Schedule O - Part I (9-96, R-2)

Computation of Nonoperational Activity Elimination

	Column A FEDERAL	Column B NONOPERATIONAL	Column C OPERATIONAL
1. Gross receipts ____________ Less returns and allowances ____________	1.		1.
2. Cost of goods sold and/or operations	2.		2.
3. Gross Profit - Subtract Line 2 from Line 1.	3.		3.
4. Dividends	4.	4.	4.
5. Interest	5.	5.	5.
6. Gross Rents	6.	6.	6.
7. Gross Royalties	7.	7.	7.
8. Net Capital Gain (attach Federal Schedule D)	8.	8.	8.
9. Net Gain or (Loss) (attach Federal Form 4797)	9.	9.	9.
10. Other Income (attach schedule)	10.	10.	10.
11. TOTAL INCOME - Add Lines 3 through 10	11.	11.	11.
12. Compensation of Officers (Schedule F-1)	12.	12.	12.
13. Salaries and Wages ____________ Less Jobs Credit ____________	13.	13.	13.
14. Repairs	14.	14.	14.
15. Bad Debts	15.	15.	15.
16. Rents	16.	16.	16.
17. Taxes (Schedule H)	17.	17.	17.
18. Interest	18.	18.	18.
19. Contributions	19.	19.	19.
20. Depreciation (attach Federal Form 4562)	20.	20.	20.
21. Less: Depreciation claimed elsewhere	21.	21.	21.
22. Depletion	22.	22.	22.
23. Advertising	23.	23.	23.
24. Pension, Profit-sharing plans, etc.	24.	24.	24.
25. Employee benefit programs	25.	25.	25.
26. Other deductions (attach schedule)	26.	26.	26.
27. TOTAL DEDUCTIONS - Add Lines 12 through 26	27.	27.	27.
28. Taxable Income before Net Operating Loss and Special Deductions (Line 11 Less Line 27)	28.	28.	28.
29(a) Interest from Federal, State, Municipal and other obligations not included in Line 11		29(a)	29(a)
29(b) Expenses from Income in Line 29 above		29(b)	29(b)
30(a) Column B - Net Nonoperational Income (Line 28 plus Line 29(a) minus Line 29(b)) Enter total here and on Page 1, Line 4(a) of the CBT-100 and CBT-100S.		30(a)	
30(b) Column C - Net Operational Income (Line 28 plus Line 29(a) minus Line 29(b))			30(b)
31. Less: Operational Capital Losses no longer offset by a Nonoperational Capital Gain (See Instruction 3(e))		31.( )	
32. Net Statutory Adjustments in Nonoperational Activity (See Instruction 3(f))		32.	
33. Other adjustments. Attach Rider (See Instruction 3(g))		33.	
34. Net Effect of Current Period Nonoperational Activity (Combine lines 30(a), 31, 32 and 33)		34.	
35. Recapture of Prior Period Nonoperational Expenses (See Instruction 3(i))		35.	
36. Adjustment required to eliminate effect of Nonoperational Activity (Line 34 plus 35). Carry to Schedule A, Line 33(d) of Form CBT-100 or Line 36(b) of Form CBT-100S.		36.	

Schedule O - Part II   Nonoperational Asset Declaration and/or Reclassification

(9-96, R-2)

1.	Prior years' net nonoperational assets acquired				1.	
2.	Current year's nonoperational assets acquired			N.J. Nexus		
	Description	Date Acquired	Federal Basis	Yes	No	
	1.			☐	☐	
	2.			☐	☐	
	3.			☐	☐	
	4.			☐	☐	
	5.			☐	☐	
	6.			☐	☐	
	7.			☐	☐	
	8.			☐	☐	
	9.			☐	☐	
	10.			☐	☐	
	11.			☐	☐	
	12.			☐	☐	
	13.			☐	☐	
	14.			☐	☐	
	15.			☐	☐	
	Total Current Year Acquisitions		2.			
3.	Current year's disposition of CURRENT years' purchases		3.			
4.	Net current year's acquisitions (Line 2 less Line 3)				4.	
5.	Current year's disposition of PRIOR years purchases				5.	
6.	TOTAL NONOPERATIONAL ASSETS - (Line 1 plus Line 4 minus Line 5)				6.	

