

SENATE, No. 1779

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Concerns treatment of certain foreign-sourced income subject to federal income tax treaty under CBT.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/27/2020)

1 AN ACT concerning the corporation business tax, amending
2 P.L.2018, c.48.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. Section 23 of P.L.2018, c.48 (C.54:10A-4.11) is amended to
8 read as follows:

9 23. a. The managerial member of a combined group may elect
10 to have the combined group determined on a world-wide basis or an
11 affiliated group basis. If no such election is made, the combined
12 group shall be determined on a water's-edge basis and will take into
13 account the incomes and allocation factors of only the following
14 members of the combined group:

15 (1) each member incorporated in the United States, or formed
16 under the laws of the United States, any state, the District of
17 Columbia, or any territory or possession of the United States,
18 excluding such a member if eighty per cent or more of both its
19 property and payroll during the privilege period are located outside
20 the United States, the District of Columbia, and any territory or
21 possession of the United States;

22 (2) each member, wherever incorporated or formed, if twenty
23 per cent or more of both its property and payroll during the
24 privilege period are located in the United States, the District of
25 Columbia, or any territory or possession of the United States;

26 (3) any member that earns more than 20% of its income, directly
27 or indirectly, from intangible property or related service activities
28 that are deductible against the income of other members of the
29 combined group;

30 (4) each member that has income as defined under the
31 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
32 et seq.) and has sufficient nexus in New Jersey pursuant to section 2
33 of P.L.1945, c.162 (C.54:10A-2).

34 b. A world-wide election or an affiliated group election is
35 effective only if made on a timely filed, original return for a
36 privilege period by the managerial member of the combined group.
37 Such election is binding for, and applicable to, the privilege period
38 for which it is made and for the five immediately succeeding
39 privilege periods. Provided however, the election can be revoked
40 prior to the expiration of the binding period by written request to
41 the Director of Taxation for reasonable cause including but not
42 limited to a substantial change in ownership, members of the
43 combined group or principal business, or changes in tax law,
44 regulation or policy.

45 c. If the managerial member elects to determine the members
46 of a combined group on an affiliated group basis, the taxable

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 members shall take into account the entire net income or loss and
2 allocation factors of all of the members of its affiliated group,
3 regardless of whether such members are engaged in a unitary
4 business, that are subject to tax or would be subject to tax under this
5 chapter, if doing business in this State.

6 d. For a combined group that determines its net income or loss
7 on a water's-edge basis pursuant to this section, an item of income
8 of a corporation that is organized outside of the United States shall
9 not be included in the net income of the combined group to the
10 extent that the item is exempt from United States federal income tax
11 by virtue of a federal income tax treaty. Any items of expense and
12 apportionment factors related to that item of exempt income shall
13 be excluded in the determination of net income of the combined
14 group to the extent provided in regulations issued by the director.
15 However, that item of exempt income shall be taken into account to
16 determine whether the corporation is included in the water's-edge
17 group pursuant to this section. If a corporation organized outside of
18 the United States is included in a water's-edge combined group and
19 has an item of income that is exempt from United States federal
20 income tax by virtue of a federal tax treaty, the corporation shall be
21 considered to be included in the combined group pursuant to this
22 section only with regard to any items of income described pursuant
23 to this section that are not exempt, taking into account items of
24 expense and apportionment factors associated with those items of
25 non-exempt income to the extent provided by regulations issued by
26 the director.

27 Nothing in this subsection shall prevent the director from
28 adjusting, pursuant to section 5 of P.L.2002, c.40 (C.54:10A-4.4),
29 section 10 of P.L.1945, c.162 (C.54:10A-10), or any other provision
30 of law, any deduction claimed by the payer for amounts that are
31 excluded from the net income of the combined groups pursuant to
32 this subsection. The director may require the reporting of the
33 amounts of excluded income and the documentation of any claimed
34 treaty exemption as conditions to be met by a payer claiming a
35 deduction of those payments.

36 e. The director shall promulgate rules and regulations
37 necessary to carry out the provisions of this section.
38 (cf: P.L.2018, c.48, s.23)

39
40 2. This act shall take effect immediately.

41 42 43 STATEMENT

44
45 This bill amends the corporation business tax as it relates to
46 treatment of certain foreign-sourced income subject to a federal
47 income tax treaty.

1 Specifically, the bill provides that, for a combined group that
2 elects to be taxed on a water's-edge basis, certain income derived
3 from a corporation organized outside of the United States would not
4 be included in the net income of the combined group if that income
5 is exempt from federal income tax by operation of a federal income
6 tax treaty. The Director of the Division of Taxation, however, is to
7 develop regulations to clarify the treatment of expenses and
8 apportionment factors related to such exempt income.