



TB-108 - Issued September 5, 2023
Tax: Corporation Business 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 it also implements other miscellaneous requirements. The law enacted a bright-line economic nexus standard. This Technical Bulletin provides general guidelines for determining whether the activities of a corporation create nexus with New Jersey for the purposes of imposing the Corporation Business Tax for privilege periods ending on and after July 31, 2023.

Note: For information on nexus for privilege periods ending **before** July 31, 2023, see [TB-79\(R\)](#).

Corporation Business Tax Nexus

The New Jersey Corporation Business Tax Act requires every domestic or foreign corporation to pay an annual franchise tax for having or exercising its corporate franchise in this State or for the following privileges:

1. Existing under the laws of this State; or
2. In the case of a foreign corporation:
 - i. Holding a general Certificate of Authority to do business in this State issued by the Division of Revenue and Enterprise Services;
 - ii. Holding a certificate, license, or other authorization issued by any other State department or agency, authorizing the company to engage in corporate activity within this State;
 - iii. Doing business in this State;
 - iv. Employing or owning capital in this State;
 - v. Employing or owning property in this State;
 - vi. Maintaining an office in this State;
 - vii. Deriving receipts from sources within this State that meet the thresholds for [bright-line economic nexus](#);
 - viii. Engaging in contacts within this State; or
 - ix. Maintaining a stock of goods in New Jersey and making deliveries to customers from such stock.

In determining whether a corporation is **doing business** in New Jersey, consideration is given to such factors as:

1. The nature and extent of the activities of the corporation in New Jersey;
2. The location of its offices and other places of business;
3. The continuity, frequency, and regularity of the activities of the corporation in New Jersey;
4. The employment in New Jersey of agents, officers, and employees;

5. The location of the actual seat of management or control of the corporation.

Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization within the State shall be deemed to be "doing business" for the purposes of the Corporation Business Tax Act. In determining whether a corporation is "doing business," it is immaterial whether its activities result in a profit or a loss.

A taxpayer exercising its franchise in this State is subject to taxation if the taxpayer's business activity in this State is sufficient to give New Jersey jurisdiction to impose the tax under the Constitution and statutes of the United States.

A foreign corporation that falls into any of the taxable categories is subject to the Corporation Business Tax, regardless of whether the business is wholly or partly in interstate commerce. A financial business corporation, banking corporation, credit card company, or similar business that has its commercial domicile in another state is subject to Corporation Business Tax in New Jersey if it obtains or solicits business or derives receipts from sources within this State during the year.

A foreign corporation will not be deemed to be doing business or employing or owning capital or property in this State for the purposes of the Act by reason of the following:

1. The maintenance of cash balances with banks or trust companies in New Jersey;
2. The ownership of shares of stock or securities kept in New Jersey in a safe deposit box, safe, vault, or other receptacle rented for the purpose, or pledged as collateral security, or deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts;
3. The taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation; and
4. Any combination of the foregoing activities.

Bright-Line Economic Nexus

Section 6 of P.L. 2023, c.96, provides a bright-line economic nexus standard. In addition to the existing rules for determining nexus, a business is deemed to have substantial nexus and is subject to the taxes imposed under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) if:

- (1) The corporation derives receipts from sources within this State, pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.45:10A-10), in excess of \$100,000 during the corporation's fiscal or calendar year; or
- (2) The corporation has 200 or more separate transactions delivered to customers in this State during the corporation's fiscal or calendar year. For the purposes of this paragraph, for any transaction that is a service transaction, "delivered to a customer" shall mean where the benefit is received within the meaning of paragraph (4) of subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6).

The economic thresholds apply to any taxpayer subject to the Corporation Business Tax regardless of filing method. A member of a combined group is a taxable member if they meet

the thresholds set forth in Section 6 of P.L. 2023, c. 96. For information on the application to disregarded entities, see Disregarded Entities and Nexus Below.

