programs related to the practice of psychology, one credit for each hour of instruction. Courses or programs shall ***either*** be presented by ***the following or be presented by*** providers approved by the ***following***:

1. American Psychological Association;

2. *[Council for the]* National Register of Health Service *[Providers in Psychology]* ***Psychologists***;

3. Association of State and Provincial Psychology Board; or

4. American Medical Association.

(b) A licensee may complete up to 20 of the required 40 continuing education credits from the following:

1. Completing a graduate course, related to the practice of psychology, given by a school, college, or university accredited by a regional accrediting body recognized by the United States Department of Education or the Council on Postsecondary Accreditation, one credit for each hour of instruction up to 20 credits;

2. Authorship of a textbook or a chapter of a textbook directly related to the practice of psychology published in the biennial renewal period for which the licensee is allocating the credits, five credits for each chapter up to five credits;

3. Authorship of an article, which has been refereed through peer review, related to the practice of psychology in a psychological, medical, or health related journal published in the biennial renewal period for which the licensee is allocating the credits, five credits per article up to five credits;

4. Presenting a new lecture or seminar to professional peers, or teaching or developing the curriculum for a new continuing education course or program related to psychology. The lecture, seminar, course, or program shall be approved pursuant to (a) above. "New" means that the licensee has never presented the seminar or lecture before, or taught or developed curriculum for that course or program in any educational setting; one credit for each 50 minutes of the lecture, seminar, course, or program, up to five credits; or

5. Teaching or developing the curriculum for a new course related to psychology in a school, college, or university accredited by a regional accrediting body recognized by the United States Department of Education or the Council on Postsecondary Accreditation. "New" means that the licensee has never taught or developed curriculum for that course in any educational setting, five credits of continuing education for each academic credit taught up to five credits.

(c) At least 10 credits of the 20 required under (a) above shall be in courses or programs in which there is the opportunity for live interaction with the continuing education instructor.

13:42-10.22 Continuing education audits; records of continuing education

(a) The Board shall perform audits on randomly selected licensees to determine compliance with continuing education requirements.

(b) A licensee shall maintain the following documentation for a period of four years after completion of the credits and shall submit such documentation to the Board upon request:

1. For attendance at courses or programs presented by a provider approved pursuant to N.J.A.C. 13:42-10.21(a): a certificate of completion from the provider which includes:

i. The title, date, and location of course offering;

ii. Name of the licensee; and

iii. Number of credits awarded;

2. For successful completion of a graduate course: a transcript from the school, college, or university;

3. For publication of textbook or article: the published item, including the date of publication;

4. For teaching a course or program or developing curriculum: documentation, including a copy of the curriculum, location, date, and time of course, duration of course by hour, and a letter from the continuing education provider, or from the school, college, or university, confirming that the licensee developed or taught the course or program; and

5. For presenting a lecture or seminar: documentation including the location, date, and duration of the lecture or seminar, a copy of the presentation, and documentation from the sponsor of the lecture or seminar indicating that the licensee presented the lecture or seminar.

13:42-10.23 Waiver of continuing education requirements

(a) The Board may waive the continuing education requirements of N.J.A.C. 13:42-10.20 on an individual basis for reasons of hardship, such as severe illness, disability, or military service.

1. A licensee seeking a waiver of the continuing education requirements shall apply to the Board in writing at least 90 days prior to license renewal and set forth in specific detail the reasons for requesting the waiver. The licensee shall provide the Board with supplemental materials that support the request for waiver.

2. A waiver of continuing education requirements granted pursuant to this section shall be effective only for the biennial period for which such waiver is granted. If the condition(s) that necessitated the waiver continue(s) into the next biennial period, a licensee shall apply to the Board for the renewal of such waiver for the new biennial period.

13:42-10.24 Additional continuing education requirements

(a) The Board may direct or order a licensee to complete continuing education credits:

1. As part of a disciplinary or remedial measure in addition to the required 40 hours of continuing education; or

2. To correct a deficiency in the licensee's continuing education requirements.

(b) Any continuing education credits completed by the licensee in compliance with an order or directive from the Board as set forth in (a) above shall not be used to satisfy the minimum continuing education requirements as set forth in N.J.A.C. 13:42-10.20.

TREASURY—TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Readoption with Amendments: N.J.A.C. 18:7

Adopted Repeal and New Rule: N.J.A.C. 18:7-1.12

Adopted Repeals: N.J.A.C. 18:7-3.7, 3.18, 3.19, 3.20, 3.24, 3.25, 3.26, 3.27, 3.28, 3B, 4, 11.10, 13.4, 13.5, 14.1 through 14.12, and 16

Proposed: January 3, 2017, at 49 N.J.R. 52(b).

Adopted: May 18, 2017, by John J. Ficara, Acting Director, Division of Taxation.

Filed: May 18, 2017, as R.2017 d.123, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:27H-81 and 54:10A-27.

Effective Dates: May 18, 2017, Readoption;
June 19, 2017, Amendments, Repeals, and New Rule.

Expiration Date: May 18, 2024.

Summary of Public Comments and Agency Responses:

The Division of Taxation (Division) received written comments on the notice of proposal from Jodi Kleuskens, Chairwoman, and Mark J. Philips, Former Chairman, of the New Jersey Society of CPA's State Taxation Interest Group (Society). The comments are summarized as follows:

COMMENT: The Society asked the Division to explain the extent to which the Division's policy under N.J.A.C. 18:7-8.12(g) is impacted by the holding in *McKesson Water Products Company v. Director, Division of Taxation*, 408 *N.J. Super.* 213 (2009) and the 2014 statutory amendment to the definition of operational income in N.J.S.A 54:10A-6.1.a.

RESPONSE: N.J.A.C. 18:7-8.12(g) required the receipts from the sale of tangible and intangible assets in a 338(h)(10) transaction to be sourced to New Jersey by multiplying the gain by a three-year average of allocation factors used by the target corporation for its three tax return

periods immediately prior to the sale. N.J.A.C. 18:7-8.12(g) was enacted prior to the *McKesson* ruling. *McKesson* held that the gain from a 338(h)(10) transaction constituted non-operational income. Non-operational income must be assigned to the commercial domicile of the taxpayer. In light of the *McKesson* decision, there is no basis to require the gain from a 338(h)(10) transaction to be sourced based on a three-year average of allocation factors. The statutory amendment to N.J.S.A. 54:10A-6.1 modified the definition of operational income in a manner that allows for the possibility that the gain from a 338(h)(10) transaction could be determined to be operational, rather than non-operational income. However, due to the continuing possibility of the 338(h)(10) gain being determined to be non-operational income pursuant to the *McKesson* holding, the statutory amendment did not remove the need to repeal the rule.

COMMENT: The Society asked whether the deletion of N.J.A.C. 18:7-8.12(g) changed the likelihood of the Division applying the rule to actual asset sales, as a means of alternative apportionment under N.J.S.A. 54:10A-8.

RESPONSE: N.J.A.C. 18:7-8.12(g), which is proposed for deletion, did not apply to actual asset sales. The rule applied to receipts from the sale of tangible and intangible assets in an IRC 338(h)(10) transaction. Therefore, the deletion of the rule does not change the likelihood of the Division applying or allowing the rule to apply to actual asset sales as a means of alternative apportionment under N.J.S.A. 54:10A-8.

Summary of Agency-Initiated Changes:

The Division is changing N.J.A.C. 18:7-8.12 upon adoption to clarify that related fees are sourced in the same way as the interest income by adding "and related fees (for example, late payment fees, annual fees, etc.)" and "and fee" to the Example.

Federal Standards Statement

A Federal standards analysis is not required because the subject of this rulemaking, the corporation business tax, is governed by N.J.S.A. 54:10A-1 et seq., and there is no Federal requirement or standard that affects this subject. References to certain Federal law provisions were, on occasion, incorporated or referenced for convenience only.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 18:7.

Full text of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks ***thus***):

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

18:7-1.4 Definition of corporation

(a) The term "corporation" shall mean any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument and includes any corporation created or organized under the laws of New Jersey and any foreign corporation which is authorized to do business, or is doing business, or employs or owns capital or property or maintains an office in New Jersey in a corporate or organized capacity by virtue of creation or organization under laws of the United States or any state, territory, or possession thereof, the District of Columbia, or any foreign country, or any political subdivision of the foregoing, which provided a medium for the conduct of business or the sharing of its gains.

1.-2. (No change.)

18:7-1.6 Subjectivity to tax; how created

(a) Every corporation not expressly exempted is deemed to be subject to tax under the Act and is required to file a return and pay a tax thereunder, provided it falls within any one of the following:

1. (No change.)

2. If a foreign corporation:

i. Holding a general Certificate of Authority to do business in this State issued by the Division of Revenue and Enterprise Services;

ii. Holding a certificate, license, or other authorization issued by any other State department or agency, authorizing the company to engage in corporate activity within this State;

iii. Doing business in this State;

iv. Employing or owning capital in this State;

v. Employing or owning property in this State;

vi. Maintaining an office in this State;

vii.-viii. (No change.)

(b) A taxpayer's exercise of its franchise in this State is subject to taxation in this State if the taxpayer's business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Example 1: (No change.)

Example 2: A New York corporation delivers furniture into New Jersey by its company-owned truck. The driver collects the payment from the New Jersey customer. The New York corporation is subject to the tax imposed by the Corporation Business Tax Act in New Jersey.

18:7-1.7 Domestic corporations subject to tax

(a) (No change.)

(b) A domestic corporation not otherwise exempt is subject to tax for every fiscal or calendar accounting period, or part thereof, whether it does business, owns capital or property, maintains an office, or engages in any activity, whether within or outside New Jersey.

(c) (No change.)

18:7-1.8 Foreign corporations subject to tax

(a) Qualifications for subject corporations. The tax is imposed on every foreign corporation subject to tax as described in N.J.A.C. 18:7-1.6, and includes every corporation that derives receipts from sources within New Jersey or engages in contacts within New Jersey or does business, employs or owns capital or property, or maintains an office in New Jersey in a corporate or organized capacity, regardless of whether it has formally qualified or is authorized to do business in New Jersey, provided that the taxpayer's business activity in New Jersey is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States.

Example 1

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the corporation business tax because it maintains an office within the State.

Example 2

A foreign corporation, which operates several retail stores outside New Jersey, leases an office in New Jersey for the convenience of its buyers when they come to New Jersey. It has several employees permanently assigned to such office. Salesmen call at the office to solicit orders from the buyers, and the merchandise is shipped to such office by the sellers. Upon receipt, the merchandise is examined and sent to the various stores of the corporation outside New Jersey. The corporation is subject to the corporation business tax because it maintains an office, is regularly doing business through its constituted representatives, and owns property in New Jersey.

Note: The foregoing examples illustrate conditions giving rise to subjectivity to the corporation business tax without regard to whether or not the corporation holds a general or special certificate of authority to do business in New Jersey.

Example 3

A foreign corporation has applied for and has received a certificate of authority to do business in New Jersey by the Division of Revenue and Enterprise Services, but does not actually do any business in New Jersey, nor does it have any office or property or any employees in New Jersey, nor does it own or employ capital

here. The corporation has sought and received the privilege of exercising its corporate franchise in New Jersey and is, therefore, subject to the corporation business tax and must file a return and pay the minimum tax.

(b) A financial business corporation, a banking corporation, a credit card company, or similar business that has its commercial domicile in another state is subject to corporation business tax in this State if during any year it obtains or solicits business or receives gross receipts from sources within this State.

(c) Mandatory submission of affidavit; proof of authorization to do business. A foreign corporation, which is subject to tax under the Corporation Business Tax Act, must submit an affidavit by a duly authorized corporate officer, stating whether or not the corporation at any time prior to the date of admitted subjectivity under the Corporation Business Tax Act held any authorization to do business in New Jersey or carried on in this State any of the activities set forth in N.J.A.C. 18:7-1.6(a).

18:7-1.9 Doing business in New Jersey; definition and rules of construction

(a) The term "doing business" is used in a comprehensive sense and includes all activities that occupy the time or labor of men or women for profit.

1. Regardless of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization within the State shall be deemed to be "doing business" for the purposes of the Corporation Business Tax Act.

2. (No change.)

(b) Whether a foreign corporation is doing business in New Jersey pursuant to N.J.A.C. 18:7-1.6(a)2iii is determined by the facts in each case. Consideration is given to such factors as:

1.-2. (No change.)

3. The continuity, frequency, and regularity of the activities of the corporation in New Jersey;

4. The employment in New Jersey of agents, officers, and employees; and

5. (No change.)

Example

(No change.)

(c) A foreign corporation shall not be deemed to be doing business or employing, or owning capital or property in this State for the purposes of the Act by reason of the following:

1. (No change.)

2. The ownership of shares of stock or securities kept in New Jersey in a safe deposit box, safe, vault, or other receptacle rented for the purpose, or pledged as collateral security, or deposited with one or more banks or trust companies, or brokers who are members of a recognized security exchange, in safekeeping or custody accounts;

3. The taking of any action by any such bank or trust company or broker, which is incidental to the rendering of safekeeping or custodian service to such corporation; and

4. (No change.)

(d) If the only business activity of a foreign corporation within New Jersey consists of the solicitation of orders for sales of its tangible personal property, which orders are to be sent outside the State for acceptance or rejection and, if accepted, are to be filed by shipment or delivery from a point outside the State, then such corporation is doing business in New Jersey and is subject to the tax. Unless it has additional contacts with New Jersey; however, it will not be liable for any tax measured by the income of the corporation. (See P.L. 86-272, 15 U.S.C. § 381). The corporation will be liable for filing a return and payment of the minimum tax.

1. (No change.)

2. Examples of additional activities or contacts with New Jersey that will subject a corporation to the tax based on or measured by income are:

i.-iii. (No change.)

iv. Conducting training courses, seminars, or lectures for personnel, other than for personnel involved only in solicitation;

v. Providing technical assistance;

vi.-ix. (No change.)

x. Carrying samples for sale, exchange, or distribution in any manner for consideration or other value;

xi. Owning, leasing, or maintaining in-State facilities, such as a warehouse or answering service; and

xii. Consigning stock of goods or other tangible personal property to any person, including an independent contractor, for sale.

3. Examples of additional activities that, together with the solicitation activities described in (d)1 above will not subject a corporation to tax based on or measured by income are:

i. Soliciting through advertising;

ii. Carrying samples and promotional materials for display or distribution without charge;

iii.-v. (No change.)

vi. Recruiting, training, or evaluating of sales personnel;

vii. Soliciting of orders at an in-State sales employee's in-home work space that is not paid for by the company; and

viii. (No change.)

(e) Independent contractors may solicit or make sales or maintain an office without subjecting a company to liability for corporation business tax based on or measured by income. Sales representatives who represent a single principal would not be considered independent contractors. A corporation would be subject to income-based tax, if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

18:7-1.10 Foreign corporations engaged in interstate commerce

A foreign corporation, which falls into any of the taxable categories subjecting a corporation to tax, as enumerated in N.J.A.C. 18:7-1.6, is subject to the corporation business tax, notwithstanding its business is wholly or partly in interstate commerce.

18:7-1.11 Foreign corporations stocking goods in New Jersey

A foreign corporation, which regularly maintains a stock of goods in New Jersey and makes deliveries to its customers from such stock shall be deemed to be doing business in New Jersey within the meaning of the Corporation Business Tax Act.

Example 1

A foreign manufacturing corporation has its factories and offices located outside New Jersey. Its sole activity in New Jersey consists of holding or storing goods in a public warehouse in this State. It has no employees in New Jersey. The corporation is subject to the corporation business tax because it owns property in New Jersey.

Example 2

A foreign manufacturing corporation has its factory outside New Jersey. Its only activity in New Jersey is the maintenance of an office within the State. The orders are forwarded to its home office outside the State for acceptance and the merchandise is shipped from the factory direct to the purchasers. The corporation is subject to the corporation business tax because it maintains an office within the State.

18:7-1.12 Exempt corporations

Corporations are exempt from the corporation business tax as provided in N.J.S.A. 54:10A-3.

18:7-1.14 Subjectivity of foreign banks and foreign national banks

(a) (No change.)

(b) Applicable rules concerning tax nexus and subjectivity to the corporation business tax, which are contained in this chapter shall apply to foreign banks, as well as to any other taxable entity, including banking corporations. In particular, but without limitation thereto, foreign banks and foreign national banks shall be subject to N.J.A.C. 18:7-1.6 and 1.8 through 1.11.

(c) Any foreign bank or foreign national bank, which engages in any activity described or contemplated in P.L. 1996, c. 17, effective April 17, 1996, shall be subject to the corporation business tax in this State.

(d) Foreign banks subject to the corporation business tax shall file Form CBT-100 and pay the applicable tax thereon to the Director of the Division of Taxation.

(e) Foreign national banks subject to the corporation business tax shall file Form BFC-1 and pay the applicable tax thereon to the Director of the Division of Taxation.

(f) Examples of bank activity in New Jersey include the following:

1. A Pennsylvania state chartered bank reports on the calendar year basis. It began doing business in Pennsylvania in a prior year and it begins doing business in New Jersey on July 1 of Year 1. It is required to file on April 15 of Year 2, its first annual corporation business tax return (CBT-100) and to pay the Year 1 corporation business tax for the short period July 1 of Year 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

2. A national bank that will report on the calendar year basis has its principal office in New Jersey. It begins doing business on July 1 of Year 1. Pursuant to N.J.S.A. 54:10A-34, it is required to file its first annual corporation business tax return (BFC-1) for the Year 2 privilege period with an assessment date of January 1 of Year 2 and to pay a Year 2 corporation business tax on April 15 of Year 2 based on income from July 1 of Year 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

3. A national bank reports on the calendar year basis and has its principal office in Philadelphia. Prior to July 1 of Year 1, it was not doing business anywhere. On that date it began doing business in both Pennsylvania and New Jersey. Pursuant to N.J.S.A. 54:10A-34, it is required to file its first annual corporation business tax return (BFC-1) for the Year 2 privilege period with an assessment date of January 1 of Year 2 and to pay a Year 2 corporation business tax on April 15 of Year 2, based on income from July 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

4. A national bank that reports on the calendar year basis and has its principal office in Philadelphia began doing business prior to January 1 of Year 1. It begins doing business in New Jersey on July 1 of Year 1. Pursuant to N.J.S.A. 54:10A-34, it is required to file its first annual corporation business tax return (BFC-1) on April 15 of Year 2 for the Year 2 privilege period with an assessment date of January 1 of Year 2, based on its income from July 1 to December 31 of Year 1.

5. A calendar year New Jersey State chartered bank begins doing business on July 1 of Year 1. Pursuant to N.J.S.A. 54:10A-34, it is required to file its first annual corporation business tax return (BFC-1) for the Year 2 privilege period with an assessment date of January 1 of Year 2 and to pay a Year 2 corporation business tax on April 15 of Year 2, based on income from July 1 to December 31 of Year 1. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

6. On June 30 of Year 1, a New Jersey State chartered bank merges into another New Jersey State chartered bank. Under N.J.S.A. 54:10A-34(5), the surviving bank's return (BFC-1) for the Year 2 privilege period will be based on its income from January 1 to December 31 of Year 1 and the income of the bank that merged into it from January 1 to June 30 of Year 1.

7. On July 31 of Year 1, a Pennsylvania state chartered bank merges into a New Jersey chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis using a CBT-100 return. The New Jersey State chartered bank will file on April 15 of Year 2, under N.J.S.A. 54:10A-34, a BFC-1 return for the Year 2 privilege period that will be based on its income from January 1 to December 31 of Year 1. In addition, the Pennsylvania state chartered bank will file on November 15 of Year 1, a CBT-100 return for the pre-merger short period covering January 1 to July 31 of Year 1 under N.J.S.A. 54:10A-2, which will be based on its pre-merger Year 1 income.

8. On July 31 of Year 1, a New Jersey State chartered bank merges into a Pennsylvania state chartered bank. Prior to the merger, the Pennsylvania state chartered bank was doing business in New Jersey and reporting on the calendar year basis. The Pennsylvania state chartered bank's Year 1 CBT-100 return filed April 15 of Year 2 for the Year 1 calendar year will be based on its income from January 1 to December 31 of Year 1. In addition, the New Jersey State chartered bank will file on November 15 of Year 1 under N.J.S.A. 54:10A-2, a Year 1 CBT-100 return reporting its pre-merger Year 1 income. This return will be in addition to the BFC-1 return required to be filed, under N.J.S.A. 54:10A-34, by April 15 of Year 1 by the New Jersey State chartered bank for the Year 1 privilege period that is based on its income from the prior year.

9. On July 1 of Year 1, a national bank headquartered in New Jersey merges into a national bank headquartered in Pennsylvania. Prior to the merger, the New Jersey national bank was only doing business in New Jersey and the Pennsylvania national bank was only doing business outside of New Jersey. The Pennsylvania national bank reports for Federal tax purposes on the calendar year basis. The Pennsylvania national bank is required to file its first annual corporation business tax return (BFC-1) on April 15 of Year 2 for the Year 2 privilege period with an assessment date of January 1 of Year 2 based on its income from July 1 through December 31 of Year 1 and the income of the New Jersey national bank that merged into it from the short period covering January 1 to June 30 of Year 1.

18:7-1.15 Investment company; definition

(a) "Investment company" means any corporation:

1.-3. (No change.)

4. Which is not a banking corporation as defined by the Corporation Business Tax Act;

5. Which is not a financial business corporation as defined by the Corporation Business Tax Act; and

6. (No change.)

(b) "Qualified investment assets" are measured by the taxpayer's assets as reported for book purposes at cost on a separate legal entity basis for balance sheet purposes. "Qualified investment activities" are measured by gross receipts and expenses as reported for Federal income tax purposes, and by adding thereto, Federal, state, municipal, and other obligations included in determining New Jersey entire net income, but not otherwise included in Federal taxable income. "Qualified investment activities" and "qualified investment assets" do not include the following specific assets or activities. The receipts, direct and indirect expenses, and assets connected with the following will not be included in the numerator of any test:

1.-6. (No change.)

7. The direct investment in collectibles, including, but not limited to, stamps, pottery, cars, and gold coins;

8.-9. (No change.)

(c) "Receipts" include, but are not limited to, the gross payments received from others (affiliated or not) regardless of whether the receipt is accounted for as an item of income or reduction in expense:

1.-3. (No change.)

4. From the investment or reinvestment of capital in stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities, includible in computing entire net income.

(d) "Reimbursements" received are payments having no element of profit in a transaction or element of covering indirect costs, and are received from others for expenses made on their behalf and are the true expenses of the entity making the reimbursement; hence, neither the expense, nor its recovery, should appear on the taxpayer's income statement for Federal purposes. When a taxpayer's accounting method displays such items on its income statement, such items will be removed from any calculations required under the regulations for the taxpayer receiving the reimbursement and included on the reimbursing company's return.

(e) (No change.)

(f) In order for a corporation to qualify as an investment company, it must meet the three-part business test and the asset test:

1. Business test (three parts):

i. (Income adjusted): For purposes of the 90 percent requirement provided by (a)1 above, a taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions as reported for Federal income tax purposes, from

cash and/or investment assets. Total income before deductions as reported for Federal income tax purposes must be adjusted as follows:

(1)-(2) (No change.)

(3) Add interest on Federal, State, municipal, and other obligations included in determining New Jersey new income, but not otherwise included in Federal total income; and

(4) (No change.)

ii. (Income unadjusted): For purposes of the 90 percent requirement provided by (a) above, a taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions, as reported for Federal income tax purposes, from cash and/or investment assets plus interest on Federal, State, municipal, and other obligations not otherwise included in Federal taxable income and exclusive of any capital loss carryback or carryforward.

(1) A gain resulting from the disposition of an asset and reported on the installment basis for Federal income taxes is considered income for purposes of the investment company statute in the year in which the installment is received under both (f)1i and ii above. Income reported on the installment basis is treated as investment income only if it is generated by the sale of an investment asset. Interest income received in conjunction with each installment is deemed investment income.

iii. (Deductions): For purposes of the 90 percent requirement provided by (a) above, a taxpayer, during the entire period covered by its report, must have incurred 90 percent or more of its total deductions as reported for Federal income tax purposes, for holding, investing, and reinvesting in cash and/or investment assets.

2. (No change.)

Example No. 1

Corporation A

. . .

NJ State & Local Governmental Obligations	27,140

. . .

Example No. 2

(No change.)

Example No. 3

(No change.)

Example No. 4

Corporation D

. . .

All Other Intangible Personal Property	$60,000

. . .

Example No. 5: Corporation A negotiates and discounts loans as opposed to merely investing in notes that were negotiated by others. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights, and other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business for purposes of the Corporation Business Tax Act.

Example No. 6: Corporation B makes or deals in secured or unsecured loans and discounts. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing, and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights, and other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business prohibited by the Corporation Business Tax Act from qualifying for the election.

Example No. 7: Corporation C rents or leases property in transactions that approximate secured loans. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing, and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights, and other securities for its own account" since this is considered a financial business activity.

