



# Changes and Corrections to the Corporation Business Tax and Other Taxes/Fees Pursuant to P.L. 2020, C. 118

**TB-97 - Issued December 14, 2020**

**Tax: Corporation Business Tax**

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 (CBT). This Technical Bulletin summarizes the changes and categorizes them by effective date. There will be more detailed explanations for various topics at a later point.

## **Effective for privilege periods ending on and after July 31, 2019:**

**Definition of Taxpayer.** The law clarified that a combined group is considered one taxpayer. This impacts various aspects of the Corporation Business Tax that will be discussed in further detail in subsequent technical bulletins.

**Definition of Affiliated Group.** Chapter 118 clarified and simplified the definition of an affiliated group for purposes of the affiliated group combined return election method. The result is that instead of having to file multiple combined returns, one combined return is filed for the entire affiliated group if the affiliated group election is made and contains the true U.S. footprint of the group's U.S. operations. The Division is aware that this may affect a combined group's filing method decision, and we will be issuing a notice to address this issue shortly. Continue to check our [website](#) for information.

Note: Only in extremely rare situations where there is a non-U.S. corporation that does not file federal returns but has nexus with New Jersey would a non-U.S. corporation have to file a separate return, otherwise no other returns would have to be filed.

**Included and Excluded Entities.** The law clarified and corrected the definitions of member, non-taxable member, and taxable member. This is in line with the Division's policy stated in [TB-86\(R\)](#) that exempt corporations are not members of a combined group, and that a New Jersey S corporation is only included as a taxable member if it elects to be included as a member. New Jersey S corporations that elect to be part of a combined return are taxed at the same rate as the other members of the combined group.

**Dividend Exclusion.** Chapter 118 clarified various aspects of the dividend exclusion at various intervals. In conjunction with the definition of a taxpayer being expanded to include a combined group, the dividend exclusion is now applied at the group level. This retroactively rectifies the "trapped dividend exclusion scenario" for certain members of the combined group. See [Notice: CBT-100U Schedule R](#) for more information.

**Combined Group Income Computation Issues.** P.L. 2020, c. 118, made various corrections and clarifications to [N.J.S.A. 54:10A-4.6](#), as follows:

*Net Operating Loss (NOL).* The law clarifies that a taxable member of a combined group can take its portion of the group's NOLs if it leaves the combined group.

*Federal Consolidated Return Regulations and Principles.* The law makes clear that the federal consolidated return regulations and principles apply to combined groups to the extent consistent with the CBT, the unitary business principal, and combined reporting.

*Federal Consolidated Return NOLs.* The law extends the federal rules and regulations governing federal consolidated return net operating losses and net operating loss carryovers for purposes of

New Jersey combined group NOLs as though the combined group filed a federal consolidated return to the extent that the federal rules are consistent with the CBT.

*International Banking Facility (IBF) Deduction.* The law clarifies the treatment of the IBF deduction if a combined group includes a banking corporation that is eligible for the deduction.

*Elective Combined Group Filing Methods.* The law clarifies the applicability of N.J.S.A. 54:10A-4.6 to affiliated group returns and world-wide group returns.

*Prior Net Operating Loss (PNOL).* The law provides the ability of a member of a combined group to sell its PNOL carryovers to other members of the combined group as long as they are otherwise eligible to do so under N.J.S.A. 34:1B-7.42a. This is an exception to the general historic rule prohibiting affiliate sales under that program. However, the sale of PNOL carryovers must be made at an arm's-length price as though the sale was to an unrelated taxpayer.

**Alternative Minimum Assessment (AMA) Credit.** Chapter 118 clarifies and corrects the application of N.J.S.A. 54:10A-4.9 to ensure that taxpayers can utilize the credit to offset the combined group's tax liability.

**Minimum Tax.** The law clarifies that the application of the minimum tax is \$2,000 per taxable member of a combined group.

**Tax Base.** P.L.2020, c.118 law clarifies and corrects various aspects of the tax base for combined groups, separate return filers, real estate investment trusts, and investment companies consistent with the Corporation Business Tax returns for computing the tax base for various taxpayers.

**Note on Filing Methods:** The Division will be issuing guidance for taxpayers that want to prospectively revise their combined return filing method option as a result of the law changes. Continue to monitor the web site for updates.

## **Effective for privilege periods ending on and after July 31, 2020:**

**Tax Rates.** The law was amended to treat the entire combined group as one taxpayer, thus the regular tax rate will be imposed at the group level instead of entity by entity.

Note: The \$2,000 minimum tax is imposed on taxable members of the combined group.

**Surtax.** Under Chapter 118, the 2.5% surtax is calculated using the combined group's allocated taxable income. The law also clarifies that any income from a member that is attributable to public utility income is exempt from the surtax. The surtax additionally applies to the taxable net income from a member's independent business activities as applicable.

**Dividend Exclusion Changes.** The law revised the dividend exclusion application method for combined groups, and now treats the combined group as one taxpayer for the purposes of the exclusion. The law also replaced the tiered dividend exclusion with a Tiered Subsidiary Dividend Pyramid Tax Credit (which treats a combined group as one taxpayer).