When determining whether receipts and transactions are sourced to New Jersey for the purposes of Section 6 of P.L. 2023, c. 96, the statute follows sourcing rules prescribed in N.J.S.A. 54:10A-6 through N.J.S.A. 54:10A-10 (see also N.J.A.C. 18:7-8.1 through N.J.A.C. 18:7-8.17). Service receipts and transactions are sourced according to the market based sourcing rules set forth at N.J.A.C. 18:7-8.10A. The rule (N.J.A.C. 18:7-8.12(e)) for determining whether a receipt is integrated in the business is applicable for nexus purposes. The rules for determining whether the business income is operational income (and allocated) or nonoperational income (and specifically assigned) apply. Non-operational income that is specifically assigned to a state other than New Jersey is not a New Jersey receipt. See N.J.S.A. 54:10A-6.1 and N.J.A.C. 18:7-8.17 for more information.

For New Jersey Corporation Business Tax purposes, entire net income and corresponding receipts are linked to federal taxable income and receipts reported for federal purposes. Taxpayers must use the same method of accounting for State tax purposes that they use for federal tax purposes and include such receipts unless there are items that are excluded/exempt for Corporation Business Tax purposes (see N.J.S.A. 54:10A-4(k); N.J.S.A. 54:10A-6; N.J.A.C. 18:7-5.1(b); N.J.A.C. 18:7-5.4 and N.J.S.A. 18:7-8.7(c)). Thus, excluded receipts and transactions do not count for the purposes of determining nexus.

If a corporation does not meet the bright-line economic nexus thresholds, a corporation could still have nexus if it meets any of the other nexus requirements (see N.J.S.A. 54:10A-2; N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.25) or any case law. If a taxpayer did not previously have nexus under N.J.S.A. 54:10A-2, but now does have nexus under Section 6 of P.L. 2023, c. 96, they must file a Corporation Business Tax return and pay the required tax. However, if a taxpayer does not have nexus under any of the statutes, regulations, or case law, then the taxpayer does not have nexus with the State and will not be required to file a Corporation Business Tax return.

For corporate partners that are unitary with a partnership that has New Jersey receipts or transactions with New Jersey customers, the corporate partner will have nexus with New Jersey if the corporate partner's proportionate share of the partnership's activities in New Jersey satisfy the bright-line economic thresholds set forth in Section 6 of P.L. 2023, c. 96. Corporate partners and unitary partnerships use the flow-through method of accounting and the nexus determination is based on the corporate partner's proportionate share of the partnership's activities. For more information on partnership methods of accounting, see N.J.A.C. 18:7-7.6.

Nexus in the Context of Combined Reporting

For purposes of the Corporation Business Tax Act, the combined group and the members of the combined group are both taxpayers pursuant to N.J.S.A. 54:10A-4(h) and the combined group is taxed as one taxpayer. A member of a combined group may have nexus with New Jersey by deriving New Jersey receipts from the unitary business or may have nexus independent of the combined group. Such member is a taxable member of the combined group.

For privilege periods ending on and after July 31, 2023, a member may also be a taxable member if the corporation is deriving receipts from sources within this State that meet the threshold for bright-line economic nexus (see N.J.S.A. 54:10A-6). This remains true whether such

receipts are the member's own receipts or are receipts derived from intercompany transactions with other members of the combined group regardless of whether the receipts are eliminated.

For privilege periods ending on and after July 31, 2023, all combined groups must use the *Finnigan* method to allocate receipts. Thus, the New Jersey receipts of all the members of the combined group that were not eliminated pursuant to N.J.S.A. 54:10A-4.7.c must be included in the numerator.

Nexus and Tax Treaties

With the exception of tax returns filed using the world-wide group filing method, New Jersey follows federal tax treaties. Non-U.S. corporations that are members of a world-wide group combined return must include their treaty protected income (or loss) and are taxable members if they have nexus with New Jersey. For all other filers, income that is exempt from federal tax under a U.S. treaty with a foreign country will be exempt from New Jersey Corporation Business Tax. A non-U.S. corporation with tax treaty protection, that is a member of a water's-edge combined group or an affiliated group, will be a taxable member if it has nexus with New Jersey, although the items of treaty protected income (or loss) is excluded from the income of the combined group. If a non-U.S. corporation, that is a separate return filer, has nexus with New Jersey and all of its income (or loss) are protected by a tax treaty, the corporation is still required to file a return and pay the Corporation Business Tax minimum tax.