(1) Have you made a claim to any other taxing jurisdiction with respect to currently held assets (whether or not included above) that nonoperational, nonunitary, or nonbusiness income was derived therefrom? . . . . ☐ Yes ☐ No

If yes, identify by asset the income, states, and years involved.

a ____

b ____

c ____

(2) Are there or were there liabilities or expenses related to the nonoperational assets declared above? . . . . ☐ Yes ☐ No

If yes, specify by asset the expenses and liabilities below for all years since acquisition.

a ____

b ____

c ____

(3) Have assets considered operating in nature in prior periods been reclassified during this reporting period as nonoperating? . . . . ☐ Yes ☐ No

If yes, on a separate rider identify all expenses, by year, previously deducted in prior years. The aggregate total of all years expenses must be recaptured and included in Entire Net Income in this reporting period. (Schedule O - Part I, Line 35).

Schedule O - Part III **Computation of Tax Due on Nonoperational Activity**

(9-96, R-2)

	ACTIVITY ____	ACTIVITY ____	TOTAL
1. Gross receipts ____ Less returns and allowances ____	1.	1.	1.
2. Cost of goods sold and/or operations	2.	2.	2.
3. Gross Profit - Subtract Line 2 from Line 1.	3.	3.	3.
4. Dividends	4.	4.	4.
5. Interest	5.	5.	5.
6. Gross Rents	6.	6.	6.
7. Gross Royalties	7.	7.	7.
8. Net Capital Gain (attach Federal Schedule D)	8.	8.	8.
9. Net Gain or (Loss) (attach Federal Form 4797)	9.	9.	9.
10. Other Income (attach schedule)	10.	10.	10.
11. TOTAL INCOME - Add Lines 3 through 10	11.	11.	11.
12. Compensation of Officers (Schedule F-1)	12.	12.	12.
13. Salaries and Wages ____ Less Jobs Credit ____	13.	13.	13.
14. Repairs	14.	14.	14.
15. Bad Debts	15.	15.	15.
16. Rents	16.	16.	16.
17. Taxes (Schedule H)	17.	17.	17.
18. Interest	18.	18.	18.
19. Contributions	19.	19.	19.
20. Depreciation (attach Federal Form 4562)	20.	20.	20.
21. Less: Depreciation claimed elsewhere	21.	21.	21.
22. Depletion	22.	22.	22.
23. Advertising	23.	23.	23.
24. Pension, Profit-sharing plans, etc.	24.	24.	24.
25. Employee benefit programs	25.	25.	25.
26. Other deductions (attach schedule)	26.	26.	26.
27. TOTAL DEDUCTIONS - Add Lines 12 through 26	27.	27.	27.
28. Net Nonoperational Income before Net Operating Loss and Special Deductions (Line 11 minus Line 27)	28.	28.	28.
29(a) Interest from Federal, State, Municipal and other obligations not included above	29(a)	29(a)	29(a)
29(b) Expenses from Income in Line 29(a) and not included in Line 28 above	29(b)	29(b)	29(b)
30. Net Current Years Nonoperational Income (Line 28 plus Line 29(a) minus Line 29(b))	30.	30.	30.
31. NEW JERSEY'S TAXABLE PORTION - attach schedule of computation (See Instruction 6). Carry total to Line 4(b) of Form CBT-100.	31.	31.	31.
32. Tax Rate for Current Year			32.
33. Tax Due on Nonoperational Activity (Multiply the total of all positive Line 31's by Line 32). Carry to Page 1, Line 4(b) of CBT-100S. See instruction 4.			33.

34. Listing of states where Nonoperational Income is being assigned:

(9-96, R-2)

Purpose of Packet

The schedules contained in this packet must be completed and made part of the Corporation Business Tax Return (either Form CBT-100 or CBT-100S) filed by any corporation seeking to treat income, expenses or assets as nonoperational pursuant to N.J.S.A. 54:10A-6.1 and not subject to apportionment using the business allocation factor.

Schedule O - Part I details the items of nonoperational income and expenses and computes the net adjustment required to eliminate the effect of the nonoperational activity on allocable net income.

Schedule O - Part II allows corporations to declare nonoperational assets or report the reclassification of assets previously deemed operational.

Schedule O - Part III allows the aggregate nonoperational activity to be broken down into separate and discrete activities. If any of these separate activities have nexus with New Jersey, the schedule computes the amount of New Jersey Corporation Business Tax due.

General Provisions

As a result of recent U.S. Supreme Court decisions, New Jersey has made statutory changes to the New Jersey Corporation Business Tax Act (N.J.S.A. 54:10A-6.1). This legislation recognizes that a Constitutional distinction based upon the Due Process and Commerce Clauses exists which restricts states from apportioning income, gains, losses or expenses from activities that have no rational relationship with this State. The terminology used by New Jersey classifies these activities and/or assets as being either operational or nonoperational.