Example No. 8: Corporation D provides and charges Corporation O and other affiliates for general and administrative services it performs on behalf of Corporation O and the affiliates. The charges cover the cost, which includes a percentage of Corporation D's wages, depreciation expense, as well as other direct and indirect expenses incurred by Corporation D to provide these services. Corporation D must include such receipts in the denominator, but not the numerator, in calculating the tests provided under the rule. The charges made to Corporation O go beyond actual reimbursements and, while considered receipts, are not considered receipts from qualified investment activities within the meaning of the rule. Where such inclusion causes the percentage to drop below the 90 percent requirement, the corporation will be denied its claim to investment company status.

(g) (No change.)

18:7-1.16 Financial business corporation; definition

(a) "Financial business corporation" means a corporation that is, in fact, in substantial competition with the business of national banks, and which also employs moneyed capital with the object of making profit by its use as money through any of the following:

1. Discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt;

2.-4. (No change.)

5. Investing and reinvesting in marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, or debentures, commonly known as investment securities; or

6.-7. (No change.)

(b) For purposes of this section:

1.-2. (No change.)

3. "Net lease" means a lease under which the lessor will not, directly or indirectly, provide or be obligated to provide for:

i. The servicing, repair, or maintenance of the leased property during the lease term.

ii.-v. (No change.)

(c) A financial business corporation shall not include:

1.-2. (No change.)

3. Production credit associations organized under the Farm Credit Act of 1933 or the Farm Credit Act of 1971, Pub. L. 91-181 (12 U.S.C. §§ 2091 et seq.);

4.-11. (No change.)

(d) (No change.)

(e) The business of national bank is defined, and may be redefined from time to time, by the Congress of the United States at 12 U.S.C. §§ 21 et seq. (The National Banking Act).

1. "The business of national banks" as used in N.J.S.A. 54:10A-4(m) and this section means the business of the bank itself and does not include bank subsidiaries, holding companies, or affiliates.

(f) A corporation may qualify as a financial business corporation provided that 75 percent of its gross income is derived from the activities enumerated in (a)1 through 7 above. For purposes of making this computation, gross income shall be the sum of the amounts reported on line 1 and lines 4 through 10 of Schedule A on Form BFC-1, adjusted as follows:

1. "Gross income" for purposes of this subsection and N.J.A.C. 18:7-5.2(a)7iii means the result of adding the income amounts for gross receipts, or sales, dividends, interest, gross rents, gross royalties, capital gain, net income, net gain, or loss from line 14(a), Part II, Federal Form 4797 and other income as adjusted for interest on Federal, state, municipal, and other obligations not included in line 5 above and the dividend exclusion;

2. (No change.)

3. The gross income included in (f)2 above resulting from the activities set forth in (a)1 through 7 above is the numerator; and

4. (No change.)

(g) A corporation that qualifies as a financial business corporation must file a Corporation Business Tax Return for Banking and Financial Corporations, Form BFC-1 and complete Schedule L apportioning the financial business conducted in New Jersey consistent with N.J.S.A. 54:10A-38.

18:7-1.17 Application of the tax to licensees under the Casino Control Act; casino business consolidated return

(a) (No change.)

(b) The consolidated return to be filed under the Casino Control Act is in addition to, and not in lieu of, any return due under the Corporation Business Tax Act. Provided, however, that where any corporation is a licensee under the Casino Control Act, it may exclude from the return due under the corporation business tax any item of income, loss, or deduction appearing on its consolidated return, but which would have been reported on its own separate return under the Corporation Business Tax Act for the year for which that item would otherwise have been reported. Provided further, that where any corporation is a partner in a licensee under the Casino Control Act, it may similarly exclude its share of distributable income or loss attributable to its partnership interest in the licensee which would otherwise have been reported by it on its own separate return under the Corporation Business Tax Act.

1.-3. (No change.)

(c) The principles of consolidation are determined by regarding each casino hotel as though it were a single corporation reporting in its own right under the Corporation Business Tax Act. The rules governing consolidation under the Internal Revenue Code do not apply. The business conducted by each casino hotel shall give rise to an obligation to file a separate consolidated corporation business tax return based on all the business activities conducted with respect to that casino hotel. All licensees and all other entities subject to common effective control, without respect to their form of organization or the form of license held, except for licenses issued to individuals in their capacity as employees, must join in filing the consolidated return. All transactions between or among them are to be eliminated in consolidation and shall not appear on the consolidated return. Accordingly, where the same licensee or entity subject to common effective control is a participant in the business conducted by more than one casino hotel, it must join in filing a consolidated return with each such business. A change in common effective control terminates the fiscal year for purposes of filing the consolidated return.

1. Common effective control is the power exercisable by any person or entity arising out of ownership or a contractual arrangement which joins more than one licensee or other entity or entities and permits domination in the management of more than one licensee or other entity or entities for the purpose of engaging in a single casino hotel business. Common effective control also occurs where a contractual arrangement permits more than one licensee or other entity or entities to operate jointly a single casino hotel business. For example, where the same persons or entities simultaneously control voting stock, boards of directors, or serve as or nominate managing partners, or are employed as managers or executives in more than one licensee or other entity or entities which participates in the business activities conducted by the same casino hotel, or where a licensee or other entity or entities executes a sale and leaseback of its property with another licensee or other entity or entities and reserves by contract the option to recover its property, all such licensees or other entity or entities subject to common effective control shall join in filing the consolidated return. Notwithstanding an absence of common ownership, licensees and all other entities subject to common effective control joined in the operation of the business conducted by a casino hotel by management contract or partnership arrangement shall join in filing the return.

2. Consistent with N.J.A.C. 18:7-11.15(a), the separate return due under the Corporation Business Tax Act may not be consolidated. See also (c)4 below.

3. Certain corporations that are members of affiliated or controlled groups may be required to file consolidated returns pursuant to N.J.S.A. 54:10A-10. See N.J.A.C. 18:7-5.11. See also (c)4 below.

4. (No change.)

(d) Where a licensee is engaged in a business wholly unrelated to the casino hotel, or is engaged in the operation of more than one casino hotel, common costs must be apportioned in a reasonable manner consistently applied. The method of apportionment shall be disclosed on the consolidated return and may be adjusted by the Director where it shall appear to him or her to result in a distortion of tax liability.

(e) Where the licensees joining in filing the consolidated return do not have a common fiscal year, the return may be based upon the fiscal year of the casino operator as defined at N.J.A.C. 19:54-1.2 where all licensees join in making such an election. The other licensees may then include their respective financial condition and operations on the basis of their own fiscal years within which the consolidated year ends. Separate schedules reconciling timing differences in elimination of balance sheet items and items of entire net income attributable to the lack of a common fiscal year must be submitted as part of any such consolidated return. In the absence of this election, the return shall be based on a calendar year ending December 31. The reporting method, once adopted, is effective for all future returns unless prior consent of the Director is obtained for a change.

(f) (No change.)

18:7-1.18 Definition of S corporation

"S corporation" means a corporation included in the definition of an "S corporation" pursuant to I.R.C. § 1361.

18:7-1.21 Definition of qualified investment partnership

(a) "Qualified investment partnership" means a partnership under this Act that has more than 10 members or partners with no member or partner owning more than a 50 percent interest in the partnership and that derives at least 90 percent of its gross income from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stocks or securities or foreign currencies or commodities or other similar income (including, but not limited to, gains from swaps, options, futures or forward contracts) derived with respect to its business of investing or trading in those stocks, securities, currencies, or commodities, but "investment partnership" shall not include a "dealer in securities" within the meaning of I.R.C. § 1236.

1. (No change.)

SUBCHAPTER 2. NATURE OF TAX

18:7-2.1 Nature of tax; in general

(a) The Act imposes a franchise tax on every domestic corporation not otherwise exempt, and upon every foreign corporation not otherwise exempt, falling within any of the taxable categories and as also enumerated in N.J.A.C. 18:7-1.6.

(b) (No change.)

18:7-2.2 Calendar and fiscal years; definitions

(a) (No change.)

(b) The term "fiscal year" means an accounting period ending on the last day of any month other than December of a calendar year.

18:7-2.3 Federal calendar or fiscal year for reporting

(a) In general, the calendar or fiscal year on the basis of which the taxpayer is required to report for Federal income tax purposes is the calendar or fiscal year on the basis of which it is required to report for purposes of the Corporation Business Tax Act.

(b) Reports based on a 52 to 53-week account year will be accepted where that method of reporting is permissible and used for Federal tax purposes. If that method is used, a fiscal year which begins within seven days from the beginning of any calendar month shall be deemed to have begun on the first day of that calendar month, and any fiscal year which ends within seven days from the end of any calendar month shall be deemed to have ended on the last day of that calendar month.

(c) (No change.)

18:7-2.6 Subject corporations must file on the basis of a calendar year period unless otherwise permitted

A subject corporation which is not required to file a Federal income tax return must file its corporation business tax return on the basis of a calendar year accounting period unless permission to employ a fiscal

year basis has been granted in writing by the Division of Taxation upon application having been made.

18:7-2.9 Effect of proof of established fiscal year accounting period submitted late

Upon proof of the establishment of a fiscal accounting period and the filing of a proper return covering such period accompanied by payment of the tax liability, a corporation shall be credited with any payment made in connection with a return previously filed on the basis of a calendar year period by reason of this section.

18:7-2.10 Period of application of tax

The tax is imposed for each calendar or fiscal period of the taxpayer, or any part thereof, during which the taxpayer had a taxable status as described in N.J.A.C. 18:7-1.6.

18:7-2.11 Component factors of tax base

The tax for the period or partial period prescribed in N.J.A.C. 18:7-2.10 is measured by a taxpayer's allocable entire net income. The tax liability may also be the Alternative Minimum Assessment amount calculated pursuant to N.J.S.A. 54:10A-5a and N.J.A.C. 18:7-18.

18:7-2.13 Conditions destroying franchise and franchise tax

(a) A domestic corporation may cease to possess a franchise as a result of proof provided to the Division of Taxation of:

1.-2. (No change.)

3. The surrender, revocation, or annulment of its charter; or

4. (No change.)

SUBCHAPTER 3. COMPUTATION OF TAX

18:7-3.4 Minimum tax

(a) The tax paid in the case of an investment company, a regulated investment company, or real estate investment trust shall not be less than $250.00, provided, however, for calendar year 2002 and thereafter, the minimum tax shall be $500.00, unless the taxpayer is a member of an affiliated group or a controlled group pursuant to I.R.C. § 1504 or 1563, and whose group has total payroll of $5,000,000 or more for the privilege period, the minimum tax shall be $2,000. The minimum tax for other corporations is set forth in (b) through (d) below.

(b) For accounting or privilege periods beginning in calendar year 2012 and thereafter the minimum tax for corporations that are not New Jersey S corporations shall be based on the New Jersey gross receipts, as defined for the purposes of this subsection pursuant to N.J.S.A. 54:10A-5a and N.J.A.C. 18:7-18.1, of the taxpayer pursuant to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	$500.00
$100,000 or more but less than $250,000	$750.00
$250,000 or more but less than $500,000	$1,000
$500,000 or more but less than $1,000,000	$1,500
$1,000,000 or more	$2,000

1. For accounting or privilege periods beginning in calendar year 2002 and thereafter, a taxpayer that is a member of an affiliated group or a controlled group pursuant to I.R.C. § 1504 or 1563, and whose group has total payroll of $5,000,000 or more for the privilege period, the minimum tax shall be $2,000 for the accounting or privilege period. If the related corporations do not have the same fiscal years, the overlapping portion shall be placed upon the equivalent fiscal basis to arrive at the threshold amount.

(c) (No change in text.)

(d) If a taxpayer is part of a group of taxpayers in which the tax liability of the group is reflected on a single return of a member of the group, the other members of the group are required also to file returns with New Jersey. Such returns shall reflect the minimum tax. Entities required to file minimum returns under this subsection include, without limitation thereto, qualified New Jersey Subchapter S subsidiaries, members of a casino consolidated group, and members of a combined group required to file a consolidated return by the Director pursuant to N.J.S.A. 54:10A-10.c.

18:7-3.6 Tax rates—corporations, S corporations

(a) Tax rates for C corporations are as follows:

1. (No change.)

2. Except as may be provided in (a)3 and 4 below, for a foreign corporation acquiring a taxable status in New Jersey on or after January 1, 1980, and filing its New Jersey return Form CBT-100 on a short period basis, the tax rate is nine percent on adjusted entire net income after proper proration.

3.-4. (No change.)

(b) For privilege periods ending on or after July 1, 2007, there shall be no tax imposed on New Jersey S corporations with total entire net income that is not subject to Federal income tax.

(c) The rates for income of New Jersey S corporations that are subject to Federal tax are as follows:

1. Except as may be provided in (c)2 or 3 below, for a New Jersey S corporation the tax rate is nine percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. § 1374 or 1375.)

2. For privilege periods beginning on or after July 1, 1996, a taxpayer that is a New Jersey S Corporation that has entire net income of $100,000 or less for a 12-month privilege period, the tax rate is 7.5 percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. § 1374 or 1375). A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $8,333 per month.

3. For privilege periods beginning on or after January 1, 2002, a taxpayer that is a New Jersey S corporation that has entire net income of $50,000 or less for a 12-month privilege period, the tax rate is 6.5 percent multiplied by any of its entire net income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. § 1374 or 1375.) A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed $4,166 per month.

18:7-3.7 (Reserved)

18:7-3.8 Investment company; tax self-assessed and payable

(a) (No change.)

(b) In no case shall the total tax be less than $250.00 provided that for privilege periods beginning on and after January 1, 2002, the tax shall not be less than $500.00, except that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to I.R.C. § 1504 or 1563 and whose group has total payroll of $5,000,000 or more for the privilege period, the minimum tax shall be $2,000 for the privilege period.

18:7-3.10 Regulated investment company; tax payable

(a) (No change.)

(b) For privilege periods beginning on and after January 1, 2002, the tax applicable to a regulated investment company shall be $500.00, provided, however, that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to I.R.C. § 1504 or 1563 and whose group has total payroll of $5,000,000 or more for the privilege period, the minimum tax shall be $2,000 for the privilege period.

(c) A regulated investment company, as defined in N.J.S.A. 54:10A-4(g), which also qualifies as an investment company, as defined in N.J.S.A. 54:10A-4(f), is not subject to the AMA. Such a company shall annually file form CBT-100, completing page 1 and Schedule M for regulated investment companies. In addition, a statement should be attached to the taxpayer's return indicating that the regulated investment company qualifies as an investment company.

(d)-(e) (No change.)

18:7-3.12 Method of accounting

In general, the method of accounting, whether cash, accrual, or other basis, used in computing net income for Federal income tax purposes is to be used in computing entire net income under the Corporation Business Tax Act.

18:7-3.13 Estimated tax

(a) For any privilege periods beginning on or after January 1, 1985, each taxpayer shall pay its estimated tax in four installments as follows:

1. Twenty-five percent on or before the 15th day of the fourth month;

2. Twenty-five percent on or before the 15th day of the sixth month;

3.-4. (No change.)

(b)-(d) (No change.)

(e) A taxpayer shall be entitled to a credit in the amount of the estimated tax payments made and shall be entitled to the return of any amount so paid which is in excess of the total tax payable under N.J.S.A. 54:10A-15(c).

(f)-(h) (No change.)

18:7-3.15 Interest on underpayment of installment payments

(a) (No change.)

(b) Interest is determined at the annual rate referred to in (c) below based upon the amount of the underpayment of any installment of estimated tax for the period from the date such installment was required to be paid until the 15th day of the fourth month following the close of the tax year, or the date such underpayment was received by the Director, whichever is earlier. For purposes of determining the period of the underpayment:

1. (No change.)

2. A payment of estimated tax on any installment date, to the extent that it exceeds the amount of the installment determined under (a)1 above for such date shall be considered a payment of any previous underpayment.

(c) The rate to be used in (b) above is an annual rate of five percent above the prime rate, compounded daily from the date the tax was originally due and payable until the date of payment. On and after July 1, 1993, the rate is three percent above the prime rate compounded annually. Each such underpayment shall bear interest at the rate prescribed above. The following is an example of underpayment interest computation:

1. Assume the average predominant prime rate for the calendar year is six percent. Therefore, the applicable interest on underpayment pursuant to this subsection is six percent plus three percent or nine percent on the amount of any underpayment of estimated tax due on or after April 1 but before July 1 of the calendar year. The method prescribed for computing the addition to the tax may be illustrated by the following example:

i. A corporation reporting on a calendar year basis estimated on its Statement of Estimated Tax for the calendar year, estimated tax in the amount of $50,000. It made payments of $12,500 each on April 15, June 15, September 15, and December 15 of the calendar year. On April 15 of the following year, it filed its tax return, CBT-100, showing a total tax of $200,000. Since the amount of each of the four installments paid by the last date prescribed for payment thereof was less than 90 percent of the tax shown on the return, the addition to the tax under this rule is applicable and is computed as follows, assuming that no exception applies:

Item (1)	Tax on return for the current year	$200,000
Item (2)	Ninety percent of item (1).....	180,000
Item (3)	Amount of estimated tax required to be paid on each installment date (25 percent of $180,000)....	45,000
Item (4)	Deduct amount paid on each installment date.....	12,500
Item (5)	Amount of underpayment for each installment date (item (3) minus item (4)).....	$ 32,500
Item (6)	Interest shall be charged on each underpayment at the rate as prescribed in this subsection	

First installment: Interest period April 15 of the current year to April 15 of the following year

Second installment: Interest period June 15 of the current year to April 15 of the following year

Third installment: Interest period September 15 of the current year to April 15 of the following year

Fourth installment: Interest period December 15 of the current year to April 15 of the following year

(d) (No change.)

(e) Exceptions to imposition of interest on underpayment of an installment payment. The addition to the tax under this rule will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment, the total amount of all payments of estimated tax made equaled or exceeded the amount which would have been required to be paid on or before such date if the estimated tax were the least of the following amounts:

1. An amount equal to the tax determined on the basis of the tax rates for the taxable year but otherwise on the basis of the facts shown on the return for the preceding taxable year and the law applicable to such year. If the tax rates for the current taxable year with respect to which the underpayment occurs differ from the rates applicable to the preceding taxable year, the exception will only apply to installments due on or after the change in tax rates. If the preceding return was a short period return filed pursuant to N.J.A.C. 18:7-12.1, the tax computed on the basis of the facts shown on such return for purposes of determining the applicability of the exception shall be the tax appearing on such short period return multiplied by 12 and then divided by the number of whole months covered by such short period return; or

2.-3. (No change.)

18:7-3.16 Banking corporations and financial business corporations

N.J.A.C. 18:7-3.13, 3.15, 11.12, and 13.6 apply to banking corporations and financial business corporations. See N.J.S.A. 54:10A-34 et seq. regarding banking corporation general taxability under the Corporation Business Tax Act.

18:7-3.17 Tax credits

(a) The following are credits permitted against the corporation business tax:

1. Business Employment Incentive Grant (BEIP), N.J.S.A. 34:1B-129;

2. Urban Enterprise Zone Employee Tax Credit, N.J.S.A. 52:27H-78;

3. Urban Enterprise Zone Investment Tax Credit, N.J.S.A. 52:27H-78;

4. Redevelopment Authority Project Tax Credit, N.J.S.A. 55:19-13;

5. Research and Development Tax Credit, N.J.S.A. 54:10A-5.24;

6. Manufacturing Equipment and Employment Investment Tax Credit, N.J.S.A. 54:10A-5.18;

7. New Jobs Investment Tax Credit, N.J.S.A. 54:10A-5.6;

8. Business Retention and Relocation Assistance Act (BRRAG), N.J.S.A. 34:1B-114;

9. Small New Jersey Based High Technology Business Investment Tax Credit, N.J.S.A. 54:10A-5.30;

10. HMO Assistance Fund Tax Credit, N.J.S.A. 17B:32B-12;

11. Effluent Equipment Tax Credit, N.J.S.A. 54:10A-5.31;

12. Neighborhood Revitalization State Tax Credit, N.J.S.A. 52:27D-492;

13. AMA Tax Credit, N.J.S.A. 54:10A-5a.f;

14. Economic Recovery Tax Credit, N.J.S.A. 52:27BBB-55;

15. Sheltered Workshop Tax Credit, N.J.S.A 54:10A-5.38;

16. Urban Transit Hub, N.J.S.A 34:1B-209;

17. Offshore Wind Economic Development, N.J.S.A. 34:1B-209.4;

18. Grow New Jersey Assistance Tax Credit, N.J.S.A. 34:1B-244;

19. Angel Investor Credit, N.J.S.A. 54:10A-5.30; and

20. Residential Economic Recovery and Growth Tax Credit, N.J.S.A. 52:27D-489f.

Recodify existing (c)-(d) as (b)-(c) (No change in text.)

18:7-3.18 through 3.20 (Reserved)

18:7-3.21 Manufacturing equipment and employment investment tax credit

(a) The following words and terms, as used in this section, shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Cost of qualified equipment" means, and is determined according to, the following criteria:

1. With respect to self-constructed equipment, the term means the cost amount properly charged to the capital account for depreciation in accordance with Federal income tax law. This includes all charges incurred to produce a particular manufacturing piece of equipment. Costs include engineering designs, drafting, and other consultations required, as well as the physical construction costs associated with the finished product.

2. (No change.)

3. With respect to equipment acquired by written lease, the term is the minimum amount required by the agreement to be paid over the term of the lease, provided that the minimum amount shall not include any amount required to be paid after the expiration of the useful life of the equipment. Property which a taxpayer leases, rents, or licenses to another person is not qualified equipment.

4. (No change.)

. . .

"Placed in service," with respect to qualified equipment, means and occurs in the earlier of the following tax years:

1. (No change.)

2. The tax year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"Qualified equipment" means machinery, apparatus, or equipment acquired by purchase for use or consumption by the taxpayer directly and primarily in the production of tangible personal property by manufacturing, processing, assembling, or refining, as defined pursuant to N.J.S.A. 54:32B-8.13a, having a useful life of four or more years, and placed in service in this State. Qualified equipment does not include tangible personal property which the taxpayer contracts or agrees to lease or rent to another person or licenses another person to use. Lease renewals, subleases, or assignments shall not be considered as qualified equipment. See N.J.A.C. 18:24-4.2.

"Useful life" used to distinguish three-year property from all other property, is determined in accordance with I.R.C. § 168.

(b) A corporate taxpayer that acquires qualified manufacturing equipment either by purchase or lease and/or has an increase in New Jersey employees due to the equipment investment is entitled to a corporation business tax credit.

1. (No change.)

2. The two portions combined plus any carryover (the credit available) shall not reduce the tax liability below 50 percent of the tax liability otherwise due for any tax year or below the statutory minimum tax provided at N.J.S.A. 54:10A-5(e).

(c)-(e) (No change.)

(f) The following example illustrates the application of the credit:

Example:	Year 1	Year 2	Year 3	Year 4
Cost of qualified equipment placed in service	None	$3,000,000	$5,000,000	$1,000,000
Average employees and/or employee equivalents	125	140	150	160

Year 2: XYZ Corporation places qualified manufacturing equipment in service in New Jersey during Year 2. The cost of the manufacturing equipment, excluding shipping and installation, is $3,000,000. The taxpayer receives a recycling equipment tax credit of $10,000 and its corporate tax liability is $400,000. The manufacturing equipment portion of the credit is $60,000 ($3,000,000 cost x two percent, not to exceed $1,000,000), and the employment investment portion is unavailable until the two years following placement of equipment in service. Therefore, the credit is the lesser of $60,000 or $190,000 (50 percent of the tax liability less the recycling equipment credit). In this case the allowable credit for XYZ Corporation is $60,000, the lesser of the two amounts.

Year 3: XYZ Corporation places additional qualified equipment in service during 1995, which was acquired through a lease agreement. The lease agreement required $5,000,000 to be paid over the term of the lease. The taxpayer is not eligible for any other tax credits, and its corporation business tax liability is $220,000. The manufacturing equipment portion of the credit is $100,000 ($5,000,000 total lease cost x two percent, not to exceed $1,000,000). The employment investment portion is $25,000 (150 measurement year average - 125 base year average = average increase of 25 x $1,000, not to exceed three percent of the cost of qualified equipment placed in service in New Jersey in Year 2). Therefore, the credit is the lesser of $125,000 ($100,000 + $25,000) or $110,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $110,000, the lesser of the two amounts. The difference between the total of the two credit portions ($125,000) and the credit allowable ($110,000), or $15,000 may be carried over for a maximum of seven years.

