

*N.J.A.C. 18:35-1.5*

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TITLE 18. TREASURY -- TAXATION  
CHAPTER 35. NEW JERSEY GROSS INCOME TAX  
SUBCHAPTER 1. GROSS INCOME--CATEGORIES AND CALCULATION

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N.J.A.C. 18:35-1.5 (2017)

§ 18:35-1.5 S corporations and S corporation shareholders

(a) The following words and terms, when used in this section, shall have the following meanings:

"Hybrid" means a Federal S corporation that has not made the New Jersey S corporation election, and the corporation conducts business both inside and outside New Jersey.

"Pro rata share" means the portion of any items attributable to an S corporation shareholder determined in accordance with I.R.C. §§ 1377 and 1362.

"S corporation" means a corporation that meets the Federal definition under I.R.C. § 1361, regardless of whether a New Jersey S corporation election was made.

"S corporation income" means the net of an S corporation's items of income, loss, or deduction determined without exclusion of items of income properly taxable or deduction of expenses or losses prohibited for gross income tax purposes.

(b) Determining S corporation income. S corporation income is properly determined by netting together all items of income, gain, loss, or expense reported on the S corporation's Federal Form 1120S, Schedule K, and making modifications required under the Gross Income Tax Act for expenses and losses that were deducted for Federal purposes, but are not permitted to be deducted for State purposes; Federally exempt income, which is taxable to New Jersey; Federally taxable income, which was included for Federal purposes, but is exempt for New Jersey purposes; and expenses not deducted Federally, which are allowable for New Jersey.

1. Additions are required for:

- i. Taxes based on or measured by profits, income, business presence, or business activity, which were paid or accrued to the United States, any state, including New Jersey, a political subdivision of any state, or the District of Columbia. Such taxes include, but are not limited to, corporate franchise or income taxes, unincorporated business taxes, net worth taxes, gross receipts taxes, local and city income taxes, business occupancy taxes;
- ii. Income taxes paid or accrued by the S corporation on behalf of, or in satisfaction of the liability of, shareholders of the S corporation;
- iii. Expenses incurred to earn or collect income or gains that are exempt from New Jersey tax;
- iv. Losses attributable to the disposition of obligations of the Federal government, any of its

territories or instrumentalities, the State of New Jersey or its political subdivisions; and

v. Interest income derived from the obligations of states other than New Jersey, their municipalities, and political subdivisions.

2. Subtractions are required for:

i. Gains attributable to the disposition of obligations of the Federal government, any of its territories or instrumentalities, the State of New Jersey or its political subdivisions;

ii. Interest income derived from the obligations of the Federal government, any of its territories or instrumentalities, the State of New Jersey or its political subdivisions;

iii. Expenses incurred to generate Federally excludable income, which is taxable to New Jersey; and

iv. Expenses which flow to the shareholder as itemized deductions (for example, I.R.C. § 179 expense, charitable contributions) for Federal tax purposes or which are limited for Federal tax purposes (for example, meals and entertainment) unless specifically restricted or prohibited under the Gross Income Tax Act.

(c) A shareholder's pro rata share is determined by the following:

1. A New Jersey electing S corporation must determine S corporation income and provide each shareholder with a Schedule NJ-K-1 reporting the shareholder's pro rata share based on ownership percentage, the New Jersey allocation factor, or deemed allocation factor, and all other information required for the proper filing of a New Jersey gross income tax return.

2. The shareholder of a Federal S corporation that has not made the New Jersey S corporation election must compute the pro rata share on a New Jersey Worksheet, Reconciliation Schedule K-1, Federal Form 1120S using the information from the Federal Schedule K-1, Form 1120S, and in accordance with (b) above.

3. A Federal S corporation's income or loss is allocated inside or outside New Jersey based on the percentages determined by the S corporation in accordance with N.J.S.A. 54A:5-10.

4. A Federal S corporation that does not have a New Jersey filing requirement and does not file a New Jersey corporate return is deemed to allocate 100 percent of its income outside New Jersey.

5. Deemed allocation of income outside New Jersey. If a Federal S corporation files a New Jersey corporation business tax return allocating 100 percent of its income to New Jersey and, in accordance with N.J.A.C. 18:7-8.3, has income that qualifies as duplicated on the corporate income tax returns filed in New Jersey and another jurisdiction, and if a credit for taxes paid to other jurisdictions is allowed on the New Jersey corporation business tax return, for New Jersey gross income tax purposes, the qualified duplicated income is deemed to be allocated outside New Jersey, and the entity is deemed to have an allocation factor outside New Jersey.

Example: On its New Jersey corporation business tax (CBT) return, an S corporation reports entire net income of \$ 15,000 and a New Jersey allocation factor of 100 percent. The S corporation is required to pay a corporate income tax to another state on \$ 3,000 of income, which is also reported to and taxed by New Jersey. The duplicated income qualifies for inclusion in the S corporation's New Jersey calculation of a credit for taxes paid to other jurisdictions. For gross income tax purposes, \$ 3,000 of income is deemed to be allocated outside New Jersey, and the entity is deemed to have allocated 20 percent of its income outside New Jersey.

