



Included and Excluded Business Entities in a Combined Group and the Minimum Tax of a Taxpayer That is a Member of a Combined Group

TB-86 - Issued January 3, 2019
Tax: Corporation Business Tax

P.L. 2018, c. 48, and P.L. 2018, c. 131, collectively mandate combined reporting for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full 12-month privilege period of the managerial member begins August 1, 2018, and ends July 31, 2019). This bulletin explains what business entities are included in a combined group and what business entities are not included in a combined group.

A combined group is defined under N.J.S.A. 54:10A-4(z) as the following: "Combined group' means the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax under this chapter, and shall include all business entities, except as provided for under any section of the Corporation Business Tax Act (1945), P.L.1945, c. 162 (C: 54:10A-1 et seq.)."

N.J.S.A. 54:10A-4 and N.J.S.A. 54:10A-4.6 include and exclude a number of entity types as described below.

Included Entity Types:

- U.S. Corporations
- Foreign Corporations
- Casinos
- Banking Corporations
- Financial Corporations
- Limited Liability Companies (unless treated as partnerships or disregarded entities for federal purposes)
- Foreign Limited Liability Companies (unless treated as partnerships or disregarded entities for federal purposes)
- Federal S Corporations (that have not made a New Jersey S corporation election)
- New Jersey S Corporations (that have elected to be included in the combined group)
- Combinable Captive Insurance Companies
- Qualified Subchapter S Subsidiaries (that have not made a New Jersey S corporation election)
- New Jersey Qualified Subchapter S Subsidiaries (that elected to be included in the combined group)
- Professional Corporations

- Any other business entities however and/or wherever incorporated or formed that are treated as corporations for federal purposes except when excluded by statute or as described below

Each member that has nexus with New Jersey is subject to the \$2,000 minimum tax. A member of a combined group has nexus if the member meets the standards of N.J.S.A. 54:10A-2 as either part of the unitary business of the combined group or independent of the combined group. If a member does not have nexus with New Jersey, the member is not subject to the minimum tax. If one member in the combined group has nexus and sufficient activities in New Jersey to be taxed based on income, no member that has nexus with New Jersey may claim P.L. 86-272 protection.

Disregarded Entities

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.

Therefore, a disregarded entity is not itself a member of a combined group. However, the tax attributes of a disregarded entity are reported by a member of a combined group when the member owns the disregarded entity. The attributes of a disregarded entity owned by a member of a combined group are included in the income and allocation factor of that member as well as the combined group. In making a determination of which members are included in a water's-edge combined group pursuant to N.J.S.A. 54:10A-4.11, the disregarded entity's attributes shall be used by the member that owns the disregarded entity. **A disregarded entity is NOT subject to the \$2,000 minimum tax as a member of a combined group because a disregarded entity is not a member of the combined group. However, if a disregarded entity is part of a unitary business of a combined group, the owner of the disregarded entity will be a member of the combined group and must be included as part of the combined group except as otherwise excluded.**

Entities that File as Partnerships for Federal Purposes

The definition of unitary business set forth under N.J.S.A. 54:10A-4(gg), in relevant part, states:

"A business conducted by a partnership which is in a unitary business with the combined group shall be treated as the business of the partners that are members of the combined group, whether the partnership interest is held directly or indirectly through a series of partnerships, to the extent of a partner's distributive share of partnership income. The amount of partnership income to be included in the partner's entire net income shall be determined in accordance with subsection a. of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business conducted directly or indirectly by one corporation is unitary with that portion of a

business conducted by another corporation through its direct or indirect interest in a partnership.”

Partnerships, limited partnerships, or limited liability companies treated as partnerships for federal purposes are business entities that can be unitary with a combined group. However, these entities are not a member of a combined group for New Jersey corporation business tax purposes. Their income flows through to the corporate partners that are members of the combined group. **Partnerships, limited partnerships, and limited liability companies that are treated as partnerships for federal purposes are NOT subject to the \$2,000 minimum tax as a member of a combined group, because they are not a member of the combined group. However, form NJ-CBT-1065 and Part-100 must still be filed.**

Statutory Excluded Entity Types:

- New Jersey S corporations that do not elect inclusion in the combined group
- New Jersey Qualified Subchapter S Subsidiaries that do not elect inclusion in the combined group
- Captive Insurance Companies that do not meet the definition of a combinable captive insurance company as defined in N.J.S.A. 54:10A-4(y)
- All other insurance companies that are not combinable captive insurance companies
- Corporations exempt from the Corporation Business Tax under N.J.S.A. 54:10A-3
- Corporations that are regulated, in whole or in part, by the Federal Energy Regulatory Commission, the New Jersey Board of Public Utilities, or similar regulatory body of another state, with respect to rates charged to customers for electric or gas services and water and wastewater services

Statutory excluded entity types are not subject to the \$2,000 minimum tax as part of the combined group; however they may **be subject to the normal statutory minimum tax if they have nexus with New Jersey and are not exempt pursuant to N.J.S.A. 54:10A-3. Statutory excluded entities that are part of an affiliated group or controlled group that has a total payroll of \$5,000,000, are subject to a \$2,000 minimum tax unless they are exempt pursuant to N.J.S.A. 54:10A-3 or lack nexus with New Jersey.**

New Jersey S corporations that do not elect inclusion in the combined group and New Jersey Qualified Subchapter S Subsidiaries that do not elect inclusion in the combined group, but are nonetheless part of an affiliated group or controlled group that has a total payroll of \$5,000,000, are subject to a \$2,000 minimum tax.

Other Entities Under Review by the Division for Inclusion or Exclusion

- Real Estate Investment Trusts
- Regulated Investment Companies
- Investment Companies

These entity types are **subject to the statutory minimum tax if they have nexus with New Jersey. If determined by the Division that these entities should be included as members of a combined group, these entities will be subject to the \$2,000 minimum tax as a member of a combined group.**

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.