**Copy of Federal Return Mandatory.** The law mandates that a taxpayer's federal return or pertinent extracts of the federal return be included as part of a full and complete New Jersey CBT return.

**Due Dates.** The law changed the original due date of the Corporation Business Tax returns to 30 days after the due date of the federal return. For administrative purposes, the Division will use the 15th day of the month following the federal due date unless that results in less than 30 days for a filing window. This means a return for a calendar year taxpayer that files Form CBT-100, Form CBT-100U, or Form BFC-1 is due May 17, 2021 (this date includes adjustments for the Division's administrative policy and the due date

falling on a weekend). If a taxpayer files for a six-month extension of time to file, the extended due date is in November. New Jersey S corporation returns are also due 30 days after the due date of the federal return. However, since federal S corporation returns are due by the 15th day of the third month following the end of their tax year, the return for a New Jersey calendar year filer is 30 days after their federal return, which is April 14, 2021, but will be treated as April 15, 2021, under the Division's administrative procedure.

Note: While the law changed tax return due dates, the due dates for estimated payments are unaffected by the law. Taxpayers that are required to make estimated payments must still submit such payments on or before the 15th day of the fourth, sixth, ninth, and 12th months.

**Banking Corporations.** The law mandates the transition to reporting of income for Banking Corporations in the same manner as other taxpayers for any banking corporations that have not already transitioned their income reporting to align with their combined group (per [TB-91](#)). In addition, separate return banking corporations that file on a fiscal basis for federal purposes also have the option to transition to a fiscal filing period for filing their New Jersey Corporation Business Tax returns when transitioning to regular reporting.

## **Effective for privilege periods beginning on and after Jan. 1, 2020:**

**New Jersey Research and Development (R&D) Credit.** The law extends the applicability of the New Jersey R&D tax credit to qualified research expenditures that had been used for the federal qualified small business R&D payroll tax credit. Chapter 118 also clarifies the treatment of energy research for the purposes of the New Jersey R&D tax credit in line with the Division's position that such research qualifies for the New Jersey R&D tax credit.

**Federal Net Operating Loss Rules.** The law extends the application of various aspects of the federal net operating loss rules to separate return and combined return filers to the extent that the federal rules are consistent with the New Jersey Corporation Business Act. For example, the New Jersey net operating loss statutes only allow a 20-year carryforward and do not allow carrybacks, thus neither the federal unlimited duration of NOLs nor the carryback provisions of the federal rules would not apply.

Note: The New Jersey Corporation Business Tax NOL-DRD ordering rules still apply and were **not** affected by the law changes.

## **Effective for privilege periods ending on and after Nov. 4, 2020:**

**Treatment of Net Operating Losses in Mergers and Acquisitions.** The law simplifies the treatment of net operating losses, net operating loss carryovers, and PNOLs in a merger and acquisition context where the parties to the merger and acquisition will be part of a combined group filing a combined return within one group privilege period subsequent to the merger. In addition the law provides a special simplified procedure if there is a regulatory delay of the merger and acquisition approval process by federal or state authorities (other than the Division of Taxation).

## **Effective for Certain Transfers Entered into on and after Jan. 1, 2021:**

**Realty Transfer Fees.** P.L.2020, c.118 exempts intercompany transfers between combined group members that are part of the unitary business of the combined group for the purposes of the grantor and grantee Realty Transfer Fees.

**Controlling Interest Transfer Tax.** Chapter 118 exempts intercompany transfers between combined group members that are part of the unitary business of the combined group for the purposes of the Controlling Interest Transfer Tax.

**Bulk Sales.** The law exempts intercompany transfers between combined group members that are part of the unitary business of the combined group from the Bulk Sales Notice Withholding Requirements.

## **Other Miscellaneous Changes:**

**Emerging Technology and Biotechnology Companies.** The benefit transfer program was updated under the new law to cite to the PNOL and NOL statutes. Further, the Chapter Law allows combined group members to sell both NOL and PNOL carryovers at arm's-length to each other as part of the program.

**Penalty Relief.** There will be no penalties or interest assessed on underpayments resulting from the enactment of this law if the taxpayer's first privilege period ended on and after July 31, 2020, and began before January 1, 2020, provided that the payments are made by the second next estimated payment due date after January 1, 2021.

**Administrative Procedure Change.** Under the law, a managerial member of a combined group is required to notify the Division when a member of the combined group leaves (e.g., dissolves, mergers, withdraws, etc.) or if a new member joins the group. The law repealed the 90-day notice requirement in N.J.S.A. 54:10A-4.10(h) and replaced it with a simplified process.

**Administration of the Corporation Business Tax.** The law mandates the creation of a simplified standardized return for privilege periods ending on and after July 31, 2021. Combined groups, banking corporations, financial business corporations, and separate return filers will use the new standardized return which replaces the CBT-100U, BFC-1, and CBT-100. New Jersey S corporations will continue to use Form CBT-100S. Chapter 118 further requires that returns and schedules be housed in a centralized location on the Division of Taxation's website with appropriate links and access to notices to ensure that practitioners have easy access to CBT forms and information.

**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.