Year 4: Qualified equipment is placed in service during Year 4 at a cost of $1,000,000. The taxpayer is not eligible for any other tax credits, and its corporation business tax liability is $350,000. The manufacturing equipment portion of the credit is $20,000 ($1,000,000 total lease cost x two percent, not to exceed $1,000,000). The employment investment portion is $45,000, based on calculations for the Year 2 and Year 3 investments (150 measurement year average - 125 base year average = average increase of 25 x $1,000 or $25,000 for the Year 2 investment AND 160 measurement year average - 140 base year average = average increase of 20 x $1,000 or $20,000 for the Year 3 investment). Therefore, the credit is the lesser of $80,000 ($20,000 + $45,000 + $15,000 carryover from Year 3) or $175,000 (50 percent of the tax liability). In this case the allowable credit for XYZ Corporation is $80,000, the lesser of the two amounts.

18:7-3.22 New jobs investment tax credit

(a) Corporate taxpayers are allowed a credit against the portion of the corporation business tax that is attributable to, and the direct consequence of, the taxpayer's qualified investment in a new or expanded business facility in this State which results in the creation of new jobs.

1. For a small business taxpayer, as defined in N.J.S.A. 54:10A-5.5, at least five new jobs must be created. For any other taxpayer, at least 50 new jobs must be created. The median annual compensation for the new jobs must be at least $27,000, adjusted for inflation beginning January 1, 1994, as provided in N.J.S.A. 54:10A-5.6e. The employer should rank the new employees by annual compensation. If the middle employee has compensation less than $27,000, the lowest ranking jobs should be deleted from the list until the median of the remaining list is at least $27,000. (If there is an even number on the list, the top half must be greater than $27,000.) The number of employees on this revised list is the number of new jobs created for purposes of this credit.

2. For privilege periods beginning on and after January 1, 2002, the eligibility standards for the New Jobs Investment Tax Credit Act have been expanded to include small or mid-size business taxpayers. For tax year 2002 such taxpayers shall have annual payroll of $5,000,000 or less and annual gross receipts of not more than $10,000,000. Such amounts will be adjusted annually for inflation commencing January 1, 2003, by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of $50.00. "Annual inflation adjustment factor" means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins.

i. (No change.)

(b)-(d) (No change.)

(e) The unused portion of the credit shall be forfeited if the property is disposed of prior to the end of its recovery period, or ceases to be used in a new or expanded business facility, except where the cessation is due

to fire, flood, storm, or other casualty, pursuant to the provisions of N.J.S.A. 54:10A-5.10 and 5.11. Except when the cessation is due to fire, flood, storm, or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years pursuant to the calculation under N.J.S.A. 54:10A-5.10.b. The taxpayer shall then file a reconciliation statement with its annual corporation business tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for such earlier years, together with any penalty and interest for failure to pay any such tax as provided in the State Uniform Procedure Law.

1. (No change.)

(f) N.J.S.A. 54:10A-5.13 requires the taxpayer to make written application to the Director of the Division of Taxation for allowance of the credit. No prior approval will be required if the return and Form 304 claiming the credit are filed on or before the original due date of the return. However, the return will be reviewed upon filing, and the Division will notify the taxpayer if the credit is disallowed. If the taxpayer applies for an extension to file Form CBT-100 or CBT-100S, a letter application from the taxpayer requesting allowance of the credit must accompany the request for extension, Form CBT-200T. The recordkeeping requirements of N.J.S.A. 54:10A-5.12 for qualified property must be followed.

EXAMPLE

New Jersey Investment Tax Credit Calculation

Corporation ABC in the current year purchases and installs the following at location D in New Jersey:

1.-4. (No change.)

At location E in New Jersey, the corporation makes repairs on existing facilities for $250,000.

At location F in New Jersey, the corporation purchases a building, owned and used by an unrelated party, for $500,000.

All locations are in New Jersey. None of the locations are in an urban enterprise zone.

In the prior year Corporation ABC had 50 employees, all at location E, with annual payroll of $2,000,000 and gross receipts of $5,000,000. In the current year Corporation ABC employs 120 people, 50 at location E, 65 at location D, and five at location F, all with income above $30,000, and has gross receipts of $10,000,000 and payroll of $5,000,000. The 65 employees at location D are all newly hired New Jersey residents with total compensation of $3,000,000. The corporation business tax liability for Corporation ABC in the current year is $10,000.

Corporation ABC should compute its current year New Jersey investment tax credit this way: (Line reference numbers are to Form 304 (1-95) New Jobs Investment Tax Credit.)

First, calculate the allowable investment base as follows:

Qualified investment:

line 4(a) with three year life	0.35 ×	$ 100,000 =	$ 35,000
line 4(b) with five year life	0.70 ×	200,000 =	140,000
line 4(c) with seven year or more life	1.00 ×	1,000,000 =	1,000,000
line 5 Sum of lines 4(a), 4(b), and 4(c)			$1,175,000

The investment base is $1,175,000.

(The airplane purchase does not qualify; the repairs at location E do not qualify; and the purchase of existing property at location F does not qualify. See N.J.S.A. 54:10A-5.5 and N.J.A.C. 18:7-3.22(b).)

Second, calculate the number of eligible new jobs created as follows in order to arrive at the new jobs factor:

line 6(a) Average New Jersey employment for this tax year	120
line 6(b) Average New Jersey employment for last tax year	50
line 6(c) Subtract line 6(b) from line 6(a)	70
line 6(d) Divide line 6(a) by 2	60
line 6(e) Number of eligible new jobs	65
line 6(f) Smaller of 6(c), 6(d), or 6(e)	60
line 7(a) Divide line 6(f) by 50 with no remainder	1
line 7(b) Multiply line 7(a) by .005	.005
line 7(c) Enter the smaller of .10 or line 7(b)	.005

(The number of eligible jobs is limited to 60, one-half total employment. ABC is, with $10,000,000 in gross receipts, not a small taxpayer in the current year.)

The new jobs factor is .005.

Third, calculate the maximum annual credit:

line 8 Multiply line 7(c) × line 2 × .2 .005 × $1,175,000 × .2 =	$1,175
line 9 Qualified investment from prior two years	0
line 10 Aggregate Annual Credit: (Sum of lines 8, 9(a), 9(b), 9(c), and 9(d))	$1,175

Fourth, calculate tax attributable to new investment which is eligible to be offset by the credit (which is proportional to compensation of new employees relative to all employees).

line 11 Compensation of all new jobs in New Jersey attributable to the qualified investment	$3,000,000
line 12 Total compensation of all employees in New Jersey	$5,000,000
line 13 Divide line 11 by line 12	.60
line 14 Enter tax liability from front page of CBT	
line 15 Multiply line 13 by line 11 CBT-100 page 1	6,000

Fifth, arrive at the allowable credit:

line 16 Multiply line 15 by 50 percent	$3,000
line 17 Enter the smaller of line 10 or line 16	1,175

18:7-3.23 Research credit

(a) A taxpayer shall be allowed a credit against its corporation business tax liability in an amount equal to 10 percent of the excess of the qualified research expenses for the fiscal or calendar accounting year over the base amount, and 10 percent of the basic research payments determined in accordance with I.R.C. § 41 as in effect on June 30, 1992, provided that I.R.C. § 41(h) relating to termination of the availability of the credit in 1995 shall not apply.

(b) (No change.)

(c) In general, the term "in-house research expenses" means:

1.-2. (No change.)

3. Under Federal regulations prescribed, any amount paid or incurred to another person for the right to use computers in the conduct of qualified research.

i. Paragraph (c)3 above shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under I.R.C. § 41(f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(d) "Qualified services" means services consisting of engaging in qualified research, or engaging in the direct supervision or direct support of research activities which constitute qualified research. If substantially all of the services performed by an individual for the taxpayer during the

taxable year consists of engaging in qualified research, or engaging in the direct supervision or direct support of research activities which constitute qualified research, the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(e) (No change.)

(f) The term "wages" means:

1. In general, the term "wages" has the meaning given such term by I.R.C. § 3401(a).

2. For self-employed individuals and owner-employees, in the case of an employee (within the meaning of I.R.C. § 401(c)(1)), the term "wages" includes the earned income (as defined in I.R.C. § 401(c)(2)) of such employee.

3. Exclusion for wages to which targeted jobs credit applies, the term "wages" shall not include any amount taken into account in determining the targeted jobs credit under I.R.C. § 51(a).

(g) (No change.)

(h) Trade or business requirement may be disregarded for in-house research expenses of certain start-up ventures. In the case of in-house research expenses, a taxpayer shall be treated as meeting the trade or business requirement of (b) above if, at the time such in-house research expenses are paid or incurred, the principal purpose of the taxpayer in making such expenditures is to use the results of the research in the active conduct of a future trade or business:

1. (No change.)

2. Of one or more other persons who with the taxpayer are treated as a single taxpayer under I.R.C. § 41(f)(1).

(i) Base amount requirements are as follows:

1.-2. (No change.)

3. Fixed-base percentage requirements are as follows:

i. (No change.)

ii. Start-up companies shall comply with the following:

(1)-(2) (No change.)

iii.-iv. (No change.)

4. Consistent treatment of expenses is required. Notwithstanding whether the period for filing a claim for credit or refund has expired for any taxable year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage shall be determined on a basis consistent with the determination of qualified research expenses for the credit year.

5. (No change.)

(j) Qualified research, for purposes of this subsection, is defined as follows:

1. The term "qualified research" means research:

i. With respect to which expenditures may be treated as expenses under I.R.C. § 174;

ii.-iv. (No change.)

2. For purposes of this subsection, the following tests shall be applied separately to each business component:

i. In general, (j)1 above shall be applied separately with respect to each business component of the taxpayer.

ii.-iii. (No change.)

3. (No change.)

4. The term "qualified research" shall not include, nor shall credit be allowed for, any of the following:

i.-ii. (No change.)

iii. Duplication of an existing business component, that is, any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component;

iv. (No change.)

v. Any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in:

(1)-(2) (No change.)

vi.-viii. (No change.)

(k) Credit allowable with respect to certain payments to qualified organizations for basic research shall be as follows:

1.-4. (No change.)

5. Concerning the maintenance of effort amount, for purposes of this subsection:

i. (No change.)

ii. Nondesignated university contributions, for purposes of this paragraph, means any amount paid by a taxpayer to any qualified organization described in (k)6i below:

(1) For which a deduction was allowable under I.R.C. § 170; and

(2) (No change.)

iii. Cost-of-living adjustment shall be defined as follows:

(1) In general, the cost-of-living adjustment for any calendar year is the cost-of-living adjustment for such calendar year determined under I.R.C. § 1(f)(3), by substituting "calendar year 1987" for "calendar year 1989" in subparagraph (B) of I.R.C. § 1(f)(3).

(2) If the base period of any taxpayer does not end in 1983 or 1984, I.R.C. § 1(f)(3)(B) shall, for purposes of this paragraph, be applied by substituting the calendar year in which the base period ends for 1989. Such substitution shall be in lieu of the substitution under (k)5iii(1) above.

6. For purposes of this subsection, the term "qualified organization" means any of the following organizations:

i. Educational institutions, that is, any educational organization which:

(1) Is an institution of higher education (within the meaning of I.R.C. § 3304(f)), and

(2) Is described in I.R.C. § 170(b)(1)(A)(ii).

ii. Certain scientific research organizations, that is, any organization not described in (k)6i above which:

(1) Is described in I.R.C. § 501(c)(3) and is exempt from tax under I.R.C. § 501(a);

(2)-(3) (No change.)

iii. Scientific tax-exempt organizations, that is, any organization which:

(1) Is described in:

(A) I.R.C. § 501(c)(3) (other than a private foundation); or

(B) I.R.C. § 501(c)(6);

(2) Is exempt from tax under I.R.C. § 501(a);

(3)-(4) (No change.)

iv. Certain grant organizations, that is, any organization not described in (k)6ii or iii above which:

(1) Is described in I.R.C. § 501(c)(3) and is exempt from tax under I.R.C. § 501(a) (other than a private foundation);

(2)-(3) (No change.)

(4) Makes an election, revocable only with the consent of the United States Secretary of the Treasury, to be treated as a private foundation for purposes of United States Code Title 26 (other than I.R.C. § 4940, relating to excise tax based on investment income).

(l) Definitions and special rules shall be as follows:

1.-2. (No change.)

3. For purposes of determining the amount of credit allowable under subsection (k)1 above, for any taxable year, the amount of the basic research payments taken into account under (k)2 above:

i.-ii. (No change.)

4. (No change.)

5. The term "corporation" shall not include:

i. (No change.)

ii. A personal holding company (as defined in I.R.C. § 542); or

iii. A service organization (as defined in I.R.C. § 414(m)(3)).

(m) For Special Rules, see I.R.C. § 41(f).

(n)-(q) (No change.)

(r) The research credit shall be generally allowed for qualified research. Qualified research is that which is limited to scientific experimentation or engineering activities designed to aid in the development of a new or improved product, process, technique, formula, invention, or computer software program held for sale, lease, or license, or used by the taxpayer in a trade or business. For in-house research expenses, this trade or business requirement will be met if the principal purpose for conducting the research is to use the results of the research in the active conduct of a future trade or business. The research credit shall generally not be allowed for the following types of activities:

1.-7. (No change.)

8. Research funded by another person (or government entity).

(See I.R.C. § 41 and regulations thereunder for other definitions and special rules concerning the research credit.)

(s) The research and expenditure tax credit is determined as follows:

1. First, calculate fixed-base percentage. Fixed-base percentage is the percentage which the aggregate qualified research expenses of the taxpayer for taxable years beginning after December 31, 1983, and before January 1, 1989, is of the aggregate gross receipts of the taxpayer for such taxable years.

Example: (No change.)

2.-3. (No change.)

(t) (No change.)

(u) If taxpayer has research within and outside New Jersey and cannot determine the amount of New Jersey qualified research expenses for the period beginning after December 31, 1983, and before January 1, 1989, calculate the amount to be used in the numerator of the ratio to arrive at the fixed base percentage as follows: take the figure for qualified research and development expenses everywhere for the period and multiply it by the average of the average of the payroll fraction and the property fraction used on the corporation business tax returns for the corresponding years in question. This amount becomes the numerator of a fraction whose denominator is taxpayer's aggregate gross receipts everywhere for the period.

(v) Any Federal deduction under I.R.C. § 174 will be the same for New Jersey purposes, since there is no New Jersey provision for a separate modified state tax credit amount under such circumstances.

(w)-(z) (No change.)

18:7-3.24 through 3.28 (Reserved)

SUBCHAPTER 3A. URBAN ENTERPRISE ZONES ACT

18:7-3A.1 General

(a) The New Jersey Urban Enterprises Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), approved August 15, 1983, provides for the establishment of up to 10 urban enterprise zones in urban areas suffering from high unemployment and economic distress. P.L. 1985, c. 391, made certain changes to eligibility requirements for designation as a zone. P.L. 1988, c. 93, modified the definition of a qualified business, made adjustments to the eligibility requirements for the employee tax credit, and provided for an alternative investment tax credit. P.L. 1993, c. 367, further modified the definition of a qualified business and provided for the designation of 10 additional enterprise zones. Zones are designated by an Urban Enterprise Zone Authority. The Authority may grant certain corporation tax and other benefits to businesses existing in, or formed in, enterprise zones, which have met the definition of a qualified business. This subchapter of the corporation tax rules sets forth the possible benefits, the necessary definitions, and the procedures for qualifying for any or all of these corporation tax benefits. Rules on the sales and use tax and urban enterprise zones are in N.J.A.C. 18:24-31. For Urban Enterprise Zone Authority rules and policies, see N.J.A.C. 5:120.

(b) (No change.)

18:7-3A.4 Credits against total tax for new employees and investments in urban enterprise zones

(a) Section 19 of the Urban Enterprise Zones Act, N.J.S.A. 52:27H-78, is applicable to a qualified business in an enterprise zone, only if the Urban Enterprise Zone Authority specifically made section 19 applicable when the enterprise zone was designated. Under section 19, any qualified business (as defined in N.J.A.C. 18:7-3A.2) that is actively engaged in the conduct of a business from a location within an enterprise zone (as defined in N.J.A.C. 18:7-3A.2), which business in that location consists primarily of manufacturing or other business that is not primarily considered as a retail sales business, or as a warehousing business, shall receive an enterprise zone employees tax credit against the amount of tax imposed under N.J.S.A. 54:10A-5 (N.J.S.A. 54:10A-1 et seq., the Corporation Business Tax Act). The credit shall only be available for new employees hired on or after the date of designation of the enterprise zone, or the date of commencement of business in the enterprise zone, whichever is later.

(b) A one-time credit of $1,500 shall be allowed for each new full-time, permanent employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7-3A.2) in which the designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, who was, immediately before employment by the taxpayer, unemployed for at least 90 days, or dependent upon public assistance as the primary source of income. Further qualifications for this benefit are in (e) and (f) below.

(c) A one-time credit of $500.00 shall be allowed for each new full-time, permanent employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7-3A.2) in which the designated enterprise zone is located, or any other qualifying municipality in which an urban enterprise zone is located, who does not meet the requirements of (b) above, and who was not, immediately before employment by the taxpayer, employed at a location within the qualifying municipality in which the qualified business is located. Further qualifications for this credit are in (e) and (f) below.

(d) See N.J.S.A. 52:27H-78.c for alternate tax benefit. The statute allows a corporation business tax credit to qualified small businesses (under 50 employees) that were in business in the zone prior to designation of the zone and that make an investment in the zone. These businesses may obtain an eight percent investment credit, to be applied against corporation business tax, by entering into an agreement, approved by the Urban Enterprise Zone Authority, with the zone city, to make an investment in the urban enterprise zone which contributes substantially to the economic attractiveness of the zone. These expenditures may include improvement of the appearance or customer facilities of its place of business or improvements in landscaping, recreation, police and fire protection, etc., in the zone.

(e) The enterprise zone employee tax credits provided in (b) and (c) above, shall be allowed in the tax year immediately following the tax year in which the new full-time, permanent employee was first employed by the taxpayer, but shall only be allowed if the employee for whom credit is claimed was employed by the taxpayer for at least six continuous months during the tax year for which the credit is claimed. The credit shall be permitted in any tax year of a 20 year period from the date of designation of the enterprise zone, or in any tax year of a period of 20 tax years from the date within that designation period upon which the taxpayer is first subject to the corporation business tax under N.J.S.A. 54:10A-1 et seq., whichever is later. The termination of designation as an enterprise zone at the end of the 20-year designation period shall not terminate the eligibility period under this section.

(f) The employee tax credit is available only for new full-time, permanent employees who have been employed by the qualified business for at least six continuous months during the year for which the credit is claimed. For a new employee to be considered a full-time, permanent employee, the total number of full-time, permanent employees, including the new employee, employed by the qualified business during the calendar year must exceed the greatest number of full-time, permanent employees employed in the zone by the qualified business during any prior calendar year since the zone was designated. "Calendar year" means the year the new employees are hired. The comparison is made to the peak employment on any date during the calendar years prior to the calendar year in which the new employees are hired, not the employment level on the last date of prior calendar years. The new employees must then continue to be employed during the following year in which the credit is claimed for six continuous months.

Example 1: ABC Company is a qualified business. The highest number of full-time permanent employees the company has employed in any prior calendar years since the zone was designated was 100. ABC Company employs 100 employees in Year 1 and hires five new employees in June of Year 10. The five new employees reside in the qualifying municipality in which the zone is located and, immediately prior to employment by the qualified business, were unemployed for at least 90 days. The five new employees remain with the company through June 30 of Year 11. ABC Company may claim the employee tax credit for the Year 11 tax year for the employees hired in Year 10. The employees remained employed by ABC Company for at least six continuous months during the year for which the credit is claimed (Year 11). The five new employees are considered full-time permanent

employees because the total number of full-time permanent employees, including the new employees, employed by ABC during the Year 10 calendar year (105) exceeded the greatest number of full-time permanent employees employed in the zone by ABC Company in prior calendar years (100). The total credit is $7,500 ($1,500 x 5).

Example 2: Same facts as above except that in March of Year 11 ABC Company terminated two of the employees hired in Year 10, and in April of Year 11 hires three new employees. The new employees reside in the qualifying municipality in which the zone is located and, although they were not unemployed for at least 90 days prior to employment by the qualified business or on public assistance, they were not employed, immediately prior to employment by the qualified business, within the qualifying municipality in which the qualified business is located. The new employees remained with ABC Company through December of Year 12. ABC may claim the $1,500 credit for the Year 11 tax year only for the three employees hired in Year 10 who were not terminated, since the two terminated employees would not have worked for six continuous months during the year for which the credit is claimed. ABC may claim the $500.00 credit for the Year 12 tax year for each of the three employees hired in Year 11 since they remained with ABC for six continuous months in Year 12 and the highest number of employees in Year 11 (106) exceeded the highest number of full-time permanent employees (105) in prior calendar years. The $1,500 credit could not be claimed for the three employees hired in Year 11 because they were not unemployed or on public assistance.

(g)-(h) (No change.)

SUBCHAPTER 3B. (RESERVED)

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. ENTIRE NET INCOME; DEFINITION, COMPONENTS, AND RULES FOR COMPUTING

18:7-5.1 Entire net income; definition

(a) "Entire net income" means total net income from all sources, whether within or outside the United States, and includes:

1.-2. (No change.)

(b) For the purpose of the New Jersey tax, the amount of a taxpayer's entire net income shall be deemed prima facie to be equal in amount to the taxable income, before net operating loss deduction and special deductions, which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax, subject to the adjustments set forth in this subchapter.

(c) (No change.)

(d) Entire net income shall be determined as if no election had been made under I.R.C. § 1371.

18:7-5.2 Entire net income; how computed

(a) "Taxable income before net operating loss deduction and special deductions," hereinafter referred to as "Federal taxable income", is the starting point in the computation of the entire net income. After determining Federal taxable income, it must be adjusted as follows:

1. Add to Federal taxable income:

i.-viii. (No change.)

ix. For accounting or privilege periods ending on or before January 10, 1996, the amount deducted, in computing Federal taxable income, for interest on indebtedness whether or not evidenced by a written statement. To be added back, such interest must be owed directly or indirectly either to an individual stockholder or members of his or her immediate family who, in the aggregate, own beneficially 10 percent or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder that owns 10 percent or more of the taxpayer's outstanding shares of capital stock. The amount deducted shall be reduced by 10 percent of the amount so deducted or $1,000, whichever is larger. Thus, if the amount of such interest is $1,000 or less, then none of said amount need be added back. However, there shall be allowed as a deduction:

(1) Any part of a deduction for interest on written evidence of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization to persons who prior to such reorganization were bona fide creditors of the taxpayer or any predecessor corporation, but were not stockholders thereof; and

(2) (No change.)

(3) Any deduction for interest that relates to debt of a "financial business corporation" owed to an affiliate corporation but only where the interest rate does not exceed two percentage points over a prime rate to be determined by the Commissioner of Banking. Interest paid or accrued to such an affiliate is an unrestricted deduction only when a corporation is a financial business corporation as determined at N.J.A.C. 18:7-1.16. A debt is owed to an "affiliate" corporation when it is owing directly or indirectly to holders of ten percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes . The deduction may not be claimed on the Corporation Business Tax Return, Form CBT-100. Any corporation that is a financial business corporation must file the Corporation Business Tax Return for Banking and Financial Corporations, Form BFC-1, and complete Schedule L apportioning the financial business conducted in New Jersey consistent with N.J.S.A. 54:10A-38; and

(4) Any part of a deduction for interest that related to debt of a banking corporation owing directly to a bank holding company as defined in 12 U.S.C. § 1841 of which the banking corporation is a subsidiary. The allowable deduction for interest is limited to interest paid or accrued directly by the subsidiary to its bank holding company parent notwithstanding that related indebtedness may be excluded from net worth where it is indirectly owing to such bank holding company.

x.-xi. (No change.)

xii. In any year or short period which ends after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any depreciation or cost recovery (ACRS or MACRS) which was deducted in arriving at Federal taxable income and which was determined in accordance with I.R.C. § 168 in effect after December 31, 1980. See (a)2iv below for depreciation allowable in computing entire net income.

xiii. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any interest, amortization or transactional costs, rent, or any other deduction which was claimed in arriving at Federal taxable income as a result of a "safe harbor leasing" election made under I.R.C. § 168(f)8; provided, however, that for a fiscal year or short period which begins in 1981 and ends in 1982, any such amount which relates to property placed in service during that part of the return year that occurs in 1981 shall be allowed as a deduction in arriving at entire income for that year only; and provided further that any such amount with respect to a qualified mass commuting vehicle pursuant to I.R.C. § 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be allowed in any event.

