



# The Combined Group as a Taxpayer under the Corporation Business Tax Act

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**Tax: Corporation Business Tax**

Beginning with tax year 2019, New Jersey mandated combined reporting. Subsequently, P.L. 2020, c. 118 (Chapter 118), which was signed into law on November 4, 2020, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act. Among other things, one of the technical changes made it clear that a combined group is a taxpayer. The purpose of this Technical Bulletin is to provide an overview of how this change will affect various aspects of the Corporation Businesses Tax return.

**The following provisions are applicable for privilege periods ending on and after July 31, 2019**

N.J.S.A. 54:10A-4(h) states that:

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

N.J.S.A. 54:10A-5(c)(1) states in relevant part that:

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

N.J.S.A. 54:10A-4.6(o) states that:

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

**The following provisions were enacted to simplify certain computations at the combine group level, for privilege periods ending on and after July 31, 2020:**

N.J.S.A. 54:10A-4(k)(5)(E) states that:

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

N.J.S.A. 54:10A-4(z) states that:

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

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

Note: Section 15 of Chapter 118, treats a combined group as one taxpayer for the purposes of the Tiered Subsidiary Dividend Pyramid Tax Credit (see Form 332, Tiered Subsidiary Dividend Pyramid Tax Credit, which will be available on the Division's website).

### **Taxable Members with Operations that are Independent of the Combined Group**

The combined group and the group members are both considered taxpayers. The various tax base components are added together to arrive at the total tax base pursuant to N.J.S.A. 54:10A-5(c)(1). For privilege periods ending on and after July 31, 2020, rather than compute the tax on an entity-by-entity basis, the tax liability for the purposes of N.J.S.A. 54:10A-5(c)(1) is computed on the group level. For purposes of the surtax, the combined group is taxed as one taxpayer. However, a taxable member is also taxed on the portion of the tax attributable to the activities that are independent from the unitary business of the combined group. Pursuant to N.J.S.A. 54:10A-4.10 and N.J.S.A. 54:10A-4.8, taxable members are jointly and severally liable for the tax due from any taxable member. The decision as to whether the taxable member reimburses the combined group for the portion of the tax attributable to the portion of a taxable member's activities that are independent from the unitary business of the combined group is a matter to be worked out by the members of the combined group.

### **Combined Groups and P.L. 86-272**

A combined group is a taxpayer. Therefore, the activities of the members of the combined group in relation to the unitary business of the combined group determine whether the combined group exceeds P.L. 86-272. Consistent with the Division's policy stated in [TB-86\(R\)](#) and [TB-89\(R\)](#), if one member of the combined group exceeds the protections of P.L. 86-272, the entire combined group exceeds P.L. 86-272.

### **Members Sharing Tax Credits with Other Members of the Combined Group**

Tax credits belong to the taxable member that earned them unless a specific statute authorizing the tax credit states that it is earned or awarded at the group level. However, for privilege periods ending on and after July 31, 2020, tax credits can be applied against the group tax liability instead of being applied on an entity-by-entity basis unless a specific credit statute restricts sharing (for example, N.J.S.A. 54:10A-5.43). Refundable credits are refundable to the member that earned the credit, and a member can share the refundable credit with other members if the member so chooses. The decision to share a refundable credit is a matter to be worked out by the members of the combined group.

### **Dividend Exclusions of a Combined Group**

For the purposes of N.J.S.A. 54:10A-4(k)(5) and by operation of N.J.S.A. 54:10A-4(h), for privilege periods ending on and after July 31, 2019, a combined group is eligible for a dividend exclusion. For privilege periods ending on and after July 31, 2020, N.J.S.A. 54:10A-4(k)(5)(E) provides a further simplified group level computation of the dividend exclusion.

## **International Banking Facility (I.B.F.) Deduction and a Combined Group**

If a combined group includes a taxable member that is a banking corporation with an international banking facility as defined by N.J.S.A. 54:10A-4(n), the combined group is eligible to deduct such income amounts that were not eliminated (so that the entire combined group is treated as one banking corporation). The income must have otherwise been eligible for the I.B.F. deduction under N.J.S.A. 54:10A-4(k)(4).

## **Computing the Minimum Tax of a Combined Group**

The statutory minimum tax is \$2,000 for each taxable member of the combined group for the group privilege period pursuant to N.J.S.A. 54:10A-5(e). For privilege periods ending on and after July 31, 2020, when computing the tax due for a combined group, the statutory minimum tax of the taxable members is added together.

## **Managerial Member Responsibilities**

The managerial member is required to be the party that comes forward on behalf of the combined group and its members to address any inquiries into refunds, the procedures involving closing agreements, Section 8 relief requests, and other matters, in accordance with N.J.S.A. 54:10A-4(h); N.J.S.A. 54:10A-4(cc); N.J.S.A. 54:10A-4.10, and N.J.S.A. 54:10A-4.8.

## **Misc.**

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**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.