

# STATE OF DELAWARE

## 2021 Corporate Income Tax 2021

### Instructions and Return

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#### INSTRUCTION HIGHLIGHTS

#### CALENDAR YEAR 2021 AND FISCAL YEAR ENDING 2022 TAX YEAR

Title 30 of the Delaware Code authorizes a number of different tax credits to be applied against Delaware income tax. Some tax credits are refundable, and others are not. All tax credits require an application to be submitted and approved prior to being claimed on a Corporation Income Tax Return. See Form 700 and instructions for details.

Senate Bill 26 of the 149th General Assembly created a Business Tax Credit of \$100.00 per unit for any business purchasing and placing into service an automatic external defibrillator at a business location in the State of Delaware. The one-time credit is available for the tax year in which the defibrillator is placed in service.

Corporations who are incorporated in Delaware and whose activities are limited to maintaining a statutory corporate office and not conducting business within Delaware are exempt from filing the Delaware corporate income tax return under Section 1902(b)(6) of Title 30 of the Delaware Code. While a corporation may be exempt from filing an income tax return under Section 1902(b)(6), an annual franchise tax is imposed upon all corporations for the privilege of being incorporated in Delaware unless specifically exempted by law. The franchise tax is administered by the Secretary of State. Companies may incorporate under the Delaware General Corporation Law by filing the proper documents with the Secretary of State, Division of Corporations, P.O. Box 898, Dover, Delaware 19903. General information can be obtained by calling (302) 739-3073, or by visiting their website, [corp.delaware.gov](http://corp.delaware.gov).

Step-by-step instructions for completing the Delaware corporate income tax return are provided in this booklet. The Division of Revenue is committed to providing quality services to all businesses. To assist, the Division's Office of Business Taxes has created a home page within the website of the Delaware Division of Revenue at [revenue.delaware.gov](http://revenue.delaware.gov). This site contains information for registering your business, tax tips to guide you in filing various business tax returns and the ability to electronically contact a representative of the Office of Business Taxes with your tax questions. Effective January 1, 2020, the apportionment calculation for Delaware will be based entirely on the sales or gross receipts factor on the Delaware corporate income tax return. If your current Delaware business license expires on December 31, 2021, you can renew your business license for 2022 and pay the license fee using a credit card at [onestop.delaware.gov](http://onestop.delaware.gov). The business will be able to print a temporary license directly from the website and subsequently will be mailed a permanent license. In addition, any business renewing a license online may also elect a one or a three-year business license.

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#### OFFICE LOCATIONS

TOLL-FREE TELEPHONE NUMBER - DELAWARE ONLY 1-(800) 292-7826

##### DOVER

Division of Revenue  
Thomas Collins Building  
540 S. DuPont Highway  
Suite 2  
Dover, DE 19901  
Telephone: (302) 744 -1085  
Fax: (302) 744 -1095

##### WILMINGTON

Division of Revenue  
Carvel State Office Building  
820 N. French Street  
Wilmington, DE 19801  
Telephone: (302) 577 - 8205  
Fax: (302) 577 - 8662

##### GEORGETOWN

Division of Revenue  
20653 DuPont Blvd, Suite 2  
Georgetown, DE 19947  
Telephone: (302) 856 - 5358  
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# CORPORATION INCOME TAX RETURN INSTRUCTIONS

## GENERAL INSTRUCTIONS

### CORPORATIONS REQUIRED TO FILE RETURNS

Every domestic and foreign corporation doing business in Delaware, not specifically exempt under the provisions of Section 1902(b), Title 30, Delaware Code, is required to file a corporation income tax return regardless of the amount, if any, of its gross income or its taxable income.

Corporations whose activities in Delaware are limited to the maintenance and management of their intangible investments may be exempt under Section 1902(b)(8). Corporations may obtain a specific ruling from the Division of Revenue by filing an Application for Exemption, Form 1902AP, describing their operations and stating the grounds for the exemption under Section 1902(b)(8).

Section 1904(1), Delaware Code, requires that corporations exempt under Section 1902(b)(8) file an Annual Information Return (Division or Revenue Form 1902(b)) reporting sources of income and services provided within and without Delaware.

**Consolidated corporate income tax returns are not permitted under Delaware Law. Each corporation that is a member of a consolidated group must file a separate return (1120 Pro forma) reporting income and deductions as if a separate Federal income tax return was filed.**

The State of Delaware has not adopted by statute or by regulation, the provisions of the Uniform Division of Income Tax Purposes Act nor is the State a compact member of the Multistate Tax Commission. The State of Delaware does not recognize or approve using Combined Reporting, Unitary or Waters Edge methods of filing a Delaware corporate income tax return.

The State of Delaware has issued regulations (Technical Information Memorandum 98-1) regarding the Federal "check the box" classification of Limited Liability Companies (LLCs), where such LLCs conduct business within Delaware.