(1) (No change.)

xiv.-xv. (No change.)

xvi. The amount deducted from Federal taxable income of treble damages paid to the Department of Environmental Protection and Energy (Department) pursuant to subsection a of section 7 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11f) for costs incurred by the Department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the Department to remove, or arrange for the removal of, the discharge.

xvii. Any deduction for research and experimental expenditures to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to N.J.S.A. 54:10A-5.24 unless those research and experimental expenditures are also used to compute a Federal credit claimed pursuant to I.R.C. § 41;

xviii. Interest paid, accrued, or incurred to a related member except as may be permitted pursuant to N.J.A.C. 18:7-5.18;

xix. (No change.)

xx. For privilege periods beginning after December 31, 2004, amounts deducted for Federal tax purposes pursuant to I.R.C. § 199, except that this provision shall not apply to amounts deducted pursuant to that section that are exclusively based upon domestic production gross

receipts of the taxpayer which are derived only from any lease, rental, license, sale, exchange, or other disposition of qualifying production property which the taxpayer demonstrates to the satisfaction of the Director was manufactured or produced by the taxpayer in whole or in significant part within the United States but not qualified production property that was grown or extracted by the taxpayer. "Manufactured or produced," as used in this paragraph, shall be limited to performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition, or character different from that in which they were acquired. The change in form, composition, or character shall be a substantial change, and result in a transformation of property into a different or substantially more usable product. For example, expenses to be added back include, but are not limited to, expenses that are applicable to or pertain to production property grown or extracted; from food processing (but not retail food sales); from software development; from filmmaking and sound recordings; from the production of electricity, natural gas, and potable water; from construction activities; and from engineering or architectural services;

xxi. For property placed in service on or after January 1, 2004, the amounts claimed as cost expense pursuant to I.R.C. § 179 that are in excess of $ 25,000; and

xxii. For privilege periods beginning after December 31, 2008, and before January 1, 2011, the amount of discharge of indebtedness income excluded for Federal income tax purposes pursuant to I.R.C. § 108(i); and

2. Deduct from Federal taxable income:

i. 100 percent of all dividends or amounts deemed dividends for Federal purposes included in Federal taxable income which were received from subsidiaries meeting the definition of a subsidiary under N.J.S.A. 54:10A-4(d) and 100 percent of all dividends from those subsidiaries which were added to Federal taxable income in accordance with (a)1 above;

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under I.R.C. § 856, and N.J.S.A. 54:10A-4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2i above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

ii. Fifty percent of all dividends or amounts deemed dividends for Federal purposes included in Federal taxable income or added to Federal taxable income in accordance with (a) above if received from 50 to less than 80 percent owned subsidiaries. Dividends received from a regulated investment company that are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for Internal Revenue purposes are not eligible for deduction or exclusion from entire net income under this subsection.

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under I.R.C. § 856, and N.J.S.A. 54:10-A4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2ii above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

iii. Depreciation on property placed in service after 1980 but prior to taxpayer fiscal or calendar accounting years beginning on and after July 7, 1993, on which ACRS or MACRS has been disallowed under (a)1xii above using any method, life and salvage value which would have been allowable under the Internal Revenue Code at December 31, 1980. A method, once adopted, must be used for all succeeding years for purposes of computing depreciation on that particular recovery property, except only that a taxpayer may make a change in method which would not have required the consent of the Commissioner of Internal Revenue. Personal property placed in service during any year after 1980 must be treated using the half year convention by claiming a half year of depreciation in the year that property is placed in service. No depreciation is allowable in the year of disposal. Aggregate depreciation claimed under this paragraph for all years is limited to the basis for depreciation under the Internal Revenue Code at the date the property is placed in service less whatever salvage value would have been required to be considered under the Internal Revenue Code at December 31, 1980;

iv. In any privilege period or taxable year beginning on or after January 1, 2002, with respect to property acquired on or after September 10, 2001, any depreciation that was deducted in arriving at Federal taxable income and that was determined in accordance with I.R.C. §§ 168(k) and 1400L. Assets acquired before September 10, 2001, for which such depreciation was taken will continue for the entire life of the asset to follow Federal depreciation. Assets acquired in periods beginning before September 10, 2001, will continue to follow Federal depreciation even if the asset itself was acquired after September 10, 2001, but during such fiscal year. Upon early retirement a basis adjustment will be required to equalize Federal and State basis.

Example: Federal bonus depreciation with respect to an asset acquired February 1, 2002, by a corporation that is a calendar year corporation will be disallowed for the corporation when filing its Form CBT-100 for 2002.

v. Gain or loss on property sold or exchanged is to be determined with reference to the amount properly to be recognized in determination of Federal taxable income. However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the Internal Revenue Code, the transferor of the property shall take as a deduction any excess or shall restore as an item of income any deficiency of depreciation disallowed under (a)1xii above over related depreciation claimed on that property under (a)2iv above. A statutory merger or consolidation shall not constitute a disposal of recovery property.

vi. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any item of income included in arriving at Federal taxable income solely as a result of a "safe harbor leasing" election made under I.R.C. § 168(f)(8); provided, however, that for the accounting period which begins in 1981 and ends in 1982, such income which relates to property placed in service during 1981 is not to be excluded; and provided, further, that any such income which relates to a qualified mass commuting vehicle pursuant to I.R.C. § 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be included in entire net income in any event.

(1) (No change.)

(2) For treatment of deductions relating to such "safe harbor lease" transactions, see (a)1xi above.

vii. Any banking corporation which is operating an international banking facility (IBF) as part of its business may exclude the eligible net income of the IBF, as herein described, from its entire net income, as follows:

(1) Any deductions under this subsection can only be claimed to the extent that they are not deductible in determining Federal taxable income, or not deductible under N.J.S.A. 54:10A-4(k)(1) through (3).

(2)-(3) (No change.)

(4) Applicable expenses are any expenses or deductions which are directly or indirectly attributable to eligible gross income as defined in (a)2vii(3) above.

viii. For privilege periods beginning on or after January 1, 2014, and before January 1, 2019, the amount of discharge of indebtedness income included for Federal income tax purposes, pursuant to I.R.C. § 108(i)).

18:7-5.3 Tax paid to foreign country or United States possession; when deductible from net income

(a) With respect to foreign taxes required to be included in income as dividends received under I.R.C. § 78, no deduction from Federal taxable income is permitted if 100 percent of the dividend received amount is deductible therefrom under N.J.A.C. 18:7-5.2(a) 2i.

1. (No change.)

18:7-5.4 Factors not adjustable to Federal taxable income

(a) No adjustment to Federal taxable income is permitted under this rule for:

1. Gains or losses not recognized for Federal income tax purposes under I.R.C. § 351 or similar sections but only to the extent that recapture or other provisions of the Code are not paramount to these sections.

2. The general business credit allowed or allowable for Federal income tax purposes under I.R.C. § 38.

i. This may not be taken as a deduction in computing the New Jersey net income tax base, nor as a credit, in any manner, in computing tax liability under the Corporation Business Tax Act.

ii. Upon disposition of assets which qualified for a general business credit under I.R.C. § 38, taxpayer must use the same basis for computing gain or loss for New Jersey net income tax purposes as employed for Federal income tax purposes.

3. Depreciation attributable to a decrease in the basis of depreciable property for Federal income tax purposes, as a result of the general business credit allowed or allowable under I.R.C. § 38.

i.-ii. (No change.)

18:7-5.5 Entire net income; determining stock ownership

(a) (No change in text.)

18:7-5.6 Adjustment of entire net income to period covered by return; how computed

(a) If the entire net income required to be reported is for a period other than a period covered by the taxpayer's Federal income tax return, the taxpayer shall compute its net income as follows:

1.-2. (No change.)

3. The result is then multiplied by the number of the calendar months or parts thereof covered by the return under the Corporation Business Tax Act. A part of a month shall be deemed to be a month.

18:7-5.8 Calculation of gain in certain instances

(a) A selling parent corporation in an I.R.C. § 338(h)(10) transaction does not recognize gain on the sale of target stock for New Jersey purposes for acquisition dates occurring on or after January 14, 1992.

(b) Where a target corporation recognizes gain as the result of an I.R.C. § 338(h)(10) election, the target reports and pays tax on such gain pursuant to N.J.A.C. 18:7-5.1(a).

18:7-5.10 Right of Director to correct distortions of net income allocation factors; adjustments and redeterminations

(a) Whenever it shall appear to the Director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in a manner so as either directly or indirectly to distort its true entire net income or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under the Act, or whereby the activity, business, receipts, expenses, assets, liabilities, or net income of the taxpayer are improperly or inaccurately reflected, the Director is authorized and empowered, in his or her discretion and in whatever manner he or she may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and outside the State and the allocation of entire net income or to make any other adjustments in any tax report or tax return as may be necessary to make a fair and reasonable determination of the amount of tax payable under the Act.

1. Where any taxpayer conducts its activity or business under any agreement, arrangement, or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement, or understanding, might have been paid or received therefor; or

2. Any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by or through another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the Director may include in the entire net income of the taxpayer the fair profits which, but for such agreement, arrangement, or understanding, the taxpayer might have derived from the transaction.

3. (No change.)

4. For purposes of this section, "substantial portion of stock" is the direct or indirect ownership of 20 percent or more of the outstanding shares of any class of stock. For purposes of arriving at this level of ownership the stock attribution rules of I.R.C. § 318 will be used.

5. Under N.J.S.A. 54:10A-10.b interest should be charged on loans or advances made by one related party to another from the day after the debt arises until the debt is satisfied. With respect to intercompany trade receivables of related taxpayers, interest is not required to be charged on an intercompany trade receivable before the first day of the third calendar month.

i. (No change.)

ii. For interest paid or accrued on a loan or advance, a safe haven rate is one that is between 100 percent and 130 percent of the Applicable Federal Rate (AFR) as determined under I.R.C. § 1274(d) in effect on the date that the loan or advance is made. Adjustments for inadequate interest would be made at 100 percent of the AFR and adjustments for excessive interest would be made at 130 percent of the AFR. In the case of a sale-leaseback transaction, the lower limit would be 110 percent of the AFR. In determining the rate of interest actually charged on a written loan or advance, any original issue discount included in income by the lender or any bond premium deducted by the lender is to be taken into account.

6.-7. (No change.)

8. Where one member of a group of controlled entities sells or otherwise disposes of tangible property to another at other than an arm's length price, a proper allocation will be made between the seller and the buyer using the following methods.

i.-ii. (No change.)

iii. Cost plus method: If the standards for application of the resale price method are not satisfied, either that method or the cost plus method is used, depending on which is more feasible and will produce a more accurate arm's length price. Normally, the cost plus method is appropriate where a manufacturer sells products to a related entity that performs substantial manufacturing, assembly, or other processing of the product or adds significant value by use of its intangible property (trademark, for example) before resale.

iv.-vi. (No change.)

9. (No change.)

10. The Division will apply equitable principles to prevent unjust situations from occurring.

(b) The application of this section is not limited to an agreement, understanding, or arrangement existing between a taxpayer and any other corporation or any person or firm for the purpose of avoiding or evading tax under the Act. It is also applicable where adjustments and redeterminations relate to transfer pricing and other transactions between related persons or entities where evasion or tax avoidance is not a consideration. The Director may initiate adjustments under this section solely in the interests of determining a fair and reasonable tax, and without respect to any benefit arising out of inter-corporate relationships or the relationships of any person holding a substantial portion of the stock of a taxpayer. The Division shall not be limited to indices, trade practices, cost sheets, Internal Revenue Reports, or any other factor in determining the appropriate transfer price for goods, services, intangibles, or other dispositions made to related parties. Where the Director determines that there is an adjustment to net income under this section, he or she may also make a corresponding adjustment to the allocation factor.

(c)-(d) (No change.)

(e) The following examples are merely illustrative and are in no way intended to limit the scope of the Director's discretion to inquire into transfer pricing or the determination of a fair and reasonable tax:

Example 1: K Corporation, the manufacturer of a proprietary product, sells goods to its distributors and wholesale customers at a 50 percent profit. It also sells goods to related foreign corporations at a 5 percent gross profit for marketing by them overseas.

On a separate entity basis, in an arm's length transaction these sales would yield a 50 percent gross profit and the price that might have been paid or received for the goods includes an amount sufficient to reflect that 50 percent gross profit.

The Director may include additional profits in entire net income sufficient to reflect the arm's length price that might have been paid or received.

Example 2: (No change.)
(f)-(g) (No change.)

18:7-5.11 Right of Director to require consolidated filing, and certain disclosures

(a) The entire net income of a taxpayer exercising its franchise in this State that is a member of an affiliated group or a controlled group pursuant to I.R.C. § 1504 or 1563 shall be determined by eliminating all payments to, or charges by other members of the affiliated or controlled group in excess of fair compensation in all inter-group transactions of any kind.

(b)-(e) (No change.)

(f) Each taxpayer that files a return and is a member of an affiliated or a consolidated group pursuant to I.R.C. § 1504 or 1563, shall within 90 days of notice of a request of the Director disclose in its return for the privilege period the amount of all inter-member costs or expenses, including, but not limited to, management fees, rents, and other services, for the privilege period.

(g) (No change.)

18:7-5.13 New Jersey net operating loss carryover

(a) A New Jersey net operating loss as defined in N.J.A.C. 18:7-5.15 for any taxable year ending after June 30, 1984, becomes a net operating loss carryover. The net operating loss carryover is carried to each of the succeeding taxable years and is reduced in each such succeeding year by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven years following the year of the loss, taking into account the normal or extended due date for filing the return for the seventh year succeeding the year of the loss. The net operating loss carryover may not be carried back to any year preceding the year of the loss. For this purpose, taxable year shall mean the accounting period covered by the taxpayer's return. In no event may a net operating loss carryover be used for a net operating loss deduction on the eighth return succeeding the loss year. Notwithstanding the foregoing, a net operating loss for any privilege period ending after June 30, 2009, shall be permitted as a net operating loss carryover to each of the 20-privilege periods following the privilege period of the loss.

(b) (No change.)

(c) Corporations acquired under I.R.C. § 338 do not lose their net operating loss carryover because the corporate franchise remains unchanged to the extent it does not fall within the provisions of N.J.A.C. 18:7-5.14.

Examples 1 and 2 (No change.)

(d) The following explain and/or define the above table: Line 28 is the amount of the taxpayer's taxable income, before net operating loss deduction and special deductions that the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax. New Jersey Adjustments are the statutory additions and deductions to line 28 that are peculiar to the New Jersey corporation business tax.

1.-3. (No change.)

18:7-5.14 Limitations to the right of a net operating loss carryover

(a) The net operating loss carryover automatically becomes zero when the cumulative effect of all its capital stock redemptions and sales after June 30, 1984, is a 50 percentage point change in the ownership of its voting stock and the corporation changes from the business giving rise to the loss. For this purpose the exchange of stock is a sale. Further, solely for this purpose and no other purpose in the Act, a business is defined in terms of the economic factors of production. The sequence in change of ownership and change in the business and the taxability of an exchange for Federal income tax purposes are irrelevant. The economic substance of the transaction is, however, paramount and may indicate forfeiture of a net operating loss carryover.

(b) The Director may disallow the carryover in those instances where the facts support the premise that a corporation was acquired for the primary purpose of the use of its net operating loss carryovers. In this context, to prevent the trafficking in loss corporations, the Director will consider the following facts:

1.-3. (No change.)

4. Any other material factor deemed appropriate to the determination.

(c) No single factor shall be deemed on its own to be dispositive of the issue.

Example 1: B Corporation was wholly owned by a single stockholder. It operated a notably unsuccessful restaurant and built up significant net operating loss carryovers. The stockholder transferred 49 percent of his or her stock to an investor who has access to a recognized and uniformly profitable fast food franchise. B Corporation releases substantially all of its existing employees, disposes of its equipment and undertakes the fast food franchise business at a new location. Notwithstanding that B Corporation's sole stockholder sold less than 50 percent of his or her stock and the corporation still sells food in a heated state, the net operating loss carryovers to B Corporation become zero. The disposition of land, labor, and capital until nothing remains except an empty corporate shell whose principal attributes are the apparent existence of an unused net operating loss carryover and some liquid capital in quest of an entirely new business is deemed to support the premise that the corporation was acquired for the primary purpose of the use of its net operating loss carryover. The economic substance of the transaction would have been to transfer the loss carryovers to a new business which is precluded by the rule.

Example 2: C Corporation was a manufacturer of buggy whips and button hooks. Due to a declining demand for its products it has built up significant net operating loss carryovers. C Corporation has only one stockholder who sells 50 percent of his capital stock to a woman who has invented a cheap and well-styled perpetual motion machine for which there is a clamorous demand. C Corporation changes its name to D Corporation and hires additional employees. It expands its plants, closes out its old product lines and realizes huge profits in its rejuvenation. D Corporation's net operating loss carryovers from its buggy whip days are unaffected by any of the above circumstances and may be claimed as a net operating loss deduction. The economic substance of the transaction is a mere restructuring of its manufacturing product line. It did not change its business where it only reallocated its economic factors of production.

18:7-5.17 Suspension of net operating loss carryover

(a) Except as provided below, for privilege periods beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss shall be allowed. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this subsection, the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by two years. This section shall not restrict the surrender or acquisition of corporation business tax benefit certificates pursuant to N.J.S.A. 34:1B-7.42a and shall not restrict the application of corporation business tax certificates pursuant to N.J.S.A. 54:10A:4-2.

Example 1:

Minnow, Inc. is a calendar year taxpayer. In 2000, it filed a NJ CBT-100 that reported a $1,000,000 net operating loss. In 2001, the taxpayer had the following income:

Operating Income	$100,000
Dividends from wholly owned subsidiary	$50,000
Subtotal	$150,000

In 2001, Minnow, Inc., uses an NOL deduction of $150,000 thus decreasing its prior year NOL to $850,000. It does not use any dividend received deduction (DRD) in 2001.

The Business Tax Reform Act suspended the NOL deduction in tax years 2002 and 2003. Assuming the same facts set forth above, in filing its return after the law changes the use of the taxpayer's NOL deduction is suspended.

In 2003, Minnow, Inc. would use a DRD of $50,000 and pay taxes on Entire Net Income of $100,000. The company would continue to have an NOL carryover of $1,000,000 that it could potentially use in 2004.

Examples 2-4 (No change.)

(b) (No change.)

(c) Any net operating deduction that was disallowed by the prohibition, and would have expired in return periods beginning in 2002

and 2003 is extended for two years. Any net operating loss deduction that was disallowed by the prohibition, and would have expired in return periods beginning in 2004 and 2005, is extended for one return period for each return period that it was disallowed.

18:7-5.18 Related party transactions

(a) Interest paid, accrued, or incurred to a related member shall not be deducted in calculating entire net income, except that a deduction shall be permitted:

1. To the extent that the taxpayer establishes that:

i. A principal purpose of the transaction giving rise to the payment of the interest was not to avoid tax otherwise due;

ii. (No change.)

iii. The related member was subject to a tax on its net income or receipts in this State or another state or possession of the United States or in a foreign nation, a measure of the tax includes the interest received from the related member, and the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State;

2.-3. (No change.)

4. For purposes of this subsection:

i. "Foreign nation" means an established sovereign government that is recognized as such by the United States Department of State;

ii. "Comprehensive income tax treaty" means a convention, or agreement, entered into by the United States and approved by Congress, with a foreign government for the allocation of all categories of income subject to taxation and/or the withholding of tax on interest, dividends, and royalties, for the prevention of double taxation of the respective nations' residents, and the sharing of information;

iii.-iv. (No change.)

v. "Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is:

(1) (No change.)

(2) A component member as defined in I.R.C. § 1563(b);

(3) A person to or from whom there is attribution of stock ownership in accordance with I.R.C. § 1563(e); or

(4) (No change.)

vi. "Related entity" means a stockholder who is an individual, or a member of the stockholder's family enumerated in I.R.C. § 318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; a stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of I.R.C. § 318, if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of I.R.C. § 318, shall apply for purposes of determining whether the ownership requirements of this definition have been met;

vii. The disclosure requirement for interest paid to a related member shall be deemed to be satisfied if the taxpayer provides a schedule of:

(1)-(3) (No change.)

(4) The nature of payment or, alternatively, by providing a copy of Federal Form 5472 or its equivalent as an attachment to Form NJ CBT-100;

viii. "Rate of tax" means allocation factor times the tax rate percentage.

5. Examples:

Examples 1-3 (No change.)

Example 4: Same facts as Example 1, but Little Palm, Ltd., the foreign subsidiary, forms White Pine, Inc. White Pine, Inc. borrows funds from Little Palm, Ltd. and holds the funds. The funds are made available for loan to Red Oak, Inc. and Blue Spruce, Inc., another affiliated domestic subsidiary on an as needed basis. White Pine, Inc. manages the lending transactions for two or more affiliated entities within the United States. White Pine, Inc. will loan funds to Red Oak, Inc. and Blue Spruce, Inc. White Pine, Inc. will charge an origination fee to cover the costs charged by Little Palm, Ltd., the foreign subsidiary to White Pine, Inc., a domestic subsidiary. Red Oak, Inc. and Blue Spruce, Inc. will make periodic interest payments and/or principal payments, depending on the terms of the notes. The interest and loan origination expenses paid by Red Oak, Inc. and Blue Spruce, Inc. to White Pine, Inc. will not be added back to Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 5: Mr. Jones, a New Jersey resident, owns 100 percent of the shares of Zippy Corp., a corporation properly capitalized and organized and doing business in New Jersey. Zippy Corp. has not made a New Jersey S election. Mr. Jones loans Zippy Corp. money at an arm's length rate under an arm's length contract. Zippy Corp. may take an interest deduction, provided that one of the exceptions applies: for example, if Mr. Jones pays New Jersey Gross Income Tax at a rate within three percent of nine percent, then Zippy Corp. may take the deduction. If Zippy Corp. does not get a deduction, Mr. Jones may not exclude the interest income from his gross income tax taxable income.

Example 6: Mr. Smith, a New Jersey resident, owns 100 percent of the shares of Pin Corp., a corporation organized and doing business in New Jersey. Pin Corp. has not made a New Jersey S election. Mr. Smith lends Pin Corp. $5,000 at an arm's length rate under an arm's length contract. When Pin Corp. files its Form CBT-100, the Stockholder's Equity reflected on its Balance Sheet, Schedule B, is $200.00. Mr. Smith paid gross income tax on the payments received from Pin Corp. However, Pin Corp. may not claim an interest deduction for interest paid to Mr. Smith. The "loan" is actually a contribution to capital, since the corporation is undercapitalized.

(b) Interest expenses and costs and intangible expenses and costs directly or indirectly paid, accrued, or incurred in connection with a transaction with one or more related members shall not be deducted in calculating entire net income, except that a deduction shall be permitted:

1.-4. (No change.)

5. For purposes of this subsection:

i.-v. (No change.)

vi. "Intangible expenses and costs" means and includes:

(1) Expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under I.R.C. §§ 1 et seq.;

(2)-(5) (No change.)

vii. "Interest expenses and costs" means amounts directly or indirectly allowed as deductions under I.R.C. § 163, for purposes of determining taxable income under the code to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange, or disposition of intangible property;

viii. "Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is:

(1) (No change.)

(2) A component member as defined in I.R.C. § 1563(b);

(3) A person to or from whom there is attribution of stock ownership in accordance with I.R.C. § 1563(e); or

(4) (No change.)

ix. "Related entity" means a stockholder who is an individual, or a member of the stockholder's family enumerated in I.R.C. § 318, if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; a stockholder, or a stockholder's partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock; or a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from

the party to the corporation under the attribution rules of I.R.C. § 318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of I.R.C. § 318, shall apply for purposes of determining whether the ownership requirements of this definition have been met;

x. The disclosure requirement for interest paid to a related member shall be deemed to be satisfied if the taxpayer provides a schedule of:

(1)-(3) (No change.)

(4) The nature of payment or, alternatively, by providing a copy of Federal Form 5472 or its equivalent as an attachment to Form CBT-100;

6. (No change.)

SUBCHAPTER 7. ALLOCATION

18:7-7.2 Regular place of business; definition

(a) A regular place of business is any bona fide office (other than a statutory office), factory, warehouse, or other space of the taxpayer which is regularly maintained, occupied and used by the taxpayer in carrying on its business and in which one or more regular employees are in attendance. The following factors will assist in the determination of what is a regular place of business.

1. Bona fide office: An office in which an employee in attendance performs significant duties related to the business of the taxpayer. An office in name only, space of the taxpayer or any place where an employee does not actually perform significant duties constituting part of taxpayer's business does not constitute a regular place of business.

2.-3. (No change.)

4. Regular employee: A regular employee must be under the control and direction of the taxpayer in transacting the taxpayer's business and/or performing work on behalf of the taxpayer. The officers of the taxpayer are generally deemed to be regular employees of the taxpayer while independent contractors and members of the taxpayer's board of directors are not regular employees of the taxpayer. The method or procedure by which a taxpayer reports the compensation paid to an individual (such as a W-2 form) shall not be conclusive as to whether the individual is a regular employee (See N.J.A.C. 18:7-8.14.):

i.-iii. (No change.)

iv. The location of inventories outside New Jersey in the possession of employees in their homes, or in trucks, or in coin-operated machines do not represent space regularly maintained, occupied and used by the taxpayer in carrying on its business.

v. In the event that the taxpayer's business is conducted by an independent agent or independent contractor, the place of business of the independent agent or independent contractor shall not be considered a regular place of business of the taxpayer. In addition, any employee of such independent agent or independent contractor shall not be considered a regular employee of the taxpayer.

(b) (No change.)