Generally activities of a multi-jurisdictional corporation which are operational in nature are apportioned to a taxing jurisdiction by the use of a business allocation formula. New Jersey uses a three factor formula based on property, receipts and payroll. Activities which are deemed to be nonoperational are not apportioned by general formula but are specifically assigned to the jurisdiction where the nonoperational activity has nexus.

There is a presumption, which must be overcome by the taxpayer by clear and cogent evidence, that all the activities of a separate corporate entity are operational in nature. It is the intention of the New Jersey Division of Taxation to consider activities to be operational to the maximum extent permitted by the U.S. Constitution. However, for corporations making nonunitary, nonbusiness, or nonoperational claims to this State, or to other jurisdictions, if it is determined that the nonoperational activity has nexus to New Jersey, the resulting assignment of income may exceed the New Jersey tax liability which would otherwise have been due had a nonoperational claim not been made.

Nonoperational Income Explained

Nonoperational income is derived from tangible and intangible property where either the acquisition, management, use, or disposition did not constitute an integral part of the taxpayer's trade or business operations.

Nonoperational assets are not acquired, managed, used, or disposed of in the normal or ordinary course of business. They also do not generate operational expenses or income during their holding period.

In making the operational or nonoperational determination, the Division will classify income as being operational if it meets either the transactional, functional, or operational test.

The **transactional** test will determine whether the acquisition, management, use, or disposition of property is in the regular course of the corporation's trade or business. A transaction or activity can occur in the regular course of business even though the taxpayer has not regularly engaged in such transactions if it is reasonable to conclude that transactions or activities of that type are customary for the kind of business being conducted. The determination of operational income under the transactional test requires not only knowledge of how often the taxpayer's trade or business has engaged in transactions of the type at issue, but also whether such transactions are likely to occur at all in that trade or business.

The **functional** test will determine whether property or activities that do not rise to the level of constituting a trade or business would still be deemed operational if that property from which income and expenses are derived is or was an integral or functional component to or a part of the taxpayer's regular trade or business operations.

Income and expenses derived from activities occurring infrequently, including transactions made in liquidation, are operational if that property was used in the business operations. The functional test focuses on the function played by the property in the corporation's trade or business, and it applies similarly to tangible as well as intangible property. Income, gains, losses or expenses arising from transactions involving intangible property, for example corporate stock, or an ownership interest in a partnership, is operational in nature if the corporation held that intangible or the underlying property represented as an integral or functional component of its trade or business.

The **operational** test will determine whether intangible property served an operational rather than an investment function. The relevant inquiry focuses on the objective characteristics of the intangible property's acquisition or use and the relation to the corporation's overall activities. This test will include as operational income all other income or gain that the State is not prohibited from taxing by the U.S. Constitution.

Tax Treatment of Nonoperational Activity

Expenses are deductible only to the extent that they are connected with operational property or income. Corporate expenses related to nonoperational income are not deductible at all except in terms of assigning and taxing income from nonoperational activities which have nexus to New Jersey

If property had been classified as operational property in prior periods and is later demonstrated to have been nonoperational and is subsequently disposed of, all expenses, without limitation, deducted in prior periods related to the nonoperational property must be added back and recaptured as income in the tax period of disposition of such property.

If a prior period's income had been classified as serving an operational function and is later demonstrated not to have been serving an operational function, all expenses, without limitation, deducted in prior periods related to such income, shall be added back and recaptured in the year when that occurs.

General corporate expenses including administrative, taxes, and interest which cannot be specifically allocated between operational and nonoperational activity shall be assigned to same by the ratio of the average value of assets producing nonoperational income to the average value of the total assets of the corporation.

Only the receipts, property and payroll expenses attributable to operational activity are to be used in computing the three factor allocation formula.

INSTRUCTIONS

SCHEDULE O - PART I

1. **Column A** represents Federal Taxable Income before net operating loss and special deductions and should be the same amount as reported on Schedule A, Form CBT-100. If Form CBT-100S is being filed, the adjustments made to convert S Corporation income to C Corporation income should be interpolated to the corresponding lines of this schedule.

2. **Column C** represents total operational activity that will be apportioned to all taxing jurisdictions using the business allocation factor. Columns B and C should always total to Column A with respect to lines 1 through 28.