An LLC that has elected to be treated as a corporation will file a Delaware corporate income tax return. The corporate attributes of the LLC do not flow through to the individual member(s). Delaware recognizes the existence of the LLC as a separate legal entity which does not create nexus for the individual LLC member(s) when the LLC has elected to be taxed as a corporation.

An LLC that does not make a Federal election to be treated as a corporation and has a single corporate member will not be recognized as a corporation for Delaware income tax purposes. The LLC will be considered a division of the single corporate member. The single corporate member will be required to file a Delaware corporate income tax return. The corporate apportionment percentage will reflect the operation of the entire corporation and the property, wage and sales factors of the LLC will be included with the factors of the single corporate member.

### PERIOD COVERED BY RETURN

The income tax year of a corporation is the same as the taxable year the corporation reports for purposes of the Federal income tax. Accordingly, this return is to be filed for the calendar year 2021 or fiscal year beginning in 2021 and ending in 2022.

Short period returns are required when there is a change of the accounting period or where the taxpayer is not in existence for the entire year. Short-period returns are also required when there is a change of ownership as in the case of a subsidiary required to file a consolidated Federal income tax return with its parent. Chapter 19 (Corporation Income Tax) of Title 30 of the Delaware Code does not contain a specific provision for the filing of a short period corporate final income tax return. Section 1901(12) provides that the "income year" of a corporate taxpayer shall be the taxable year for which a taxpayer computes its net income for purposes of the Federal income tax. Section 1903 provides that the entire net income of a corporation is the amount of its Federal taxable income with specific modifications. As a result, if a short period Federal return is due, a short period Delaware return is also due for the same tax period. Short period returns resulting from acquisitions or mergers are due on the fifteenth day of the fourth month after the end of the taxable pre-acquisition and post-acquisition periods.

### WHEN TO FILE AND EXTENSIONS

File Form 1100 on or before the fifteenth day of the fourth month following the close of the taxable year. A request for an automatic extension of six months to the Internal Revenue Service will automatically extend by six months the filing date for the Delaware return. If an automatic Federal extension has been granted, a copy of the extension must be attached to the final return when filed.

An extension of time with payment for filing the Delaware corporate income tax return is made by filing Form 1100 T-EXT on or before the due date of the original return. **Please note that a timely filed extension extends the due date for filing a final return but does not extend the due date for payment of tax.** Payment of the anticipated liability must be made with the extension request. Section 511 of Title 30 of the Delaware Code provides that the Director may grant an extension of time for filing any return and may require a bond not exceeding twice the amount of the tax.

An extension beyond the automatic six-month period must be requested by letter on or before the extended due date of the return. A copy of the Division of Revenue Approval Letter must be attached to the final return when filed.

### PENALTIES AND INTEREST

Returns filed late are subject to a penalty of 5% per month, up to a maximum of 50% of the tax liability due, plus interest of 1/2% per month from the original due date until paid. In addition to the above penalties and interest, an additional penalty of 1% per month (not to exceed 25%) is imposed for failure to pay (in whole or in part) the tax liability shown to be due on a timely filed return.

### TENTATIVE TAX FILING REQUIREMENTS

Every corporation is required to declare the amount of its estimated tax liability and prepay the estimated tax in four installments. The declaration and first remittance, equal to 50% of the corporation's estimated tax liability, are due on or before the fifteenth day of the fourth month of the taxable year. The declaration (Form T-1) is due even if the estimated tax liability is zero and no remittance is required. The remaining coupons -- T-2, T-3, and T-4 -- are not required to be filed if the estimated tax liability is zero for the remainder of the taxable year. If the estimated tax liability is greater than zero during any of the remaining three quarters of the taxable year, quarterly tentative tax payments are due according to the following schedule: 20% on the 15th day of the 6th month of the taxable year; 20% on the 15th day of the 9th month of the taxable year and 10% on the 15th day of the 12th month of the taxable year.

Declarations of tentative tax and payments must be made by filing Form 1100-T, Tentative Tax Return. Failure to make a declaration or file and pay the required tentative tax payments will result in a penalty. A penalty of 1.5% per month is imposed on any underpayment or late payment of tentative taxes from the due date of the tentative payment to the date the tax was paid. The penalty will not be imposed if total tentative taxes timely paid equal or exceed 80% of the current year's tax liability or equal or exceed 100% of the tax liability of the first preceding taxable year.

Corporations that do not qualify as a small corporation must make estimated payments that equal to 80% of the current year's tax liability.

### Small Corporation Rule:

The term "small corporation" means any corporation, including, without limitation, an S corporation subject to § 1158 of this title, if such corporation (or any predecessor corporation) had aggregate gross receipts from sales of tangible personal property and gross income from other sources both within and without the State for purposes of computing the ratio described in schedule 3-D of this return that do not exceed the applicable threshold of \$20,000,000 (as adjusted pursuant to 30 Del. C. § 515) for any 2 of the 3 taxable years immediately preceding the taxable year for which estimated tax is being computed.

