



## Net Deferred Tax Liability Deduction and Combined Returns

### TB-96 – Issued February 24, 2020 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). Recognizing that certain companies could be adversely affected by the shift to combined reporting, a special ASC-740 relief deduction was included in the two laws. This bulletin explains the eligibility requirements for the deduction and addresses specific questions that the Division has received.

N.J.S.A. 54:10A-4(k)(16) states:

- (A) There shall be allowed as a deduction an amount computed in accordance with this paragraph.
- (B) For purposes of this paragraph, "net deferred tax liability" means deferred tax liabilities that exceed the deferred tax assets of the combined group, as computed in accordance with generally accepted accounting principles, and "net deferred tax asset" means that deferred tax assets exceed the deferred tax liabilities of the combined group, as computed in accordance with generally accepted accounting principles.
- (C) Only publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial statements prepared in accordance with generally accepted accounting principles, as of the effective date of this paragraph, shall be eligible for this deduction.
- (D) If the provisions of sections 18 through 23 of P.L.2018, c.48 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to the members' net deferred tax liability or an aggregate decrease to the members' net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.
- (E) For 10 years beginning with the combined group's first privilege period beginning on or after January 1 of the fifth year after the effective date of P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6 to C.54:10A-4.11), a combined group shall be entitled to a deduction from combined group entire net income equal to one-tenth of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability. Such increase in the net deferred tax liability or decrease in the net deferred tax asset or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the unitary reporting requirements under sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided under this paragraph as of the effective date of this paragraph.
- (F) The deferred tax impact determined in subparagraph (E) of this paragraph must be converted to the annual Deferred Tax Deduction amount, as follows:
  - (i) the deferred tax impact determined in subparagraph (E) of this paragraph shall be divided by the rate determined under section 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.);
  - (ii) the resulting amount shall be further divided by the New Jersey unitary business allocation factor that was used by the combined group in the calculation of the deferred tax assets and deferred tax liabilities as described in subparagraph (E) of this paragraph;

(iii) the resulting amount represents the total net Deferred Tax Deduction available over the ten-year period as described in subparagraph (E) of this paragraph.

(G) The deduction calculated under this paragraph shall not be adjusted as a result of any events happening subsequent to such calculation, including, but not limited to, any disposition or abandonment of assets. Such deduction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the deduction under this section is greater than combined group entire net income, any excess deduction shall be carried forward and applied as a deduction to combined group entire net income in future privilege periods until fully utilized.

(H) Any combined group intending to claim a deduction under this paragraph shall file a statement with the director on or before July 1 of the year subsequent to the first privilege period for which a combined return is required. Such statement shall specify the total amount of the deduction which the combined group claims on such form and in such manner as prescribed by the director. No deduction shall be allowed under this paragraph for any privilege period except to the extent claimed on such timely filed statement in accordance with this paragraph.

## Definitions

For purposes of the Net Deferred Tax Liability Deduction, the Division defines the following terms as stated:

**Publicly Traded Company** means a company that is listed on a stock exchange or over-the-counter markets.

**Generally Accepted Accounting Principles** refers to accounting principles, standards, and procedures established by either:

- *U.S. Generally Accepted Accounting Principles (U.S. GAAP)*, which are issued by the Financial Accounting Standards Board (FASB); **or**
- *International Financial Reporting Standards (IFRS)*, which are issued by the International Accounting Standards Board (IASB).

**Financial Statements** are statements that are required to be filed on a schedule (annually, quarterly, etc.) and that are prepared in accordance with generally accepted accounting principles. This includes, but is not limited to, 10-K, 10-Q, or SEC Form 8-K that are filed with the U.S. Securities and Exchange Commission.

**Net Deferred Tax Asset** refers to the deferred tax assets that exceed the deferred tax liabilities of a combined group that are computed in accordance with generally accepted accounting principles.

**Net Deferred Tax Liability** refers to the deferred tax liabilities that exceed the deferred tax assets of the combined group that are computed in accordance with generally accepted accounting principles.

