



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*.

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.

