



Changes to Corporation Business Tax, Gross Income Tax, and Other Requirements from P.L. 2023, c.96

TB-107 - Issued July 11, 2023 Tax: Corporation Business Tax Gross Income Tax

P.L. 2023, c.96, which was signed into law on July 3, 2023, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax Act (CBT) and Gross Income Tax Act (GIT) and also implements other miscellaneous requirements. This Technical Bulletin summarizes the changes/requirements and categorizes them by effective date. Note: The Division is in the process of revising existing publications, drafting new publications, and updating the regulations and tax forms to incorporate the information summarized below. Please continue to check the website for updates.

Effective for privilege periods ending on and after July 31, 2022:

Changes to the Net Deferred Tax Liability Deduction — While the net deferred tax liability (NDTL) deduction can still be taken for privilege periods beginning on and after January 1, 2023, the allowable deduction amount will be calculated differently than originally legislated. The deduction will be taken over a minimum of 27 group privilege periods but there is no requirement that the periods be consecutive. If an entity cannot use the deduction in a particular group privilege period because of the income limitation in N.J.S.A. 54:10A-4(k)(16)(G), the balance is carried forward for use in a future period but the total amount used in a given period cannot exceed the allowable deduction percentage for that period.

There are two deduction periods: one for group privilege periods beginning on or after January 1, 2023 but before January 1, 2030, and another for group privilege periods beginning on or after January 1, 2030. For the first deduction period (group privilege periods beginning on or after January 1, 2023 but before January 1, 2030), the deduction is limited to one percent of the total NDTL deduction per period for the first seven group privilege periods. For the second deduction period (group privilege periods beginning on or after January 1, 2030), the deduction is limited to five percent of any remaining NDTL deduction per period until fully used. The one percent and five percent amounts are calculated once at the beginning of each deduction period.

Non-U.S. Corporations Claiming Treaty Protection (other than world-wide group members) — 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 any item of income (or loss) excluded or exempted from federal taxable income under the terms of the treaty in entire net income. 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.

Income of Non-U.S. Corporations that are not Members of a World-Wide Group Combined Return — A non-U.S. corporation that is not a member of a world-wide group combined return must include its effectively connected income on its New Jersey return that was reported for federal purposes that is not protected by a tax treaty. Such non-U.S. corporation does not have

to add back world-wide income that was not included for federal purposes. For a non-U.S. corporation that did not file a federal return, the corporation only reports its non-treaty protected U.S. source income that would be effectively connected income had the corporation been conducting a business effectively connected to the U.S. Only the receipts and expenses attributable to such income (loss) amounts are included. For allocation factor purposes, only receipts attributable to effectively connected income of that non-U.S. corporation would be included. This means that any receipts not attributable to effectively connected income are excluded from the allocation factor.

World-Wide Basis and World-Wide Group Defined — P.L. 2023, c.96 added a definition for “world-wide basis” and “world-wide group” for purposes of combined reporting. A *world-wide group* includes all members of the combined group regardless of where they are located or formed. The *world-wide basis* includes all of the income and attributes of such members regardless of whether they file federal returns. The members must include all income regardless of any exemption or exclusion provided by a tax treaty. In the case of a member that is a non-U.S. corporation, the member is allowed to take deductions that are allowable to a U.S. corporation.

Timing of Deduction of New Jersey Qualified Research Expenditures — Taxpayers may deduct the full value of the New Jersey qualified research expenditures in the same year as the New Jersey Research and Development Tax Credit (N.J.S.A. 54:10A-5.24).

Conformance to the Regulations for the Treatment of the IRC §163(j) Limit — N.J.S.A. 54:10A4(k)(2)(K) was amended to codify by statute the rules set forth in TB-87(R) and N.J.A.C. 18:75.22.

Clarification of Net Operating Loss Adjustments —P.L. 2023, c.96 clarified the Director’s ability to make adjustments to net operating losses for closed years, but limited the ability to make adjustments to 10 years after the return was filed.

Effective for tax years beginning on and after January 1, 2023:

Gross Income Tax (business receipts) and Corporation Business Tax Sourcing Uniformity — P.L. 2023, c.96 prospectively mandates that the sourcing rules for business receipts (not individual taxpayer’s compensation) for Gross Income Tax (GIT) purposes will follow the Corporation Business Tax (CBT) sourcing rules. Thus, if a taxpayer that is subject to the GIT Act engages in a trade or business (regardless of business form) or is a partner in a partnership or shareholder of an S corporation that conducts business operations partly inside and partly outside New Jersey, and the portion of the New Jersey income cannot readily or accurately be ascertained, the income must be sourced in a manner consistent with the provisions of N.J.S.A. 54:10A-6 through N.J.S.A. 54:10A-10.