6. Payment of a minimum tax to another state by an S corporation does not fulfill the criteria of

(c)5 above. Therefore, income is not deemed to be S corporation income allocated outside New Jersey for gross income tax purposes. If the taxpayer is required to file a personal income tax return in the other jurisdiction reporting S corporation income, the taxpayer would not be eligible for a credit for taxes paid to the other jurisdiction.

7. When an S corporation with a New Jersey corporation business tax (CBT) allocation factor of 100 percent reports entire net income that is subject to Federal corporate income taxation on the New Jersey CBT return and the corporate tax return of another state and the tax paid to the other state qualifies for a reduction on the New Jersey CBT return, the amount of income taxed by both jurisdictions is deemed S corporation income allocated outside New Jersey. If the taxpayer is required to file a personal income tax return in the other jurisdiction reporting the S Corporation income, the taxpayer would be eligible for credit for taxes paid to another jurisdiction, subject to limitations.

(d) Determining an S corporation shareholder's New Jersey gross income tax reporting requirement. A Federal S corporation shareholder's New Jersey gross income tax reporting requirement is determined based on the shareholder's New Jersey residency, whether or not the S corporation has made a valid New Jersey S corporation election, and the S corporation's allocation factor or deemed allocation factor.

1. Resident shareholder.

i. A resident shareholder must report both the pro rata share of S corporation income or loss (subject to limitations) from a New Jersey electing S corporation; and

ii. The pro rata share of S corporation income or loss (subject to limitations) not allocated to New Jersey from a New Jersey nonelecting Federal S corporation.

2. Nonresident shareholder.

i. By signing the New Jersey S corporation or New Jersey QSSS Election Form CBT-2553, a nonresident shareholder consents to the corporation's election to be treated as a New Jersey S corporation and to New Jersey's right and jurisdiction to tax and collect the tax on the nonresident shareholder's S corporation income.

ii. If a nonresident shareholder fails to sign and give consent, the S corporation is required to calculate the nonconsenting shareholder's gross income tax liability by applying the maximum gross income tax rate in effect to the shareholder's pro rata share allocated to New Jersey. The resulting gross income tax is reported and paid by the S corporation with its corporation business tax return and is listed on the nonconsenting shareholder's Schedule NJ-K-1. A nonconsenting shareholder is required to file a Nonresident Gross Income Tax Return, Form NJ-1040NR, and report as an estimated payment, the amount listed on his or her Schedule NJ-K-1 as payments made on his or her behalf by the S corporation.

iii. A nonresident shareholder must determine the pro rata share earned everywhere as if the shareholder was a New Jersey resident.

iv. A full-year nonresident shareholder must report as New Jersey source income or loss (subject to limitations) the pro rata share allocated to New Jersey from an S corporation that has made the New Jersey S corporation election, regardless of the category in which the shareholder is required to report the income on the New Jersey Nonresident Gross Income Tax Return.

v. The pro rata share from a Federal S corporation that has not made the New Jersey election is not reportable as New Jersey source income by a nonresident.

3. Part-year resident. A part-year resident must report on a resident return, the pro rata share

for the period of New Jersey residency. This is determined by calculating a residency percentage, which is the number of days of the S corporation's year (fiscal or calendar) that the shareholder was a New Jersey resident divided by 365 days (366 for a leap year). A separate residency percentage must be calculated for each S corporation.

Example: If an S corporation's fiscal year is October 1 through September 30 and a shareholder was a New Jersey resident through April 15th, the shareholder was a New Jersey resident for 197 days of the S corporation's fiscal year (October 1 - April 15) 197 days divided by 365 equals a residency percentage of 54 percent.

i. For S corporations that have made the New Jersey S election, the total amount of pro rata share of S corporation income from the Schedule NJ-K-1 must be multiplied by the residency percentage. For S corporations not making the New Jersey S election, the pro rata share of income or loss not allocated to New Jersey must be multiplied by the residency percentage.

4. A part-year nonresident shareholder must determine the reporting requirement of income earned everywhere as if the shareholder was a New Jersey resident. A nonresidency percentage (100 percent less the calculated residency percentage) is applied to determine the amount of pro rata share reportable for the nonresidency period.

i. A part-year nonresident shareholder must determine the New Jersey source pro rata share by applying the nonresidency percentage to the pro rata share of income or loss allocated to New Jersey by an S corporation, which has made the New Jersey S corporation election, regardless of the category in which the shareholder is required to report the income on the New Jersey part-year nonresident income tax return. Income or loss from a Federal S corporation which has not made the New Jersey S corporation election is not reportable as New Jersey source income by a nonresident.

5. If the corporation is a New Jersey electing S corporation, the shareholders must report as follows:

i. A resident shareholder reports the entire pro rata share, regardless of where it is allocated.

ii. A nonresident shareholder reports the pro rata share allocated to New Jersey as New Jersey source income and reports all of the pro rata share, regardless of where it is allocated, as everywhere income.

iii. A part-year resident shareholder applies the residency percentage to all of the net pro rata share, regardless of where it is allocated.

iv. A part-year nonresident shareholder applies the nonresidency percentage to the net pro rata share allocated to New Jersey and reports the result as New Jersey source income, and applies the nonresidency percentage to all of the net pro rata share, regardless of where it is allocated, and reports the result as income from everywhere.

