Corporate taxpayer was entitled to credit for corporate income tax paid in another state. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Net worth determination that did not result in unfair or unreasonable tax would not be modified on judicial review. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Interpretation of amendment to corporate tax governing safe harbor leasing provisions did not constitute rulemaking. Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation, 11 N.J.Tax 241 (1990), reversed 12 N.J.Tax 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

Corporate owner of safe harbor leased property could include the property in the business allocation factor. Reuben H. Donnelley Corp. v. New Jersey Dept. of Treasury, Div. of Taxation, 11 N.J.Tax 241 (1990), reversed 12 N.J.Tax. 255, certification granted 127 N.J. 551, 606 A.2d 364, reversed 128 N.J. 218, 607 A.2d 1281.

18:7–8.2 Method of arithmetic computation required

In computing allocation percentages, division must be carried to six decimal places, for example .201614 or 20.1614 per cent.

Statutory References

N.J.S.A. 54:10A–8.

18:7–8.3 Right of Director to independently compute allocation factor

(a) If it appears that the business allocation factor computed on the basis of all or any of the property-receipts-payroll fractions does not properly reflect the activity, business, receipts, capital, entire net worth or entire net income of the taxpayer in New Jersey, the Director may adjust or the taxpayer may request an adjustment of the business allocation factor.

(b) Reduction in tax for income duplicated on a return filed with another State pursuant to N.J.S.A. 54:10A–8 and this rule—100 percent allocation factor:

1. Eligibility:

i. Where the Business Allocation Factor under Section 6 of the Act is 100 percent and the taxpayer in fact paid a tax based on or measured by income to a foreign state, resulting in a duplication of income being taxed, it may, under Section 8 of the Act, apply for a reduction in the amount of its tax. The reduction is available only where the taxpayer in its own right acquired a taxable status in the foreign state by reference to at least one of the criteria described at N.J.A.C. 18:7–1.6 as if the New Jersey Corporation Business Tax Act were the law of that foreign state.

Example: S corporation does not maintain a regular place of business outside New Jersey, other than a statutory office. It was not a domestic corporation in State X, nor did it meet any of the other criteria described at N.J.A.C. 18:7–1.6 in that State which would have created a taxable status in New Jersey. Although it was not itself doing business in State X, it was a member of an affiliated group of corporations which conducted a unitary business in that State and as such is permitted or required to join in filing a combined or consolidated return in State X. In fact, it did so.

Any duplication of income being reported to New Jersey and to State X may not form the basis for a reduction in the tax.

2. Method:

i. An eligible taxpayer computes its reduction on a rider attached to its return by demonstrating that a part of entire net income is duplicated on a return filed with another state. It must attach a copy of all relevant portions of the return filed with the foreign state relating to income reported, the computation of all components of its apportionment fractions and the computation of the tax paid to the foreign state. It must also submit a schedule apportioning all property, receipts and payroll to a common denominator defined consistent with the return. For purposes of calculating the reduction:

(1) It may be based upon only so much of adjusted entire net income appearing on its Corporation Business Tax Return as is reported to the foreign state;

(2) The formula apportionment used in the foreign state may not exceed the Business Allocation Factor as determined under Section 6 of the Act and these rules;

(3) It must be computed by using the lesser of the tax rates of the foreign state or the tax rate under the New Jersey Corporation Business Tax Act.

Example 1: Corporation A does not maintain a regular place of business outside New Jersey other than a statutory office. As a consequence, its Business Allocation Factor is 100 percent. It sold land for $250,000 which had a tax basis and book value of $100,000 and was situated in State Y. Under the laws of State Y, the entire gain is directly allocable to that State and is taxed at an eight percent rate. It may determine the portion of its tax which is measured by net income as follows:

	New Jersey Tax Income Base	Duplicated in State Y
Gross income exclusive of gain on sale of land	$500,000	
Net gain on sale of land	+150,000	$150,000
Total income	650,000	
Deductions	-447,778	
Taxable income before net operating deductions and special deductions	202,222	
Adjustments—N.J. Corporation Business Tax Deducted—add back	+20,000	
Entire net income	$222,222	
Tax at 9%—before reduction	$20,000	
Formula apportionment not used in State Y		100%

	New Jersey Tax Income Base	Duplicated in State Y
Duplication of income		150,000
Reduction—may not exceed 9%		.08
Tax paid to State Y		$ 12,000
Reduction	– 12,000	
Paid with return	$8,000	

Example 2: Corporation B does not maintain a regular place of business outside New Jersey other than a statutory office. Its Business Allocation Factor is 100 percent. It did however start and complete a construction job in State Z and paid an income tax to that State at a ten and one-half percent rate. It may determine the portion of its Corporation Business Tax measured by net income as follows:

For accounting periods beginning before July 1, 1996:

		New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss deduction and special deductions		$227,500	$227,500
Add ACRS	$ 15,000		
Less NJ depreciation	12,000	3,000	
Add ACRS	15,000		
Less State Z Depreciation	15,000		–0–
†Add back of NJCBT, other States, Political Subdivisions, etc. tax paid or accrued	52,000	52,000	
Taxes imposed or measured by income from State Z return	28,800		28,800
Municipal bond interest add back—NJ	7,000	7,000	
Municipal Bond Interest add back—State Z	–0–		–0–
Net Operating Loss—NJ	4,500	(4,500)	
Net Operating Loss—State Z	5,000		(5,000)
Dividend Exclusion—NJ	10,000	(10,000)	(10,000)
Dividend Exclusion—State Z	–0–		
Entire Net Income		$275,000	
Portion of ENI duplicated			$241,300
Apportionment (computed below)			.250000
Apportioned duplicated ENI			$ 60,325
Tax at 9% on New Jersey Income Base		$ 24,750	
Tax at State Z rate (10 1/2%) on Apportioned duplicated ENI			$ 6,33
Reduction—at 9% of Apportioned duplicated ENI ($60,325)		$ 5,429	
New Jersey tax after credit		$ 19,321	

† For accounting periods beginning on or before July 7, 1993 only, New Jersey CBT was required to be added back in computing New Jersey E.N.I.

For accounting periods beginning on or after July 1, 1996:

		New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss deduction and special deductions		$227,500	$227,500
Add ACRS	$15,000		
Less NJ depreciation	15,000	3,000	
Add ACRS	15,000		
Less State Z Depreciation	15,000		–0–
Add back of NJCBT, other States, Political Subdivisions, etc. tax paid or accrued	52,000	52,000	
Taxes imposed or measured by income from State Z return	28,800		28,800
Municipal bond interest add back—NJ	7,000	7,000	
Municipal Bond Interest add back—State Z	–0–		–0–
Net Operating Loss—NJ	4,500	(4,500)	
Net Operating Loss—State Z	5,000		(5,000)
Dividend Exclusion—NJ	10,000	(10,000)	(10,000)
Dividend Exclusion—State Z	–0–		
Entire Net Income		$275,000	
Portion of ENI duplicated			$241,300
Apportionment (computed below)			.245000
Apportioned duplicated ENI			$59,118
Tax at 9% on New Jersey Income Base		$24,750	

	New Jersey Tax Income Base	Duplicated in State Z
Tax at State Z rate (10 1/2%) on Apportioned duplicated ENI		$6.20
Reduction—at 9% of Apportioned duplicated ENI ($59,118)	$5,321	
New Jersey tax after credit	$19,429	

Corporation B computed the apportionment on its State Z return as follows:

	State Z	Everywhere	Portion in State Z
Property Fraction			
Owned (Valued under State Z law and regulation)	$140,000	$ 500,000	
Leased (at 8 times annual rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$180,000	$ 600,000	0.300000
Receipts Fraction	$200,000	$1,000,000	0.200000
Double Weighting of Receipts Fraction			0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			1.000000
Allocation Factor using State Z Law and Regulation (Total divided by four)			0.250000

For accounting periods beginning before July 1, 1996, if the formula apportionment had been determined in State Z consistent with the N.J. Corporation Business Tax Act, it would have been:

Property Fraction			
Owned (Valued under N.J.C.B.T. Act)	$100,000	$ 400,000	
Leased (at 8 times rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$140,000	$ 500,000	0.280000
Receipts Fraction	$200,000	$1,000,000	0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			0.780000
Allocation Factor using N.J.C.B.T. Act (Total divided by three)			0.260000

For accounting periods beginning on or after July 1, 1996, if the formula apportionment has been determined in State Z consistent with the N.J. Corporation Business Tax Act, it would have been:

Property Fraction			
Owned (Valued under N.J.C.B.T. Act)	$100,000	$ 400,000	
Leased (at 8 times rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$140,000	$ 500,000	0.280000
Receipts Fraction	$200,000	$1,000,000	0.200000
Double Weighting of Receipts Fraction			0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			0.980000
Allocation Factor using N.J.C.B.T. Act (Total divided by four)			0.245000

For the period beginning prior to July 1, 1996, since the apportionment fraction (.250000) used in State Z does not exceed the Business Allocation Factor as it would have been determined under the Act and this subchapter, it is used for purposes of determining the reduction.

For the period beginning on or after July 1, 1996, since the apportionment fraction (.250000) used in state Z exceeds the Business Allocation Factor as it would have been determined under the Act and this subchapter, the New Jersey Factor (.245000) would be used for purposes of determining the reduction.

Amended by R.1984 d.594, effective January 7, 1985.
See: 16 N.J.R. 3001(a), 17 N.J.R. 115(c).
(b) added.
Amended by R.1997 d.429, effective October 6, 1997.
See: 29 N.J.R. 3426(a), 29 N.J.R. 4324(a).
Rewrote tables in (b)2i(3).

Statutory References

See N.J.S.A. 54:10A-8 as to right of Director to independently adjust a taxpayer's allocation factor.

Law Review and Journal Commentaries

Tax Law. Robert J. Alter, Jay Soled, 135 N.J.L.J. S53 (1993).

Case Notes

Corporate taxpayer was entitled to credit for income tax paid in another state. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.

Redetermination of net worth tax which was not unreasonable or unfair would not be disturbed. Kettler Realty Corp. v. Director, Div. of Taxation, 12 N.J.Tax 470 (1992), affirmed 14 N.J.Tax 165.