



Addback of Other States' Taxes

TB-80 – March 15, 2017
Tax: Corporation Business Tax

The Corporation Business Tax Act requires that a corporation's taxable income be determined without the exclusion, deduction, or credit of certain taxes.

Specifically, the relevant statute at N.J.S.A. 54:10A-4(k)(2)(C) provides in pertinent part that the following taxes must be added back:

"[T]axes paid or accrued to the United States, a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia, or to any foreign country, state, province, territory or subdivision thereof, on or measured by profits or income, or business presence or business activity, or the tax imposed by this act..."

Taxes that do not qualify as being measured by business presence or business activity are enumerated in the regulation N.J.A.C. 18:7-8.7(f) which states that:

". . . 'Business presence' or 'business activity' taxes include, but are not limited to, net worth taxes, gross receipts taxes, single business taxes. . . Property taxes, excise taxes (for example, cigarette taxes), payroll taxes, and sales taxes are not considered 'business presence' or 'business activity' taxes."

The cases of *PPL Electric Utilities Corporation v. Director*, 28 N.J. Tax 128 (Tax Ct. 2014) and *Duke Energy Corporation v. Director*, 28 N.J. Tax 226 (Tax Ct. 2014) are instructive as far as the addback of specific taxes.

In *PPL Electric*, the court ruled that the Pennsylvania gross receipts tax is an excise tax that is measured solely on the amount of electricity sold. The tax is passed on to the consumer of electricity and was not required to be added back to determine entire net income because the tax is not measured by business presence, business activity, income, or profits. The court determined that the Pennsylvania capital stock tax is measured by using the taxpayer's average accumulated book income over five years and the taxpayer's net worth. The court also noted that the Pennsylvania courts have held that the tax resembles a property tax because it is measured by the value of the company's assets. Under N.J.A.C. 18:7-8.7(f), property taxes are not considered business presence or business activity taxes.

In *Duke Energy*, the court ruled that the North Carolina utilities tax is measured by gross receipts because North Carolina imposes the tax on an electric power company's taxable gross receipts from furnishing products such as electricity, current, or power, and the tax contained a sale for resale exemption. The South Carolina utilities tax is imposed on the fair market value of property owned and used by utilities and electrical cooperatives and on gross sales of electricity services. Thus, the taxpayer was not required to add back the North Carolina utilities or South Carolina utilities tax to determine New Jersey entire net income.

Based on the relevant statute, regulation, and applicable case law, the following types of taxes should be added back:

- Taxes measured based on profits or income;
- Taxes based on business presence or business activity that are not property taxes, excise taxes, payroll taxes, or sales taxes;
- Taxes similar to the Corporation Business Tax.

The following tax types should not be added back:

- Gross receipts taxes that are similar in nature to the New Jersey Petroleum Gross Receipts Tax whereby the tax is imposed based on receipts, but not on profits. This type of gross receipts tax is akin to an excise tax;
- Taxes imposed on capital stock that measure the value of the taxpayer's assets;
- Excise taxes;
- Sales taxes;
- Payroll taxes;
- Property taxes.

The Division will evaluate a tax to determine if it is based on profits, income, business presence or business activity, and, therefore, must be added back to income. A tax that is related to business presence or business activity but that is in effect a property tax, excise tax, payroll tax, or sales tax will not be added back.

The name of the tax may not be determinative of whether the tax is required to be added back to income. The basis and operation of the tax must be examined to determine whether the tax is required to be added back.

EXAMPLE OF TAXES NOT REQUIRED TO BE ADDED BACK

Based on the applicable New Jersey statutes, regulations, and case law, and an analysis of the specific application of the taxes, the Division has determined that taxes not required to be added back include, but are not limited to the following:

Alabama Privilege Tax (Code of Ala. § 40-14A-21)
Delaware Franchise Tax (8 Del. C. § 503)
Georgia Net Worth Tax (O.C.G.A. § 48-13-70)
Illinois Franchise Tax (805 ILCS 5/15.35)
Kansas Franchise Tax (K.S.A. § 79-5401)
Kentucky License Tax (KRS § 136.070) (Repealed January 1, 2006)
Louisiana Franchise Tax (La. R.S. § 47:601)
Michigan Business Personal Property Tax (MCLS § 211.8)
Minnesota Care Tax (Minn. Stat. § 295.50) (Repealed as of Jan. 1, 2020)
Mississippi Corporation Franchise Tax (Miss. Code Ann. § 27-13-1)
Nevada Modified Business Tax (Nev. Rev. Stat. Ann. § 363B.010) (Repealed July 1, 2015)
New York Tax on the Furnishing of Utility Services (NY CLS Tax § 186-a)
New York Commercial Rent Tax (New York City Administrative Code § 11-701 et seq.)
North Carolina Franchise Tax (N.C. Gen. Stat. § 105-122)

North Carolina Utilities Tax (N.C. Gen. Stat. § 105-116) (Repealed July 1, 2014)
Oklahoma Business Activity Tax (68 Okl. St. § 1215) (Repealed January 1, 2013)
Pennsylvania Capital Stock-Franchise Tax (72 P.S. § 7601) (Repealed December 31, 2015)
Pennsylvania Bank and Trust Company Shares Tax (72 P.S. § 7701)
Pennsylvania Gross Receipts Tax (72 P.S. § 8101)
Puerto Rico Excise Tax (PR-IRC § 2101)
South Carolina Utilities Tax (S.C. Code Ann. § 12-20-100)
Tennessee Franchise Tax (Tenn. Code Ann. § 67-4-2101)
Washington State Litter Tax (RCW 82.19.010)
West Virginia Business and Occupation Tax (W. Va. Code § 11-13-1)
Feed License and Tonnage Fees: Several states including New York, New Jersey, Pennsylvania, Ohio, and Virginia have feed license and tonnage fees. These fees may be called grain license and tonnage fees in certain states. The Division considers these fees to be similar to excise taxes, and therefore should not be added back.

EXAMPLE OF TAXES REQUIRED TO BE ADDED BACK

Based on the applicable New Jersey statutes, regulations, and case law, and an analysis of the specific application of these taxes, the Division has determined that taxes required to be added back include, but are not limited to the following:

California Franchise Tax (CA Rev & Tax Code § 23101)
California LLC Fee (CA Rev & Tax Code § 17942)
California LLC Tax (CA Rev & Tax Code § 17941)
Charleston Business and Occupation Tax (Charleston WV Code § 110-51)
Connecticut Business Entity Tax (Conn. Gen. Stat. § 12-2846)
District of Columbia Unincorporated Business Tax (D.C. Code § 47-1808.01)
Hawaii Business Excise Tax (Hawaii Revised Statutes § 18-237-13)
Los Angeles Business Tax (LAMC § 21.03)
Massachusetts Corporation Excise Tax (Income Tax portion only, MA G.L. Ch. 63 § 39)
Michigan Gross Receipts Tax (MCL § 208.1203)
Mississippi Corporate Income and Franchise Tax (Income Tax portion only, MS Code § 27-7-5)
New Hampshire Business Profits Tax (NH Rev Stat § 77-A:1)
New York Maintenance Fee (New York Tax Law Article 9, § 181.2)
New York City Unincorporated Business Tax (N.Y.C. Administrative Code § 11-503)
Ohio Commercial Activities Tax (Ohio Code § 5751.02)
Oregon Excise Tax (OR Rev Stat § 317.018)
Philadelphia Business Income Receipts Tax (Phila. Code § 19-2601)
Puerto Rico Volume of Business Tax also called the Municipal License Tax (Act No. 163-2013)
Seattle Business and Occupation Tax (SMC § 5.45.050)
Tennessee Excise Tax (Tenn. Code Ann. § 67-4-207)
Texas Franchise Tax (TX Tax Code, Ch.171, Subsection A, § 171.002)
Texas Margin Tax (TX Tax Code, Ch. 171, Subsection C, § 171.101)
Washington Business and Occupation Tax (WA Rev. Code § 82.04.010)

FURTHER INFORMATION

There are several other taxes imposed by states, municipalities, territories, and foreign countries that are not included in the above list. The Division of Taxation will update this publication periodically. You may contact us at (609) 292-5995 if you have questions about whether you should add back a particular state tax pursuant to the Corporation Business Tax Act. Information about the Corporation Business Tax is available on the Division of Taxation website at <http://www.state.nj.us/treasury/taxation/corp.shtml>.

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.