Disregarded Entities and Nexus

A business entity that is treated as a disregarded entity for federal income tax purposes is also treated as a disregarded entity for New Jersey Corporation Business Tax purposes pursuant to N.J.S.A. 42:2C-92. Disregarded entities also include legal partnerships that are disregarded entities for federal purposes. The attributes and activities of a disregarded entity are treated as that of the owner's and are included in the attributes activities of the owner for both federal tax purposes and New Jersey Corporation Business Tax purposes. Thus, when evaluating whether a taxpayer has nexus with New Jersey, the attributes and activities of the disregarded entity are included as the taxpayer's attributes and activities for determining whether the taxpayer has nexus.

Public Law 86-272

The Federal Interstate Income Act, Title 15 U.S.C.A. Section 381, "Public Law 86-272," prohibits a state from imposing a net income based tax on income of a foreign corporation earned within its borders from interstate commerce, if the corporation's only business activity within the state consists of the solicitation of orders by the corporation or its representatives of tangible personal property, the orders are sent outside the state for approval and, if approved, are filled by shipment or delivery from a point outside the state. In order for the in-State activities of the foreign corporation to meet the PL 86-272 standard, the activities must either be limited solely to speech or conduct that invites an order OR be ancillary activities related to the requests for an order.

Note: P.L. 86-272 does not apply to services or intangible personal property.

Sales and activities involving financial products, financial instruments, and financial services are not P.L. 86-272 protected because they are not tangible personal property. Thus, if a financial

business corporation, banking corporation, credit card company, or similar business has nexus with New Jersey, the taxpayer is subject to Corporation Business Tax in this State based on or measured by income.

Note: The offering, soliciting, selling, accepting, or buying of digital assets such as virtual currency or non-fungible tokens (NFTs) and/or offering of services pertaining to them is the offering and selling of financial products, financial instruments, and financial services and is not P.L. 86-272 protected.

A foreign corporation that conducts business activity in New Jersey that exceeds the protection of Public Law 86-272 is subject to the Corporation Business Tax as measured by the net income of the corporation. Even though a corporation's activities may be protected by Public Law 86-272, if it is registered or otherwise has nexus in New Jersey, it is subject to the Corporation Business Tax minimum tax and must file a Corporation Business Tax return.

Independent contractors may solicit or make sales or maintain an office without subjecting a company to liability for Corporation Business Tax based on or measured by income. Sales representatives who represent a single principal are not considered independent contractors. A corporation is subject to an income-based tax if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

Combined Groups. As all combined groups are now required to use the *Finnigan method*, the combined group cannot claim P.L. 86-272 protection if one of the members either has activities that are not protected by P.L. 86-272 or that exceed the protections of P.L. 86-272.

In-State activities by a corporation that EXCEED the protections of Public Law 86-272 include, but are not limited to:

1. Repairs, maintenance, and installations;
2. Collection or repossession activities;
3. Credit investigations;
4. Conducting training courses, seminars, or lectures for personnel (other than for personnel involved only in solicitation);
5. Providing technical assistance;
6. Resolving customer complaints for a purpose other than to ingratiate sales personnel with the customer;
7. Approving or accepting orders or securing deposits on sales;
8. Acquiring personnel for purposes other than solicitation activities;
9. Maintaining a display at a single location within New Jersey in excess of two weeks during the tax year;
10. Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;
11. Picking up or replacing damaged or returned property;