6. If the corporation is a Federal S corporation that did not make the New Jersey S election, including a Federal S corporation that does not file a New Jersey corporate return, the shareholders must report as follows:

i. A resident shareholder reports the net pro rata share not allocated to New Jersey.

ii. A nonresident shareholder does not report any of the net pro rata share as New Jersey source income, but reports the net pro rata share not allocated to New Jersey as income from everywhere.

iii. A part-year resident shareholder applies the residency percentage to the net pro rata share not allocated to New Jersey.

iv. A part-year nonresident shareholder does not report any of the net pro rata share as New Jersey source income, but applies the nonresidency percentage to the net pro rata share not allocated to New Jersey and reports the result as income from everywhere.

(e) Determining Shareholder's New Jersey Accumulated Adjustments Account ("NJ AAA" or "New Jersey AAA"). A New Jersey Accumulated Adjustments Account must be maintained for a resident shareholder of a New Jersey electing or a New Jersey nonelecting Federal S corporation. The shareholder's initial beginning balance is zero for the first tax year beginning after July 7, 1993.

1. A New Jersey AAA Worksheet should be used to record each year's adjustments and to determine the year's ending balance, which may be a negative amount.

2. A yearly adjustment is made for the shareholder's net pro rata share of S corporation income or (loss) including the income, gain, or loss from the S corporation's complete liquidation of its assets, which is reported by the shareholder in the category net gains or income from disposition of property.

i. Adjustments for other income and losses include, without limitation, New Jersey tax-exempt income, gains and losses earned by the S corporation during the tax year.

ii. Other reductions which were made to the shareholder's Federal AAA or Federal Other Adjustments Account (OAA) must also be made to the New Jersey AAA, provided that these reductions have not already been taken into consideration in calculating net pro rata share of S corporation income. Other reductions include, but are not limited to, taxes based on income, business presence or activity; health or life insurance; fines or penalties; club dues; foreign taxes; and expenses incurred by the S corporation to generate New Jersey tax-exempt income, gains or losses.

iii. Distributions. New Jersey AAA must be reduced by the amount of any distributions the shareholder received from the S corporation during the year, up to the New Jersey AAA balance. Distributions in excess of the New Jersey AAA balance are to be applied to the shareholder's New Jersey Earnings and Profits Account and after that against the shareholder's New Jersey adjusted basis.

3. Hybrid. Distributions from a hybrid corporation must be allocated to both the income earned inside New Jersey and the income earned outside of New Jersey using the corporation's allocation factor or deemed allocation factor.

4. For a Federal S corporation that has not made the New Jersey election, the income, loss, and reductions to be included on a New Jersey AAA Worksheet are based on the corporation's allocation factor, or deemed allocation factor outside of New Jersey.

5. The shareholders must retain all New Jersey AAA information until they dispose of their shares of the S corporation.

(f) The earnings and profits accumulated in a Federal S corporation prior to the New Jersey S corporation election becoming effective are classified as New Jersey Earnings and Profits (NJ E and P) and are taxed to a resident shareholder as dividends when distributed.

1. Shareholder of an S corporation which has made the New Jersey S corporation election. A shareholder in a Federal S Corporation which has made the New Jersey S corporation election will use an NJ E and P Account for New Jersey Resident Shareholders of an Electing New Jersey S Corporation Worksheet, to annually adjust and calculate NJ E and P. The initial beginning balance will be the retained earnings of the S corporation immediately prior to the New Jersey S corporation election. If the retained earnings are a negative amount, the initial beginning

balance is zero.

2. Shareholder of an S corporation which has not made the New Jersey S corporation election. A shareholder in a Federal S corporation which has not made the New Jersey S corporation election will use an NJ E and P Account For Shareholders of A Nonelecting Federal S Corporation or "Hybrid" Corporation Worksheet, to annually adjust and calculate NJ E and P. The initial beginning balance will be the total of the shareholder's beginning Federal Accumulated Adjustments Account and Federal Other Adjustments Account for the corporation's first tax year that begins on or after July 7, 1993, plus any remaining Federal accumulated earnings and profits at that time. If the total is a negative amount, the initial NJ E and P is zero.

3. NJ E and P Account. The NJ E and P Account must be increased or decreased each year by any other additions or adjustments made to the shareholder's Federal earnings and profits account and reduced by the amount of dividends the shareholder received from the S corporation that were taxable for New Jersey gross income tax purposes.

4. Hybrid. For an S corporation which has not made the New Jersey S corporation election and which allocates income both inside and outside New Jersey, or which is deemed to have allocated income outside New Jersey, the corporation's New Jersey allocation factor must be used to determine the income, other additions and adjustments, and dividends that are allocated to New Jersey.

5. Shareholder of an S corporation which was formed after July 7, 1993. A shareholder of a Federal S corporation which was newly incorporated after July 7, 1993, will have an NJ E and P balance of zero, regardless of whether or not a New Jersey S election was made.

(g) Determining shareholder's initial New Jersey basis:

1. For a resident who was a shareholder of a Federal S corporation before January 1, 1994, his or her initial basis in the stock and indebtedness of the S corporation is the basis of the stock determined on January 1, 1994, as if the S corporation was a C corporation, plus any indebtedness the S corporation owes to the shareholder.

2. For a resident who became a shareholder of a Federal S corporation on or after January 1, 1994, his or her initial basis in the stock and indebtedness of the S corporation is the same as the Federal basis determined on whichever date is the latest:

- i. The date the shareholder last became a resident of New Jersey; or
- ii. The date the shareholder acquired the stock of the S corporation; or
- iii. The effective date of the corporation's most recent Federal S election.