For small corporations, 25% of the estimated tax liability for the current taxable year shall be paid with the tentative return filed on the fifteenth day of the fourth month of the current taxable year, and the balance of the estimated tax shall be paid in 3 equal installments of 25% on each of the fifteenth day of the sixth month of the current taxable year; the fifteenth day of the ninth month of the current taxable year; and the fifteenth day of the twelfth month of the current taxable year.

An Electronic Funds Transfer (EFT) program has been established enabling a corporation to remit tentative tax payments electronically. This program is available to all corporations on a voluntary basis.

To participate in the EFT program, you must complete the EFT Authorization Agreement form. This form and its instructions are available at <https://revenue.delaware.gov/services/BusEFT/BusEft.shtml> under the "Enrollment" tab.

### EXEMPT CORPORATIONS

The following corporations are exempt from filing a Delaware corporate income tax return:

1. Fraternal beneficiary societies, orders, or associations.
2. Cemetery corporations and corporations created for religious, charitable, scientific or educational purposes.
3. Business leagues, chambers of commerce, fire companies, merchants' associations or boards of trade not organized for profit.
4. Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.
5. Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes.
6. Corporations maintaining a statutory corporate office in Delaware but not doing business within Delaware.
7. Insurance companies paying taxes upon gross premiums to the Insurance Commissioner.
8. Corporations whose activities within Delaware are confined to the

maintenance and management of their intangible investments and the collection and distribution of the income from such investments or from tangible property physically located outside of Delaware.

9. S Corporations for taxable years beginning on or after January 1, 1992,
10. A corporation qualifying as a domestic international sales corporation (DISC) under the provisions of subchapter N of Chapter 1 of the Internal Revenue Code.
11. An entity that is a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code of 1986.
12. An entity registered as an investment company under the Investment Company Act of 1940.
13. An entity that is a real estate investment trust as defined in Section 856 of the Internal Revenue Code of 1986.
14. An entity that is a homeowner's association as defined in Section 528 of the Internal Revenue Code or successor provision.

#### NOTICE OF FEDERAL TAX ADJUSTMENT

If a taxpayer files an amended Federal income tax return, the corporation is required within 90 days to file an amended State of Delaware corporation income tax return, Form 1100X, together with a copy of the amended Federal return (1120X Pro forma). If the net income reported by the taxpayer to the Internal Revenue Service for Federal income tax purposes is changed or corrected by the Internal Revenue Service, or the tax computed on the return is redetermined by the Internal Revenue Service, notice of such changes,

corrections or adjustments must be reported to the Division of Revenue within 90 days after the final determination by the Internal Revenue Service is made along with an amended 1120X pro forma return. Form 1100X is available from the Division of Revenue website (revenue.delaware.gov).

#### ATTACH COPY OF FEDERAL RETURN

You must attach a copy of your Federal return (form 1120) for the income year, including all schedules and exhibits, when filing your Delaware return. **If a corporation is a member of an affiliated group for Federal income tax purposes, the corporation must furnish a pro forma Form 1120.**

#### ELECTRONIC FILING OF FORM 1099 INFORMATION

Any corporation required to report Form 1099-MISC or 1099-R information to the Internal Revenue Service on electronic media must also report to the Delaware Division of Revenue on electronic media. The duty to report 1099-MISC information to the Division of Revenue applies in the case of Forms 1099-MISC issued to persons resident in Delaware or to nonresidents of Delaware for work performed within Delaware. The 1099-MISC and 1099-R forms are required to be reported to Delaware in the case of any person issued a Form 1099-R on which Delaware taxes are reported as withheld. Even though Delaware participates in the Combined Federal/State Filing Program, the 1099-MISC and 1099-R forms are required to be filed directly with Delaware. All others, including 1099-DIV and 1099-INT need not be filed. Please see Technical Information Memorandum 2006-3 for the complete reporting requirements.

### SPECIFIC INSTRUCTIONS FOR FORM 1100

#### IMPORTANT

*To ensure the timely and proper processing of your corporate income tax return, ALL lines and schedules must be completed. Specific line items, supported by separate attached schedules, must be entered on the appropriate line of this return. Failure to complete all lines and schedules will delay the processing of your return.*

#### CALENDAR OR FISCAL YEAR OPERATION

The 2021 Form 1100 is used to report your Delaware corporate income tax for calendar year 2021 or fiscal year beginning in 2021 and ending in 2022. If the corporation conducts business on a fiscal year basis, insert the beginning and ending dates of the fiscal year in a MM/DD/YYYY format.

#### EMPLOYER IDENTIFICATION NUMBER, NAME AND ADDRESS

Enter the employer identification number complete name, corporate headquarters address and Delaware address (if different from the corporate headquarters address) of the corporation. Employer identification numbers are issued by the Internal Revenue service by filing Federal Form SS-4.

#### DATE AND STATE OF INCORPORATION AND NATURE OF BUSINESS

Enter the date in MM/YYYY format and the state in which the corporation is incorporated. Enter a short phrase to describe the nature of business conducted by the corporation.

