



Guidance for Corporation Business Tax Filers on the IRC § 163(j) Limitation

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Tax: Corporation Business Tax

Revision Information: This Technical Bulletin was revised on May 11, 2021, to include technical corrections in the Corporation Business Tax Act that were codified in P.L. 2020, c. 118 (Chapter 118). The law changes were in-line with how the Division had been treating I.R.C. §163(j) and does not change the way it is reported on New Jersey returns. Additionally, the publication was updated to address modifications to I.R.C. §163(j) resulting from the Coronavirus Aid, Relief, and Economic Security Act (commonly referred to as the CARES Act).

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).

P.L. 2018, c. 48, enacted a method for applying the I.R.C. §163(j) limitation. Specifically, N.J.S.A. 54:10A-4(k)(2)(K) states that:

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

N.J.S.A. 54:10A-4(k)(2)(K) made no modification to the overall calculation of the I.R.C. §163(j) limitation or the income that is reported on line 28 for federal purposes. Further, N.J.S.A. 54:10A-4(k)(2)(K) did not indicate that the taxpayer should apply the I.R.C. §163(j) limitation without regard as to whether the taxpayer was included on a federal consolidated return.

Therefore, the amount the taxpayer reported for federal purposes is the amount that must be reported for New Jersey purposes. This means that taxpayers will use the interest expense and interest income allocation methods adopted in the federal regulations as the pro-rata calculation for New Jersey purposes (N.J.S.A. 54:10A-4(k)(2)(K)) and any related party addbacks must be applied after the I.R.C. §163(j) limitation.

Note: The application of N.J.S.A. 54:10A-4(k)(2)(K) comes first before the application of N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4.

N.J.S.A. 54:10A-4.6, which was amended by Chapter 118, 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. 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.

Each member of the combined group included on the same New Jersey combined return will make the adjustments required by N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4, as applicable.

Note: N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4 do not apply to transactions between members of a combined group reported on the same New Jersey combined return because each provide an exception for New Jersey combined return members.

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.