3. For a nonresident shareholder the initial basis in the stock and indebtedness of an S corporation is zero on whichever date is the latest of:

- i. The date the shareholder last became a nonresident of New Jersey; or
- ii. The date on which the shareholder acquired the stock of the S corporation; or
- iii. The effective date of the corporation's most recent Federal S election; or
- iv. The effective date of the corporation's most recent New Jersey S corporation election.

(h) Determining Shareholder's New Jersey Adjusted Basis. A shareholder's New Jersey adjusted basis is determined at the close of the S corporation's taxable year or just prior to the shareholder's full or partial disposition of stock and must take into account all non-liquidating

distributions received or deemed to have been received. The shareholder's New Jersey adjusted basis is comprised of the initial New Jersey stock basis, plus additional capital contributions, plus the cost of purchasing additional stock, plus or minus the balance of the shareholder's New Jersey AAA, plus indebtedness owed to the shareholder by the S corporation, minus indebtedness owed to the S corporation by the shareholder.

(i) Shareholder reporting of pro rata share:

1. The items of income, gain, or loss earned by an S corporation do not maintain their character when passed through to the shareholder. The shareholder's pro rata share of S corporation income is calculated on a limited flow through basis and must be reported, whether or not distributed, on the shareholder's gross income tax return in the category, Net Pro Rata Share of S Corporation Income. Exceptions may apply when there has been a complete liquidation of the S corporation.

2. Neither the corporation in preparing the New Jersey Schedules K and NJ K-1, nor a shareholder in reporting the pro rata share, is permitted to deduct or exclude items of income, gain, loss, or expense unless permissible under the New Jersey Gross Income Tax Act. For example, a shareholder may not deduct interest paid by the shareholder on indebtedness incurred to purchase S corporation stock, unreimbursed business expenses, personal expenses, or any expenses not permitted to be deducted for gross income tax purposes.

(j) Shareholder reporting of pro rata share of losses:

1. An allowable loss can offset the pro rata share of income from another S corporation provided that the income and loss occurred in the same tax year.

2. A loss from a prior year cannot be used to offset the current year's income. An unused loss from the current year cannot be used in a subsequent tax year.

3. Losses which cannot be used in the current year are allowed as an adjustment to the shareholder's basis of that S corporation when the stock is disposed of.

4. A shareholder may only use the pro rata share of loss from an S corporation to the extent that it does not exceed the shareholder's New Jersey adjusted basis in that S corporation. For loss limitation purposes, losses for the period are not included in the shareholder's New Jersey adjusted basis in accordance with I.R.C. section 1366.

5. The New Jersey rules of priority for determining the use and assignment of S corporation losses must be followed when all of the following three conditions are satisfied:

i. The shareholder must be a shareholder in three or more Federal S corporations;

ii. Total usable S corporation losses exceed total pro rata share of Federal S corporation income; and

iii. The losses were generated by two or more S corporations.

6. If the total amount of usable losses exceeds the total amount of income, then Federal rules of priority must be used, and each S corporation's usable loss must be prorated in the proportion that the usable loss bears to the total amount of usable losses for the period.

7. A shareholder in only two S corporations must follow the following rules:

i. If both S corporations have income, the combined amount must be reported.

ii. If one S corporation has income and one has a loss, the usable portion of the loss,

determined using the New Jersey adjusted basis, can be used to offset the income from the other S corporation. If the useable loss exceeds income, the reportable net pro rata share of S corporation income is zero.

(k) A shareholder reports an S corporation liquidation as follows:

1. Federal Plan of Liquidation. Any Federal plan of liquidation adopted by an S corporation and its shareholder(s) is deemed to be adopted by the S corporation and its shareholder(s) for New Jersey tax purposes. The S corporation and its shareholder(s) are bound by the plan's requirements and attributes under the Internal Revenue Code. The shareholder(s) are subject to the same income or loss reporting requirements under the Gross Income Tax Act and supporting rules. For example, if the adopted Federal plan of liquidation requires the S corporation, and ultimately the shareholder(s), to recognize a gain or loss from the deemed sale of its assets, the gain or loss from the deemed sale is reported by the shareholder(s) for gross income tax purposes.

2. Complete Liquidation of an S Corporation. A complete liquidation of an S corporation is deemed to occur in the tax year when all of the S corporation's assets have been sold or deemed to have been sold, exchanged, disposed, or distributed and all of the S corporation's stock has been sold, exchanged, or disposed.

i. The income or loss from an S corporation's operations, activities, and transactions prior to the S corporation's complete sale, exchange, or other disposition of all of its assets must be reported by the shareholder in the category, net pro rata share of S corporation income.

ii. The income or loss from an S corporation's sale or deemed sale, exchange, distribution, or other disposition of all of its assets when in conjunction with the sale, exchange, or disposition of all of the S corporation's stock must be reported by the shareholder in the category "net gains or income from the disposition of property."

3. Partial Liquidation of an S Corporation. A partial liquidation of an S corporation is deemed to occur when the S corporation disposes of some, but not all, of its assets and the S corporation continues operating, even if operating in a different capacity or business.

i. Examples of a partial liquidation of an S corporation are:

(1) An S corporation sells its assets under an installment type agreement, the installment notes are held by and are payable to the S corporation, and the S corporation remains open and active to collect the notes.