(c) The mere fact that a taxpayer is subject to an income or franchise tax in other jurisdictions shall not be determinative as to whether the taxpayer maintains a regular place of business outside New Jersey where taxable status in that jurisdiction is based on criteria other than a regular place of business.

18:7-7.3 Allocating and non-allocating companies; definition

(a) A taxpayer that allocates a portion of its entire net income outside this State is referred to as an "allocating" taxpayer.

(b) A taxpayer that does not allocate any part of its entire net income outside this State is referred to as a "non-allocating" taxpayer.

(c) (No change.)

18:7-7.5 Allocation factor; application

(a) (No change.)

(b) If the taxpayer is deemed to be a "part year allocating" taxpayer because it had a regular place of business outside New Jersey for less than 50 percent of the period of time covered by the return, it will determine its overall business allocation factor by prorating the overall business allocation factor computed by the number of months, or part thereof, that a regular place of business was maintained and adding this to 100 percent prorated by the number of months, or part thereof, a regular place of business was not maintained.

Example (No change.)

18:7-7.6 Corporate partners and partnerships

(a) A foreign corporation that is a general partner in a general or limited partnership or is deemed to be a general partner in a limited partnership doing business in New Jersey satisfies the subjectivity requirements set forth in N.J.S.A. 54:10A-2. A foreign corporation that is a general partner of a general or limited partnership doing business in New Jersey is subject to filing a corporation business tax return in New Jersey and paying the applicable tax under the terms of the Corporation Business Tax Act to New Jersey. Such a corporation is also deemed to be employing, or owning capital or property in New Jersey, or maintaining an office in New Jersey, if the partnership does so.

(b) (No change.)

(c) A foreign corporate limited partner of a limited partnership doing business in New Jersey is considered exercising its franchise to do business in this State, doing business in this State or employing capital in this State, and, therefore, is subject to tax under N.J.S.A. 54:10A-2 and filing a corporation business tax return, if:

1. (No change.)

2. The foreign corporate limited partner, in addition to the exercise of its rights and powers as a limited partner, takes an active part in the control of the partnership business;

3.-4. (No change.)

(d)-(f) (No change.)

(g) For purposes of apportionment (allocation) of corporate income, where the subject corporation and the partnership are not part of a single unitary business, including a business carried on directly by the foreign corporate partner, separate accounting apportionment should be used to arrive at corporate income. If the New Jersey business of the partnership is part of a single unitary business including a business carried on directly by the foreign corporate partner, flow through accounting apportionment should be used with respect to the incomes of the two entities.

1. Separate accounting apportionment, for purposes of this subsection only, means use of the following method: The corporation's distributive share of the partnership's business income would be apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A-6 apportionment factor for that business by only taking into account the corporate partner's share of the receipts, payroll, and property of the business that the partnership carries on directly. Second, the corporation's entire net income, excluding its distributive share of the partnership's income is apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A-6 apportionment factor for that business by only taking into account the receipts (excluding receipts from the partnership namely, receipts from intercompany transactions), payroll, and property of the business that the corporation carries on directly. Third, these two amounts would be added together to arrive at the corporation's entire net income apportioned to New Jersey.

2. "Flow through accounting apportionment," for purposes of this section only, means use of the following method: Taxpayer shall separately compute the property, payroll, and receipts fractions attributable to the partnership activity. The taxpayer next computes the property, payroll, and receipts fractions attributable to the corporate activity. An allocation factor combining the factors of the corporation and the partnership is then applied to the corporation's entire net income including its distributive share of the partnership's income.

3. Facts that either singly or in combination may suggest that the corporation and partnership are part of a unitary business and hence that a flow through approach may be appropriate include, without limitation thereto:

i.-v. (No change.)

vi. There is sharing of operational facilities, technology, and/or know-how.

4. (No change.)

(h) The accounting methods described in (g) above are also applied to domestic corporate partners. If a domestic corporation is a partner in a foreign partnership that does not conduct business in New Jersey, and the corporation's own business and that of the partnership are not unitary, then the corporation's income from the partnership shall not be

included in the corporation's tax base, and the partnership's receipts, payroll, and property shall not be considered in determining the apportionment factor to apply to the corporation's income from its own business. If, however, the two businesses are unitary, then the flow through method should be used in apportioning the corporation's income.

1. Solely for purposes of this section, each regular place of business of a partnership that is unitary with a corporate partner is to be treated as a regular place of business of the corporate partner. Relief pursuant to N.J.A.C. 18:7-8.3 is permitted to domestic partners with respect to partnership income duplicated on a return of a domestic corporate partner filed with another state. By virtue of its subjectivity under the Corporation Business Tax Act, a corporate partner may seek relief under N.J.S.A. 54:10A-8 if the taxpayer believes that tax computed does not result in a fair apportionment.

(i) (No change.)

(j) The classification of partnership items of income, expense, or loss as operational or nonoperational is to be determined in accordance with N.J.S.A. 54:10A-6.1. Whether or not a partnership is unitary or nonunitary with its corporate partner is a different issue from the issue of taxability of operational or nonoperational income or the deductibility of operational or nonoperational expenses or losses.

(k) Any New Jersey corporate tax credits for which a subject corporate partner may qualify shall pass through to the corporate partner. The corporate partner may claim its proportionate share of such credit on its New Jersey corporation business tax return.

EXAMPLE I

Corporation ABC is a foreign corporation which allocates to New Jersey, and also has 50 percent share in a partnership that is doing business in New Jersey, but is not unitary with the corporation. The corporation would calculate its allocation factor and allocated income exclusive of the activities of the partnership. The partnership would calculate its allocated income based upon its own attributes, and the allocated incomes from both entities are combined to make allocated net income.

	ABC Corp.	Fraction in NJ	General Partnership	Fraction in NJ	
Property NJ	9,000		500		
Everywhere	10,000	.900000	1,000	.500000	
Receipts NJ	3,000		5,000		
Everywhere	10,000	.300000	20,000	.250000	
Double Weighting of Receipts Fraction		.300000		.250000	
Payroll NJ	6,000		250		
Everywhere	10,000	.600000	1,000	.250000	
Total		2.100000		1.250000	
Allocation Factor (Total divided by 4)		.525000		.132500	
Net Income of Corporation					$5,000
Corporation's Distributive Share of Partnership Income					$1,000
Total Net Income					$6,000
Corporation's Income		5,000			
Corporation's Allocation Factor		.525000			
Corporation's Allocation Net Income					$2,625
Partnership Income				1,000	
Partnership Allocation Factor				.312500	
Partnership Allocation Net Income					$313
Total Allocated Net Income					$2,938

EXAMPLE II

Corporation DEF is a foreign corporation that has no nexus with New Jersey other than a 50 percent general partnership interest in a partnership, which is not unitary with the corporation. The corporation would calculate its allocation factor and allocated income exclusive of the activities of the partnership. In this case, the allocation factor is zero and the corporation does not allocate any of its income to New Jersey. The partnership would allocate its income as a separate entity. The allocated income from both calculations are then combined to compute the tax liability of the corporation.

	DEF Corp.	Fraction in NJ	General Partnership	Fraction in NJ
Property NJ	0		750	
Everywhere	10,000	0.000000	1,000	.750000
Receipts NJ	0		10,000	
Everywhere	10,000	0.000000	20,000	.500000

	DEF Corp.	Fraction in NJ	General Partnership	Fraction in NJ	
Double Weighting of Receipts Fraction		0.000000		.500000	
Payroll NJ	0		750		
Everywhere	10,000	0.000000	1,000	.750000	
Total		0.000000		2.500000	
Allocation Factor (Total divided by 4)		0.000000		.625000	
Net Income of Corporation					$5,000
Corporation's Distributive Share of Partnership Income					$1,000
Total Net Income					$6,000
Corporation's Income		5,000			
Corporation's Allocation Factor		.000000			
Corporation's Allocation Net Income					$0
Partnership Income				1,000	
Partnership Allocation Factor				.625000	
Partnership Allocation Net Income					$625
Total Allocated Net Income					$625

EXAMPLE III

Corporation XYZ is unitary with a partnership and holds a 50 percent general partnership interest in a general partnership. The taxpayer should use the flow through method of allocation since there is a sufficient integration of assets and business activities between the corporation and partnership.

	XYZ Corp.	50 Percent Partnership Interest	Combined	Fraction in NJ	
Property NJ	9,000	750	9,750		
Everywhere	10,000	1,000	11,000	.886364	
Receipts NJ	3,000	10,000	13,000		
Everywhere	10,000	20,000	30,000	.433333	
Double Weighting of Receipts Fraction				.433333	
Payroll NJ	6,000	750		6,750	
Everywhere	10,000	1,000	11,000	.613636	
Total				2.36666	
Allocation Factor (Total divided by 4)				.591667	
Net Income of Corporation					$5,000
Corporation's Distributive Share of Partnership Income					$1,000
Total Net Income					$6,000
Combined Allocation Factor					.591667
Allocated Entire Net Income					$3,550

The numerator and denominator of each fraction is determined by taking the corporation's property, payroll or receipts in New Jersey and everywhere and adding them to its share of the partnership's property, payroll or receipts in New Jersey and everywhere. The partnership's fractions are based on the corporation's percentage ownership interest without regard to special allocations. The column in the example headed "Fraction in NJ" represents each combined fraction in decimal form.

EXAMPLE IV

Corporation GHI is a foreign corporation which has no nexus with New Jersey other than a 10 percent general partnership interest in a limited partnership, which is unitary with the corporation. GHI is subject to Corporation Business Tax. Since the corporation has a unitary relationship with the partnership, the flow through method should be used to calculate the correct amount of income to be allocated to New Jersey. Corporation LMN holds a limited partnership interest in the same limited partnership. The corporation and the partnership are not part of a unitary business, and the limited

partnership does not have liabilities to third parties. LMN is not subject to corporation business tax in New Jersey since it is a true limited partner, not a "deemed general partner" pursuant to (c) above.

	GHI Corp.	10 Percent General Partnership Interest	Combined	Fraction in NJ	
Property NJ	0	750	750		
Everywhere	10,000	1,000	11,000	.068182	
Receipts NJ	0	10,000	10,000		
Everywhere	10,000	20,000	30,000	.333333	
Double Weighting of Receipts Fraction				.333333	
Payroll NJ	0	750	750		
Everywhere	10,000	1,000	11,000	.068182	
Total				.803030	
Allocation Factor (Total divided by 4)				.200758	
Net Income of Corporation					$5,000
Corporation's Distributive Share of Partnership Income					$1,000
Total Net Income					$6,000
Combined Allocation Factor					.200758
Allocated Entire Net Income					$1,205

The numerator and denominator of each fraction is determined by taking the corporation's property, payroll or receipts in New Jersey and everywhere and adding them to its share of the partnership's property, payroll or receipts in New Jersey and everywhere. The partnership's fractions are based on the corporation's percentage ownership interest without regard to special allocations. The column in the example headed "Fraction in NJ" represents each combined fraction in decimal form.

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

18:7-8.1 Business allocation factor; computation

(a) The business allocation factor is computed on the basis of the average percentage resulting from the following three fractions:

1. Average value of real and tangible personal property in New Jersey over the average value of such property both within and outside New Jersey (this is usually referred to as the property fraction);

2. Receipts allocable to New Jersey over receipts both within and outside New Jersey (this is usually referred to as the receipts fraction in this subchapter but may also be referred to as the sales fraction. The terms may be used interchangeably for fiscal periods beginning on or after July 1, 1996);

3. Payroll allocable to New Jersey over payroll within and outside New Jersey (this is usually referred to as the payroll fraction).

(b)-(d) (No change.)

(e) For taxpayers with fiscal year privilege periods, the business allocation factor is computed according to the following schedule:

1.-2. (No change.)

3. For the taxpayer that has a privilege period that begins in 2013 and ends in 2014, the sales fraction will account for 90 percent of the allocation, and property and payroll fractions will each account for five percent of the allocation; and

4. (No change.)

(f)-(g) (No change.)

18:7-8.2 Method of arithmetic computation required

In computing allocation percentages, division must be carried to six decimal places, for example, .201614 or 20.1614 percent.

18:7-8.3 Right of Director to independently compute allocation factor

(a) If it appears that the business allocation factor computed on the basis of all or any of the property-receipts-payroll fractions does not properly reflect the activity, business, receipts, capital, entire net worth, or entire net income of the taxpayer in New Jersey, the Director may adjust or the taxpayer may request an adjustment of the business allocation factor.

(b) Reduction in tax for income duplicated on a return filed with another State pursuant to N.J.S.A. 54:10A-8 and this rule—100 percent allocation factor:

1. Eligibility:

i. Where the business allocation factor under N.J.S.A. 54:10A-6 is 100 percent and the taxpayer in fact paid a tax based on or measured by income to a foreign state, resulting in a duplication of income being taxed, the taxpayer may, under N.J.S.A. 54:10A-8, apply for a reduction in the amount of its tax. The reduction is available only where the taxpayer in its own right acquired a taxable status in the foreign state by reference to at least one of the criteria described at N.J.A.C. 18:7-1.6.

Example: Corporation A does not maintain a regular place of business outside New Jersey, other than a statutory office. Corporation A was not a domestic corporation in State X, nor did Corporation A meet any of the other criteria described at N.J.A.C. 18:7-1.6 in State X which would have created a taxable status in New Jersey. Although it was not itself doing business in State X, Corporation A was a member of an affiliated group of corporations which conducted a unitary business in State X and as such is permitted or required to join in filing a combined or consolidated return in State X. In fact, Corporation A did so.

Any duplication of income being reported to New Jersey and to State X may not form the basis for a reduction in the tax.

2. Method:

i. An eligible taxpayer computes its reduction on a rider attached to its return by demonstrating that a part of entire net income is duplicated on a return filed with another state. The eligible taxpayer must attach a copy of all relevant portions of the return filed with the foreign state relating to income reported, the computation of all components of its apportionment fractions, and the computation of the tax paid to the foreign state. The eligible taxpayer must also submit a schedule apportioning all property, receipts, and payroll to a common denominator defined consistent with the return. For purposes of calculating the reduction:

(1) The business allocation factor may be based upon only so much of adjusted entire net income appearing on its corporation business tax return as is reported to the foreign state;

(2) The formula apportionment used in the foreign state may not exceed the business allocation factor as determined under N.J.S.A. 54:10A-6 and these rules;

(3) The business allocation factor must be computed by using the lesser of the tax rates of the foreign state or the tax rate under the New Jersey Corporation Business Tax Act.

Example 1: Corporation A does not maintain a regular place of business outside New Jersey other than a statutory office. As a consequence, Corporation A's business allocation factor is 100 percent. Corporation A sold land for $250,000 which had a tax basis and book value of $100,000 and was situated in State Y. Under the laws of State Y, the entire gain is directly allocable to State Y and is taxed at an eight percent rate. Corporation A may determine the portion of its tax which is measured by net income as follows:

	New Jersey Tax Income Base	Duplicated in State Y
Gross income exclusive of gain on sale of land	$500,000	
Net gain on sale of land	+150,000	$150,000
Total income	650,000	
Deductions	-447,778	
Taxable income before net operating deductions and special deductions	202,222	
Adjustments— NJ Corporation Business Tax Deducted—add back	+20,000	
Entire net income	$222,222	
Tax at 9% — before reduction	$20,000	
Formula apportionment not used in State Y		100%
Duplication of income		150,000
Reduction—may not exceed 9%		.08
Tax paid to State Y		$ 12,000
Reduction	-12,000	
Paid with return	$8,000	

Example 2: Corporation B does not maintain a regular place of business outside New Jersey other than a statutory office. Corporation B's business allocation factor is 100 percent. Corporation B did however start and complete a construction job in State Z and paid an income tax to State Z at a 10 1/2 percent rate. Corporation B may determine the portion of its corporation business tax measured by net income as follows:

For accounting periods beginning before July 1, 1996:

		New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss deduction and special deductions		$227,500	$227,500
Add ACRS	$ 15,000		
Less NJ depreciation	12,000	3,000	
Add ACRS	15,000		
Less State Z Depreciation	15,000		–0–
†Add back of NJ CBT, other States, Political Subdivisions, etc. tax paid or accrued	52,000	52,000	
Taxes imposed or measured by income from State Z return	28,800		28,800
Municipal bond interest add back—NJ	7,000	7,000	
Municipal Bond Interest add back—State Z	-0-		–0–
Net Operating Loss—NJ	4,500	(4,500)	
Net Operating Loss—State Z	5,000		(5,000)
Dividend Exclusion—NJ	10,000	(10,000)	(10,000)
Dividend Exclusion—State Z	-0-		
Entire Net Income		$275,000	
Portion of ENI duplicated			$241,300
Apportionment (computed below)			.250000
Apportioned duplicated ENI			$ 60,325
Tax at 9% on New Jersey Income Base		$ 24,750	
Tax at State Z rate (10 1/2%) on Apportioned duplicated ENI			$ 6,334
Reduction—at 9% of Apportioned duplicated ENI ($60,325)		$ 5,429	
New Jersey tax after credit		$ 19,321	

† For accounting periods beginning on or before July 7, 1993 only, New Jersey CBT was required to be added back in computing New Jersey ENI. For accounting periods beginning on or after July 1, 1996:

		New Jersey Tax Income Base	Duplicated in State Z
Taxable income before net operating loss deduction and special deductions		$227,500	$227,500
Add ACRS	$15,000		
Less NJ depreciation	15,000	3,000	
Add ACRS	15,000		
Less State Z Depreciation	15,000		–0–
Add back of NJ CBT, other States, Political Subdivisions, etc. tax paid or accrued	52,000	52,000	
Taxes imposed or measured by income from State Z return	28,800		28,800
Municipal bond interest add back—NJ	7,000	7,000	
Municipal Bond Interest add back—State Z	-0-		–0–
Net Operating Loss—NJ	4,500	(4,500)	
Net Operating Loss—State Z	5,000		(5,000)
Dividend Exclusion—NJ	10,000	(10,000)	(10,000)
Dividend Exclusion—State Z	–0–		
Entire Net Income		$275,000	
Portion of ENI duplicated			$241,300
Apportionment (computed below)			.245000
Apportioned duplicated ENI			$59,118
Tax at 9% on New Jersey Income Base		$24,750	
Tax at State Z rate (10 1/2%) on Apportioned duplicated ENI			$6,207
Reduction—at 9% of Apportioned duplicated ENI ($59,118)		$5,321	
New Jersey tax after credit		$19,429	

Corporation B computed the apportionment on its State Z return as follows:

	State Z	Everywhere	Portion in State Z
Property Fraction			
Owned (Valued under State Z law and regulation)	$140,000	$ 500,000	
Leased (at 8 times annual rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$180,000	$ 600,000	0.300000
Receipts Fraction	$200,000	$1,000,000	0.200000
Double Weighting of Receipts Fraction			0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			1.000000
Allocation Factor using State Z Law and Regulation (Total divided by four)			0.250000

For accounting periods beginning before July 1, 1996, if the formula apportionment had been determined in State Z consistent with the NJ Corporation Business Tax Act, it would have been:

Property Fraction			
Owned (Valued under NJ CBT Act)	$100,000	$ 400,000	
Leased (at 8 times rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$140,000	$ 500,000	0.280000
Receipts Fraction	$200,000	$1,000,000	0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			0.780000
Allocation Factor using NJ CBT Act (Total divided by three)			0.260000

For accounting periods beginning on or after July 1, 1996, if the formula apportionment has been determined in State Z consistent with the N.J. Corporation Business Tax Act, it would have been:

Property Fraction			
Owned (Valued under NJ CBT Act)	$100,000	$ 400,000	
Leased (at 8 times rentals)	$ 40,000	$ 100,000	
Total Property Fraction	$140,000	$ 500,000	0.280000
Receipts Fraction	$200,000	$1,000,000	0.200000
Double Weighting of Receipts Fraction			0.200000
Payroll Fraction	$ 90,000	$ 300,000	0.300000
Total of Fractions			0.980000
Allocation Factor using NJ CBT Act (Total divided by four)			0.245000

For the period beginning prior to July 1, 1996, since the apportionment fraction (.250000) used in State Z does not exceed the business allocation factor as it would have been determined under the Act and this subchapter, it is used for purposes of determining the reduction.

For the period beginning on or after July 1, 1996, since the apportionment fraction (.250000) used in state Z exceeds the business allocation factor as it would have been determined under the Act and this subchapter, the New Jersey business allocation factor (.245000) would be used for purposes of determining the reduction.

18:7-8.4 Property fraction; "tangible personal property"; definition and scope; special situations

(a) The term "tangible personal property" shall mean corporeal personal property, such as machinery, fixtures, tools, implements, goods, wares, and merchandise, and does not mean money, deposits in banks, shares of stock, bonds, notes, credits or evidence of an interest in property, and evidences of debt.

(b) Tangible personal property within New Jersey.

1. (No change.)

2. Property of the taxpayer held in New Jersey by an agent, consignee, or factor is (and property held outside New Jersey by an agent, consignee, or factor is not) situated or located within New Jersey.

3. Mobile or movable property, such as construction equipment or trucks, is within New Jersey based on the ratio of time the property is used within the State to the time the property is used everywhere during the period covered by the return.

4. Ships are within New Jersey based on the ratio of time the vessels are in operation in New Jersey to the time the vessels are in operation everywhere, and including all sailing days, days in port for loading, unloading, ordinary repairs, refueling, or provisioning as operation.

5.-6. (No change.)

(c) Tangible personal property in transit.

1. (No change.)

2. Property in transit from a point outside New Jersey to another point outside New Jersey is situated or located outside New Jersey.

3. Property, while in transit from a point outside New Jersey to a point in New Jersey or vice-versa does not have a fixed situs either within or outside the State and, therefore, will not be deemed to be "situated" or "located" either within or outside New Jersey and accordingly, such property while so in transit should be omitted from both the numerator and the denominator of the property fraction.

4. (No change.)

18:7-8.5 Business allocation factor; property fraction derived from average values

(a) The percentage of the taxpayer's real and tangible personal property within New Jersey is determined by dividing the average value of such property within New Jersey by the average value of real and tangible personal property within and outside New Jersey.

1. (No change.)

(b) The term "taxpayer's real and tangible personal property" shall include property owned, leased, rented, or used by the taxpayer during the period covered by the return and shall exclude property not yet in service or removed from service during that period. Property or equipment under construction (exclusive of inventory work in progress) is excluded from the property fraction until it is completed.

(c) (No change.)

(d) The overriding objective is a fair and reasonable apportionment of entire net income by weighing the allocation factor for the portion of the real and tangible personal property owned, leased, rented, or used in this State.

Example 1 (No change.)

Example 2: Taxpayer is engaged in long term construction contracting. It has elected to recognize income for tax purposes on the completed contract method of accounting. It recognizes income on a contract in a tax year where its property was removed to other taxing jurisdictions to work on unrelated construction in progress.

That property fraction must reflect the average value of the taxpayer's real and tangible personal property inside the State and everywhere during the period of construction to fairly and reasonably apportion the entire net income reported for the period covered by the return.

18:7-8.6 Average value; computation period

(a) (No change.)

(b) At the option of the taxpayer or the Director, a more frequent basis (monthly, weekly, or daily) may be used. Where the taxpayer's usual accounting practice does not permit computation of average value on a quarterly or more frequent basis, a semi-annual or annual basis may be used where no distortion of average value results. If any basis other than quarterly is used on the return, such basis and the reasons therefor must be fully explained on a separate rider.

18:7-8.7 Business allocation factor; determination or receipts fraction

(a) The percentage of the taxpayer's receipts within New Jersey is determined by ascertaining the taxpayer's receipts allocable to New Jersey during the period covered by the return and dividing the sum of the receipts by the taxpayer's total receipts within and outside New Jersey during such period.

(b) The receipts of the taxpayer are to be computed on the cash, accrual, or other method of accounting used in computation of its net income for Federal income tax purposes. However, the numerator and denominator of the receipts fraction must, in any event, relate to the entire net income recognized during the period covered by the return.

Examples 1 and 2 (No change.)

(c) Entire net income shall be included or excluded as follows:

1. (No change.)

2. Any income which is excluded from entire net income is also excluded from the numerator and denominator of the receipts fraction, except for banking corporations with international banking facilities as provided in P.L. 1983, c. 422. See N.J.S.A. 54:10A-6.

Example:

Dividends recognized as income for purposes of determining Federal income tax but which are excluded from entire net income under N.J.S.A. 54:10A-4(k)(1) must also be excluded in computing the receipts fraction.

(d) The receipts sourced to a state, a possession or territory of the United States or the District of Columbia or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income or business presence or business activity shall be excluded from the denominator of the sales fraction. This principle applies to single entity taxing jurisdictions, as well as post-apportionment combination states. The rule also permits the throwout of receipts to pre-apportionment combination states. Receipts from pre-apportionment combination states are not required to be thrown out of the denominator of the New Jersey receipts fraction if they create a potential tax in a foreign state. For purposes of this subsection, "pre-apportionment combination states" are those states where the receipts from all states are added together before the apportionment factor is calculated. "Post-apportionment combination states" are those where the various apportionment factors are calculated first then totaled. If a taxpayer believes that application of the throwout rule in a particular situation produces an improper allocation, the taxpayer may avail itself of the prescribed avenues to request the Director's discretionary adjustment of the allocation factor pursuant to N.J.S.A. 54:10A-8. Notwithstanding the foregoing, for privilege periods beginning on or after July 1, 2010, the receipts sourced to a state, a possession or territory of the United States or the District of Columbia, or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income or business presence or business activity are not required to be excluded from the denominator of the sales fraction found in N.J.S.A. 54:10A-6(B).

