



Changes to the New Jersey Corporation Business Tax

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Tax: Corporation Business Tax

P.L. 2018, c. 48, signed into law on July 1, 2018, and P.L. 2018, c. 131, signed into law on October 4, 2018, significantly changed the New Jersey Corporation Business Tax Act. This Technical Bulletin summarizes the major changes listed by the effective dates.

Effective for tax years beginning on and after January 1, 2017:

Repatriation of Accumulated Foreign Earnings. A taxpayer is not allowed to use any deduction, exemption, or credit taken for federal purposes when reporting repatriation income (IRC §965(a) deemed dividends) on its New Jersey Corporation Business Tax return.

Dividend Exclusion Changes. Taxpayers who own 80% or more of the stock of a subsidiary will only be able to exclude 95% of the dividends received from those subsidiaries for tax years beginning after December 31, 2016.

Factor Relief. A special allocation was created to provide factor relief. Taxpayers can use a special allocation formula that is the lesser of the three-year average 2014 through 2016 allocation factor or 3.5% for calculating the tax on dividends received (or deemed received) by a taxpayer from a subsidiary for tax years beginning on and after January 1, 2017, and beginning before January 1, 2019.

Tiered Dividend Exclusion. The law provides an allocated tiered subsidiary dividend exclusion for dividends paid to a taxpayer by certain subsidiaries. The exclusion is intended to avoid multiple layers of tax on dividends that are included in entire net income.

Penalties and Interest. The law provides that penalties and interest **are not imposed** on the underpayment of tax resulting from the retroactive changes for the 2017 tax year. This provision only applies if the payments are made by the second estimated payment due date subsequent to the enactment of the law (e.g., for a calendar year taxpayer, by December 31, 2018, for tax years beginning on or after January 1, 2017).

Effective for tax years beginning on and after January 1, 2018:

Surtax. For tax years beginning on or after January 1, 2018, through December 31, 2021, there is a surtax imposed on every business entity that is subject to the Corporation Business Tax based on the taxpayer's allocated taxable net income to New Jersey. **The surtax is not imposed on New Jersey S corporation or partnership tax returns.** The surtax is imposed only if the taxpayer's allocated taxable net income is in excess of \$1,000,000. The rate varies depending on the tax year (2.5% for tax years beginning on or after January 1, 2018, through December 31, 2019, and 1.5% for tax years beginning on or after January 1, 2020, through December 31, 2021). Allocated taxable net income is defined as being either the allocated net income for tax years ending before July 31, 2019, or taxable net income for tax years ending on and after July 31, 2019. The definition of

allocated taxable net income was included to account for the change in net operating loss subtraction methods from a pre-allocation method to a post-allocation method.

The surtax does not apply to New Jersey S corporations and partnerships. A corporate partner's share of partnership income is subject to the surtax if the corporate partner's allocated taxable net income meets the threshold for the surtax. However, if a New Jersey S corporation is included in a unitary combined return, then its portion of income is subject to the surtax.

GILTI and FDII. The law permits the taxpayer to use the amount of its federal IRC §250(a) deduction against its Global Intangible Low Taxed Income (GILTI) and Foreign Derived Intangible Income (FDII) if the income was included in the taxpayer's entire net income for New Jersey Corporation Business Tax purposes. Additionally, GILTI and FDII income is treated the same as for federal purposes. For federal income tax purposes, GILTI and FDII are their own types of business income and are not dividends. Therefore, for New Jersey Corporation Business Tax purposes, GILTI and FDII are not dividends or deemed dividends.

Treaty Exceptions. The treaty exceptions for the related party addbacks of interest and intangible expenses (set forth in N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4) have been amended to add additional requirements. Previously, a taxpayer only needed to establish that the amounts were paid, accrued or incurred by or to related members domiciled in nations with a comprehensive tax treaty with the United States. The taxpayer must also now establish that: 1) the related member was subject to tax in the treaty nation on a tax base that included the amount paid, accrued or incurred, **and** 2) the related member's income received from the transaction was taxed at an effective tax rate equal to or greater than 6 percent.

Qualified Business Income Deduction. No deduction under IRC §199A is allowed for either Corporation Business Tax or Gross Income Tax purposes for tax years beginning after December 31, 2017.

IRC §163(j) Limitation Method. For Corporation Business Tax purposes, the 30% business interest expense deduction limitation set forth under IRC §163(j), applies on a "pro-rata" basis as between the total categories of related party and unrelated party interest. Additional information will be posted to the Division's website as soon as it becomes available.