(2) An S corporation operates a travel agency, which is located in a building it owns. The S corporation sells the travel agency, and the new owner rents the building from the S corporation.

ii. The net of all items of income, gain, or loss from an S corporation which was partially liquidated, whether from a sale or a deemed sale, must be reported by the shareholder in the category net pro rata share of S corporation income.

(l) Shareholder Reporting of Nonliquidating Distributions. The taxability of a nonliquidating distribution from an S corporation is governed by the Federal priority system established under I.R.C. sections 1368 and 1371. To determine the taxability, the nonliquidating distribution must first be applied against the shareholder's NJ AAA balance, then against the shareholder's NJ E and P balance, and finally against the shareholder's New Jersey adjusted basis.

1. A resident shareholder reports nonliquidating distributions from its NJ E and P Account as dividend income.



2. A resident shareholder reports the amount of a nonliquidating distribution which exceeds the shareholder's NJ AAA, NJ E and P, and New Jersey adjusted basis as gains from disposition of property.

3. A nonliquidating distribution from a hybrid corporation must be allocated to both the income earned inside New Jersey and the income earned outside New Jersey by applying the corporation's allocation factors, or deemed allocation factors, inside and outside New Jersey. Distributions from the NJ E and P, which are applicable to the income earned inside New Jersey are taxable nonliquidating distributions from a C corporation and are reportable by a resident shareholder as dividend income. If a nonliquidating distribution is in excess of the hybrid corporation's NJ AAA balance, the excess must first be applied against the shareholder's NJ E and P balance, and finally against the shareholder's New Jersey adjusted basis.

4. A nonresident shareholder must calculate the taxable portion of a liquidating or nonliquidating distribution as if the shareholder was a resident. The taxable portion must be reported as a dividend or gain from disposition of property earned everywhere. A distribution, whether liquidating or nonliquidating, is not New Jersey source income for a nonresident shareholder.

(m) A shareholder reports the disposition of S corporation stock as follows:

1. A shareholder's disposition of S corporation stock must be reported in the category net gains or income from the disposition of property. The shareholder calculates New Jersey net gain or loss from the disposition by subtracting the prior year's unused pro rata share of losses and the New Jersey adjusted basis in the stock, as defined under (h) above, from the liquidating distribution.

2. When a shareholder disposes of some, but not all, of his or her stock, the New Jersey adjusted basis in the stock and the prior year's unused pro rata share of losses must be prorated based on the portion of stock that was sold and the result subtracted from the sale proceeds.

3. If a shareholder reports the stock sale as an installment sale for Federal income tax purposes, the shareholder must also report the New Jersey gain from the sale under the installment method. The New Jersey installment sale income must be determined under applicable Federal rules and procedures using the New Jersey adjusted basis and prior year unused pro rata share of losses. If the stock sale results in a New Jersey loss, the full loss is reported in the year the transaction occurred.

4. A nonresident shareholder must follow the resident shareholder procedures to determine the net gains or income from the disposition of property everywhere. The gain or loss from a disposition of S corporation stock is not New Jersey source income for a nonresident.

(n) The following examples illustrate S corporation shareholder reporting requirements:

**S CORPORATION SHAREHOLDER REPORTING REQUIREMENTS**

**EXAMPLE #1 - Corporation made an NJ S election; resident/nonresident shareholder owns 100% of S corporation's stock; pro rata share is \$1,000.**

Corporate election		Corporation's allocation factor	Corp's income	Income allocation	Income reportable by:		
Federal	NJ CBT				Resident	Nonr Everywt	
Federal S	NJ S	NJ alloc Non NJ	100% X 0% X	1000 = NJ source 1000 = Non NJ	1000 0	1000 0	10
Federal S	NJ S	NJ alloc Non NJ	70% X 30% X	1000 = NJ source 1000 = Non NJ	700 <u>300</u> 1000	700 <u>300</u> 1000	7 <u>3</u> 10
Federal S	NJ S	NJ alloc Non NJ	0% X 100% X	1000 = NJ source 1000 = Non NJ	0 1000	0 1000	0 10

**EXAMPLE #2 - Corporation did not make an NJ S election; resident/nonresident shareholder owns 100% of S corporation's; pro rata share is \$1,000.**

Corporate election		Corporation's allocation factor	Corp's income	Income allocation	Income reportable by:		
Federal	NJ CBT				Resident	Nonr Everywt	
Federal S	Nonelect	NJ alloc Non NJ	100% 0%	1000 = NJ "C" inc 1000 = S out of NJ	1000 0	0 0	
Federal S	Nonelect	NJ alloc Non NJ	70% X 30% X	1000 = NJ "C" inc 1000 = S out of NJ	700 300	0 300	0 3
Federal S	Nonelect	NJ alloc Non NJ	0% X 100% X	1000 = NJ "C" inc 1000 = S out of NJ	0 1000	0 1000	0 10

**S CORPORATION SHAREHOLDER REPORTING REQUIREMENTS**

**Example # 3 - Corporation made an NJ S election; part year resident shareholder owns 100% of stock; pro rata share is \$1,000; corporation's fiscal year is 10/1-9/30; residency percentage is 54%.**

