



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.

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.