#### CHECK THE APPLICABLE BOX

Check the Small Corporation box if the corporation qualifies as a small corporation.

The term "small corporation" means any corporation, including, without limitation, an S corporation subject to § 1158 of this title, if such corporation (or any predecessor corporation) had aggregate gross receipts from sales of tangible personal property and gross income from other sources both within and without the State for purposes of computing the ratio described in schedule 3-D of this return that do not exceed the applicable threshold of \$20,000,000 (as adjusted pursuant to 30 Del. C. § 515) for any 2 of the 3 taxable years immediately preceding the taxable year for which estimated tax is being computed.

Check the ESOP box if the corporation has received a determination on whether a plan, initially or as a result of a plan amendment, meets the requirements of section IRC 4975(e)(7).

Check the Initial Return box if this is the first time the corporation is filing a Delaware corporate income tax return. Check the change of address box if the address of the corporation has changed from the previous year's filing. Check the Extension Attached box if the corporation has obtained an approved Federal or Delaware extension of time to file a Delaware's corporate income tax return.

#### OUT OF BUSINESS

Enter the exact date in MM/DD/YYYY format when the corporation ceased business operations. Only enter a date if the corporation went out of business during, or on the last day of the corporation's tax year reported on this return.

#### SCHEDULE 1 - INTEREST INCOME

Enter in Schedule 1, Column 1, the total amount of interest income received from a foreign source to the extent that a foreign tax was actually paid or accrued on the foreign interest income.

Also, include this amount on Form 1100, Schedule 4-A, Line 1. Interest income received from a foreign source on which a foreign tax was not actually paid is classified as "Other Interest Income" and included in Schedule I, Column 5.

Enter in Schedule I, Column 2, the total amount of interest income received from bonds or securities of the United States or U. S. Instrumentalities, less applicable expenses. Also, enter this amount on Form 1100, Schedule 4-A, Line 2. Interest received on obligations for which the United States is not the primary obligor or which are not guaranteed by the full faith and credit of the United States are not exempt from tax.

Enter in Schedule I, Column 3, the total amount of interest income (include discount) received on inter-corporate obligations representing advances, loans or similar contractual transactions that meet the following requirements: (1) The debtor and creditor corporations are subject to taxation under Delaware Law, and (2) The debtor corporation does not claim a deduction for such interest payments in determining its entire net income for Delaware corporation income tax purposes. Also, enter this amount on Form 1100, Schedule 4-A, Line 3.

Enter in Schedule I, Column 4, the total amount of interest income received from obligations issued by any state or political subdivisions, other than the State of Delaware or its political subdivisions. Also, include this amount on Form 1100, Schedule 4-B, Line 3 and Form 1100, Page 2, Schedule 2, Column 3, Line 5. The interest must be allocated to the state where the transaction took place that resulted in creation of the obligation.

Enter in Schedule I, Column 5, the total amount of all other interest income received and not included in any other column of Schedule I. Also, include this amount on Form 1100, Page 2, Schedule 2, Column 3, Line 5. The interest must be allocated to the state where the transaction took place that resulted in creation of the obligation.

#### LINE 1 - FEDERAL TAXABLE INCOME

Enter on Line 1, the amount of your Federal taxable income without modifications. The State of Delaware does not recognize an affiliated group of corporations as a taxable entity. Consolidated and combined returns are not permitted. **The starting point for Delaware corporate income taxes is the Federal taxable income without modifications. Each separate corporation must attach a separate Federal corporate income tax return (1120 Pro forma).**

#### LINE 2 - SUBTRACTIONS FROM FEDERAL TAXABLE INCOME

Enter on Schedule 4-A, Line 1, the amount of dividends received from foreign sources to the extent that a foreign tax was actually paid or accrued, or the dividends were included in the dividend gross-up for Federal income tax purposes. Dividends not eligible for the deduction on schedule 4-A, Line 1 are to be apportioned to the state of corporate domicile. Also enter on schedule 4-A, Line 1 the amount of interest (from Schedule 1, Column 1) and royalties received from foreign sources to the extent that a foreign tax was actually paid or accrued. Interest and royalty income received from a foreign source on which a foreign tax was not actually paid are required to be allocated within or

without Delaware in Schedule 2 of the Delaware corporate income tax return. Please see Line 6 for specific allocation rules.

Federal Form 1118 must be attached to substantiate the deduction claimed on Schedule 4-A, Line 1. Dividends from Domestic International Sales Corporations, foreign capital gains, rents and miscellaneous income are not considered exempt income for purposes of this exclusion. These items of income are subject to the rules of allocation or apportionment. Please refer to the specific instructions for apportionable and non-apportionable income.

Enter on Schedule 4-A, Line 2, (from Schedule 1, Column 2) the amount of interest income received from bonds or securities of the United States or U.S. Instrumentalities, less applicable expenses.