3. **Column B** represents total nonoperational income, gains, losses and attributable expenses which are not apportioned but are specifically assigned. The income and expense items must be related to assets declared on Schedule O - Part II.

   a. **Line 4 through Line 11** reflect the revenues, gains or losses generated by nonoperational assets.

   b. **Line 12 through Line 27** reflect the direct and indirect expenses associated with the nonoperational assets. Submit a statement detailing the basis and the accounting controls employed in assigning direct and indirect expenses to the nonoperational assets.

   Example 1 - Direct Expenses
   Corporation A, a manufacturer of shoes, purchased 1,000 shares of stock of Corporation B, a car wash company located outside New Jersey, for $15,000 as a passive investment which it claims is a nonoperational asset. Corporation A purchased these shares by borrowing $10,000 at a 9% interest rate, and by utilizing excess funds of $5,000. The first year's interest was $900.00, and the corporation was charged a processing fee of $250.00 on the loan. Both the interest expense ($900) and the processing fee ($250) are direct expenses of the asset purchased and should be included in the Nonoperational Column (Column B).

   Example 2 - Indirect Expenses
   Corporation C has a substantial cash flow to the point that it maintains a separate division to manage and control all of its excess funds (both operational and claimed nonoperational funds). Corporation C should assign the direct expenses associated with the nonoperational assets and apportion the remaining indirect divisional expenses on a reasonable basis (e.g., value of operational assets to nonoperational assets), and apportion part of the corporate overhead on some reasonable basis (e.g., value of the part of the division to the total corporation).

   Indirect corporate expenses, including general and administrative expenses, interest expenses and taxes, shall be assigned to nonoperational assets by the ratio of the average value of assets producing nonoperational income to the average value of the total assets of the corporation.

c. **Lines 29(a) and (b)** reflect the financial activity of nonoperational tax exempt assets and operational tax exempt assets.

d. **Line 30(a)** reflects the net income from nonoperational activities. It is the total of line 28 plus line 29(a) minus line 29(b). The total from this line should be carried to Page 1, line 4(a) of Form CBT-100 or Form CBT-100S.

e. **Line 31** - If nonoperational capital gains are used to offset operational capital losses in determining Federal Taxable Income, the amount of the operational capital loss offset must be subtracted from the total nonoperational income to effect the elimination of the nonoperational activity from entire net income.

f. **Line 32** - Enter the adjustments required to reflect the elimination of New Jersey adjustments to Federal Taxable Income on nonoperational activity reported originally on lines 30, 31, 32, 33, 35 and 37 of Schedule A.

Example 3

Corporation D reported dividend income of $1,000.00 from various non-subsidiary companies, of which the corporation claimed that $300.00 in dividends from Corporation E is nonoperational income. Since 50% of the $300.00 is excluded on line 37, an adjustment subtracting $150.00 from nonoperational income is required to eliminate the double exclusion.

g. **Line 33** - Enter any other adjustments required to properly reflect the elimination of the nonoperational income. Please submit a separate rider detailing this amount.

h. **Line 34** represents the sum of lines 30(a), 31, 32 and 33 and represents the net adjustments required to eliminate the effect of nonoperational income from entire net income for current period activity.

i. **Line 35** reflects the recapture of prior period deductions when in prior periods property had been classified as operational property and is later demonstrated to have been nonoperational property and is subsequently disposed of, all expenses, without limitation, deducted in prior periods related to the nonoperational property must be added back and recaptured as income in the period of disposition of such property.

j. **Line 36** reflects the sum of lines 34 and 35 and is the total adjustment required to eliminate the effect of nonoperational activity from entire net income. The total on this line is carried to Schedule A, line 33(d) of Form CBT-100 or Schedule A, line 33(d) of Form CBT-100S.

SCHEDULE O - PART II

1. **Nonoperational assets defined:** Nonoperational assets are assets **NOT** acquired, managed, used, or disposed of in the normal or ordinary course of business, or which did not generate business expenses or income during their holding period. In determining the operational versus nonoperational asset status, and hence the income and gains, and expenses and losses associated therewith, the corporation shall not recognize as nonoperational any asset that does not meet either the transactional, functional, or operational tests.

COMPLETING THE FORM:

2. **Line 1** - Prior Years' Net Nonoperational Assets
   Enter the total original Federal basis for all nonoperational assets acquired prior to the current period that the corporation still owns and claims to be nonoperational assets to New Jersey.

