for a start-up company is figured as follows:

- For the first 5 tax years, the percentage is 3%.
- For the 6th tax year, divide the aggregate qualified research expenses for the 4th and 5th tax years by the aggregate gross receipts for those tax years, then divide the result by 6.
- For the 7th tax year, divide the aggregate qualified research expenses for the 5th and 6th tax years by the aggregate gross receipts for those tax years, then divide the result by 3.
- For the 8th tax year, divide the aggregate qualified research expenses for the 5th, 6th, and 7th tax years by the aggregate gross receipts for those tax years, then divide the result by 2.
- For the 9th tax year, divide the aggregate qualified research expenses for the 5th, 6th, 7th, and 8th tax years by the aggregate gross receipts for those tax years, then divide the result by 1.5.
- For the 10th tax year, divide the aggregate qualified research expenses for the 5th through 9th tax years by the aggregate gross receipts for those tax years, then divide the result by 1.2.
- For the 11th and later tax years, divide the aggregate qualified research expenses for any 5 of the 5th through 10th tax years by the aggregate gross receipts for those tax years.

Existing Company

The fixed-base percentage for an existing company (any company that is not a start-up company) is figured by dividing the aggregate qualified research expenses for the tax years beginning after 1983 and before 1989 by the aggregate gross receipts for those tax years.

Line 11 – Enter the average annual gross receipts (reduced by returns and allowances) for the 4 tax years preceding the tax year for which the credit is being determined. You may be required to annualize gross receipts for any short tax year. This is determined by using Line 1 (less returns and allowances) from Schedule A of the 4 preceding tax years.

For a tax year that the credit terminates, the average annual gross receipts for the 4 tax years preceding the termination tax year is prorated for the number of days the credit is applied during the tax year.

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. An Alternative Simplified Credit (ASC) election can be made on an amended return for a tax year only if you have not previously claimed the research credit on an original return or amended return for that tax year. An extension of time to make the ASC election will not be granted.

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.

Do not include expenses and payments that were taken as part of the federal Orphan Drug Credit to calculate the New Jersey R&D Credit.

Note: Amounts 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, the New Jobs Investment Tax Credit, or the Angel Investor Tax Credit.

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 previous privilege periods or tax years on this form. All credit carryovers must be calculated using the laws that were in effect for that tax period. Previous versions of the form are available on the Division of Taxation's website (njtaxation.org).

PART VI – Calculation of the Allowable Credit Amount and Carryover (for CBT-100, CBT-100S, and BFC-1 Filers only)

For CBT-100, CBT-100S, and BFC-1 filers, the allowable Research and Development Tax Credit for the current year is calculated in Part VI. Combined return filers do not complete Part VI, and must complete Part VII instead. The amount of the credits applied cannot reduce the tax liability to an amount less than the statutory minimum.

Line 32 – The minimum tax is assessed based on the New Jersey Gross Receipts as follows:

New Jersey Gross Receipts	CBT-100/ BFC-1	CBT-100S
Less than $100,000	$ 500	$ 375
$100,000 or more but less than $250,000	750	562
$250,000 or more but less than $500,000	1,000	750
$500,000 or more but less than $1,000,000	1,500	1,000
$1,000,000 or more	2,000	1,500

If a taxpayer is filing a separate return and is a member of an affiliated 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.

Line 34 – Taxpayers claiming multiple credits must list any credits already applied to the tax liability to ensure accuracy of the calculation for maximum credit allowable.

Carryover Time Frame. 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 fields 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 for tax years following the credit's privilege period or tax year. (N.J.S.A. Sec. 54:10A-5.24b).

Part VII – Calculation of the Allowable Credit Amount and Carryover for Combined Return Filers

For CBT-100U filers, the allowable Research and Development Tax Credit for the current year is calculated in Part VII. All combined return filers must complete Section A. Members that choose **not** to share their credit must also complete Section B.

Section A – To be completed by ALL combined return filers

This section calculates the amount of credit allowable for the group. If a member chooses not to share their credit with the group, Section A must still be completed to ensure the credit allowed for the member does not exceed the amount that would otherwise be allowed against the group tax liability.

The amount of the credit calculated in this section cannot reduce the tax liability to an amount less than the aggregate statutory minimum tax of the group members.

Line 39 – Multiply the number of taxable group members by $2,000 and enter the result.

Line 41 – Combined groups claiming multiple credits must list any credits already applied to the group tax liability to ensure accuracy of the calculation for maximum credit allowable.

Carryover Time Frame. 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 fields 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 for tax years following the credit's privilege period or tax year. (N.J.S.A. Sec. 54:10A-5.24b).

Section B

This section is used to calculate the amount of credit allowable for members that choose not to share their credit with the group. Section B is completed based on the member's share of the group tax liability. The amount of the credit calculated in this section cannot reduce the tax liability to an amount less than $2,000. The amount of the credit is also limited to the amount that would otherwise be allowed against the group tax liability if the member had been sharing the credit.

Line 48 – Members claiming multiple credits must list any credits already applied to the member's tax liability to ensure accuracy of the calculation for maximum credit allowable.

FORM 315
(10-21)
2021

New Jersey Corporation Business Tax
AMA Tax Credit

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Read the instructions before completing this form

Combined Return Filers

☐ The taxpayer is included as a taxable member on a New Jersey combined return. See instructions.
Fill in oval if member is **not** sharing its credit with other members of the group. ⬭

Part I Calculation of the Allowable Credit Amount and Carryover
(Combined return filers DO NOT complete Part I. Continue with Part II.)