Example: ABC Inc., a New Jersey corporation, manufactures goods in New Jersey. It also maintains an office in Philadelphia. Eighty percent of ABC Inc.'s payroll and property are in NJ. It sells 30 percent of its goods to NJ customers; 30 percent to PA customers; and 40 percent to customers in other states. ABC Inc. files returns and pays tax to NJ and PA only. It is not subject to tax in other states due to the protection of P.L. 86-272. ABC Inc. has entire net income of $1,000,000.

For tax year 2001, beginning 1/1/01, and ending 12/31/01, its allocation factor is:

Property		Payroll		Double Receipts			Allocation Percentage
$\left(\frac{80}{100}\right.$	+	$\frac{80}{100}$	+	$\frac{30}{100}$	+	$\left.\frac{30}{100}\right) \div 4 =$	55%

For tax year 2002, beginning 1/1/02 and ending 12/31/02, its allocation factor is:

Property		Payroll		Double Receipts			Allocation Percentage
$\left(\frac{80}{100}\right.$	+	$\frac{80}{100}$	+	$\frac{30}{60}$	+	$\left.\frac{30}{60}\right) \div 4 =$	65%

(e) Receipts that are included in the numerator of a jurisdiction's receipts fraction by reason of the operation of a throwback provision are deemed not to be receipts assigned to that jurisdiction and are, therefore, excludible from this State's receipts fraction denominator.

(f) For pre-throwout repeal returns the amount by which the exclusion of receipts from the denominator of the sales fraction increases the liability of all the members of an affiliated group or controlled group pursuant to I.R.C. § 1505 or 1563 over the liability calculated without application of the exclusion shall not exceed $5,000,000. If the exclusion increases the liability of all the members of an affiliated group or controlled group by more than $5,000,000 for the privilege period, then the amount of liability in excess of $5,000,000 due to the exclusion shall be abated, and the abated liability shall be allocated among the members of the affiliated group or the controlled group in proportion to each member's increase in liability due to the exclusion of such receipts. The Director may allow a single corporation within the affiliated group or controlled group to act as the key corporation (clearinghouse) for the abatement. "Business presence" or "business activity" taxes include, but are not limited to, net worth taxes, gross receipts taxes, and single business taxes. For example, business presence or business activity taxes include, but are not limited to, the Pennsylvania Bank Shares Tax (72 P.S. 7701 et seq.) and the New York Franchise Tax on Banking Corporations (Article 32 of the New York tax laws). Property taxes, excise taxes (for example, cigarette taxes), payroll taxes, and sales taxes are not considered "business presence" or "business activity" taxes.

(g) For pre-throwout repeal returns the exclusion of sales increases the liability of a single entity taxpayer that is independent of and not affiliated with any controlled or affiliated group as defined above, then such increase shall be capped at $5,000,000 and the excess shall be abated.

18:7-8.8 Scope of allocable receipts

(a) Unless otherwise noted herein, receipts from the following are allocable to New Jersey:

1. Sales of tangible personal property where shipments are made to points in New Jersey. Delivery of goods to a purchaser in this State is a shipment made to a point in New Jersey regardless of the F.O.B. point or the fact that the goods may subsequently be resold and trans-shipped to a point outside this State.

i.-ii. (No change.).

iii. The sale of goods shipped by a taxpayer from outside New Jersey to a New Jersey customer by a common carrier results in a receipt allocable to New Jersey. The common carrier is deemed an agent of the seller regardless of the F.O.B. point.

Example:

Taxpayer, a manufacturer located outside New Jersey, transports goods by a common carrier to a New Jersey facility where the customer takes possession of the goods. Since the common carrier is deemed to be an agent of the taxpayer, the common carrier's transportation of the goods into the possession of the customer in New Jersey results in receipts allocable to New Jersey.

iv. The sale of goods shipped from outside New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside New Jersey results in receipts that are not allocable to New Jersey.

Example:

Taxpayer, a non-New Jersey manufacturer, transports goods from outside New Jersey to a New Jersey location by either a common carrier or a private transporter. The goods are picked up in New Jersey by a common carrier and transported further to a customer outside New Jersey. Since the common carrier is deemed an agent of the seller regardless of the F.O.B. point, the shipment by the common carrier from a point in New Jersey to a point outside New Jersey results in receipts not allocable to New Jersey.

2.-3. (No change.)

4. Royalties from the use in New Jersey of patents or copyrights; and

5. (No change.)

18:7-8.9 Receipts from sales of capital assets; when includible

(a) The gross receipts from sales of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) either within or outside New Jersey should not be included in either the numerator or denominator of the receipts fraction. The net gains from such sales that are included in entire net income are the amounts that are properly to be included in the computation of the receipts fraction. For the purposes of the numerator in the computation of the receipts fraction, a net loss should not offset a net gain.

ILLUSTRATION

FACTS

	Selling Price	Cost	Net Gain	Net Loss
Property #1	$1,000	$ 600	$400	
Property #2	2,000	2,200		$200
Property #3	3,000	2,900	100	
			$500	$200

	(200)
Amount of gain appearing on Schedule A	$300

The $300 net gain is includable in the denominator of the receipts fraction in all cases. The computation to arrive at the amount to be included in the numerator is given in the following examples:

Example 1:

At the time of sale, Property #1 was located within New Jersey, whereas Property #2 and #3 were located outside New Jersey.

Amount of N.J. Gains	$400	= 80% x $300 (net gain) = $240
Total Gains	$500	

The amount of $240 is to be included in the numerator of the receipts fraction.

Example 2:

At the time of sale, Property #1 and #3 were located outside New Jersey, whereas Property #2 was located within New Jersey.

Amount of N.J. Gains	-0-	= 0% x $300 (net gain) = -0-
Total Gains	$500	

There is nothing attributable to this transaction that will affect the numerator of the receipts fraction.

Example 3 (No change.)

(b) (No change.)

18:7-8.10 Receipts; compensation for services; allocation for certain special industries

(a) The numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned under this section if the service is performed within this State. If the service is performed both within and outside this State, the numerator of the receipts fraction includes receipts from services based upon the cost of performance or amount of time spent in the performance of such services or by some other reasonable method that should reflect the trade or business practice and economic realities underlying the generation of the compensation for services. "Cost of performance" is defined as all direct costs incurred in the performance of the service, including direct costs of subcontractors.

1.-2. (No change.)

(b) Commissions received by the taxpayer are allocable to New Jersey if the services for which the commissions were paid were performed in New Jersey. If the taxpayer's services for which commissions were paid were performed for the taxpayer by salesmen or working out of a New Jersey office of the taxpayer, the taxpayer's services will be deemed to have been performed in New Jersey.

Example

(No change.)

(c) Certain service fees from transactions having contact with this State are allocable to New Jersey based upon the following:

1.-3. (No change.)

4. Certain lump sum payments for services performed within and outside New Jersey must be apportioned in the following manner in order to result in a fair and reasonable receipts fraction.

i. (No change.)

ii. Trucking companies deriving revenues from transporting freight will calculate their receipts fraction using mileage as follows: The taxpayer's receipts are multiplied by a fraction, the numerator of which is the number of miles driven in New Jersey and the denominator of which is the mileage driven in all jurisdictions. For convenience, taxpayers required to maintain mileage records in compliance with the International Fuel Tax Agreement pursuant to N.J.S.A. 54:39A-24 and to N.J.A.C. 13:18-3.12 shall make calculations using such records.

(1) In addition, with regard to the property fraction, movable property, such as tractors and trailers, shall be allocated to this State using the same mileage fraction set forth in (c)4ii above. Such allocated movable property shall be added to the fraction of non-movable property in New Jersey over non-movable property everywhere to arrive at the property fraction.

(2) With regard to the payroll fraction, wages of mobile employees such as drivers shall be allocated to New Jersey based upon mileage as set forth in (c)4ii above. Such allocated payroll shall be added to the fraction formed by non-mobile employee wages in New Jersey over non-mobile wages everywhere to arrive at the payroll fraction.

(d) If a taxpayer receives a lump sum in payment for services and also for materials or other property, the sum received must be apportioned on a reasonable basis.

1. That part apportioned to services performed is includible in receipts from services;

2. That part apportioned to materials or other property is includible in receipts from sales; and

3. (No change.)

(e) Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the following procedures:

1. (No change.)

2. In the case of asset management services directly or indirectly provided to a pension plan, retirement account, or institutional investor, such as private banks, national and international private investors, international traders, or insurance companies, receipts shall be allocated to New Jersey to the extent the domicile of the beneficiaries of the plan, beneficiaries of the account, or beneficiaries of the similar pool of assets held by the institutional investor is in New Jersey.

i. In the event the domiciles of the beneficiaries are not or cannot be obtained, a reasonable proxy may be used to allocate receipts to New Jersey that reflects the trade or business practice and economic realities underlying the generation of receipts from the asset management services. The burden of demonstrating the reasonableness of the method rests on the taxpayer. Based on specific facts and circumstances, reasonable proxies used to allocate receipts to New Jersey may take into account, among other things, the latest available population census data; the domicile of the sponsor of the plan, account, or pool of assets; the sponsor's New Jersey payroll apportionment factor or the sponsor's ratio of New Jersey employees to total employees.

3. In the case of asset management services directly or indirectly provided to a regulated investment company, receipts shall be allocated to New Jersey to the extent that shareholders of the regulated investment company are domiciled in New Jersey in accordance with the following:

i. The portion of receipts deemed to arise from services performed within New Jersey shall be determined by multiplying the total of such receipts from the sale of such services by a fraction. The numerator of the fraction is the average of the sum of the beginning of the year and the end of the year balance of shares owned by the regulated investment company shareholders domiciled in New Jersey for the regulated investment company's taxable year for Federal income tax purposes that ends within the taxable year of the taxpayer. The denominator of the fraction is the average of the sum of the beginning of the year and end of the year balance of shares owned by the regulated investment company shareholders. A separate computation is made to determine the allocation of receipts from each regulated investment company.

4. As used in (e)1 through 3 above:

i. "Asset management services" means the rendering of investment advice, making determinations as to when sales and purchases are to be made, or the selling or purchasing of assets and related activities. As used in this section, "related activities" means administration services, distribution services, management services, and other related services.

ii. "Administration services" means and includes clerical, accounting, bookkeeping, data processing, internal auditing, legal, and tax services but does not include trust services.

iii. "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares, or selling shares of a regulated investment company.

iv. "Management services" means the rendering of investment advice, making determinations as to when sales and purchases of securities are to be made, or the selling or purchasing of securities and related activities.

v. "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-2m in the case of an individual and under N.J.S.A. 54A:1-2o in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the mailing address of the beneficiary of the plan, account, or other similar pool of assets based upon the sponsor's records with respect to any such beneficiary or the shareholder's mailing address on the records of the regulated investment company. For purposes of (e)3 above, in the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

vi. (No change.)

vii. "Regulated investment company" means a regulated investment company as defined in N.J.S.A. 54:10A-4(g) and meets the requirements of I.R.C. § 851.

viii. "Sponsor" means the party that has contracted directly with the beneficiaries of the plan, account, or similar pools of assets.

5. (No change.)

(f) Receipts from the services of a registered securities or commodities broker or dealer shall be sourced to New Jersey if the customer is located within the State.

1. For purposes of this subsection:

i. "Securities" has the meaning provided by I.R.C. § 475(c)(2);

ii. "Commodities" has the meaning provided by I.R.C. § 475(e)(2); and

iii. (No change.)

18:7-8.11 Receipts; rents and royalties

(a) (No change.)

(b) Receipts from royalties derived from trademarks utilized in business in New Jersey are deemed located in New Jersey.

1. (No change.)

2. Receipts from royalties derived from trademark license agreements, which wholly or in part authorize the licensee to sell or market products or services, are sourced to New Jersey in the same ratio as the licensee recognizes in its sales fraction receipts from sales related to the trademarked items or services.

Example 1: Corporation B is a Delaware corporation having legal title to certain trademarks. Corporation B licenses those trademarks to affiliated entities, and the affiliates pay Corporation B an arm's length royalty for their use. The trademarks are used by the affiliates within and outside New Jersey. Allocation of Corporation B's income from trademark royalties paid to it by affiliates is based upon the use of the trademarks in New Jersey by the affiliates. If an affiliate generates 10 percent of its sales revenue from the use of a trademark within New Jersey and therefore is recognizing 10 percent of the affiliate's revenue in its New Jersey receipts fraction numerator and 90 percent in other jurisdictions, 10 percent of the royalty paid by the affiliate to Corporation B for that trademark is apportioned to New Jersey by Corporation B.

18:7-8.12 Other business receipts

(a) All other business receipts earned by the taxpayer within New Jersey are allocable to New Jersey. Other business receipts include all items of income entering into the determination of entire net income during the year for which the business allocation factor is being computed and is not otherwise provided for in these rules. Examples of such business receipts include, but are not limited to, interest income, dividends, governmental subsidies, or proceeds from sales of scrap.

(b)-(d) (No change.)

(e) Intangible income not apportioned by other provisions of these rules is included in the numerator of the receipts fraction where the taxable situs of the intangible is in this State. The taxable situs of an intangible is the commercial domicile of the owner or creditor unless the intangible has been integrated with a business carried on in another state. Notwithstanding that the commercial domicile is outside this State, the taxable situs is in New Jersey to the extent that the intangible has been integrated with a business carried on in this State.

Example: Taxpayer has its domicile outside this State. It is in the business of lending money, some of which is loaned to New Jersey residents. Interest income ***and related fees (for example, late payment fees, annual fees, etc.)*** recognized from such loans is income derived from sources within this State and, as such, is earned in New Jersey. That interest ***and fee*** income is includable in the numerator of the receipts fraction.

(f) (No change.)

18:7-8.13 Business allocation factor; payroll fraction

(a) Wages, salaries, and other compensation include all amounts paid for personal services rendered to the taxpayer, but do not include amounts paid of the taxpayer that do not have in them the element of compensation for personal services actually rendered or to be rendered.

(b) The percentage of the taxpayer's payroll allocable to New Jersey is determined by dividing the wages, salaries, and other personal service compensation of the taxpayer's employees within New Jersey during the period covered by the return by the total amount of compensation of all the taxpayer's employees during the period.

1. (No change.)

2. In general, a taxpayer reporting to the Division of Employer Accounts in the New Jersey Department of Labor and Workforce Development must allocate to New Jersey all wages, salaries, and other personal service compensation, and other items reportable to that Division in the amount prescribed by the New Jersey Department of Labor and Workforce Development.

(c) Wages, salaries, and other compensation are computed on the cash or accrual basis, in accordance with the method of accounting used by the taxpayer in reporting for Federal income tax purposes.

18:7-8.14 Definition of officers and employees

(a) Those officers and employees whose wages, salaries, and other personal service compensation are required to be included in the computation of the payroll fraction of the business allocation factor include every individual, officer, and general executive officer whose relationship with the taxpayer is that of employee and employer.

(b) Generally, the relationship of employer and employee exists when the taxpayer has the right to control and direct the individual not only as to the result to be accomplished by him or her but also as to the means by which such result is to be accomplished. If the relationship of employer and employee exists, the designation or description of the relationship, and the measure, method, or designation of the compensation, are immaterial.

(c)-(d) (No change.)

18:7-8.15 Compensation of officers and employees within New Jersey

(a) Compensation of officers and employees within this State shall include the entire amount of wages, salaries, and other personal service compensation for services performed within or both within and outside this State if:

1. (No change.)

2. The service is performed both within and outside this State, but the service performed outside the State is incidental to the individual's service within the State. For example, service that is temporary or transitory in nature or which consists of isolated transactions;

3.-4. (No change.)

18:7-8.16 Allocation: international banking facilities

Any banking corporation, having an international banking facility, which maintains a regular place of business (other than a statutory office) outside New Jersey, which elects to take the deduction from entire net income provided by N.J.A.C. 18:7-5.2(a)2vii, shall complete the allocation factor under this subchapter in the usual way. For the purpose of allocation, however, all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in N.J.S.A. 54:10A-4(n), shall be included in both the numerator and denominator of the fractions described in this

subchapter, whether or not such international banking facility income amounts are otherwise attributable to New Jersey.

18:7-8.17 Non-operational income

Non-operational income of taxpayers is not subject to allocation but shall be specifically assigned. One hundred percent of non-operational income from taxpayers having their principal place from which the trade or business of the taxpayer is directed or managed in this State shall be specifically assigned to this State.

SUBCHAPTER 10. SECTION 8 ADJUSTMENTS

18:7-10.1 Discretionary adjustments of business allocation factor by Director

(a) Generally, the allocation formula described in this chapter will result in a fair apportionment of the taxpayer's net worth and net income within and outside New Jersey. However, experience in this and other states that impose similar franchise taxes has shown that due to the nature of certain businesses the formula may work hardships in some cases, and not do justice either to the taxpayer or the State. Accordingly, provision is made in such cases for the Director to use some other formula that will more accurately reflect the business activity within New Jersey.

(b) Section 8 of the Act provides that where it shall appear to the Director that the business allocation factor, determined pursuant to N.J.S.A. 54:10A-6, does not properly reflect the activity, business, receipts, capital, entire net worth, or entire net income of a taxpayer reasonably attributable to New Jersey, he or she may in his or her discretion adjust the business allocation factor by:

1. (No change.)

2. Including one or more other elements, such as expenses, purchases, and contract values (minus subcontract values);

3.-4. (No change.)

5. Applying any other similar or different method calculated to effect a fair and proper allocation of the entire net income and the entire net worth reasonably attributable to this State.

(c) Adjustment of the business allocation factor may be made by the Director upon his or her own initiative or upon request of a taxpayer.

1.-3. (No change.)

SUBCHAPTER 11. RETURNS

18:7-11.1 Returns; corporations required to file

(a) (No change.)

1. Every corporation subject to tax, regardless of the amount of its entire net income. (See N.J.A.C. 18:7-1.6.)

2. (No change.)

18:7-11.3 Effect of deficiency notice

(a)-(c) (No change.)

(d) Only the portion of any deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code that is the subject of a timely petition for redetermination in the Tax Court of the United States may delay the reporting requirements set forth in N.J.A.C. 18:7-11.8 and then only to the extent permitted by (a) above.

Example: The Internal Revenue Service (IRS) redetermined the net income of a taxpayer's 1983 tax return based on three separate issues, A, B, and C. These three issues resulted in increases in net income for New Jersey purposes of $5,000, $30,000, and $110,000 respectively. The taxpayer accepted Issue A resulting in a $5,000 increase in income for New Jersey purposes and requested a hearing before the IRS on Issues B and C. The taxpayer has 90 days from the issuance of the deficiency to report Issue A to the Division of Taxation.

Six months later, the IRS issues a determination that it intends to uphold the entire amount represented by Issues B and C. The taxpayer accepts the determination on Issue B, but appeals Issue C to the Tax Court of the United States. The taxpayer has 90 days from the issuance of the IRS determination to report the $30,000 increase in net income represented by Issue B to the Division of Taxation.

One year later, the Tax Court issues an unfavorable decision to the taxpayer on Issue C. The taxpayer accepts the verdict and decides not to appeal the issue any further. The $110,000 represented by Issue C must be reported to the Division of Taxation within 90 days of the court decision.

18:7-11.5 Change of accounting period

(a) A taxpayer will not be permitted to change its accounting period for purposes of the Corporation Business Tax Act unless it has first obtained the permission of the Commissioner of Internal Revenue for Federal income tax purposes where permission is required under the Internal Revenue Code. A copy of such permission must be filed with the Division of Taxation.

(b) (No change.)

18:7-11.6 Forms of returns

(a) Returns are required to be made on forms prescribed by the Director.

1. In the case of all taxpayers, annual returns are required to be filed on Form CBT-100 or CBT-100S. As used in these rules, references to Form CBT-100 may be interpreted to include Form CBT-100S, as the context may require.

2. (No change.)

(b) The Director may require any taxpayer to file any other reports and submit any further information the Director may require in the administration of the provisions of the Act.

(c) Every return shall have annexed to it a certification by the president, vice-president, comptroller, secretary, treasurer, assistant treasurer, accounting officer, or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained in the return are true.

1.-3. (No change.)

18:7-11.7 Time for filing returns

(a) The appropriate annual corporation business tax return together with payment of the tax, including the required prepayment, must be filed with the Division of Taxation on or before the 15th day of the fourth month after the close of each fiscal or calendar accounting period.

(b) A return is timely filed and deemed delivered on the date of the United States Postal Service postmark stamped on the envelope. See N.J.S.A. 54:49-3.1.

(c) A return is timely filed when it is mailed to the Division of Taxation on the next business day, if the due date falls on a Saturday, Sunday, or State holiday.

18:7-11.8 Time to report change or correction in Federal net income

(a) The report of change or correction in Federal taxable income as the result of an Internal Revenue Service audit must be reported to the Division of Taxation within 90 days of issuance of the Federal report by filing an amended Form CBT-100 or amended Form CBT-100S return. To amend Form CBT-100 or Form CBT-100S returns, use Form CBT-l00 or Form CBT-100S for the appropriate tax year and write "AMENDED RETURN" clearly on the front page of that form.

(b) Any taxpayer that files an amended return with the United States Treasury Department must file an amended New Jersey corporation business tax return within 90 days thereafter.

(c) After the filing of a report of change or correction on an amended Form CBT-100 or amended Form CBT-100S return, the Director may, within the time prescribed by law, audit the return and compute and assess the tax based upon the issue or issues set forth in the Federal revenue agent report.

(d) (No change.)

18:7-11.9 Time for filing returns for unauthorized foreign corporations doing business in New Jersey

(a) A foreign corporation that does business, employs, or owns capital or property or maintains an office in New Jersey without authorization or after its withdrawal from the State, is subject to tax for each calendar or fiscal accounting period or part thereof during which it has engaged in any such activity. The corporation is subject to the same requirements with respect to filing returns and paying taxes as a duly authorized corporation.

(b) In this connection, see N.J.S.A. 14A:13-11 pursuant to which every foreign corporation transacting any business, directly or indirectly,

in New Jersey without having first obtained a Certificate of Authority to do business here, shall for each offense forfeit to the State the sum of not less than $200.00 nor more than $1,000 to be recovered with costs in an action prosecuted by the Attorney General in the name of the State.

18:7-11.10 (Reserved)

18:7-11.11 Returns required to be filed by corporation ceasing to be subject to tax

(a) A domestic corporation that ceases to possess its franchise is required to file a return covering each year or period for which no return was previously filed.

(b) A foreign corporation that surrenders its authority to do business or otherwise ceases to have a taxable status in New Jersey is required to file a return covering each year or period for which no return was filed.

18:7-11.12 Extension of time to file return; interest and penalty

(a) No extension will be granted unless request is made on Tentative Return Form CBT-200T and is actually received by the Division of Taxation or postmarked on or before the due date of the return. The Tentative Return must:

1.-3. (No change.)

(b) Taxpayers using the New Jersey Corporation Business Tax Return Form CBT-100 may request an extension for a period not exceeding six months and will receive automatic approval, provided that the taxpayer has complied with the instructions set forth on the Tentative Return Form CBT-200T, and has paid any unpaid balance of its estimated tax.

1. (No change.)

2. Initial extensions will be confirmed in writing by the Division of Taxation.

3. (No change.)

(c) Banking and financial corporations may request an extension of time to file return subject to the following conditions:

1. No extension will be granted unless request is actually received by the Division of Taxation or postmarked on or before the due date of the return;

2. The extension shall be made on a copy of page 1 of Form BFC-1, including the exact name, address, New Jersey Serial number, if applicable, the Federal employer identification number, if any, and the amount of tentative tax liability;

3.-4. (No change.)

(d) (No change in text.)

(e) Where the taxpayer has requested a Federal extension, the Division of Taxation shall grant the taxpayer an extension for a period not exceeding five months. In cases where the taxpayer has failed to obtain a Federal extension, the taxpayer, upon request, may be granted a two month extension for filing the return if sufficient cause is submitted. Sufficient cause should be interpreted so that it is impossible or wholly impracticable to file a return within two months from the original due date of the return.

(f) Extensions may be confirmed in writing by the Division of Taxation, if necessary.

(g) (No change in text.)

(h) Interest and penalty are chargeable as follows:

1. (No change.)