Corporate election		Corporation's allocation factor		Corp's income	Residency percentage	Income allocation	
Federal	NJ CBT						
Federal S	NJ S	NJ alloc	100% X	1000 X	54% =	NJ source	540
		Non NJ	0% X	1000 X	54% =	Non NJ	0
Federal S	NJ S	NJ alloc	70% X	1000 X	54% =	NJ source	378
		Non NJ	30% X	1000 X	54% =	Non NJ	<u>162</u>
							540
Federal S	NJ S	NJ alloc	0% X	1000 X	54% =	NJ source	0
		Non NJ	100% X	1000 X	54% =	Non NJ	540

**Example #4 - Corporation did not make an NJ S election; part year resident shareholder owns 100% of stock; pro rata share is \$1,000; corporation's fiscal year is 10/1-9/30; residency percentage is 54%.**

Corporate election		Corporation's allocation factor		Corp's income	Residency percentage	Income allocation	
Federal	NJ CBT						
Federal S	Nonelect	NJ alloc	0% X	1000 X	54% =	NJ source	0
		Non NJ	100% X	1000 X	54% =	Non NJ	540
Federal S	Nonelect	NJ alloc	70% X	1000 X	54% =	NJ "C" inc	378
		Non NJ	30% X	1000 X	54% =	NonNJ S	<u>162</u>
							540
Federal S	Nonelect	NJ alloc	100% X	1000 X	54% =	NJ "C" inc	540
		Non NJ	0% X	1000 X	54% =	NonNJ S	0

**S CORPORATION SHAREHOLDER REPORTING REQUIREMENTS**

**Example #5- Corporation made an NJ S election; part year nonresident shareholder owns 100% of stock; pro rata share is \$1,000; corporation's fiscal year is 10/1-9/30; nonresidency percentage is 46%.**

Corporate election		Corporation's allocation factor		Corp's income	Nonresidency Income allocation		Part year reportabl
Federal	NJ CBT				percentage		everywhe
Federal S	NJ S	NJ alloc	100% X	1000 X	46% = NJ source	460	46
		Non NJ	0% X	1000 X	46% = Non NJ	0	
Federal S	NJ S	NJ alloc	70% X	1000 X	46% = NJ source	322	32
		Non NJ	30% X	1000 X	46% = Non NJ	<u>138</u>	
						460	46
Federal S	NJ S	NJ alloc	0% X	1000 X	46% = NJ source	0	46
		Non NJ	100% X	1000 X	46% = Non NJ	460	

**Example #6 - Corporation did not make an NJ S election; part year nonresident shareholder owns 100% of stock; pro rata share is \$1,000; corporation's fiscal year is 10/1-9/30; nonresidency percentage is 46%.**

Corporate election		Corporation's allocation factor		Corp's income	Nonresidency Income allocation		Part year reportabl
Federal	NJ CBT				percentage		Everywhi
Federal S	Nonelect	NJ alloc	0% X	1000 X	46% = NJ source	0	46
		Non NJ	100% X	1000 X	46% = Non NJ	460	
Federal S	Nonelect	NJ alloc	70% X	1000 X	46% = NJ "C" inc	322	11
		Non NJ	30% X	1000 X	46% = NonNJ S	<u>138</u>	
						460	
Federal S	Nonelect	NJ alloc	100% X	1000 X	46% = NJ "C" inc	460	
		Non NJ	0% X	1000 X	46% = NonNJ S	0	

(o) The following examples illustrate the provisions of this section when there are sales of an S corporation's assets; sales of shareholder's stock; and liquidations.

Example 1. Complete liquidation of a New Jersey electing S corporation and the shareholder's stock are sold at a gain.

Facts:

S corporation's only transaction is the sale of its assets which resulted in a gain of \$ 10,000.

Sole shareholder's Schedule NJ-K-1 reports \$ 10,000 pro rata share of S corporation's gain from sale of its assets, all of which are allocated to New Jersey.

Shareholder's opening New Jersey basis in the stock and capital total \$ 100.00.

Shareholder received a distribution of \$ 14,000.

Reporting of transactions - The shareholder's pro rata share of the complete liquidation of the S corporation and the shareholder's gain or loss on disposition of the stock are separately reported in the category net gains or income from disposition of property.

**Resident shareholder:**

Pro rata share of S corporation's gain from disposition of corporation's assets			\$ 10,000
Sale of stock: Liquidating distribution		\$ 14,000	
Less: Opening NJ basis in stock	\$ 100		
Pro rata share of S corp's gain reported	\$ 10,000		
	-----		
Ending NJ basis in stock		(\$ 10,100)	
		-----	
Gain on disposition of S corporation stock			\$ 3,900
			-----
Net gains or income from disposition of property			\$ 13,900

**Nonresident shareholder:**

	Everywhere Income	New Jersey Income
Net gains or income from disposition of Property	\$ 13,900	\$ 10,000

Shareholder reports Everywhere income as if a New Jersey resident.

The S corporation's gain allocated to New Jersey is New Jersey source income; the shareholder's gain from the sale of S corporation stock is not sourced to New Jersey by a nonresident.

Example 2. Complete liquidation of a New Jersey electing S corporation; shareholder's stock is sold at a loss.

Facts:

S corporation's only transaction was the sale of its assets which resulted in a gain of \$ 10,000.