## Net Deferred Tax Liability Deduction

Publicly-traded companies and their affiliates (subsidiaries) whose deferred tax positions are negatively affected as a direct result of the change to mandatory combined reporting can claim a Net Deferred Tax Liability Deduction (NDTLD) in an amount necessary to offset the increase in the net deferred tax liability, decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability.

Financial statements must be filed with a United States regulatory authority or a regulatory authority of a foreign nation with which the United States has a reciprocal agreement. Financial statements must be prepared in accordance with generally accepted accounting principles.

In order to be able to claim the deduction, taxpayers must complete Form DT-1 (New Jersey Corporation Business Tax Statement of Net Deferred Tax Liability Deduction) on or before July 1, 2020. The form will be available online no later than April 1, 2020. Please continue to check the website ([www.state.nj.us/treasury/taxation/cbt/cbtreform.shtml](http://www.state.nj.us/treasury/taxation/cbt/cbtreform.shtml)). **Once completed, the form must be uploaded through the New Jersey Online Notice Response Service (NJ ONRS).** Note: The Division will not accept Form DT-1 through the mail.

Taxpayers will use one-tenth of the deduction per year over a ten-year period beginning on or after January 1, 2023.

## **Q & A on Net Deferred Tax Liability Deduction**

The Division has received several questions regarding the Net Deferred Tax Liability Deduction (NDTLD), which are answered below:

**1. Can a privately held company apply for the NDTLD?**

No. Privately held companies are not eligible for the NDTLD. The law specifies that in order to be eligible for the deduction a company must be publicly traded, listed on a stock exchange or over-the-counter market, and file financial statements in accordance generally accepted accounting principles (defined above).

**2. I am an owner of a closely held group of companies that is now required to file mandatory combined returns, am I eligible for the NDTLD?**

No, only publicly traded companies that file financial statements in accordance with U.S. G.A.A.P. or I.F.R.S. are eligible. Individuals and privately held combined groups are not eligible for the NDTLD.

**3. Are there specific stock exchanges or over-the-counter markets on which a company must be listed to qualify for the NDTLD?**

A company can be listed on any stock exchange or over-the-counter market that is regulated by a U.S. regulatory authority or a regulatory authority of the foreign nation that has a reciprocal agreement with the U.S. government or U.S. regulatory authority.

**4. Is the surtax included in the computation of the NDTLD?**

Yes. The surtax is part of the overall tax rate of the combined group so it must be included when calculating the NDTLD.

**5. Is the impact of changing to market-based sourcing included in the computation of the NDTLD?**

No. The NDTLD was designed to mitigate the financial impact of New Jersey's shift to combined reporting. The change to market-based sourcing is not a result of combined reporting. Therefore, it cannot be included in the NDTLD calculation.

**6. The parent corporation files financial statements in accordance with IFRS and is listed on a foreign stock exchange that has a reciprocal agreement with the U.S. government. The U.S. subsidiaries are required to file a mandatory unitary combined return with New Jersey and are included in the parent corporation's financial statements filed with the foreign nation. Are the U.S. subsidiaries eligible for the NDTLD?**

Yes, because the subsidiaries are affiliates of the parent corporation that files financial statements in accordance with I.F.R.S. and the parent corporation is listed on a relevant stock exchange.

**7. The parent corporation files financial statements in accordance with U.S. GAAP and is listed on the New York Stock Exchange. The parent corporation is not unitary with its subsidiaries. The subsidiaries are required to file a mandatory unitary combined return for New Jersey Corporation Business Tax purposes. The combined group is included in the parent corporation's financial statements filed with the U.S. Securities and Exchange Commission (SEC). Is the combined group eligible for the NDTLD?**

Yes. Even though the publicly traded parent corporation is not unitary with its subsidiaries, the subsidiaries are required to file a New Jersey combined return and they participate in the financial statements filed with the SEC, which makes them eligible for the NTDL.

The Division of Taxation is in the process of drafting regulations addressing the topics covered by this Technical Bulletin.

**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.