2. Any unpaid portion of the tax on the final return that is in excess of the amount paid shall bear interest at the rate of one and one-half percent per month, or fraction thereof from the original due date of the return to the date of actual payment or December 8, 1987. On and after December 9, 1987, the unpaid portion of the tax shall bear interest at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due or December 9, 1987, whichever is later, to the date of actual payment. On and after July 1, 1993, the unpaid portion of the tax shall bear interest at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

3. In addition, if the amounts paid up to and including the time for filing of the tentative return total less than the lesser of 90 percent of the amount of tax due, or for a taxpayer that had a preceding fiscal or calendar accounting year of 12 months and filed a return for that year showing a tax liability equal to the tax computed at the rates applicable to the current accounting year applied to the facts shown on the return for and the law applicable to the preceding accounting year, the taxpayer shall be liable for a penalty of five percent per month, or fraction thereof, on the amount of underpayment. In this context, "filing of the return" means filing of the tentative return incident to a request for extension; "the time for filing" means the original due date for filing the return; and "amount of underpayment" means the difference between 100 percent of the tax shown on the final return and the total of all installments of estimated tax paid on or before the original due date for filing the return, as well as any amount paid with the tentative return.

(i) Where a taxpayer makes an election on Federal Form 8023, it will be granted an extension of time to file a corporation business tax return until the Federal election is filed, provided that a Form CBT-200T has been properly filed in accordance with these rules.

(j) Warning:

1. No request for extension will be considered unless taxpayer has complied with all the filing requirements for extensions set forth in this rule.

18:7-11.13 Place for filing returns and payment of tax

(a) Amended returns and related documents together with remittances payable to "State of New Jersey" must be forwarded to the New Jersey Division of Taxation, Revenue Processing Center, PO Box 666, Trenton, NJ 08646-0666. See N.J.A.C. 18:7-11.19 for electronic filing requirements.

(b) (No change.)

18:7-11.16 Return to be filed by an S Corporation

(a) Except as may be provided otherwise by this section, an S corporation, that is, one which has made an election under section 1361 et seq., of the Internal Revenue Code of 1954, as amended and supplemented, must complete its New Jersey corporation business tax return on its own separate basis as though no election had been made under the Federal statute.

(b) Except as may be provided otherwise by this section, in preparing its corporation business tax return the taxpayer cannot assume that ordinary income or loss (Federal taxable income) is equal to Federal taxable income before net operating loss deduction and special deductions for New Jersey corporation business tax purposes, when the taxpayer has elected Federal S corporation treatment. Certain amounts not necessarily limited to I.R.C. § 179 expenses and Form 1120-S dividends that qualify for the dividend exclusion are not included as part of the S corporation's ordinary income (loss) computation, but rather are passed directly through to the shareholder on the Federal Form K-1 Schedule. For corporation business tax purposes these amounts are included in the computation of entire net income, as if the corporation were a C corporation and no Federal S corporation election were made.

Example 1: S Corporation has 1985 taxable income for Federal tax purposes of $100,000. However, not included in computation of such amount is a $5,000 I.R.C. § 179 expense and $10,000 of S Corporation dividends received from a different corporation that qualify for the Federal dividend exclusion. Barring any other difference between Federal taxable income and New Jersey taxable income per Schedule A, Form CBT-100, New Jersey taxable income before net operating loss deduction (NOL) and special deductions is computed as such:

$100,000	Federal Taxable Income
(5,000)	I.R.C. § 179 Expense
10,000	Qualifying S Corporation Dividends
$105,000	New Jersey Taxable Income Before NOL and Special Deductions

Example 2: S Corporation is liquidating under I.R.C. § 337. When disposing of its real property during the 12 month distribution period, the corporation recaptures for Federal tax purposes $5,000 of I.R.C. § 291 expenses which an S Corporation does not include as part of Federal taxable income if it were an S Corporation for the three preceding years before the I.R.C. § 337 election and the I.R.C. § 1363(b) election. Since

the S Corporation is treated as a C Corporation for State tax purposes, the I.R.C. § 291 recapture is part of taxable income before net operating loss and special deductions on Schedule A, Form CBT-100.

(c) With respect to tax years beginning after July 7, 1993, S corporation status may be elected for New Jersey purposes by the shareholders of a Federal S corporation. The filing of an election Form CBT-2553 with the Division of Taxation to be recognized as a New Jersey S corporation is required. A New Jersey S corporation is entitled to pay its tax at a preferential rate as provided in N.J.S.A. 54:10A-5(c)(2) and (3) and to report and pay its tax liability on Form CBT-100S.

18:7-11.17 Copies of tax returns or other information required

(a) (No change.)

(b) The Director may require all taxpayers to keep records he or she may prescribe, and the Director may require the production of books, papers, documents, and other data, to provide or secure information pertinent to the determination of the tax and its enforcement and collection.

(c) The Director may, also by general rule or special notice, require any taxpayer to make and file information returns, under oath, of facts pertinent to the determination of the tax or liability for tax pursuant to such regulations, at the times and in the form or manner and to the extent he or she may prescribe under law.

(d) (No change.)

18:7-11.18 Reproduction of forms

(a) Subject to the conditions and requirements of this section, the Director will accept for filing purposes reproductions of the New Jersey Corporation Business Tax Return Forms CBT-100 and CBT-200T in lieu of the official forms printed and furnished by the Director. Anyone contemplating the use of reproduced forms is cautioned to observe that the conditions herein stated may vary from the Federal regulations relating to reproduction of Federal tax forms.

(b) In order to be acceptable for filing purposes, reproduction of Forms CBT-100 and CBT-200T must meet the following conditions and requirements:

1. Reproductions must be facsimiles of the complete official form, produced by photo-offset, photo-engraving, photo-copying, or other similar reproduction processes;

2. Reproductions must be on paper of substantially the same color, weight, and texture and of a quality at least equal to that used in the official form;

3.-4. (No change.)

5. The color and quality of the reproduction of the printed matter must be substantially the same as that of the official form, and the reported information must be entirely legible;

6. The taxpayer's full and correct name, address, and identifying number as it appears on the pre-stenciled form furnished by the Director must be typed or printed on the reproduction;

7. All reported information on page 1 of the return must be typed or printed;

8.-9. (No change.)

10. The Director does not undertake to approve or disapprove the specific equipment or process in reproducing official forms, but requires only that the reproduced forms satisfy the stated conditions. It should be noted, however, that photocopies do not meet all the above conditions;

11. The Director does not undertake to approve or disapprove the specific writing medium or style of writing to be used, but requires that the reported information on the reproduced form be of good quality black-on-white with hand writing of satisfactory legibility.

18:7-11.19 Electronic filing and payment

(a)-(c) (No change.)

(d) As a result of changes in technology, the Division of Taxation will determine which electronic filing methods satisfy the requirements imposed in this section. The Division will provide notice as to the authorized electronic filing methods by publication on the Division's website and through other means as the Director may deem appropriate.

SUBCHAPTER 12. SHORT PERIOD RETURN

18:7-12.1 Short period returns; when required

(a) (No change.)

(b) Some of the circumstances that require the filing of short period returns are:

1. (No change.)

2. A foreign corporation that acquires a taxable status in New Jersey subsequent to the commencement of its Federal accounting period, and whose first New Jersey corporation business tax return embraces a period less than the accounting period reported for Federal income tax purposes;

3. Corporations that dissolve, merge, consolidate, withdraw, surrender or otherwise cease to have a taxable status in New Jersey prior to the close of a full 12 months accounting period;

4. A corporation that changes its accounting period.

(c) If a corporation ceases to exist as the result of an action such as a merger or if its New Jersey S status terminates, for example, the short period return for the terminating corporation or corporation losing its New Jersey S status would be due on the 15th day of the 4th month after the close of the short year ending on the date of the merger or on the day before the S corporation disqualifying event.

Example: A corporation had been granted New Jersey S status for the period beginning January 1 of the calendar year. The election terminated on April 6 of the calendar year due to merger. The due date for the return for the short period January 1 to April 6 of the calendar year (that is, through the close of business on the date that the merger occurs) is August 15 of the calendar year which is the 15th day of the 4th month after the close of the period. An automatic six-month extension of the time to file Form CBT-100S is available by making a tentative return and paying the tentative tax on Form CBT-200T by August 15 of the calendar year.

18:7-12.2 Short period returns; proration procedures

(a) Where a short period return is required, the entire net income is permitted to be prorated as follows:

1. (No change.)

2. With respect to net income, a domestic corporation filing a short period return shall not be entitled to prorate its adjusted net income. A foreign corporation whose short period return under the Act covers a period other than the accounting period reported upon for Federal income tax purposes, may prorate its adjusted entire net income by dividing its adjusted entire net income by the number of calendar months or parts thereof covered by the Federal income tax return and multiplying the result by the number of calendar months or parts thereof covered by the short period return. A part of a month shall be deemed to be a month.

3. (No change.)

4. Where a taxpayer is entitled and has elected to allocate less than the full amount of its entire net income to New Jersey the allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return. For treatment of allocation on a short period return, see N.J.A.C. 18:7-12.3.

18:7-12.3 Short period returns; allocation

(a) (No change.)

(b) In the case described in (a) above, the allocation factors shall be applied to entire net income only after such entire net income shall have been prorated as indicated in N.J.A.C. 18:7-12.2.

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

18:7-13.1 Assessment and reassessment

(a) On its return, a taxpayer must compute the amount of tax payable pursuant to the Corporation Business Tax Act and must remit the amount of the reported tax.

1. The Director shall cause the return to be examined and shall conduct any audit or investigation or reaudit as he or she may deem necessary;

2. If the Director determines that there is a deficiency with respect to payment of any tax due under the Act, he or she shall assess or reassess

the additional taxes, penalties and interest due to the State, give notice of such assessment or reassessment to the taxpayer, and make demand for payment;

3.-4. (No change.)

(b) For tax liabilities accruing prior to July 1, 1993, the Director may assess an additional tax at any time within five years from the date of the filing of the return or amended return. Any unexpired fifth year of the five year period of limitations remaining in effect on July 1, 1993, shall continue to be in full force and effect. For tax liabilities accruing on and after July 1, 1993, the Director may assess an additional tax at any time within four years from the date of the filing of the return or amended return.

1.-3. (No change.)

(c)-(d) (No change.)

(e) For reports or returns filed prior to July 1, 1993, and within five years from the date of filing the report of change or correction or an amended return, the Director may reexamine the return, recompute and reassess the tax, and shall so notify the taxpayer. For tax liabilities accruing on and after July 1, 1993, the period of limitation to make a deficiency assessment runs for an additional four year period from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue. The additional period of limitation will only be applicable to the increase or decrease in tax attributable to the adjustments in the changed or corrected income.

18:7-13.2 Hearing; protest

(a) The rules concerning the right of taxpayer to a hearing are:

1.-2. (No change.)

(b) (No change.)

18:7-13.3 Appeal

(a) Any aggrieved taxpayer may, within 90 days after any final decision, order, finding, assessment or action of the Director made pursuant to the provisions of the Corporation Business Tax Act, appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

(b) (No change.)

18:7-13.4 through 18:7-13.5 (Reserved)

18:7-13.6 Time for payment of tax

(a) The annual franchise tax must be paid to the Director in full on or before the due date of the return. For accounting periods ending on or after December 31, 1980, the annual franchise tax, including any estimated or installment payments required to be made pursuant to the Corporation Business Tax Act and N.J.A.C. 18:7-3.13 must be paid to the Director in full on or before the due date of the return. For due dates of returns see N.J.A.C. 18:7-11.7.

(b) (No change.)

(c) A taxpayer that ceases to be subject to tax under the Act must pay the entire tax for each fiscal or calendar accounting period or part of a period during which it had a taxable status. See N.J.A.C. 18:7-11.11.

18:7-13.7 Additional tax; change in Federal tax; interest to be charged

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commissioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, within 15 days after the date of the Division's assessment letter to the taxpayer, the taxpayer must remit that additional tax together with interest thereon at the rate of three percentage points above the prime rate assessed for each month or fraction thereof compounded annually at the end of each year, from the date such tax was originally due to the date of actual payment.

(b) However, if the taxpayer failed to notify the Director of any change in Federal net income within 90 days as required by the Act, any additional tax resulting from a change, plus interest thereon computed as indicated in (a) above, shall be deemed to have been due within 15 days after notification was required to be filed with the Director.

18:7-13.8 Claims for refund; when allowed

(a) The four-year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. For purposes of this section, the term "due date" means the original due date of the return. The term does not mean or include any extended due date.

(b) The four-year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment.

(c) For purposes of the application of this rule only:

1. A Tentative Return and Application for Extension of Time to File New Jersey Corporation Business Tax Return (Form CBT-200T) and an installment voucher are not returns;

2. A Corporation Business Tax Return (Form CBT-100) is a return; and

3. A Report of Changes in Corporate Taxable Net Income by the Internal Revenue Service (IRA-100) or a Form CBT-100 or CBT-100S for the appropriate tax year, with the words "AMENDED RETURN" clearly written on the front page of the form, is an amended return.

(d) When a taxpayer files a Report of Changes in Corporate Taxable Net Income by the Internal Revenue Service pursuant to N.J.A.C. 18:7-11.8(a) that results in a diminution of entire net income for any year, the four-year period for filing a claim for refund based on that diminution for the return year at issue begins on the date that taxable income is finally changed or corrected by the Internal Revenue Service. Such claims for refund must be filed with the Division of Taxation on Form A-3730. The Division may require additional information in order to properly determine the operative date of the Internal Revenue Service change or correction.

(e) When a taxpayer files an amended return with the Internal Revenue Service (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7-11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within four years of the later of filing or payment of the original return self-assessment (Form CBT-100).

(f) Where the Director makes an assessment and the taxpayer properly protests the assessment pursuant to N.J.A.C. 18:7-13.2, the taxpayer may establish that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. Upon audit and verification, the Director will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment pursuant to N.J.S.A. 54:49-16. After a final determination has been issued, the taxpayer has 90 days in which to appeal to the Tax Court if it is dissatisfied with the determination. The offset procedure is not considered a refund action pursuant to N.J.S.A. 54:49-14.

(g) Where the Director assesses additional tax by way of an additional assessment or final determination and the taxpayer pays the assessment, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim, unless the taxpayer follows the procedure prescribed in N.J.S.A. 54:49-14b and N.J.A.C. 18:2-5.5(c)1.

(h) If a taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A-8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7-8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the Corporation Business Tax Act, plainly noting on the filed returns its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7-10.1. In addition, a claim for refund must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) To claim a refund and amend Form CBT-100 or CBT-100S returns, the Form CBT-100 (or the Form CBT-100S for New Jersey S corporations) for the appropriate tax year shall be used. The words "AMENDED RETURN" shall be clearly written on the front page of the form, and it shall be mailed to:

Corporation Business Tax Refund Section
50 Barrack Street
PO Box 259
Trenton, NJ 08695-0259

The following examples apply to claims accruing on and after July 1, 1993:

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within four years of the filing of the delinquent Form CBT-100. A penalty for late filing of the Form CBT-100 may be imposed under N.J.S.A. 54:49-4.

Example 2: One year after filing a Form CBT-100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer files an amended tax return claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. Any taxpayer filing an amended return with the Internal Revenue Service must file an amended return with New Jersey within 90 days, see N.J.S.A. 54:10A-13. The periods of limitation to make deficiency assessments under N.J.S.A. 54:49-6 and to file claims for refund under N.J.S.A. 54:49-14 shall commence to run for additional four-year periods from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue; provided, that the additional periods of limitation shall only be applicable to the increase or decrease in tax attributable to the adjustments in such changed or corrected taxable income.

Example 3: Taxpayer receives an additional tax assessment with which it disagrees. Taxpayer does not contest the assessment with the Division or in the Tax Court within 90 days. Taxpayer pays the assessment within one year after the end of the 90-day protest period and 90-day appeal period and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. Taxpayer files a claim for refund within four years of having made its payment of the assessment but beyond 450 days after the 90-day protest period expires. Since the taxpayer did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:49-14a or follow the refund procedure established by N.J.S.A. 54:49-14b and N.J.A.C. 18:2-5.5(c)1, the claim must be rejected.

Example 4: Taxpayer did not contest an estimated tax assessment (N.J.S.A. 54:49-5). More than four years after having paid it, the taxpayer concludes that it was erroneous. Subsequently, the taxpayer files a Report of Changes in Corporate Taxable Net Income by the Internal Revenue Service (IRA-100) or a Form CBT-100 marked "AMENDED RETURN" relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

18:7-13.9 Payment of refunds; rejection of claims; interest on overpayments

(a)-(b) (No change.)

(c) If the Director shall reject the claim for refund in whole or in part, he or she shall make a determination accordingly and serve a notice upon the taxpayer.

(d) (No change.)

18:7-13.10 Refund for erroneous payments

(a) Where no questions of fact or law are involved and it appears from the records of the Director that any moneys have been erroneously or illegally collected from any taxpayer or have been paid by any taxpayer under a mistake of fact or law, the Director may at any time within two years of payment, upon making a record in writing of his or her reasons therefor, certify to the State Treasurer that the taxpayer is entitled to a refund.

(b) (No change.)

18:7-13.11 Lien of tax

(a) The tax imposed by the Act, including the required tax prepayment for accounting periods ending March 31, 1968, and thereafter, shall constitute a lien on all the taxpayer's property and franchises on and after January 1 of the year next succeeding the year in which it is due and payable.

1. All interest, penalties, and costs of collection that fall due or accrue shall be added to and become a part of this lien;

2. The lien date is not affected by an extension of time that may be granted for filing the return.

(b) Notwithstanding the provisions of any other law, all such taxes, interest, penalties, and costs imposed or incurred under the Act, whether levied or assessed or not, shall unless sooner paid continue and remain a lien on all of the taxpayer's property and franchises until the expiration of ten years after January 1 of the year in which they become due and payable.

18:7-13.12 Release of property from lien

(a) The Director may release any property from the lien of any tax, interest, or penalty imposed upon any corporation in accordance with the provisions of the Act, or of any certificate, judgment, or levy procured by him or her, upon written application made to him or her and upon payment of a $5.00 fee, provided:

1. Payment be made to the Director of such sum as he or she shall deem adequate consideration for release; or

2. Deposit be made of whatever security or bond the Director shall deem proper to secure payment of any debt evidenced by any tax, interest, penalty, cost of collection, certificate, judgment, or levy, the lien of which is sought to be released; or

3. (No change.)

(b) (No change.)

18:7-13.13 Certificate as to lien for unpaid corporation franchise taxes

(a) Upon the receipt of a written application accompanied by the fee provided for in subsection (b) of this section, the Director shall issue to the applicant a certificate certifying with respect to the corporation or corporations listed in the application one of the following:

1.-3. (No change.)

(b)-(c) (No change.)

(d) Any person who shall acquire for a valuable consideration an interest in lands covered by such a certificate in reliance thereon shall hold his or her interest free from any lien held by the State for unpaid corporation franchise taxes due pursuant to the provision of the Act and not shown on the certificate.

SUBCHAPTER 14. TAX CLEARANCE

18:7-14.1 Tax Clearance Certificate

(a) This section describes certain actions and certain transactions by corporations that require the prior issuance of a Tax Clearance Certificate by the Director of the Division of Taxation as evidence that all State taxes, penalties, interest, and fees have been paid or provided for in order to avoid a transferee liability to certain officers and directors.

(b) The following words and terms, when used in this section, have the following meanings unless the context clearly indicates otherwise:

"Authorized foreign corporation" means a corporation holding a general Certificate of Authority to do business in New Jersey issued by the Division of Revenue and Enterprise Services to the exclusion of any other authority, license, or right derived from any other source.

"Business entity" means a corporation, partnership, or limited liability company, whether organized under the laws of this State or under the laws of any other state or foreign jurisdiction, which is subject to taxation under any state tax law.

"Certification" means a writing on behalf of a corporation making an undertaking executed under oath of its president, vice president, or treasurer which represents that the corporation making the undertaking has a net worth not less than 10 times the amount of all taxes paid by a corporation applying for a Tax Clearance Certificate during the last complete year in which it filed tax returns with the State of New Jersey. Net worth, for this purpose, is net worth defined in the conventional accounting sense determined consistent with generally accepted

accounting principles and not as defined at N.J.S.A. 54:10A-4(d) of the Corporation Business Tax Act.

. . .

"Domestic corporation" means a corporation that received its charter under any law of the State of New Jersey.

"Foreign corporation" means any corporation other than a domestic corporation that is subject to taxes. The term includes entities that are taxable as such, as well as any entity obligated to withhold personal income taxes or to collect sales and use tax.

. . .

"Taxes" means all taxes, fees, penalties, and interest owing under any tax law of the State of New Jersey that are payable to or collectible by the Director.

"Undertaking" means a writing by a domestic corporation or by an authorized foreign corporation executed on its behalf by its president, vice president, or treasurer which undertakes, as surety and not as guarantor, to pay all taxes of a corporation applying for a Tax Clearance Certificate on or before the date such taxes are payable. Where more than one corporation undertakes to pay such taxes, the undertaking must be jointly and severally undertaken.

(c) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the surviving corporation is a domestic corporation or an authorized foreign corporation.

(d) No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation, or merge or consolidate, under the laws of any jurisdiction, into a foreign corporation that is not an authorized foreign corporation; and no domestic corporation may dissolve, and no authorized foreign corporation may withdraw as an authorized corporation (except only where that withdrawal is affected by its merger or consolidation under the laws of another state into a domestic corporation or into another foreign corporation which, itself, is an authorized corporation), unless the corporation shall have applied for and received a Tax Clearance Certificate from the Director of the Division of Taxation that is dated not earlier than 45 days prior to the effective date of the corporate action or transaction described.

(e) No business entity may merge or consolidate into any other business entity other than a domestic business entity or a foreign business entity authorized to transact business in this State, unless the business entity files or causes to be filed by the Division of Taxation with the Division of Revenue and Enterprise Services a certificate issued by the Director of the Division of Taxation dated not earlier than 45 days prior to the effective date of the business entity action evidencing that the business entity's taxes have been paid or provided for.

(f) The Tax Clearance Certificate is issued by the Director of the Division of Taxation upon application on the appropriate form to the Division of Revenue and Enterprise Services, which is accompanied by a statutory fee of $120.00 ($25.00 application fee and $95.00 dissolution withdrawal fee). All fees related to the application and final dissolution/withdrawal must be paid with the initial application for tax clearance in the form of a check or money order payable to "Treasurer, State of New Jersey." Failure to complete the tax clearance procedure will result in the forfeiture of the $120.00 fee. The Tax Clearance Certificate is dated and it voids and becomes a nullity 46 days after that date. The Tax Clearance Certificate is evidence that the requisite corporation business taxes have been paid or provided for only during the 45-day period succeeding the issuance of the Tax Clearance Certificate.

(g) The corporation's tax liability will be deemed ended as of the date the application is accepted by the Division of Revenue and Enterprise Services, as long as the tax clearance procedure is successfully concluded with the Division of Taxation. Although the business tax liability will end before the issuance of the Tax Clearance Certificate, any prior tax obligation will remain payable and must be satisfied before a Tax Clearance Certificate will be issued. If a Tax Clearance Certificate is not issued, the business tax liability will be reactivated as if there was no lapse in subjectivity.

(h) (No change.)

(i) A Tax Clearance Certificate may be issued under any one of three conditions:

1. Where an amount is deposited or paid on account which, in the judgment of the Director, is adequate to cover estimated taxes up to the date of the relevant corporation action. The amount that is deemed to be adequate is described in the instruction sheet accompanying the estimated summary tax return to be filed with the application; or

2. (No change.)

3. Solely in the case where:

i. (No change.)

ii. The application is accompanied by a written undertaking by the corporation or corporations that either own 50 percent or more of all classes of the applicant corporation's capital stock, or are a party together with the applicant corporation in the type of reorganization described at I.R.C. § 368(a)(1)(C), and the application is accompanied by a legal opinion signed by an attorney at law of the State of New Jersey who states that he or she is familiar with the facts of the transaction to the effect that all of the above requirements are met.

(j) As a condition of issuing any Tax Clearance Certificate, the Director may require evidence by affidavit, or by any other means that seems to him or her appropriate, that any foreign corporation that is not an authorized foreign corporation and that is a party to the transaction causing any corporation to seek a Tax Clearance Certificate has, itself, paid all taxes that it owes.

Example: A foreign corporation that is not subject to the corporation business tax or any property tax in New Jersey may be obligated to withhold personal income taxes or to remit sales and use tax. Such taxes must be paid whether or not withheld from employees or charged to customers.

(k) Whenever necessary to properly reflect the entire net income of any taxpayer, the Director may determine the year or period in which any item of income or deduction shall be included, without being limited to the method of accounting employed by the taxpayer.

Example: A foreign corporation sold a piece of property located in this State at a substantial gain that it has elected to report on the installment method of accounting for Federal income tax purposes. Before it has recognized all of the gain on this sale, the foreign corporation withdraws from the State and cancels its Certificate of Authority to do business.

(l) (No change.)

(m) See N.J.A.C. 18:7-14.5 for the streamlined dissolution or withdrawal procedure.