The result is that for GIT purposes business receipts, other than the individual taxpayer’s compensation as an employee, are sourced using a single sales factor formula (instead of the historic three-factor formula) and service receipts are sourced using market sourcing rules (instead of cost of performance rules). N.J.S.A. 54:10A-6.1 applies when determining whether business income is operational income and allocated or non-operational income and specifically assigned. Additionally, this also means that the Director may exercise Section 8 Relief on

business income for GIT purposes (N.J.S.A. 54:10A-8) in the same manner as is done for CBT purposes on a case-by-case basis. Please continue to check the Division's website as we will be posting information on tax sourcing of receipts from business income as soon as it becomes available. The Business Allocation Schedule (Form NJ-NRA) will also be updated for tax year 2023. For more information on the CBT sourcing rules, see N.J.A.C. 18:7-7.1 through N.J.A.C. 18:7-10.1.

Effective for privilege periods ending on and after July 31, 2023:

Clarification of Deriving Receipts for Corporation Business Tax Nexus Purposes — P.L. 2023, c.96 adopts a bright-line threshold for economic nexus. For privilege periods ending on and after July 31, 2023, a non-New Jersey corporation will be deemed to have substantial nexus if it derives New Jersey receipts in excess of \$100,000 or has 200 or more separate transactions delivered to customers in this State during the corporation's taxable year (in accordance with N.J.S.A. 54:10A-6). This is in addition to the other ways a corporation may have nexus with the State. For more information on nexus, see N.J.A.C. 18:7-1.6 through 1.25. The Division will be posting additional information on this topic. Please continue to check the website for updates.

Finnigan Method Required for all Combined Groups — All combined groups are required to use the *Finnigan Method* for sourcing receipts. A combined group is treated as one taxpayer for purposes of sourcing the unitary receipts the combined group. Therefore, the numerator of the New Jersey allocation factor is based on all of the combined group members' New Jersey receipts.

Changes to the Treatment of GILTI and the I.R.C. §250 Deduction — N.J.S.A. 54:10A-4.15 was repealed. GILTI income is prospectively treated as a dividend and may be excluded as set forth in N.J.S.A. 54:10A-4(k)(5) or may be eliminated under N.J.S.A. 54:10A-4.6.d. The I.R.C. §250 deductions for GILTI and FDII are no longer allowed. Publications that contain existing information on this topic will be updated and new information will be posted. Please continue to check the website for updates.

Changes to Calculating Taxable Net Income — For all taxpayers, for purposes of computing taxable net income, as prescribed by N.J.S.A. 54:10A-4(w), the I.R.C. §172(a)(2) limitation applies to net operating losses calculated pursuant to N.J.S.A. 54:10A-4(v) and N.J.S.A. 54:10A-4.6(h). For a combined group, the I.R.C. §172(a)(2) limitation applies at the combined group level. Additionally, when computing the total taxable net income for a combined group, the combined group must first add the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group before subtracting the prior net operating loss conversion carryforwards and the net operating losses.

Changes to the Net Operating Loss Sharing Rules for Combined Groups — Under N.J.S.A. 54:10A-4.6(g), the remaining unused unexpired prior net operating loss conversion carryovers ("PNOLS") of combined group members have been pooled into a prior net operating loss conversion carryovers pool for the combined group. Under, N.J.S.A. 54:10A-4.6(h), the net operating loss carryovers of combined group members have been pooled into a net operating loss carryover pool for the combined group. The prior net operating loss conversion carryover pool and net operating loss carryover pool are separate pools.

Changes to the Historic Ordering of Certain Exclusions and Deductions— The dividend exclusion (DRD) and international banking facility deduction (IBF) are now calculated preallocation. The prior net operating loss conversion carryover deduction and net operating losses/net operating loss carryovers are calculated post-allocation. The historic limitation (preventing the DRD and IBF from increasing net operating losses) is no longer applicable.

Changes to the Dividend Exclusion (DRD) — This exclusion applies after the State additions but before the State deductions to entire net income and before the allocation of entire net income. Dividends (and deemed dividends) from 80 percent or more owned separate entity subsidiaries are 100 percent excluded. Dividends (and deemed dividends) from more than 50 percent but less than 80 percent owned separate entity subsidiaries are 50 percent excluded. However, for purposes of the exclusion, N.J.S.A. 54:10A-4(k)(5)(F)(ii) has a claw-back provision that requires the exclusion to be reduced by 5 percent of all dividends (and deemed dividends) received by the taxpayer during the privilege period. Dividends and deemed dividends distributed between combined group members that are included in the same New Jersey combined return are eliminated. The claw-back provision does not apply to intercompany dividend (and deemed dividend) transactions between members of the same group filing a New Jersey combined return.