Enter on Schedule 4-A, Line 3, (from Schedule 1, Column 3) the amount of interest income (including discount) received on inter-corporate obligations representing advances, loans or similar contractual transactions that meet the following requirements: (1) The debtor and creditor corporations are subject to taxation under Delaware Law, and (2) The debtor corporation does not claim a deduction for such interest payments in determining its entire net income for Delaware corporation income tax purposes.

Enter on Schedule 4-A, Line 4, the gain received from the sale or other disposition of bonds or securities issued by the United States or its instrumentalities or by the State of Delaware or its political subdivisions.

Enter on Line 2(e) an amount equal to the portion of wages paid or incurred for the taxable year which is disallowed as a deduction for Federal purposes under Subsection (a) of Section 280 C, IRC, relating to the portion of wages for which the jobs tax credit is claimed. Attach copy of Federal Form 5884 - Jobs Credit.

Enter on Schedule 4-A, Line 6, the cost incurred (not to exceed \$5,000) of a renovation project to remove physical design features in a building that restricts the full use of the building by physically handicapped persons. The term "building" means a building or structure, or a portion thereof, located in Delaware and open to the public, and includes sidewalks, curbing, driveways, and entrances connected with or related to the use of the building structure. Expenditures incurred to remove architectural barriers or physical design features for the purpose of making the building more accessible to, or usable by, handicapped individuals will generally qualify for the deduction, subject to the \$5,000 limitation.

Under this provision, qualified renovation expenses incurred after December 31, 1978 are deductible in the taxable year in which the project is completed. Attach a statement to your return describing the project, the date of commencement, location, date of completion, and costs incurred.

Enter on Schedule 4-A, Line 7, the amount of any allowable net operating loss carryovers for State of Delaware purposes (See "NET OPERATING LOSS DEDUCTION", PAGE SEVEN). Do not make an entry on Schedule 4-A, Line 7, unless your carryback loss was limited under Delaware Law and you are carrying forward an amount which differs from your Federal net operating loss carryforward.

Enter on Schedule 4-A, Line 8, the amount of non-business income or loss. The corporation may exclude, under limited circumstances, "non-business" income (net of related expenses) earned in the course of non-business activities unrelated to those carried out in Delaware.

An entry on this line must be supported by Form 1100NBI (available on the Division of Revenue website at [revenue.delaware.gov](http://revenue.delaware.gov)) identifying, by description and amount, each item of non-business income and demonstrating that: (1) Delaware is not the state of commercial domicile of the corporation. Commercial domicile is the principal place from which the trade or business of the corporation is directed or managed. (2) There is lack of a unitary relationship between the corporation and the payer of the income. If the payer and the corporation are at all functionally integrated, if they have any centralized management, or if, between them, they take advantage of economies of scale, then there is not a lack of a unitary relationship. (3) The income at issue is of an investment, as opposed to an operational, nature. Interest earned on temporary investment of working capital, or on investments meant at maturity or at a later time to be applied to operations, is of an operational nature. (4) The income and apportionment factors have been appropriately adjusted by related expenses and items used to produce the income.

Enter on Line 2 the total from Schedule 4-A, Line 9.

### LINE 3 - SUBTOTAL

Subtract Line 2 from Line 1 and enter result on Line 3.

### LINE 4 - ADDITIONS TO FEDERAL TAXABLE INCOME

Enter on Schedule 4-B, Line 1, the amount of all net income taxes computed on the basis of, or in lieu of, net income or net profit that are imposed by any state or political subdivision of any state and were deducted in computing Federal taxable income.

Enter on Schedule 4-B, Line 2, the amount of loss incurred from the sale or other disposition of bonds or securities issued by the United States or its instrumentalities or by the State of Delaware or its political subdivisions.

Enter on Schedule 4-B, Line 3, (from Schedule 1, Column 4) the amount of interest income received from obligations issued by any State or political subdivisions, other than the State of Delaware or its political subdivisions.

Enter on Schedule 4-B, Line 4, the amount of any percentage depletion expense allowable under Federal Law, to the extent it is in excess of cost depletion.

Enter on Schedule 4-B, Line 5, the amount of interest (including discounts) paid on inter-corporate obligations, where creditor corporation eliminated such interest income from its income on Schedule 4-A, Line 3.

Enter on Schedule 4-B, Line 6, charitable donations claimed as a deduction in computing Federal taxable income for which the Neighborhood Assistance or the Land & Historic Resource Conservation Delaware income tax credits were granted.

Enter on Line 4 the total from Schedule 4-B, Line 7.

### LINE 5 - ENTIRE NET INCOME

Enter on Line 5 the amount of Federal taxable income (Line 1) reduced by the subtractions entered on Line 2 and increased by the additions entered on Line 4. This amount represents entire net income for purposes of the Delaware Income Tax Law.