1.	Enter AMA Tax Credit carried over from prior year	1.	
2.	Enter tax liability from page 1, line 2 of CBT-100, CBT-100S, or BFC-1,	2.	
3.	Enter the required minimum tax liability (see instructions)	3.	
4.	Subtract line 3 from line 2	4.	
5.	Enter 50% of the tax liability reported on line 2	5.	
6.	Enter the lesser of line 4 or line 5	6.	
7.	Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	7.	
8.	Subtract line 7 from line 6. If zero or less, enter zero	8.	
9.	Allowable credit for the current tax period. Enter the lesser of line 1 or line 8 here and on Part I, Schedule A-3 of the CBT-100, BFC-1, or CBT-100S	9.	
10.	Amount of credit carryover to following year's return (subtract line 9 from line 1)	10.	

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Part II Calculation of Allowable Credit Amount and Carryover – Combined Return Filers ONLY

Section A – ALL Combined Return Filers

11. Enter AMA Tax Credit carried over from prior year	11.	
12. Enter the group tax liability from Schedule A, Part III, line 5, column (a) of CBT-100U	12.	
13. Enter the aggregate minimum tax of combined group members (see instructions)	13.	
14. Subtract line 13 from line 12	14.	
15. Enter 50% of the tax liability reported on line 12	15.	
16. Enter the lesser of line 14 or line 15	16.	
17. Other tax credits used by combined group on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	17.	
18. Subtract line 17 from line 16. If zero or less, enter zero	18.	
19. Allowable credit for the current tax period. Enter the lesser of line 11 or line 18. **If sharing,** also enter in the member's column of Part I, Schedule A-3 of the CBT-100U	19.	
If SHARING credit, complete line 20. **If NOT sharing credit, skip line 20 and complete Section B.**		
20. Amount of credit carryover to following year's return (subtract line 19 from line 11)	20.	

Section B – Combined Return Filers NOT Sharing Credit

21. a) Enter combined group tax liability from line 12	21a.			
b) Divide line 21a by the combined group allocation factor from Schedule J, line 9	21b.			
c) Member's share of combined group tax liability – Multiply line 21b by member's allocation factor from Schedule J, line 9			21c.	
22. Required minimum tax liability			22.	2,000
23. Subtract line 22 from line 21c			23.	
24. Enter 50% of the tax liability reported on line 21c			24.	
25. Enter the lesser of line 23 or line 24			25.	
26. Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total			26.	
27. Subtract line 26 from line 25. If zero or less, enter zero			27.	
28. Allowable credit for the current tax period. Enter the lesser of line 19 or line 27 here and in the member's column of Part I, Schedule A-3 of the CBT-100U			28.	
29. Amount of credit carryover to following year's return (subtract line 28 from line 11)			29.	

Instructions for Form 315
AMA Tax Credit

For tax periods beginning on or after January 1, 2002, if a taxpayer incurs an AMA (Alternative Minimum Assessment) liability in excess of the regular CBT liability, the excess may be carried over to subsequent years and used as a credit against the regular CBT liability. The carryovers never expire. There are, however, limitations as to how much credit can be taken on any single return.

Note: To claim the credit, the AMA must have been required and paid by the taxpayer. A taxpayer that was not required to pay the AMA cannot claim a credit.

New Jersey S corporations that formerly filed as C corporations and had an AMA liability can take the AMA credit on the CBT-100S tax return subject to the same rules as stated above.

To calculate the allowable credit and carryover, taxpayers filing Forms CBT-100, CBT-100S, or BFC-1 complete Part I and CBT-100U filers complete Part II.

Note: The AMA credit cannot be generated by a taxpayer for tax years beginning on and after August 1, 2018 (ending on and after July 31, 2019).

Combined Return Filers

If filing a combined return, this form must be completed by the member that earned the credit. All combined return filers must check the combined return filers box at the top of the form and complete Part II, Section A.

Members Opting Not to Share. In general, tax credits are earned by a member of the combined group and are shareable with the combined group. However, members are not required to share their credits. See N.J.S.A. 54:10A-4.6.i and TB-90(R), *Tax Credits and Combined Returns.* In addition to Section A, members that choose not to share must also complete Part II, Section B and fill in the oval at the top of the form to indicate they are not sharing the credit.

FYI

Taxpayers must include the appropriate credit form in the year the credit was earned even if they are not claiming the credit on their tax return.

Part I – Calculation of the Allowable Credit Amount and Carryover (for CBT-100, CBT-100S, and BFC-1 Filers only)

For CBT-100, CBT-100S, and BFC-1 filers, the allowable AMA Tax Credit for the current year is calculated in Part I. Combined return filers do not complete Part I, and must complete Part II instead. The amount of this credit in addition to the amount of any other tax credits is limited to 50% of the taxpayer's total tax liability and cannot exceed an amount that would reduce the total tax liability below the statutory minimum.

Line 3 – The minimum tax is assessed based on the New Jersey Gross Receipts as follows:

New Jersey Gross Receipts	CBT-100/BFC-1	CBT-100S
Less than $100,000	$500	$375
$100,000 or more but less than $250,000	$750	$562
$250,000 or more but less than $500,000	$1,000	$750
$500,000 or more but less than $1,000,000	$1,500	$1,125
$1,000,000 or more	$2,000	$1,500

If a taxpayer is filing a separate return and is a member of an affiliated 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.

Line 7 – Taxpayers claiming multiple credits must list any credits already applied to the tax liability to ensure accuracy of the calculation for maximum credit allowable.

Part II – Calculation of the Allowable Credit Amount and Carryover for Combined Return Filers

For CBT-100U filers, the total and allowable AMA Tax Credit for the current year is calculated in Part II. All combined return filers must complete Section A. Members that choose not to share their credit must also complete Section B.