Sole shareholder's Schedule NJ-K-1 reports \$ 10,000 pro rata share of S corporation's gain from sale of its assets, all of which is allocated to New Jersey.

Shareholder's opening New Jersey basis in the stock and capital total \$ 5,000.

Shareholder received a distribution of \$ 14,000.

Reporting of transactions - The shareholder's pro rata share of the complete liquidation of the S corporation and the shareholder's gain or loss on disposition of the stock are separately reported in the category net gains or loss on disposition of the stock are separately reported in the category net gains or income from disposition of property.

**Resident shareholder:**

Pro rata share of S corporation's gain from disposition of S corporation's assets			\$ 10,000
Sale of stock:			
Liquidating distribution		\$ 14,000	
Less: Opening NJ basis in stock	\$ 5,000		
Pro rata share of S corporation's gain reported	\$ 10,000		
	-----		
Ending NJ basis in stock		(\$ 15,000)	
		-----	
Loss on disposition of S corporation stock			(\$ 1,000)
			-----
Net gains or income from disposition of property			\$ 9,000

**Nonresident shareholder:**

	Everywhere Income	New Jersey Income
Net gains from disposition of property	\$ 9,000	\$ 10,000

Shareholder reports Everywhere income as if a New Jersey resident.

The S corporation's gain allocated to New Jersey is New Jersey source income; the shareholder's loss from the sale of S corporation stock is not sourced to New Jersey by a nonresident.

Example 3 - Sole shareholder of a New Jersey electing S corporation sells all of the stock at the end of the S corporation's tax year. The S corporation retains all of its assets and continues operation under new ownership.

Facts:

Shareholder's Schedule NJ-K-1 reports net pro rata share of S corporation income of \$ 1,500, all of which is allocated to New Jersey.

Sole shareholder's opening New Jersey basis in the stock is \$ 500.00.

Shareholder sold the stock for \$ 1,800.

Shareholder has gains of \$ 900.00 from the sale of publicly traded shares of stock.

Reporting of transactions - Shareholder's net pro rata share of S corporation income is reported in the category net pro rata share. The gain or loss on disposition of the shareholder's shares of stock is reported in the category gains from disposition of property.

**Resident shareholder:**

Net pro rata share of S corporation income			\$ 1,500
Net gains from disposition of property:			
Sale of S corporation stock:			
Sale proceeds		\$ 1,800	
Less: Opening NJ basis in stock	\$ 500.00		
Net pro rata share reported	\$ 1,500		
	-----		
Ending NJ basis in stock		(\$ 2,000)	
		-----	
Loss on sale of S corporation stock			(\$ 200.00)
Gains from sale of publicly traded stocks			\$ 900.00
			-----
Net gains from disposition of property			\$ 700.00

**Nonresident shareholder:**

	Everywhere Income	New Jersey Income
Net pro rata share of S corporation income	\$ 1,500	\$ 1,500
Net gains from disposition of property	\$ 700.00	\$ 0

Shareholder reports Everywhere income as if a New Jersey resident.

The shareholder's net pro rata share of income allocated to New Jersey is New Jersey source income; the shareholder's loss from the sale of S corporation stock is not sourced to New Jersey by a nonresident.

Example 4 - A Federal S corporation electing New Jersey election which allocates 100 percent to New Jersey is liquidated under an I.R.C. § 338(h)(10) election.

Facts:

Prior to the liquidation of the S corporation's assets, the S corporation had a net loss from operations of \$ 850.00 and interest income of \$ 70.00.

The S corporation recognized a gain of \$ 10,000 from the deemed sale of the S corporation's assets.

Sole shareholder's Schedule NJ-K-1 reports a net pro rata share of S corporation loss in the amount of \$ 780.00 all of which is allocated to New Jersey; and a pro rata share of gain from the S corporation's deemed sale of assets in the amount of \$ 10,000.

Shareholder's opening NJ basis in their stock was \$ 2,100.

Shareholder received a liquidating distribution of \$ 15,000.

Reporting of transactions - Income and losses from corporate activity prior to the liquidation of the corporation's assets are reported in the category net pro rata share of S corporation income. The S corporation's gain or loss on disposition of its assets is reported in the category, net gains from the disposition of property. The shareholder's net gains or loss on disposition of the S corporation stock is reported in the category, net gains from the disposition of property.

**Resident shareholder:**

Net pro rata share of S corporation income - loss		(\$ 780.00)	\$ 0
Net gains from disposition of property:			
Pro rata share of S corporation's gain on sale of assets			\$ 10,000
Sale of stock:			
Liquidating distribution		\$ 15,000	
Opening NJ basis in stock	\$ 2,100		
Add: pro rata share of S corporation's			
Gain on sale of assets	\$ 10,000		
Less: pro rata loss reported	(\$ 780.00)		
Add: Unused net Pro Rata loss		\$ 780.00	
		-----	
NJ basis		(\$ 12,100)	
		-----	
Gain from sale of S corporation stock			\$ 2,900
			-----
Net gains from disposition of property			\$ 12,900

**Nonresident shareholder:**



	Everywhere Income	New Jersey Income
Net pro rata share of S corporation income (loss)	0	0
Net gains from disposition of property	\$ 12,900	\$ 10,000

Shareholder reports Everywhere income as if a New Jersey resident.