**If the net income reported on Line 5 is derived entirely from Delaware sources, and no part of such income is apportionable to business activities conducted in other states, enter the amount on Line 5 on Line 11 and do not complete Lines 6 through 10.**

### LINE 6 - TOTAL NON-APPORTIONABLE INCOME

Enter on Line 6 the total amount of non-apportionable income (or loss) from Schedule 2, Column 3, Line 8, which is explained below:

### SCHEDULE 2 - NON-APPORTIONABLE INCOME ALLOCATED WITHIN AND WITHOUT DELAWARE

The State of Delaware has not adopted by statute or regulation the provisions of the Uniform Division of Income for Tax Purposes Act (UDITPA). The following items of income (less related or applicable expenses) must be allocated to Delaware or to another state. If an item of income, such as domestic dividends, miscellaneous income, is not specifically exempted or directly allocated under this Section, the item of income must be placed in the numerator of the gross receipts factor if Delaware is the state of commercial domicile. Please refer to the following rules of allocation.

Enter on Line 1, Column 3, Schedule 2, the total income received from rents and royalties from tangible property. Rent and/or royalty income received from property physically located in Delaware is allocated in Column 1. Rent and/or royalty income received from property physically located outside of Delaware is allocated in Column 2.

Enter on Line 2, Column 3, Schedule 2, the total income received from patent and copyright royalties. Patent and copyright royalties are to be allocated proportionately to Delaware (Column 1) or other States (Column 2) based on the State in which the product or process protected by the patent is manufactured or used, or in which the publication protected by the copyright is produced or printed.

Enter on Line 3 the amount of gains (or losses) realized from the sale or other disposition of real property, allocated to the State in which the property is physically located.

Enter on Line 4 the amount of gains (or losses) realized from the sale or other disposition of depreciable tangible property, allocated to the State in which the property is physically located or normally used in the taxpayer's business. The gain on the sale of rolling stock must be apportioned to the State(s) in which the property was used regardless of the location at the time of the sale.

Enter on Line 5 the amount of interest income (including discount) to the extent included in determining entire net income as reported in Schedule 1, Columns 4 and 5, allocated to the state where the transaction took place which resulted in creation of the obligation. In determining the state in which the obligation was created, the taxpayer must provide conclusive physical evidence indicating the state in which the obligation was created. Absent conclusive proof to the contrary, interest income will be allocated to the state of corporate domicile or to the state in which the investment or credit decisions were made.

Enter on Line 6 the total of Lines 1 through 5 for Columns 1, 2 and 3. Enter on Line 7 the total expenses applicable or directly related to Lines 1 through 5 of Schedule 2. Indicate the portion of the expenses applicable to the non-apportionable income allocated within Delaware (Column 1), without Delaware (Column 2) and total of both within and without Delaware (Column 3). All expenses related to the production of allocable income must be supported

by appropriate documentation. If direct expenses cannot be documented, such expenses will be determined by multiplying total expenses by a fraction, the numerator of which is allocable income subject to expense reduction and the denominator is total income.

Subtract Line 7 from Line 6 for Columns 1, 2 and 3. Enter the remainder on Line 8. **Do not put an amount on Line 8 for Columns 1, 2 and 3 without completing Lines 1 through 7 for Columns 1, 2 and 3.** Enter the remainder from Line 8, Column 1, on Line 10 on the front of the return. Enter the remainder from Line 8, Column 3, on Line 6 on the front of the return.

#### **LINE 7 - INCOME SUBJECT TO APPORTIONMENT**

Subtract Line 6 (total non-apportionable income) from Line 5 (entire net income) and enter the result (income or loss) on Line 7.

#### **SCHEDULE 3(A) - GROSS RECEIPTS SUBJECT TO APPORTIONMENT**

Enter on Line 1 in the column headed "Within Delaware", the gross receipts from the sales of tangible property physically delivered within Delaware to the purchaser or his agent located within the State of Delaware (but not including delivery to the United States Mail or to a common or contract carrier for shipment to a place outside Delaware). Enter in the column headed "Within and Without Delaware", the total gross receipts from the sales of tangible personal property both within and without Delaware during the income year. Include in the factor on the appropriate line, the taxpayer's share of gross receipts from the sale of tangible property and gross income from other sources resulting from the taxpayer's proportionate ownership as a general or limited partner in an active partnership.

Enter on Line 2 in the column headed "Within Delaware" all other gross income (if any) including receipts from services rendered within Delaware which are not tax exempt, and which are not directly allocated in Schedule 2. Gross income from sources within Delaware must include taxable dividends, net gains, or losses on the sale of intangible property and distributions from partnerships in which the taxpayer is a corporate partner, when the State of Delaware is maintained as the principal place from which the trade or business of the taxpayer is directed or managed. Other income is considered gross income from a Delaware source when the activity that gives rise to the income is performed within the State of Delaware. Enter on Line 2 in the column headed "Within and Without Delaware", all other gross income (if any) from other sources both within and without Delaware which are not tax exempt, and which are not directly allocated in Schedule 2 (attach statement). Do not include on Line 2 the income which is excluded as nonbusiness income on Schedule 4-A, Line 8. Add the amounts on Line 1 and Line 2 and enter the total on Line 3. **If you are selling tangible personal property or providing services within Delaware, you are liable for a Delaware Business License and the payment of a gross receipts tax on the receipts received from such sales or services.**

#### **SCHEDULE 3(B) - DETERMINATION OF APPORTIONMENT PERCENTAGE**

Enter in the numerator on Line 1 the total gross receipts within Delaware from Line 3 on Schedule 3(A), enter in the denominator on Line 2 the total gross receipts from within and without Delaware on Line 3 on Schedule 3(A) and compute the respective percentage carried to at least six decimal places. Enter the apportionment percentage on Line 3 in Schedule 3(B) and on Line 8 on the front of the return.