Section A – To be completed by ALL combined return filers
This section calculates the amount of credit allowable for the group. If a member chooses not to share their credit with the group, Section A must still be completed to ensure the credit allowed for the member does not exceed the amount that would otherwise be allowed against the group tax liability.

The amount of the credit calculated in this section cannot exceed 50% of the group tax liability otherwise due and cannot reduce the tax liability to an amount less than the aggregate statutory minimum tax of the group members.

Line 13 – Multiply the number of taxable group members by $2,000 and enter the result.

Line 17 – Combined groups claiming multiple credits must list any credits already applied to the group tax liability to ensure accuracy of the calculation for maximum credit allowable.

Section B
This section is used to calculate the amount of credit allowable for members that choose not to share their credit with the group. Section B is completed based on the member's share of the group tax liability. The amount of the credit calculated in this section cannot exceed 50% of the member's tax liability otherwise due and cannot reduce the tax liability to an amount less than $2,000. The amount of the credit is also limited to the amount that would otherwise be allowed against the group tax liability if the member had been sharing the credit.

Line 26 – Members claiming multiple credits must list any credits already applied to the member's tax liability to ensure accuracy of the calculation for maximum credit allowable.

FORM 320
(10-21)
2021

New Jersey Corporation Business Tax
Grow New Jersey Assistance Tax Credit

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable
		NU

Read the instructions before completing this form

Combined Return Filers

☐ The taxpayer is included as a taxable member on a New Jersey combined return. See instructions. Fill in oval if member is **not** sharing its credit with other members of the group. ⬭

Part I Qualifications

1. Does the taxpayer have written approval from the New Jersey Economic Development Authority to receive a Grow New Jersey Assistance tax credit? ..... ☐ YES ☐ NO

2. Has the taxpayer received a paper tax credit certificate issued by the New Jersey Division of Taxation? .. ☐ YES ☐ NO
   Check the box to indicate the original certificate has been submitted to the Division of Taxation ..... ☐

3. Does the taxpayer have a tax incentive profile on the New Jersey eCerts portal with a Grow New Jersey Assistance Tax Credit amount available for use? ..... ☐ YES ☐ NO

Note: If the answer to question 1 or both questions 2 and 3 is "NO," do not complete the rest of this form. The taxpayer is **not** eligible for this tax credit. Otherwise, go to Part II.

Part II Calculation of the Available Credit

4. Enter the approved credit amount as reported on the tax credit certificate for the current privilege period or tax year or the amount that is available in the taxpayer's incentive profile on the eCerts portal	4.	
5. Grow New Jersey Assistance Tax Credit carried forward from prior year	5.	
6. Total credit available (add lines 4 and 5)	6.	

Part III Calculation of the Allowable Credit Amount and Carryforward (Combined return filers DO NOT complete Part III. Continue with Part IV.)

7. Enter tax liability from page 1, line 2 of CBT-100, CBT-100S, or BFC-1, ...	7.	
8. Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ .....Total	8.	
9. Subtract line 8 from line 7. If zero or less, enter zero	9.	
10. Allowable credit for the current tax period. Enter lesser of line 6 or line 9 here and on Part I, Schedule A-3 or CBT-100, CBT-100S, or BFC-1	10.	
11. Amount of credit carryforward to following year's return (subtract line 10 from line 6)	11a.	

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Part IV Calculation of Allowable Credit Amount and Carryforward – Combined Return Filers ONLY

Section A – ALL Combined Return Filers

12. Enter the group tax liability from Schedule A, Part III, line 5, column (a) of CBT-100U	12.	
13. Other tax credits used by combined group on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	13.	
14. Subtract line 13 from line 12. If zero or less, enter zero	14.	
15. Allowable credit for the current tax period. Enter the lesser of line 6 or line 14. **If sharing,** also enter in the member's column of Part I, Schedule A-3 of the CBT-100U	15.	
If SHARING credit, complete line 16. **If NOT sharing credit, skip line 16 and complete Section B.**		
16. Amount of credit carryover to following year's return (subtract line 15 from line 6)	16.	

Section B – Combined Return Filers NOT Sharing Credit

17. a) Enter combined group tax liability from line 12	17a.			
b) Divide line 17a by the combined group allocation factor from Schedule J, line 9	17b.			
c) Member's share of combined group tax liability – Multiply line 17b by member's allocation factor from Schedule J, line 9			17c.	
18. Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total			18.	
19. Subtract line 18 from line 17c. If zero or less, enter zero			19.	
20. Allowable credit for the current tax period. Enter the lesser of line 15 or line 19 here and in the member's column of Part I, Schedule A-3 of the CBT-100U			20.	
21. Amount of credit carryover to following year's return (subtract line 20 from line 6)			21.	

Instructions for Form 320
Grow New Jersey Assistance Tax Credit

Purpose of this Form

This form must be completed by any taxpayer that claims a tax credit as provided for in the Grow New Jersey Assistance Tax Credit Act, N.J.S.A. 34:1B-242 et seq. If the taxpayer claims this credit on CBT-100, CBT-100U, CBT100S, or BFC-1, a completed Form 320 must be included with the return to validate the claim.

The Grow New Jersey Assistance Tax Credit is available to businesses creating or retaining jobs in New Jersey and making a qualified capital investment at a qualified business facility in a qualified incentive area as defined in the Grow New Jersey Assistance Act. This includes affiliates of the business located in the qualified business facility and tenants that are businesses in the qualified business facility. The capital investment requirements, employment requirements, and amount of the credit vary by qualified investment area and industry type.

