



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.

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 November 1, 2023 to reflect the changes resulting from P.L. 2022, c. 133 and P.L. 2023, c. 96.