#### **SCHEDULE 3(C) - GROSS REAL AND TANGIBLE PERSONAL PROPERTY**

Enter on Line 1 the original cost value of all real and tangible personal property owned at the beginning and at the end of the taxable year allocable (a) within the State of Delaware and (b) within and without the State of Delaware. Enter on Line 2 the value of all real and tangible personal property rented at the beginning and at the end of the taxable year allocable (a) within the State of Delaware and (b) within and without the State of Delaware. The rented real and tangible property is valued at 8 times the annual rental. Include in the factor on the appropriate line, the taxpayer's share of real and tangible property owned and rented resulting from the taxpayer's proportionate ownership as a general or limited partner in an active partnership. Goods in transit should be included in the property factor of the state to which the goods are to be delivered. Real and tangible personal property owned by the United States Government that is used or operated by the taxpayer shall be disregarded.

Enter on Line 3 the total of Lines 1 and 2.

Enter on Line 4 of Schedule 3(C) the original cost of real and tangible personal property, the income from which is separately allocated in Schedule 2 or is excluded as non-business income on Schedule 4-A, Line 8. Also enter on Line 4 the value of property currently under construction or property not used in the taxpayer's business.

Subtract Line 4 from Line 3 and enter the remainder on Line 5.

Calculate the average value of the property by adding on Line 5 the total beginning and total ending values of property within the State of Delaware and

property within and without the State of Delaware respectively and divide each sum by two.

Enter on Line 6 the calculated average value of the property.

#### **SCHEDULE 3(D) - WAGES, SALARIES AND OTHER COMPENSATION**

Enter on Line 1 the total wages, salaries, bonuses, and other compensation paid or accrued to employees engaged in employment within the State of Delaware and within and without the State of Delaware during the taxable year. Include in the factor on the appropriate line, the taxpayer's share of wages, salaries, bonuses, and other compensation paid or accrued to employees, resulting from the taxpayer's proportionate ownership as a general or limited partner in an active partnership. Enter on Line 2 the wages, salaries, bonuses, and other compensation paid or accrued to general executive officers. "General Executive Officers" means the officers of record in the state in which the taxpayer is incorporated.

Subtract Line 2 from Line 1 and enter the remainder on Line 3.

#### **LINE 8 - APPORTIONMENT PERCENTAGE**

Enter on Line 8 the apportionment percentage calculated on the back of the return in Schedule 3-B, Line 3.

#### **LINE 9 - DELAWARE APPORTIONABLE INCOME**

Multiply the income (or loss) subject to apportionment on Line 7 by the apportionment percentage on Line 8 and enter the result on Line 9.

#### **LINE 10 - DELAWARE NON-APPORTIONABLE INCOME**

Enter on Line 10 the income (or loss) calculated on the back of the return in Schedule 2, Column 1, Line 8.

#### **LINE 11 - TOTAL DELAWARE INCOME**

Enter on Line 11 the sum of Lines 9 and 10.

#### **LINE 12 - DELAWARE TAXABLE INCOME**

Enter on Line 12 the amount shown on Line 5 or Line 11, whichever is less. This is your Delaware Taxable Income.

#### **LINE 13 - TAX COMPUTATION**

To compute the tax liability on Line 13, multiply Line 12, Delaware Taxable Income by 8.7%.

#### **LINE 14 - APPROVED NON-REFUNDABLE INCOME TAX CREDITS**

Enter on line 14 the approved non-refundable income tax credits from Delaware Form 700, Delaware Income Tax Credit Schedule. Form 700 along with the approved application(s) for the Tax Credits should be attached to the return.

#### **LINE 15 - BALANCE DUE AFTER NON-REFUNDABLE CREDITS**

Subtract line 14 from line 13. Enter the result on line 15.

#### **LINE 16 - DELAWARE TENTATIVE TAX PAID**

Enter on Line 16 the amount of Delaware tentative tax paid on Forms 1100T. Include on this line amounts paid with requests for extensions of time to file.

#### **LINE 17 - CREDIT CARRYOVER FROM PRIOR YEAR**

Enter on Line 17 the amount of credit carryover from the immediately preceding taxable year.

#### **LINE 18 - OTHER PAYMENTS**

Enter on Line 18 the amount of other corporate income tax payments made for the taxable year that are not included on Lines 16 and 17. Attach an explanation and evidence of payment.