Partnerships are not allowed the credit directly, but the amount of credit of each partner shall be determined by allocating to each partner that proportion of the credit of the business that is equal to the partner's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or with the partner's tax period, or that proportion that is allocated by a partnership agreement.

The tax credit can be applied to 100% of the tax liability. The unused amount of the annual credit can be used during a 20-year carryforward. The business may also apply for a tax credit transfer certificate with the Division of Taxation to transfer unused tax credits from the Grow New Jersey Assistance Program from any year to sell the unused tax credits to another business. The tax credits must be sold for no less than 75% of the value of the tax credits, and the purchaser is subject to the same limitations and conditions as the seller of the tax credits.

Unused tax credits may be carried forward for 20 years following a credit's privilege period or tax year. However, a taxpayer may not carry over any amount of unused credit to a privilege period or tax year during which a corporate acquisition, with respect to which a taxpayer was a target corporation, occurred or during which the taxpayer was a party to a merger or a consolidation.

Parts III and IV are used to calculate the allowable credit and carryforward. Taxpayers filing Forms CBT-100, CBT-100S, or BFC-1 complete Part III and CBT-100U filers complete Part IV.

Combined Return Filers

If filing a combined return, this form must be completed by the member that earned (purchased) the credit. All combined return filers must check the combined return filers box at the top of the form and complete Part IV, Section A.

Members Opting Not to Share. In general, tax credits are earned by a member of the combined group and are shareable with the combined group. However, members are not required to share their credits. See N.J.S.A. 54:10A-4.6.i and TB-90(R), *Tax Credits and Combined Returns.* In addition to Section A, members that choose not to share must also complete Part IV, Section B and fill in the oval at the top of the form to indicate they are not sharing the credit.

Taxpayers must include the appropriate credit form in the year the credit was earned even if they are not claiming the credit on their tax return.

Part I – Qualifications

To be eligible for the tax credit, the answer to question 1 **and** either question 2 or 3 must be "YES." If the answer to question 1 or both 2 and 3 is "NO," the taxpayer is **not** entitled to the Grow New Jersey Assistance Tax Credit.

If the taxpayer received a paper tax credit certificate, the original certificate and a copy of the completed Form 320 must be submitted by mail to the New Jersey Division of Taxation, CBT Refunds/Tax Credits, PO Box 259, Trenton, NJ 08695-0259. Failure to submit this documentation by mail will result in the delay and/or denial of the tax credit claimed.

Part II – Calculation of Available Credit

Line 4 – The amount of the tax credit is equal to the amount reported on the tax credit certificate that was issued by the New Jersey Division of Taxation.

Part III – Calculation of the Allowable Credit Amount and Carryforward (for CBT-100, CBT-100S, and BFC-1 Filers only)

For CBT-100, CBT-100S, and BFC-1 filers, the allowable Grow New Jersey Assistance Tax Credit for the current tax period is calculated in Part III. Combined return filers do not complete Part III, and must complete Part IV instead.

Line 8 – Taxpayers claiming multiple credits must list any credits already applied to the tax liability to ensure accuracy of the calculation for maximum credit allowable.

Part IV – Calculation of the Allowable Credit Amount and Carryforward for Combined Return Filers

For CBT-100U filers, the total and allowable Grow New Jersey Assistance Tax Credit for the current year is calculated in Part IV. All combined return filers must complete Section A. Members that choose not to share their credit must also complete Section B.

Section A – To be completed by ALL combined return filers

This section calculates the amount of credit allowable for the group. If a member chooses not to share their credit with the group, Section A must still be completed to ensure the credit allowed for the member does not exceed the amount that would otherwise be allowed against the group tax liability.

Line 13 – Combined groups claiming multiple credits must list any credits already applied to the group tax liability to ensure accuracy of the calculation for maximum credit allowable.

Section B

This section is used to calculate the amount of credit allowable for members that choose not to share their credit with the group. Section B is completed based on the member's share of the group tax liability. The amount of the credit is also limited to the amount that would otherwise be allowed against the group tax liability if the member had been sharing the credit.

Line 18 – Members claiming multiple credits must list any credits already applied to the member's tax liability to ensure accuracy of the calculation for maximum credit allowable.

FORM 324
(10-21)
2021

New Jersey Corporation Business Tax
Business Employment Incentive Program Tax Credit

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable
		NU

Read the instructions before completing this form

Combined Return Filers

☐ The taxpayer is included as a taxable member on a New Jersey combined return. See instructions.
Fill in oval if member is **not** sharing its credit with other members of the group. ⬭

Part I Qualifications

1. Does the taxpayer have written approval from the New Jersey Economic Development Authority to receive a BEIP Tax Credit? ☐ YES ☐ NO

2. Has the taxpayer received a paper tax credit certificate issued by the New Jersey Division of Taxation? ☐ YES ☐ NO

   Check the box to indicate the original certificate has been submitted to the Division of Taxation ☐

3. Does the taxpayer have a tax incentive profile on the New Jersey eCerts portal with a BEIP Tax Credit amount available for use? ☐ YES ☐ NO

NOTE: If the answer to question 1 or both questions 2 and 3 is **"**NO,**"** do not complete the rest of this form. The taxpayer is **not** eligible for this tax credit. Otherwise, go to Part II.

Part II Calculation of the Available Credit

4.	Enter the total approved BEIP credit amount as reported on the tax credit certificate(s) for the current tax year or the amount(s) that is available in the taxpayer's incentive profile on the eCerts portal. (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	4.	

Part III Calculation of the Allowable Credit Amount and Refund
(Combined return filers DO NOT complete Part III. Continue with Part IV.)