New Entities Included as Members of the Combined Group — P.L. 2023, c.96 requires real estate investment trusts, investment companies, and regulated investment companies that meet statutorily enumerated definitions of a “captive” to be included as members of the combined group and taxed as C corporations, which means disallowing the benefits provided to those entities including the special apportionment treatment prescribed under N.J.S.A. 54:10A5(d) and deductions that would be allowed under the Internal Revenue Code only for those classes of entities. **Note:** Real estate investment trusts, investment companies, and regulated investment companies of which at least 50 percent of the shares, by vote or value, are owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed \$15 billion or that otherwise do not meet the definition of a captive real estate investment trust, investment company, or regulated investment company are still excluded from the combined group and are not subject to these changes.

Additional Clarity for Corporation Business Tax Due Dates — P.L. 2023, c.96 clarifies that the due date of the New Jersey return is the 15th day of the month following the month of the original due date of the federal return (or the 15th day of the month following the month of the extended due date of the federal return in the case of a taxpayer that received an extension for federal purposes) for the close of the taxpayer’s privilege period, or part thereof.

Changes to the Water’s-Edge Group — P.L. 2023, c.96 amends the categories for determining when an entity is included as a member of water’s-edge group to clarify that the second inclusion category/prong is applicable to non-U.S. corporations. Additionally the law replaces the fourth inclusion category/prong, which had required corporations with New Jersey income and nexus to be included in the water’s-edge group (N.J.S.A. 54:10A-4.11.a(4)) with a new category (N.J.S.A. 54:10A-4.11.a(5)) requiring that all other corporations not included in the other three inclusion categories/prongs are required to be included as a member of the water’s-edge group if the corporations have effectively connected income (or loss) with the U.S. Such member that is included as a result of the new inclusion category/prong is included in the

combined group only to the extent of its effectively connected income or loss with the U.S. taking into account items of expense and allocation factors associated with such effectively connected income or loss, and not taking into account the amounts that are not attributable to the U.S. effectively connected income or loss.

Unitary Partnerships and the Nonresident Partner Partnership Withholding — P.L. 2023, c.96 clarifies that unitary partnerships are exempt from paying the portion of the partnership withholding tax (N.J.S.A. 54:10A-15.11) that is directly or indirectly (in the case of a tiered partnership) attributable to the member of the combined group that is a corporate partner in the unitary partnership. The amount exempt from the withholding attributable to the member is based on the member’s distributive share of partnership income as a partner in the unitary partnership.

Definition of Unitary Business Amended — P.L. 2023, c.96 expands the definition of unitary business to include business entities under common ownership that are: “sufficiently interdependent, integrated, **or** interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts.” Thus, for privilege periods ending on and after July 31, 2023, additional entities may be unitary and required to be included as a member of the combined group. However, this amendment does not change the fact that a unitary business determination requires a qualitative and quantitative analysis based on the facts and circumstances of the business entities.

Change in Duration of the Managerial Member — P.L. 2023, c.96 changes the term that a member is required to serve as a managerial member from 10 privilege periods to six privilege periods (current privilege period plus the successive five privilege periods).

Increase in Installment Payment Safe Harbor Amounts — P.L. 2023, c.96 increases the installment payment safe harbor in N.J.S.A. 54:10A-15.2 from \$500 to \$1,500. Additionally, the law sets forth the safe harbor amount for combined groups by applying the \$1,500 amount by taxable member in the aggregate. For example, if a combined group had three taxable members, the safe harbor amount would equal \$4,500.

Installment Payment Underpayment Date Change — P.L. 2023, c.96 changes the underpayment date in N.J.S.A. 54:10A-15.4 to coincide with the same month as the due date of the New Jersey Corporation Business Tax returns to the 15th day of the 5th month after the close of the fiscal or calendar accounting year (i.e., 15th day of the month following the month of the original due date of the federal return). P.L. 2023, c.96 also provides that a taxpayer may petition the Director of the Division of Taxation to have such penalties and interest waived due to undue hardship, good cause shown, or other reasons as may be provided for waiving penalties and interest in the State Tax Uniform Procedure Law, R.S.54:48-1 et seq.

Related Party Addbacks No Longer Applicable — The statutory amendments sunset the related party addback statutes (N.J.S.A. 54:10A-4(k)(2)(I) and N.J.S.A. 54:10A-4.4).

Clarification on Late Filing Penalties — The statutory amendments made technical clarifications to the words in N.J.S.A. 54:49-4, but did not change the meaning or application of the statute.

Estimated Payment Relief — For Corporation Business Tax and Gross Income Tax taxpayers impacted by the statutory amendments, no penalties or interest shall accrue for underpayment of tax as a result of the provisions of P.L. 2023, c.96 applying to privilege periods ending on or after July 31, 2023 (that began on January 1, 2023 in the case of Gross Income Tax taxpayers), but ending before January 1, 2024, that create an additional tax liability as a result of the statutory amendments. However, the additional estimated payments shall be made by the later of the second next estimated payment due date subsequent to the enactment of P.L. 2023 c.96 or the second estimated payment due date after January 1, 2024.

Please continue to monitor the Division’s website as more information will be posted as it becomes available.

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.