#### **LINE 19 - APPROVED REFUNDABLE INCOME TAX CREDITS**

Enter on Line 19 the approved refundable income tax credits from Delaware Form 700, Delaware Income Tax Credit Schedule. Form 700 along with the approved application(s) for the Tax Credits should be attached to the return.

#### **LINE 20 - TOTAL PAYMENTS AND CREDITS**

Enter on Line 20 the sum of the payments and credits from Lines 16 through 19. This amount represents the total credits available to be applied against the tax liability on Line 13.

#### **LINE 21 - BALANCE DUE**

Subtract Line 20 from Line 13. If Line 13 is greater than Line 20, enter on Line 21 the BALANCE DUE to be paid in full.

#### **LINE 22 - OVERPAYMENT**

Subtract Line 20 from Line 13. If Line 20 is greater than Line 13, enter on Line 22(a) the total overpayment available for refund and/or credit carryover.

Enter on Line 22(b) the amount of refund requested.

Enter on Line 22(c) the amount of credit carryover requested. The sum of Lines 22(b) and 22(c) must be equal to the amount entered on Line 22(a).

## NET OPERATING LOSS DEDUCTIONS

The amount of the Net Operating Loss (NOL) recognized for Delaware corporate income tax purposes is limited to the amount recognized for Federal purposes. The deduction is calculated in accordance with the provisions of the Internal Revenue Code, and no modification to the amount of the net operating loss is allowed. Because you are required to file an **1120 Pro forma** with your Delaware corporate income tax return, the NOL on the **1120 Pro forma** cannot exceed the NOL on the Federal Consolidated 1120 Form. **A copy of the Federal Consolidated 1120 Form along with the 1120 Pro forma and a schedule indicating the loss year(s) and the NOL amount(s) being carried back and/or carried forward must be attached to the Delaware 1100 return.**

Section 382 of the Internal Revenue Code of 1986 limits the use of NOL carryforwards by purchasing corporations acquiring corporations with tax losses which are to be used to offset the income of the purchasing corporation. The limitation requirements affect Federal taxable income of the purchasing corporation. There are no provisions within the Delaware corporate income tax code for modification of Federal taxable income due to the Section 382 limitations.

Effective for taxable years ending after June 30, 1990 net operating loss carrybacks **in excess of \$30,000** for each carryback year will no longer be deductible for Delaware corporate income tax purposes. **In amending the carryback year**, enter on Line 2(g), Form 1100X, the amount of the net operating loss carried back which cannot exceed \$30,000.

A corporation that has a net operating loss and has filed a Corporation Application for Tentative Refund on Federal Form 1139 must file an amended 1100X and attach a copy of the amended 1120X (Pro forma). Delaware does not have a tax form equivalent to the Federal Form 1139.

**A copy of the amended Federal Consolidated 1120 Form along with the amended 1120X (Pro forma) and a schedule indicating the loss year(s) and the NOL amount(s) being carried back and/or carried forward must be attached to the Delaware 1100X return.**

Prior to the enactment of the Tax Cuts and Jobs Act of 2017 (P.L. 115-97, 12/22/2017), the Delaware NOL provisions were as follows:

- Carryforward for 20 years for returns with a tax period after August 1997 and 15 years for returns before August 1997
- Carryback is limited to 2 years with a \$30,000.00 limit per year
- Loss year's loss is pre-apportionment and is limited to federal NOL which is reported on Line 1 of the Delaware return
- Losses can only be utilized to the extent of federal taxable income on Line 1 of the Delaware return
- Losses cannot be used to offset any additions (modifications to Line 1 of the Delaware return)

After December 31, 2020, the Delaware NOL provisions are as follows:

- The 2-year Carryback has been eliminated except for certain businesses in farming with a \$30,000.00 limit per year
- Losses Carried forward limited to 80% of the taxable income on Line 1 of the Delaware return.
- NOLs allowed to be Carried forward indefinitely
- NOLs incurred by property and casualty insurance companies can Carryback 2 years with a \$30,000.00 limit per year and Carryforward 20 years to offset 100% of taxable income on Line 1 of the Delaware return.

Under no circumstances is there to be an adjustment on an Amended Return, Form 1100X on Line 4(a), to reflect a decrease on Schedule 4-B, Line 1 of the Delaware corporation income tax return of the carryback year for the refund of such taxes arising as a result of the net operating loss deduction.

Cash method taxpayers must include any refund of state corporation income taxes as a negative amount on Schedule 4-B, Line 1 in the year received, while other taxpayers will include such refunds as a negative amount on Schedule 4-B, Line 1 under their regular method of accounting.

In the case of a merger of two or more **unrelated** corporations, each corporation's unused carryover net operating loss is carried over into the surviving corporation. However, if there is a merger of two or more **related** corporations, then the net operating loss is limited to the amount of net operating loss not absorbed through consolidation prior to the merger.