5.	Enter tax liability from page 1, line 2 of CBT-100, CBT-100S, or BFC-1	5.	
6.	Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	6.	
7.	Subtract line 6 from line 5. If zero or less, enter zero	7.	
8.	Allowable credit for the current tax period. Enter lesser of line 4 or line 7 here and in Part I, Schedule A-3 of CBT-100, CBT-100S, or BFC-1	8.	
9.	Amount of credit to be refunded (subtract line 8 from line 4). Enter here and in Part II, Schedule A-3 of the CBT-100, CBT-100S, or BFC-1	9.	

Note: There is no carryover provision for this tax credit.

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable **NU**

Part IV Calculation of Allowable Credit Amount and Refund – Combined Return Filers ONLY

Section A – ALL Combined Return Filers

10. Enter the group tax liability from Schedule A, Part III, line 5, column (a) of CBT-100U	10.	
11. Other tax credits used by combined group on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	11.	
12. Subtract line 11 from line 10. If zero or less, enter zero	12.	
13. Allowable credit for the current tax period. Enter the lesser of line 4 or line 12. **If sharing,** also enter in the member's column of Part I, Schedule A-3 of the CBT-100U	13.	
If SHARING credit, complete line 14. **If NOT sharing credit, skip line 14 and complete Section B.** 14. Amount of credit to be refunded (subtract line 13 from line 4). Enter here and in the member's column of Part II, Schedule A-3 of the CBT-100U	14.	

Note: There is no carryover provision for this tax credit.

Section B – Combined Return Filers NOT Sharing Credit

15. a) Enter combined group tax liability from line 10	15a.			
b) Divide line 15a by the combined group allocation factor from Schedule J, line 9	15b.			
c) Member's share of combined group tax liability – Multiply line 15b by member's allocation factor from Schedule J, line 9			15c.	
16. Other tax credits used by taxpayer on current year's return (see instructions): (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total			16.	
17. Subtract line 16 from line 15c. If zero or less, enter zero			17.	
18. Allowable credit for the current tax period. Enter the lesser of line 13 or line 17 here and in the member's column of Part I, Schedule A-3 of the CBT-100U			18.	
19. Amount of credit to be refunded (subtract line 18 from line 4). Enter here and in the member's column of Part II, Schedule A-3 of the CBT-100U			19.	

Instructions for Form 324
Business Employment Incentive Program Tax Credit

Purpose of this Form

This form must be completed by any taxpayer that claims a tax credit as provided for in N.J.S.A. 34:1B-129 as amended by P.L. 2015, c. 194 and P. L. 2016, c. 9. The credit is in lieu of an incentive grant based on a percentage of withholdings, and is equal to the full amount of the grant. In accordance with N.J.S.A. 34:1B-129(e), an approved tax credit shall be issued in the manner and for the amounts as follows and may only be applied in the tax period for which they are issued and cannot be carried forward.

If the credit exceeds the amount of tax liability otherwise due from a business that pays tax otherwise due under N.J.S.A. 54:10A-5, N.J.S.A. 54:18A-2 and N.J.S.A. 54:18A-3, N.J.S.A. 17:32-15, or N.J.S.A. 17B:23-5, that amount is refundable pursuant to N.J.S.A. 34:1B-129(f). A business that does not pay taxes under N.J.S.A. 54:10A-5, N.J.S.A. 54:18A-2 and N.J.S.A. 54:18A-3, N.J.S.A. 17:32-15, or N.J.S.A.17B:23-5, may apply with the Executive Director of the Economic Development Authority for a tax credit transfer certificate.

If the taxpayer claims this credit on Form CBT-100, CBT-100U, CBT-100S, or BFC-1, a completed Form 324 must be included with the return to validate the claim.

Any amount of the credit that is in excess of the tax liability is refundable but must be taken prior to all other credits and payments.

Parts III and IV are used to calculate the allowable credit and carryover. Taxpayers filing Forms CBT-100, CBT-100S, or BFC-1 complete Part III and CBT-100U filers complete Part IV.

Combined Return Filers

If filing a combined return, the form must be completed by the member that earned the credit. All combined return filers must check the combined return filers box at the top of the form and complete Part IV, Section A.

Members Opting Not to Share. In general, tax credits are earned by a member of the combined group and are shareable with the combined group. However, members are not required to share their credits. See N.J.S.A. 54:10A-4.6.i and TB-90(R), *Tax Credits and Combined Returns.* In addition to Section A, members that choose not to share must also complete Part IV, Section B and fill in the oval at the top of the form to indicate they are not sharing the credit.

FYI

Taxpayers must include the appropriate credit form in the year the credit was earned even if they are not claiming the credit on their tax return.

Part I – Qualifications

To be eligible for the tax credit, the answer to question 1 **and** either question 2 or 3 must be "YES." If the answer to question 1 or both 2 and 3 is "NO," the taxpayer is not entitled to the Business Employment Incentive Program Tax Credit.

If the taxpayer received a paper tax credit certificate, the original certificate and a copy of the completed Form 324 must be submitted by mail to the New Jersey Division of Taxation, CBT Refunds/Tax Credits, PO Box 259, Trenton, NJ 08695-0259. Failure to submit this documentation by mail will result in the delay and/or denial of the tax credit claimed.

Part II – Calculation of Available Credit

The amount of the tax credit is equal to the amount reported on the tax credit certificate that was issued by the New Jersey Division of Taxation.