Research and Development Credit. The New Jersey Research and Development Credit (R&D Credit) is recoupled to the current IRC §41. Previously, the New Jersey R&D Credit was coupled to IRC §41 in effect on June 30, 1992 and was not refundable. In recoupling to the current IRC §41, it was expressly made clear that the New Jersey R&D Credit continued to be non-refundable. In addition, to prevent any unintended consequences by acts of Congress, the law states that no act of Congress terminating the federal credit would terminate the New Jersey R&D Credit. Both of the methods used for calculating the federal corporate income tax credit are now allowable for purposes of calculating the New Jersey R&D Credit.

Miscellaneous Major Changes.

- Taxpayers must addback all income that is exempt under any law of the United States to their entire net income.

- The law adjusts the depreciable basis of assets for certain utility companies.

Penalties and Interest. The law provides that penalties and interest **are not imposed** on the underpayment of tax resulting from the retroactive changes applying to returns filed for tax year 2018. This provision only applies if the payments are made by the first estimated payment due after January 1, 2019.

Effective for tax years ending on and after July 31, 2019 (beginning on or after August 1, 2018 for full 12-month fiscal tax years):

Market Based Sourcing. Under the new market-based sourcing provisions, sourcing for services is based on where the benefit of the service is received, rather than where the service is performed (aka “cost of performance” method).

Alternative Minimum Assessment. The Alternative Minimum Assessment is repealed and a transition conversion credit for unused Alternative Minimum Assessment credits of taxpayers that are members of a combined group provides relief to combined return filers.

Mandatory Combined Reporting. The law mandates combined returns for unitary businesses.

- The law provides a net deferred tax liability deduction for publicly traded corporations that are impacted by the switch to combined reporting, beginning five years after a combined group’s first combined return.
- The law designates the default managerial member, provides options for selecting an alternate manager, and details the various responsibilities of the managerial member.
- The law provides combined return exceptions to the related party addbacks.
- The law provides a method for calculating the entire net income of members of a combined group, and methods for using tax credits and net operating losses.
- New Jersey S corporations that do not elect to be included in a combined group are not considered “taxable members” included on the combined return.
- The minimum tax for each member of a combined group is \$2,000. Taxpayers filing a separate return must continue to calculate the minimum tax as per the statutes and regulations. Minimum tax is never prorated.

Water’s-Edge Default Combined Return. The default combined return filing method is the water’s-edge method. Taxpayers in a unitary business must file a mandatory unitary tax return on a water’s-edge basis. The members included in the water’s-edge group are: 1) 80/20 property and payroll domestic corporations; 2) 80/20 property and payroll foreign corporations; 3) members that earn more than 20% of their income, directly or indirectly, from intangible property or related service activities that are deductible against the income of other members of the combined group; and 4) all members that have nexus with New Jersey pursuant to N.J.S.A. 54:10A-2.

Worldwide or Affiliated Group Combined Return Basis. The law allows taxpayers to elect to file either on a worldwide combined return basis or an affiliated group combined return basis, but not both at the same time.

Included and Excluded Business Entities in a Combined Group. The Division has issued guidance on what business entities are included in a combined group and what business entities are not included in a combined group

Combinable Captive Insurance Companies. Combinable captive insurance companies are no longer exempt from the Corporation Business Tax, but are exempt from the Insurance Premiums Tax. Captive insurance companies that do not meet the definition of a combinable captive insurance company are still subject to Insurance Premiums Tax and the cap imposed under N.J.S.A. 17:47B-12. Combinable captive insurance companies are included in the combined group on a combined return.

Penalties, Interest, and Estimated Payments. In the first tax year that a mandatory combined return is due, penalties or interest **will not be imposed on an underpayment** that results from the change from separate return reporting to mandatory combined return reporting. Any overpayment by a member of the combined group from the prior tax year is credited as an overpayment of the tax owed by the combined group or credited toward future estimated payments by the combined group.

Net Operating Loss Changes. The law also transitions New Jersey net operating losses to a post-allocation method. Prior to the enactment of P.L. 2018, c. 48, New Jersey net operating losses were calculated on a pre-allocation method. The law includes a method for converting outstanding pre-allocation net operating loss carryovers to post-allocation net operating loss carryovers.

Net Operating Losses and Changes in Ownership. The law clarifies that N.J.S.A. 54:10A-4.5 does not apply to members of a combined group filing a New Jersey combined return.

More Information. This document provides a general summary of the major changes. More detailed information on certain topics that affect the Corporation Business Tax Act is forthcoming. Please continue to monitor our website for updates.

Note: A Technical Bulletin is an informational document designed to provide guidance on a topic of interest to taxpayers and describe changes to the law, regulations, or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the tax law or its interpretation 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