12. Owning, leasing, or maintaining in-State facilities such as a warehouse or telephone answering service;
13. Consigning tangible personal property;
14. Soliciting credit cards and other financial products and services to New Jersey customers;
15. The offering, soliciting, selling, accepting, or buying of digital assets such as virtual currency or non-fungible tokens (NFTs) and/or the offering of services pertaining to them is the offering and selling of financial products, financial instruments, and financial services and is not P.L. 86-272 protected;
16. Offering, selling, providing maintenance, or performing such duties under a warranty or extended warranty service contract for the performance of services under the contract through any means, whether in person or through the internet;
17. Contracting with a marketplace facilitator to facilitate the sale of the taxpayer's products on the facilitator's online marketplace where the marketplace facilitator maintains the corporation's products at fulfillment centers in this State;
18. Transmitting code or electronic instructions through the internet to repair or upgrade products as part of a service subscription purchased by the customer or as part of a warranty (or extended warranty) service contract purchased by the customer;
19. Placing software or ancillary data (e.g., apps or "internet cookies") on computers and devices in New Jersey to gather market or product research that is packaged and sold to data-brokers or other third parties;
20. Selling internet advertising services to New Jersey business customers where the taxpayer provides targeted advertising to specific New Jersey individuals using information the taxpayer mined from software or ancillary data (e.g., apps or "internet cookies") that was placed on computers and devices in New Jersey by the taxpayer on individuals' devices;
21. Providing certain types of post-sales assistance through an electronic chat, email, or application that customers access through the company's website. Some examples include but are not limited to: chat rooms for troubleshooting problems, complaint resolution, or an internet help desk for technical support whereby the customer can talk to a service representative who may conduct repair services remotely;
22. Contracting with in-State customers to stream (but not download) videos and music to electronic devices;
23. Contracting with in-State customers for subscription services;
24. Contracting with in-State customers to provide business services such a quality control, manufacturing production line maintenance, research and development, product design, logistics, regulatory, and/or other types of services through the internet-connected devices, computers, and/or machines, whereby the application is installed on the customer's devices, computers, and/or machines that functions through the internet connection between the customer and the taxpayer, where the services are conducted on the taxpayer's computers and the data is transmitted back to the customer's devices, computers, and/or machines based on information received from the customer's in-State devices, computers, and/or machines.

25. Inviting and/or accepting applications for employment through an internet-based platform that are not specifically targeted to in-State residents or for in-State job positions other than for sales positions.

In-State activities by a corporation that DO NOT EXCEED the protections of Public Law 86-272 include, but are not limited to:

1. Soliciting through advertising;
2. Carrying samples and promotional materials for display or distribution without charge;
3. Providing vehicles to sales personnel for their use in conducting protected activities, regardless of whether the vehicle is owned or leased and/or registered (or not) in New Jersey;
4. Checking customer inventories without charge;
5. Maintaining a display at a single location for less than two weeks during the tax year;
6. Recruiting, training, or evaluation of sales personnel;
7. Soliciting orders from an in-State sales employee's in-home work space that is not paid for by the company;
8. Mediating customer complaints in order to ingratiate sales personnel with the customer;
9. Posting frequently asked questions (FAQs) on a webpage to assist customers or potential customers;
10. Placing software or ancillary data (e.g., apps or "internet cookies") on computers and devices in New Jersey that are ancillary to the solicitation of orders that are **neither** sold to data-brokers or other third parties **nor** used for the purposes of gathering data to sell services to business customers of the taxpayer;
11. Offering only tangible personal property for sale on a website that enables customers to search for items, read product descriptions, select items for purchase, choose delivery options, and pay for the items without having the taxpayer engage in any other in-State business activities or any of the activities that pierce the taxpayer's P.L. 86-272 protection;
12. Accepting electronic payment using a credit card or another electronic payment method (e.g., Bitpay, Paypal, Venmo, or Zelle) for the purchase of tangible personal property on the taxpayer's online store, but not when the taxpayer receives a digital asset as payment and resells it as part of the taxpayer's business to in-State customers;
13. Inviting and/or accepting applications for employment through an internet-based platform if the only positions being offered in State for are sales jobs where the employee only conducts a solicitation function and non-solicitation job positions in State are not being offered.

Note: A corporation that does not exceed the protections of Public Law 86-272 is not subject to the income component of the New Jersey Corporation Business Tax, however, it is still subject to the statutory minimum tax.

Voluntary Disclosure Program

Taxpayers who discover they have business activities that create nexus for New Jersey tax purposes are encouraged to voluntarily register and bring their accounts into compliance by disclosing past tax liabilities. Information about the State's [Voluntary Disclosure Program](#) is available on the Division's website.

More Information

General information about [Corporation Business Tax](#) and [Changes to the Corporation Business Tax Act](#) is available online.

See [N.J.A.C. 18:7-1.6](#) through 1.25 for the nexus regulations.

For information on nexus for privilege periods ending **before** July 31, 2023, see [TB-79\(R\)](#).

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.