Part III – Calculation of the Allowable Credit Amount and Refund (for CBT-100, CBT-100S, and BFC-1 Filers only)

For CBT-100, CBT-100S, and BFC-1 filers, the allowable Business Employment Incentive Program Tax Credit for the current year is calculated in Part III. Combined return filers do not complete Part III, and must complete Part IV instead.

Line 6 – Taxpayers claiming multiple credits must list any credits already applied to the tax liability to ensure accuracy of the calculation for maximum credit allowable.

Part IV – Calculation of the Allowable Credit Amount and Refund for Combined Return Filers

For CBT-100U filers, the total and allowable Business Employment Incentive Program Tax Credit for the current year is calculated in Part IV. All combined return filers must complete Section A. Members that choose not to share their credit must also complete Section B.

Section A – To be completed by ALL combined return filers

This section calculates the amount of credit allowable for the group. If a member chooses not to share their credit with the group, Section A must still be completed to ensure the credit allowed for the member does not exceed the amount that would otherwise be allowed against the group tax liability.

Line 11 – Combined groups claiming multiple credits must list any credits already applied to the group tax liability to ensure accuracy of the calculation for maximum credit allowable.

Section B
This section is used to calculate the amount of credit allowable for members that choose not to share their credit with the group. Section B is completed based on the member's share of the group tax liability. The amount of the credit is also limited to the amount that would otherwise be allowed against the group tax liability if the member had been sharing the credit.

Line 16 – Members claiming multiple credits must list any credits already applied to the member's tax liability to ensure accuracy of the calculation for maximum credit allowable.

FORM 332
(10-21)
2021

New Jersey Corporation Business Tax
Tiered Subsidiary Dividend Pyramid Tax Credit

This form replaces Schedule RT (Allocated Tiered Subsidiary Dividend Exclusion)

Name as Shown on Return	Federal ID Number	Unitary ID Number, if applicable
		NU

Read the instructions before completing this form.

Return Filing Method

☐ The taxpayer is a combined group.
Note: The managerial member completes this form on the group's behalf.

OR

☐ The taxpayer is a separate return filer
Note: Separate return filers do not complete Part I, column 1. Begin at column 2.

Part I Tiered Subsidiary Dividends Must be Subject to Tax on New Jersey Tax Return

(1) **Combined Group Filers Only** Member's Information		(2) Subsidiary's Information		(3) Dividends Received From Subsidiary		(4) Subsidiary's Tax Information		(5) Pyramid Tax Credit
(a) Name	(b) Federal ID Number	(a) Name	(b) Federal ID Number	(a) Dividends Received by Taxpayer (Parent)	(b) Amount of Column 3a not Excluded by Dividend Exclusion	(a) Tax Rate of Subsidiary	(b) Allocation Factor Used by Subsidiary	Multiply Column 3b by Column 4a and 4b*

1. Enter the total of column 5 ..... | |

Part II – Total Tiered Subsidiary Dividend Pyramid Tax Credit

2. Enter tax liability from page 1, line 2 of Form CBT-100, CBT-100S, or BFC-1, or Schedule A, Part III, line 5, column (a) of CBT-100U.	2.	
3. Other tax credits used by this taxpayer on current year's return: (a) _____ _____ (b) _____ _____ (c) _____ _____ (d) _____ _____ Total	3.	
4. Subtract line 3 from line 2. If zero or less, enter zero.	4.	
5. Allowable credit for the current tax period. Enter lesser of line 1 or line 4 here and on Part I, Schedule A-3 of the CBT-100, CBT-100U, CBT-100S, or BFC-1	5.	

* The credit is based on the tax paid to the State by the subsidiary on its dividends/deemed dividends or the amount the subsidiary would have paid if not for the use of tax credits, prior year net operating losses (PNOLs), or net operating losses (NOLs).

Instructions for Form 332
Tiered Subsidiary Dividend Pyramid Tax Credit

Purpose of This Form – The purpose of the Tiered Subsidiary Dividend Pyramid Tax Credit is to allow taxpayers to calculate a credit for 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 subsidiary must have paid tax on the dividends.

For privilege periods ending on and after July 31, 2020, taxpayers are allowed a credit against the regular tax imposed by N.J.S.A. 54:10A-5(c) 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 regular tax liability imposed by N.J.S.A. 54:10A-5(c) 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. See N.J.S.A. 54:10A-5.46. For purposes of the credit, the members of a combined group filing a New Jersey combined return are treated as one taxpayer.

The tax credit is not refundable and cannot be carried over. Nor can the tax credit be used against the surtax. The tax credit may be applied against the minimum tax and can bring the taxpayer's liability to zero, but not less than zero. For the purposes of calculating the credit, if a subsidiary only pays the minimum tax, and did not use PNOLs, NOLs, or tax credits, then the tax credit would be based on the subsidiary's minimum tax liability attributable to the dividends included in the subsidiary's entire net income allocated to New Jersey.

The "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). In calculating column 5, these amounts should also be taken into account and included in the calculation.

The taxpayer will add up the tax paid by its subsidiaries on the dividends that were included in the subsidiaries taxable net income.

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.

Note: For taxpayers filing a New Jersey combined return, the combined group is treated as one taxpayer for the purposes of the Tiered Subsidiary Dividend Pyramid Tax Credit. The 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 credit since these dividends and deemed dividends were already 100% eliminated pursuant to N.J.S.A. 54:10A-4.6.d.

Tiered dividends are dividends reported on the subsidiary's CBT-100, CBT-100U, CBT-100S, or BFC-1 as dividend income from the subsidiary that is then issued to the parent company as a dividend.