The shareholder's gain from the sale of S corporation stock is not sourced to New Jersey by a nonresident.

Example 5 - A Federal S corporation which did not make the New Jersey S election and allocates all of its income to New Jersey sells all of its assets and dissolves. The shareholder receives a liquidating distribution in payment for their stock.

Facts:

S corporation had a net loss from operations in the amount of \$ 3,750.

Sale of the S corporation's assets resulted in a net gain of \$ 19,000.

Shareholder's cost of the stock was \$ 3,000.

Shareholder received a liquidating distribution of \$ 15,000.

Reporting of transactions - For New Jersey tax purposes the shareholder owns stock in a C corporation. The shareholder does not have reportable net pro rata share of S corporation income from this corporation. The shareholder's gain or loss from liquidation of the corporation's stock is reported in the category net gains from disposition of property.

**Resident shareholder:**

Sale of stock:

Sale proceeds - liquidating distribution	\$ 15,000	
Less: Cost of stock	(\$ 3,000)	
	-----	
Gain from disposition of property		\$ 12,000

Nonresident shareholder:

For a nonresident shareholder there is no New Jersey source income from this transaction. If the nonresident has a New Jersey filing requirement due to other New Jersey activity, this transaction would be included in Everywhere income as if a resident.

	Everywhere Income	New Jersey Income
Gain from disposition of property	\$ 12,000	\$ 0

Example 6 - A hybrid corporation (a Federal S corporation that did not make the New Jersey S election and which allocates its income both inside and outside New Jersey), sells all of its assets and the shareholder's stock is liquidated.

Facts:

Corporation had net income of \$ 3,750 from operations prior to liquidation of the assets.

Sale of corporation's assets resulted in a net gain of \$ 19,000.

The corporation's New Jersey allocation factor is 45 percent; the allocation factor outside of New Jersey is 55 percent.

Shareholder received a liquidating distribution of \$ 15,000.

Opening balance of NJ AAA of \$ 1,900.

Shareholder's cost of the stock was \$ 3,000.

Reporting of transactions - For New Jersey tax purposes the shareholder owns stock in both a Federal S corporation and a New Jersey C corporation. The corporation's allocation factor inside of New Jersey determines the shareholder's New Jersey C corporation income and the costs and proceeds attributable to the sale of C corporation stock. The corporation's allocation factor outside of New Jersey determines the shareholder's Federal S corporation income allocated outside of New Jersey and the shareholder's New Jersey stock basis and sale proceeds attributable to the sale of Federal S corporation stock.

			<b>New Jersey C corporation Income</b>	<b>Federal S corporation income not Allocated to New Jersey</b>
			45%	55%
Net pro rata share of income	3,750		\$ 0	\$ 2,063
Net gains from disposition of property:				
Pro rata share of gain from disposition of corporation's assets	\$ 19,000	\$ 0	\$ 10,450	\$ 10,450
Liquidation of stock:				
Sale proceeds	\$ 15,000	\$ 6,750	\$ 8,250	
Less:				
Cost of stock	\$ 3,000		(\$ 1,350)	(\$ 1,650)
NJ AAA opening balance			n/a	(\$ 1,900)
Net pro rata share of income reported			n/a	(\$ 2,063)
Pro rata share of gain from asset sale reported			n/a	(\$ 10,450)
			-----	-----

Gain on sale of C corporation stock	\$ 5,400	\$ 5,400
Loss on sale of S corporation stock	(\$ 7,813)	(\$ 7,813)
		-----
Net gains from disposition of property		\$ 8,037

Resident shareholder:

A resident shareholder must report the Federal S corporation income from operations prior to liquidation of the assets allocated outside of New Jersey, \$ 2,063 as net pro rata share of S corporation income. The corporation's income allocated inside of New Jersey is from a New Jersey C corporation and is not reportable.

The shareholder's reports as net gains from disposition of property, the gain allocated outside of New Jersey and attributed to the corporation's sale of assets, \$ 10,450; the gain attributed to disposition of New Jersey C corporation stock, \$ 5,400; and the loss attributed to disposition of Federal S corporation stock, (\$ 7,813).

Net pro rata share of S corporation income:	\$ 2,063
Net gains or income from disposition of property:	\$ 10,450
Gain on sale of S corporation assets allocated outside New Jersey	\$ 5,400
Gain on sale of New Jersey C corporation stock	(\$ 7,813)
Loss on sale of Federal S corporation stock	\$ 8,037

Nonresident shareholder:

For a nonresident shareholder there is no New Jersey source income from these transactions. If the nonresident has a New Jersey filing requirement due to other New Jersey activity this transaction would be included on the nonresident return in the following manner:

	Everywhere Income	New Jersey Income
Net pro rata share of S corporation income	\$ 2,063	\$ 0
Gain from disposition of property	\$ 8,037	\$ 0

HISTORY:

New Rule, R.2007 d.14, effective January 16, 2007.

See: 38 N.J.R. 3502(a), 39 N.J.R. 238(b).

Amended by R.2008 d.282, effective September 15, 2008.

See: 40 N.J.R. 2222(a), 40 N.J.R. 5245(b).

Added (c)6 and (c)7.

Amended by R.2016 d.017, effective February 16, 2016.

See: 47 N.J.R. 2445(a), 48 N.J.R. 295(a).

Rewrote the section.