3. **Line 2** - Current Year's Nonoperational Assets

   a. **Description** - Enter the quantity purchased and the general nature of the asset purchased (e.g., 1 each - machinery, 1 each - building, 100 shares - XYZ, $2,000 - Bonds, etc.).

   b. **Date Acquired** - Indicate the date the asset was first acquired. If the asset was acquired in a prior year and its status changed from operational to nonoperational in the current reporting period, then enter *as a second date* the date such status changed in this reporting period.

   c. **Federal Basis** - Indicate the ORIGINAL Federal tax basis used to carry the asset for Federal Income Tax purposes.

   d. **New Jersey Nexus** - Indicate whether the nonoperational asset has a New Jersey nexus. Answer YES where the asset was physically located in New Jersey or where any of the activity related to its purpose, or its management, or its use, or its disposition, took place in whole or in part within this State during any portion of its holding period.

4. **Line 3** - Current Year's Disposition of Nonoperational Assets: Enter the original Federal tax basis of any assets purchased in the current period and disposed of during the current period and included on Line 2 of the Schedule O, Part II.

5. **Line 5** - Current Year's Disposition of Prior Year Purchases: Enter the original Federal tax basis of any prior year purchases disposed of during the current period.

6. **Additional Questions** - **ALL** questions must be answered. Provide the appropriate responses and, where necessary, provide the additional information requested. If additional space is required, provide supplementary riders.

SCHEDULE O - PART III

1. Part III details and computes the applicable amounts of New Jersey Corporation Business Tax due on nonoperational activity(ies) which may be wholly or partially taxable by New Jersey.

2. **Lines 1 through 30** separately detail the income and expense items applicable for **each** nonoperational activity. Attach additional schedules as required if the number of activities exceeds two.

3. **Line 31** - Enter the portion of the net operational income for each activity taxable to New Jersey. Detail the methodology and the computation on a separate rider. See instruction 6 below for specific guidelines on the extent nonoperational activity is taxable by New Jersey. Carry the total operational income to line 4(b) of Form CBT-100.

4. **Line 33** - Multiply the total New Jersey taxable income (Do not net losses from total of line 31) by the current period's tax rate (line 32) to arrive at the New Jersey Corporation Business Tax due on nonoperational activity. Carry this amount to page 1, line 4(b) of Form CBT-100S.

5. **Line 34** - List all other states, if any, to which each nonoperational activity or income has been taxed. If the income was taxed as part of a combined reporting group as operational income, place an asterisk by that State's name.

6. Nonoperational income, less attributable expenses, will be taxed by New Jersey when either the activity or property itself has nexus to New Jersey or when the corporation's principal place of business management or direction is in New Jersey.

   a. When the nonoperational activity itself does not have nexus to New Jersey other than by reason of the taxpayer's principal place of business management being in New Jersey, the nonoperational income related to that activity, less attributable expenses, will be assigned to and taxed in New Jersey by use of the business allocation factor.

   b. Nonoperational net rents and royalties from real or tangible personal property located in New Jersey for at least a portion of the filing period are 100% taxable by New Jersey to the extent the asset maintained physical situs in New Jersey.

   c. Nonoperational gains and losses from sales or exchanges of real or tangible personal property located in New Jersey during at least part of the filing period or the holding period of the assets are 100% taxable to New Jersey to the extent the asset maintained physical situs in New Jersey.

   d. Nonoperational gains and losses from sales or exchanges of intangible property, including capital assets where intangible property is wholly or in part managed, controlled, or accounted for by employees or agents located in New Jersey during at least part of the holding period of the asset are 100% taxable to New Jersey to the extent of the ratio of expenses for the controlling employees or agents in New Jersey to those expenses everywhere.

   e. Nonoperational interest and dividends where the underlying investment is wholly or in part researched, managed, controlled, or accounted for by employees or agents located in New Jersey are 100% taxable to New Jersey to the extent of the ratio of expenses of the controlling employees or agents in New Jersey to those expenses everywhere.

   f. Nonoperational rents and royalties from patents, copyrights, trademarks, service marks, secret processes and formulas, franchises and like property are 100% taxable to the extent of the business allocation factor reported to New Jersey by the user of the underlying property for that period.

   g. Other nonoperational income constitutionally taxable by New Jersey will be taxed to a reasonable extent based upon the facts and circumstances. For example, under circumstances where the nonoperational activity has nexus to more than one jurisdiction, including New Jersey, it may be appropriate to assign the income using the traditional three fraction factor of the nonoperational activity.

7. Net nonoperational losses cannot be used to offset taxable operational income in current, prior or future periods.

   a. A net loss in any discreet, separate nonoperational activity may not be used to reduce the net income or tax liability of any other discrete, separate, nonoperational activity in current, prior or future periods.