Example:

Company A (parent corporation) 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 (or would have paid if not for the use of tax credits, prior year net operating losses, or net operating losses) on the $80,000,000 on its CBT-100, CBT-100U, CBT-100S, or BFC-1, Company A is entitled to a tax credit based on the amount of tax Company B paid on the $80,000,000 from its CBT-100, CBT-100U, CBT-100S, or BFC-1.

Combined Return Filers – If filing a combined return, this form must be completed by the managerial member. 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. For the purposes of the Tiered Subsidiary Dividend Pyramid Tax Credit, a combined group is entitled to the credit from the noncombined 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 subsidiaries or another subsidiary combined group (filing a separate New Jersey combined return) as 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.

FYI

Taxpayers must include the appropriate credit form in the year the credit was earned even if they are not claiming the credit on their tax return.

Instructions – Provide the requested information for dividends included in entire net income from investments in which the taxpayer owns 50% 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.

Part II Calculation of the Allowable Credit Amount

Complete Part II to determine the amount of usable tax credit. The Tiered Subsidiary Dividend Pyramid Tax Credit can only reduce the regular CBT tax liability of the taxpayer. The excess tax credit cannot be carried forward. The credit cannot be applied against the surtax.

NAME AS SHOWN ON RETURN	FEDERAL ID NUMBER

Form 500

Computation of the 2021 Post Allocation Net Operating Loss (NOL) and Prior Net Operating Loss Conversion Carryover (PNOL) Deductions (See Instructions)

Does the taxpayer have any Prior Net Operating Loss Conversion Carryovers? ☐ Yes. Begin Form 500 at Section A, line 1. OR ☐ No. Enter zero on Schedule A, Part 2, line 23 and continue with Section B.

Section A – Computation of Prior Net Operating Losses (PNOL) Deduction from periods ending PRIOR to July 31, 2019

Complete this section only if the allocated entire net income/(loss) before net operating loss deductions and dividend exclusion on Schedule A, Part II, line 22 is positive (income).

1. Prior Net Operating Loss Conversion Carryover (PNOL) – Enter the total of Worksheet 500-P, Part II, column 3	1.	
2. Enter the portion of line 1 previously deducted	2.	
3. Enter the portion of line 1 that expired	3.	
4. 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*	4.	
5. PNOL available in the current tax year – Subtract lines 2, 3, and 4 from line 1 (if zero or less, enter zero)	5.	
6. Enter the allocated net income from Schedule A, Part II, line 22	6.	
7. **Current tax year's PNOL deduction** – Enter the lesser of line 5 or line 6 here and on Schedule A, Part II, line 23	7.	

* If the allocated discharge of indebtedness exceeds the amount of PNOL that is available and the taxpayer has post allocation net operating loss carryover in Form 500 Section B, carry the remaining balance to line 5 of Section B.

Section B – Post Allocation Net Operating Losses (NOLs) For Tax Years Ending ON AND AFTER July 31, 2019

Check the box next to each period if the unused, unexpired, post allocation NOL carryovers are from a tax period in which the taxpayer was a taxable member on a New Jersey combined return. **Otherwise, leave the box blank.**

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. Portion of line 2 previously deducted	3.	
4. Portion of line 2 that expired (after 20 privilege periods)	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. NOLs available for current tax year – Subtract lines 3, 4, and 5 from line 2	6.	
7. Enter Allocated Entire Net Income Before Post Allocation Net Operating Loss Deduction from Schedule A, Part II, line 24	7.	
8. **Current tax year's NOL deduction** – Enter the lesser of line 6 or line 7 here and on Schedule A, Part II, line 25	8.	

* If the taxpayer has any allocated discharge of indebtedness that was not used in Form 500 Section A, enter the balance.

NAME AS SHOWN ON RETURN	FEDERAL ID NUMBER

WORKSHEET
500-P

NEW JERSEY CORPORATION BUSINESS TAX
Prior Net Operating Loss Conversion Worksheet

Use this worksheet to calculate the converted prior net operating losses for use for tax years ending on and after July 31, 2019. **(See Instructions)**

NOTE: This is used to calculate your converted prior net operating losses from pre-allocated net operating loss carryovers to post-allocated net operating loss carryovers for the last tax periods ending before July 31, 2019. Use the allocation factor calculated on Schedule J in the last tax period ending prior to July 31, 2019, for Part I, line 1. This is the taxpayer's base year allocation factor for the last tax period ending before July 31, 2019, pursuant to N.J.S.A. 54:10A-4(u). **Submit a copy of this worksheet to substantiate calculations and to determine usable amounts for future years.** If more space is needed, enclose a rider listing the information.

Part I

1. Allocation Factor For The Last Tax Period Ending Prior to July 31, 2019 (from Schedule J).....	

Part II

Column 1	Column 2	Column 3
Tax Period Ending	Prior Net Operating Losses (see instructions)	Converted Prior Net Operating Loss Carryover Multiply line l, Part I by amount in column 2, Part II
2.		
3.		
4.		
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Enclose a Copy with Tax Return

NAME AS SHOWN ON RETURN	FEDERAL ID NUMBER

Form 500S COMPUTATION OF THE AVAILABLE CONVERTED NET OPERATING LOSSES

PART I Net Operating Loss Carryovers Generated as a C Corporation prior to its New Jersey S election

1. Prior Net Operating Loss Conversion Carryover (PNOL) available (see instructions)	1.	
2. Post Allocation Net Operating Loss Carryover (NOL) available (see instructions)	2.	
3. Total Net Operating Losses Available – Total lines 1 and 2	3.	

PART II – Available Net Operating Loss Deductions

1. Enter amount used on Schedule A, Part I, Line 41	1.	
2. Enter amount used on Schedule A, Part II, Line 4	2.	
3. Total amount of available converted NOL carryover used – Add lines 1 and 2	3.	

NOTE: Must include last Net Operating Loss Schedule/Worksheet Prior to Conversion to S Corporation (from Form CBT-100 or CBT-100U).

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

2023 Best Lawyers in America: David Gutowski, Kyle Sollie, Lee Zoeller

Chambers US 2023: Tax (Pennsylvania)

Legal 500 US 2023 (Tier 3): US Taxes - Contentious; US Taxes - Non-contentious

National Law Journal's List of Tax Law Trailblazers, 2023 - Sara Lima

US News - Best Lawyers "2023 Best Law Firms" (National Tier 1): Litigation–Tax; Tax Law

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

ReedSmith

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

- 5 July 2023 New Jersey Corporation Business Tax Amendments Signed Into Law; Co-Authors: Matthew L. Setzer, Chandler N. Scanlon; Reed Smith Client Alerts
- 22 March 2023 New Jersey Corporation Business Tax: Third Time's a Charm?; Co-Authors: Matthew L. Setzer, Chandler N. Scanlon; Reed Smith In-depth
- 6 December 2021 NJ limitations period extended: tax periods back to 2015 remain open; Co-Authors: Matthew L. Setzer; Reed Smith Client Alerts
- 4 June 2021 NJ Corporate Income Tax Nexus Initiative to Begin on June 15; Co-Authors: Matthew L. Setzer; Reed Smith Client Alerts
- 6 November 2020 NJ Combined Reporting: Policy Changes, Legislative Corrections, and Filing Positions; Co-Authors: Matthew L. Setzer; Reed Smith Client Alerts

Recent Speaking Engagements

- 30 April - 3 May 2024 COST Spring Conference / Audit Session 2024, Cambridge, Massachusetts, United States "Beyond Population: How Companies Can Use Alternative Datasets and Methods to More Effectively Apportion Their Service Receipts"
- 6-29 February 2024 TEI Houston Tax School, Houston, Texas, United States
- 22 August 2023 "New Jersey's Recent CBT Amendments under P.L. 2023, c. 96: Q&A with Alan Kline"
- 17 August 2023 COST SALT Tech Conference Foster City, California, United States "Beyond Population: How Technology Companies Can Use Alternative Datasets and Methods to More Effectively Apportion Their Service Receipts"

Recent Quotes

- 22 March 2023 "NJ Bill Seeks Changes To Combined Reporting Regime" Law 360
- 21 November 2022 "NJ Senate OKs Ending Tax Assessment Deadline Suspension" Law 360
- 21 September 2022 "New Jersey Adopts Combined Reporting Regs" Tax Notes
- 18 May 2022 "New Jersey Tax Division Proposes New and Updated CBT Regs" Tax Notes
- 24 January 2022 "New Jersey Court Upholds Refund Reg, but Finds Refund Offset Barred" Tax Notes
- 13 December 2021 "New Jersey Court Says Company President Responsible for Tax Blunder" Tax Notes

ReedSmith

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through partnership

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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

Matt is an associate in Reed Smith's State Tax Group. He currently focuses his practice on Pennsylvania and New Jersey corporate and sales and use tax appeals.

Matt regularly writes and speaks on emerging topics concerning New Jersey's corporation business tax. As a result, Matt is a contributor to state tax publications, including Tax Analyst's State Tax Notes.

Matt is a member of the Pennsylvania and New Jersey Bars. He is also a member of the New Jersey Bar association and a regular attendee at meetings of the Tax Section of the New Jersey Business and Industry Association.

Publications

- 5 July 2023 New Jersey Corporation Business Tax Amendments Signed Into Law; Co-Authors: David J. Gutowski, Chandler N. Scanlon; Reed Smith Client Alerts
- 22 March 2023 New Jersey Corporation Business Tax: Third Time's a Charm?; Co-Authors: David J. Gutowski, Chandler N. Scanlon; Reed Smith In-depth
- 6 December 2021 NJ limitations period extended: tax periods back to 2015 remain open; Co-Authors: David J. Gutowski; Reed Smith Client Alerts
- 4 June 2021 NJ Corporate Income Tax Nexus Initiative to Begin on June 15; Co-Authors: David J. Gutowski; Reed Smith Client Alerts

Speaking Engagements

- 22 August 2023 "New Jersey's Recent CBT Amendments under P.L. 2023, c. 96: Q&A with Alan Kline"
- 24 January 2022 NJ CBT refund opportunities for 2015 forward
- 3 November 2021 Council on State Taxation (COST) Mid-Atlantic Regional State Tax Webinar "Navigating Murky New Jersey Corporate Business Tax Waters; Discussion of State Tax Cases, Issues & Policy Matters to Watch

Notable Quotes

- 6 March 2024 "Litter-Generating Tax Appeal Awaits Certification Over 'Constitutional Questions of Taxing and Spending'" New Jersey Law Journal
- 22 February 2024 "Business Group Wants New Jersey High Court to Rule on Litter Tax" Bloomberg Tax
- 21 November 2022 "NJ Senate OKs Ending Tax Assessment Deadline Suspension" Law 360
- 20 September 2022 "NJ Transfer Pricing Resolution Program Enrolls 22 Cos." Law 360
- 18 May 2022 "New Jersey Tax Division Proposes New and Updated CBT Regs" Tax Notes
- 7 March 2022 "Wash. Bank Tax Violates Interstate Commerce Law, Justices Told" Law 360
- 24 January 2022 "New Jersey Court Upholds Refund Reg, but Finds Refund Offset Barred" Tax Notes