18:7-14.2 Actions not requiring the prior issuance of a Tax Clearance Certificate

(a) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the surviving corporation is a domestic corporation or an authorized foreign corporation.

(b) A corporate dissolution before commencing business may occur without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12-2(3).

(c) A dissolution of a corporation without assets may occur without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12-4.1(3).

(d) See N.J.A.C. 18:7-14.5 for the streamlined dissolution or withdrawal procedure.

18:7-14.3 Actions and transactions requiring the prior issuance of a Tax Clearance Certificate in order to avoid a personal liability to certain officers and directors

(a) No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation, or consolidate with another corporation to form a new corporation or merge into a foreign corporation that is an unauthorized foreign corporation, and no domestic corporation may dissolve (except as may be provided by law), and no authorized foreign corporation may withdraw its authority to do business in New Jersey, unless the foreign corporation shall have applied for and received a Tax Clearance Certificate from the Director of the Division of Taxation.

(b) See N.J.A.C. 18:7-14.5 for the streamlined dissolution or withdrawal procedure.

18:7-14.4 Forms and instructions regarding procedure to obtain a Tax Clearance Certificate

(a) The forms for the closure of operations in New Jersey may be:

1. Downloaded from the Division of Revenue and Enterprise Services website http://www.nj.gov/treasury/revenue/dissforms.shtml.

18:7-14.5 Streamlined dissolution or withdrawal procedure

(a) Notwithstanding any rule or regulation to the contrary, the streamlined dissolution or withdrawal process begins when a corporation submits all required forms with proper remittance to:

New Jersey Division of Revenue and Enterprise Services
Business Liquidations
PO Box 308
Trenton, NJ 08625

(b) Remittance shall be in the form of a single check or money order payable to "Treasurer, State of New Jersey" in the amount of $120.00. This amount represents the formerly separate $25.00 fee to the New Jersey Division of Taxation and the $95.00 dissolution fee to the Division of Revenue and Enterprise Services. The full payment shall be forfeited if the applicant does not complete the tax clearance procedure.

(c) The applicant's tax eligibility will be deemed ended with the Division of Taxation on the date the application for dissolution or withdrawal is accepted by the Division of Revenue and Enterprise Services, provided that the tax clearance procedure is successfully concluded with the Division of Taxation. Although the business tax eligibilities end before the issuance of the Tax Clearance Certificate, all prior tax obligations remain payable and must be satisfied before a Tax Clearance Certificate will be issued. If a Tax Clearance Certificate is not issued, the business tax eligibilities of the taxpayer will be reactivated as if there had been no lapse in subjectivity.

(d) (No change.)

SUBCHAPTER 16. (RESERVED)

SUBCHAPTER 17. PARTNERSHIPS

18:7-17.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Nonresident corporate partner" means a partner that is not an individual, estate, or trust subject to taxation pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Nonresident corporate partners include:

1. Entities that are classified as partnerships for Federal income tax purposes;

2. Entities that are classified as corporations for Federal income tax purposes that:

i. Are not corporations exempt from tax pursuant to N.J.S.A. 54:10A-3; or

ii. Do not maintain a regular place of business, as defined in N.J.A.C. 18:7-7.2, in New Jersey.

. . .

18:7-17.2 Subjectivity

(a) For privilege periods beginning on or after January 1, 2002, a partnership, including any entity that is classified as a partnership for Federal income tax purposes, except a qualified investment partnership as defined herein (see N.J.A.C. 18:7-1.21) or a partnership listed on a United States national stock exchange, shall file a return on a form prescribed by the Director and remit tax under these rules.

(b) Entities that meet the requirements of N.J.S.A. 54A:5-8(c) are commonly referred to as "hedge funds." Income received by a nonresident individual, estate, or trust from a "hedge fund" is exempt from tax under the New Jersey gross income tax because it is not deemed to be carrying on from a trade or business.

1. In those situations in which partnerships do not meet the definition of qualified investment partnerships in N.J.S.A. 54:10A-4(r) (which would automatically exempt partnerships from partnership payments under N.J.S.A. 54:10A-15.11a), and if all of the income derived from the hedge fund partnership by the partners is not subject to New Jersey gross income tax, the partnership is not required to remit a payment of tax on behalf of its nonresident, noncorporate partners, since the income to the nonresidents is not considered subject to tax in New Jersey.

(c) P.L. 2001, c.136, applies to privilege periods beginning on and after January 1, 2001, and before January 1, 2002.

18:7-17.4 Extension of time to file returns

No extension will be granted unless the request is made on Partnership Tentative Return and Application for Extension of Time to File Form PART-200T and the form is actually received by the Division of Taxation or is postmarked on or before the due date of the return. (See N.J.A.C. 18:7-11.12 for additional standards for extension of time to file.)

18:7-17.5 Calculation of tax

(a) The tax to be paid shall be the total of:

1. The share of entire net income of the partnership for the privilege period of all nonresident noncorporate partners multiplied by an allocation factor determined pursuant to N.J.S.A. 54:10A-6 and using the partnership's allocation fractions multiplied by the tax rate of .0637; plus

2. The share of entire net income of the partnership for the privilege period of all nonresident corporate partners multiplied by an allocation factor determined pursuant to N.J.S.A. 54:10A-6 and using the partnership's allocation fractions multiplied by the tax rate of .09.

3. As used in this subsection, the term "entire net income" as applied to partnerships means distributive share of partnership income for Federal purposes plus tax exempt interest income as shown on the Form Federal K-1.

(b) (No change.)

(c) A partnership must have a regular place of business as defined under N.J.A.C. 18:7-7.2 outside the State of New Jersey in order to allocate a portion of its income outside New Jersey. For purposes of this subchapter, each regular place of business of a partnership that is unitary with a corporate partner who is filing a return in this State is to be treated as a regular place of business of the corporate partner. See N.J.A.C. 18:7-17.8(d).

18:7-17.6 Credit or refund

(a) As of the date the Division of Taxation receives the payment, the amount of tax paid by a partnership pursuant to N.J.A.C. 18:7-17.5 shall be credited to accounts of its nonresident partners in proportion to each nonresident partner's share of allocated entire net income and the rate for that partner class set forth in N.J.A.C. 18:7-17.5.

(b) (No change.)

(c) A nonresident noncorporate partner and a nonresident corporate partner may claim a credit on their own New Jersey returns for the amount of tax allocated to them by the partnership. Any excess tax payments may be refunded to the partner.

(d) Since partners may wish to claim a credit or refund for tax payments made on their behalf by a partnership, there may be an advantage if certain partnerships issue Form NJ-K1's as soon as possible after the close of the tax period.

(e) Example: A partnership has a fiscal year ending on January 31. The partnership tax payment on behalf of foreign partners is due May 15. The amount of payment on behalf of partners will not be credited to the accounts of partners until the date received by the Division of Taxation.

1. Accordingly, a calendar year partner, whose first quarter estimated payment is due by April 15 cannot take a credit against its April 15 estimated payment, for the partnership's May 15 tax payment that has not yet been received by the Division.

(f) Payments remitted on unauthorized or improperly prepared returns will be credited on the date the Division of Taxation is able to post the payment properly.

18:7-17.7 Estimated return

A partnership that is not a qualified investment partnership or an investment club and that is not listed on a United States national stock exchange shall be required to make installment payments of tax. For privilege periods beginning on January 1, 2007, and thereafter, those partnerships that are required to make tax payments pursuant to N.J.S.A.

54:10A-15.11a.(1) shall make installment payments of 25 percent of that tax on or before the 15th day of each of the fourth month, sixth month, and ninth month of the privilege period and on or before the 15th day of the first month succeeding the close of the privilege period. A partnership required to make such payments shall be deemed to make them subject to the provisions of N.J.S.A. 54:10A-15.4 and shall be liable for any addition to tax provided thereunder.

18:7-17.8 Certain corporate partners; exemption form

(a) (No change.)

(b) If a partnership erroneously makes a tax payment to the Division of Taxation on behalf of an entity that is exempt, the exempt entity must establish that the money has actually been paid to the State by the partnership, and the entity is actually exempt, in order to qualify for a refund.

(c) If a New Jersey S corporation, that does not have a place of business in New Jersey is a partner in a partnership, a tax payment is made on its behalf at the nine percent rate, since the corporation does not have a regular place of business in New Jersey.

(d) For purposes of this subchapter, each regular place of business of a partnership that is unitary with a corporate partner is to be treated as a regular place of business of the corporate partner. See N.J.A.C. 18:7-7.6(g) and (h)1.

(e) If a partner in a partnership is a qualified I.R.C. § 501(c)(3) charity or any retirement plan approved by the Internal Revenue Service, the partner may file Form 1065E with the partnership to relieve the partnership from making a payment measured by the partner's share. At present, New Jersey does not impose a tax on unrelated business income.

Example: A New Jersey general partnership has a unitary relationship under the criteria set forth at N.J.A.C. 18:7-7.6(g)3 with a corporate partner located in Illinois. As a result of this relationship the corporate partner is considered to have a regular place of business in the State and is not a "nonresident corporate partner." This partner may file a Form 1065E with the partnership so that no tax payments will be made by the partnership on the partner's behalf.

18:7-17.9 Allocation of tax for partners that are corporations

Separate accounting apportionment shall be used if a corporate partner and partnership are not in a unitary relationship in which the apportioned income of the partnership and partner (excluding the partner's distributive share) are added together. When a corporation and a partnership are in a unitary relationship, then a blended or combined allocation factor should be used. This allocation factor is derived by adding the partnership and corporation allocation fractions together and applying the combined factor to the corporation's entire net income including its distributive share of the partnership's income (see N.J.A.C. 18:7-7.6(g)).

18:7-17.10 Electronic filing

(a) A partnership subject to the provisions of the Corporation Business Tax Act shall file its return and make payment of its liability by electronic means, if it has 10 or more partners, provided that the return is not prepared by a paid tax preparer. Payments of partnership liabilities and fees along with the submission of payment-related returns, such as the Partnership Return Voucher (Form Part-100) and the Partnership Tentative Return and Application for Extension of Time to File (Form Part 200-T), by a partnership subject to the provisions of the Corporation Business Tax Act with more than 10 partners shall be made electronically.

(b) A paid tax preparer who prepares returns for partnerships subject to the provisions of the Corporation Business Tax Act shall file electronically all of the partnership returns prepared by that preparer during the tax year as instructed by the partners of the partnership. Payment of the partnership liabilities and fees along with the submission of payment-related returns, such as the Partnership Return Voucher (Form Part-100) and the Partnership Tentative Return and Application for Extension of Time to File (Form Part 200-T), either by the partners or by a paid tax practitioner as instructed by the partners of the partnership shall be made electronically.

SUBCHAPTER 18. ALTERNATIVE MINIMUM ASSESSMENT

18:7-18.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Affiliated group" means a group of corporations defined as an affiliated group by I.R.C. § 1504, or any successor Federal law, that files a consolidated Federal income tax return for the privilege period pursuant to I.R.C. §§ 1501 through 1504.

"Cost of goods sold" means the cost of goods sold calculated pursuant to the same method used by the taxpayer for the purpose of computing its Federal income tax (including, for example, and without limitation, I.R.C. § 263A) multiplied at the taxpayer's election by (1) either the allocation factor computed pursuant to N.J.S.A. 54:10A-6; or (2) the receipts fraction of the allocation factor (N.J.A.C. 18:7-10.1 regarding discretionary adjustments of the allocation factor by the Director). In a particular case, the Director may use another input or expenditure that is necessary to measure fairly and reasonably the business activity of the taxpayer.

"Key corporation" means a single member within an affiliated group designated by the group to act as a "clearinghouse" for adjustments made by or to members of the group. For privilege periods commencing after June 30, 2006, key corporations are not permitted for reporting for any other tax purposes in New Jersey.

. . .

"New Jersey gross profits" means New Jersey gross receipts reduced by returns and allowances attributable to New Jersey gross receipts, less the cost of goods sold. See N.J.S.A. 54:10A-5a.

"New Jersey gross receipts" means the receipts of the taxpayer for the privilege period, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for Federal tax purposes arising during the privilege period from:

1. (No change.)

2. Sales of tangible personal property located outside the State at the time of the receipt of or appropriation to the order where shipment is made to points within the State;

3.-5. (No change.)

. . .

18:7-18.2 Alternative minimum assessment

(a) For privilege periods beginning on or after January 1, 2002, all New Jersey taxpayers except those enumerated in N.J.A.C. 18:7-18.3 are required to pay New Jersey corporation business tax computed under N.J.S.A. 54:10A-5 or the alternative minimum assessment computed under N.J.S.A. 54:10A-5a, whichever is greater. There are two methods of determining the alternative minimum assessment. One is based on New Jersey Gross Receipts, and the other is based upon New Jersey Gross Profits.

(b) For privilege periods beginning on and after July 1, 2006, the alternative minimum assessment shall be $0.00 except for corporations exempt from the corporation business tax on net income by virtue of the application of 15 U.S.C. §§ 381 et seq. (P.L. 86-272). For such taxpayers, the alternative minimum assessment shall continue to be computed in accordance with N.J.S.A. 54:10A-5a.

(c) For privilege periods beginning on and after January 1, 2007, a taxpayer exempt from corporation business tax on net income by virtue of the application of 15 U.S.C. §§ 381 et seq. (P.L. 86-272), that files a consent to the jurisdiction of this State to impose and pay the tax pursuant to N.J.S.A. 54:10A-5 shall have an alternative minimum assessment of $0.00.

18:7-18.4 Calculation of the alternative minimum assessment

(a) The computation of the alternative minimum assessment (AMA) based on New Jersey gross profits is calculated as follows:

1. (No change.)

(b) The computation of the AMA based on gross receipts is calculated as follows:

1. (No change.)

(c) For the first privilege period that the taxpayer pays the AMA, the taxpayer may select a computation method for the AMA, based either on

gross profits or gross receipts. Once selected, that method must be employed for that privilege period and for the next succeeding four privilege periods.

(d) The maximum AMA for an individual corporation for a privilege period is $5,000,000. For an affiliated group of corporations, the maximum AMA is $20,000,000. If the $20,000,000 threshold is claimed by an affiliated group, the group must name a key corporation to act as a clearinghouse for adjustments to members of the group.

1. An affiliated group's AMA tax cannot be more than $20,000,000 less its corporation business tax (CBT) liability. Form 401 assists taxpayers in calculating the AMA threshold limit. Form 401, Column C, reflects the CBT liability of each corporation in the affiliated group, including the designated key corporation. Form 401, Column D, reflects the amount of AMA that each corporation in the group would be liable for in excess of each corporation's CBT liability. The total CBT liability is subtracted from $20,000,000. The resulting amount, if greater than zero, is the total AMA payable by the designated key corporation. Accordingly, if the amount is zero or less, all corporations are relieved of paying any AMA.

2. (No change.)

3. If it wishes to do so, a group can change its key corporation each year to allow a different entity to pay the AMA on behalf of the group so that such entity will be due the credit for excess AMA payments in 2007 when the credit against CBT is calculated.

4. Examples:

Example 1. (No change.)

Example 2. An affiliated group has 10 corporations. The total CBT liability of the group is $7 million, of which the key corporation's CBT liability is $1 million. When the group calculates its AMA liability, the group discovers that its total AMA liability is $50 million of which $43 million is in excess of its CBT liability of $7 million. However, because of the $20 million cap and the reduction in the cap for CBT payments, the group's AMA liability cannot be more than $13 million ($20 million less the group's CBT liability of $7 million). The total tax, paid by the key corporation, for itself and the members of the group that are listed on Form 401 is $14 million. This is made up of its $1 million in key corporation's CBT liability plus the $13 million AMA. The key corporation would reflect its own CBT liability on line 13 of Form CBT-100, page 1 and the $13 million key corporation AMA payment on line 17 of Form CBT-100, page 1. Each of the other members of the group would list its own CBT liability on line 13 of Form CBT-100, page 1 of its own return. The total amount of CBT liability shown on the returns of the other members of the group is $6 million.

Example 3. An affiliated group has 10 corporations. The total CBT liability of the group is $7 million, of which the key corporation's CBT liability is $1 million. If the group's excess AMA had been $9 million instead of $43 million (as in Example 2) the key corporation would be liable for $9 million AMA since the $20 million cap was not reached. The total tax, paid by the key corporation, for itself and the members of the group that are listed on Form 401, is $10 million. This is made up of the $1 million key corporation's CBT liability plus the $9 million AMA. The key corporation would reflect its own CBT liability on line 13 of Form CBT-100, page 1 and the $9 million key corporation AMA payment on line 17 of Form CBT-100, page 1. Each of the other members of the group would list its own CBT liability on line 13 of Form CBT-100, page 1 of its own return. The total amount of CBT liability shown on the returns of the other members of the group is $6 million.

(e) If a taxpayer has a short period return, the thresholds and caps provided by statute and this subchapter are prorated. For example, a taxpayer whose privilege period is six months shall become subject to tax under the gross profits method when gross profits are $500,000 or greater and under the gross receipts method when gross receipts are $1,000,000 or more. Similarly, for an individual corporation having a six month privilege period, the maximum alternative minimum tax shall be $2,500,000 or for an affiliated group of corporations shall be $10,000,000.

18:7-18.5 Alternative minimum assessment credits

(a) If the alternative minimum assessment (AMA) for a taxpayer exceeds the amount of tax computed under N.J.S.A. 54:10A-5 for a privilege period, that excess amount shall be permitted to the taxpayer as a credit unless such taxpayer is also entitled to a credit pursuant to N.J.S.A. 54:10A-5b (for certain air carriers pursuant to 49 U.S.C. § 40102).

(b) The credit may be carried forward to subsequent privilege periods, including periods when the AMA is no longer applicable, during which the tax pursuant to N.J.S.A. 54:10A-5 exceeds the AMA provided that:

1. The credit applied shall not reduce the amount of tax otherwise due to an amount less than the AMA for that period;

2.-3. (No change.)

(c) (No change.)

18:7-18.6 Gross receipts calculation; agency businesses

(a) Under the applicable accounting principles for several industries, cash flow relating to the underlying product is not considered a receipt of the taxpayer. Using this approach, a taxpayer in such a business may report as its gross receipts for Federal purposes fees it receives from its customers. This methodology enables certain high volume, low margin industries to achieve an accurate reflection of their tax liability when calculating the alternative minimum assessment (AMA).

1.-2. (No change.)

SUBCHAPTER 19. FILING FEE PAYMENTS BY PROFESSIONAL CORPORATIONS

18:7-19.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Licensed professional" means, and is limited to, persons rendering a professional service as defined in N.J.S.A. 14A:17-3(1).

. . .

18:7-19.2 Payment of filing fee

(a) (No change.)

(b) If a professional corporation includes nonresident professionals, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the professional corporation filing fee may be used, provided that the professional corporation has an office outside New Jersey.

(c) (No change.)

(d) Example: A professional corporation has an office in Washington, D.C. It has 100 professionals in that office. Three of the attorneys travel from Washington to Newark, N.J. for a trial. As the result of their legal work in New Jersey, the firm receives a $1,000,000 legal fee. The professional corporation's New Jersey allocation factor for 2002 is 0 property, 0 payroll, $1,000,000 New Jersey receipts divided by $10,000,000 receipts everywhere which equals

(0 + 0 + 1/10 + 1/10) ÷ 4 = 0.05.

The professional corporation fee is then calculated as follows:

0 Resident professionals = 0

Three nonresident professionals with physical nexus to New Jersey:

3 x $150.00 = $450.00

97 nonresident professionals without physical nexus

97 x $150.00 = $14,500

$14,550 x 0.05 = $727.50

Total of 0 + $450.00 + $727.50 = $1,177.50 total professional fee of the corporation for 2002.

(e) In calculating the number of licensed professionals of the corporation, a quarterly average is used. All professionals of the corporation are counted, regardless of the nature of their relationship to the corporation. They are included whether they are shareholders, employees, or owners and regardless of the nature of the licensed profession that they practice.

Example 1: (No change.)

Example 2: A nursing home that is a professional corporation has 10 physicians and 10 licensed registered nurses, half of which are nonresidents that have no physical nexus in New Jersey. The

professional corporation has a New Jersey business allocation factor of 50 percent. The professional fee payment is $2,250 ((5 + 5) x $150.00) plus ((5 + 5) x $150.00) x 50 percent) plus an installment payment of $1,125 (50 percent of $2,250).

(f) (No change.)

18:7-19.3 Installment payment

(a) Each professional corporation required to make a payment of the professional corporation filing fee shall, on or before the 15th day of the fourth month of its fiscal year, make an installment payment of its filing fee for the succeeding return period. The amount of the installment payment is 50 percent of the amount required to be paid for the present fiscal year.

(b)-(c) (No change.)

18:7-19.4 Penalty and interest

For purposes of tax administration, the filing fee and installment payments pursuant to this subchapter are subject to the provisions of the State Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. Collection of the filing fee and installment payments shall be enforced pursuant to the terms of that Act, including, without limitation thereto, penalty and interest and cost of collection provisions.

SUBCHAPTER 20. TREATMENT OF S CORPORATIONS

18:7-20.1 S corporations

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

1. "Federal S corporation" means a corporation making a valid election under Federal law (I.R.C. § 1361), to be an S corporation. For the definition of "S corporation" as used in this section, see N.J.A.C. 18:7-1.18.

2. "New Jersey S corporation" means an S corporation that has made a valid election under N.J.S.A. 54:10A-5.22, and that has been an S corporation since such election. For a definition of "New Jersey S corporation" see N.J.A.C. 18:7-1.19. For purposes of this section, a New Jersey S corporation also refers to a parent of a New Jersey Qualified Subchapter S Subsidiary.

3. "S corporation shareholder" means an individual, an estate, or a trust owning a share(s) in an S corporation.

(b) (No change.)

(c) A Federal S corporation must file a New Jersey Subchapter S Election form (CBT-2553) to elect treatment as a New Jersey Subchapter S corporation, to treat its subsidiary as a New Jersey Qualified Subchapter S Subsidiary (see N.J.A.C. 18:7-20.2), or to report a change in shareholders.

1. A Federal S corporation may make an election to be treated as a New Jersey S corporation if it meets all of the following criteria:

i. The corporation is or has applied to be an S corporation pursuant to I.R.C. § 1361;

ii.-iii. (No change.)

iv. The beneficiary of a qualified Subchapter S trust must make an election to be treated as the owner of the trust so that the trust will be eligible to hold stock and the beneficiary will be treated as the stockholder. If the trust is a shareholder at the time the S corporation election is made, the beneficiary's election may be made on the New Jersey Form CBT-2553 or on a separate consent statement to be attached to the Form CBT-2553. If the stock is acquired after the S corporation election is made, the beneficiary's election is made on a separate statement;

v. (No change.)

vi. Shareholder elections may be made on Form CBT-2553 or on separate consent statements which may be attached to Form CBT-2553;

vii. For S corporations having shareholders that are trusts, the trust beneficiaries or trust owners must join in the filing of the New Jersey Form CBT-2553. Both the trusts and the trust beneficiaries and/or owners must sign and consent to New Jersey's jurisdiction and right to tax, on the Form CBT-2553. (See (c)1iii above.)

(1) If an initial shareholder were to transfer stock to a trust which qualifies as a grantor trust of which the shareholder is a grantor, a new Form CBT-2553 shall be signed and filed by the Trustee;

viii. For an electing small business trust (ESBT) that is a shareholder of a Federal S corporation seeking to elect New Jersey S corporation status, shareholder consent must be signed by the trustee of the ESBT; and

ix. An Employee Stock Ownership Plan (ESOP) may be a shareholder of a New Jersey S corporation.

2. The fully completed and duly executed Form CBT-2553 shall be filed within one-calendar month of the time at which a Federal S corporation election would be required. Specifically, this form must be filed at any time before the 16th day of the fourth month of the first tax year the election is to take effect. If the tax year has 3 1/2 months or less remaining, and the election is made not later than three months and 15 days after the first day of the tax year, it shall be treated as timely made during such year. An election made by a small business corporation after the 15th day of the fourth month but before the end of the tax year is treated as having been made for the following year. A small business corporation is one that is defined in I.R.C. § 1361(b).

i. (No change.)

3. (No change.)

4. Corporations that are void must be reinstated before an S election can be granted. Failure to reinstate by the S election due date precludes the New Jersey S election from being effective for that tax year.

(d) The reporting requirements for S corporations are as follows:

1. An S corporation making an election to be treated as an S corporation in New Jersey shall file an S corporation Corporation Business Tax Return (Form CBT-100S) along with a Schedule NJ-K-1 for each shareholder.

i. Foreign corporations that meet the filing requirements and whose income is immune from New Jersey tax pursuant to Public Law 86-272, 15 U.S.C. § 381 et seq., must obtain and complete Schedule N, Nexus-Immune Activity Declaration, and remit the minimum tax with the Form CBT-100S.

2. For New Jersey corporation business tax purposes, a Federal S corporation that fails to elect New Jersey S corporation status, or has not been approved for New Jersey S corporation status files its tax return as a C corporation on Form CBT-100 and calculates its New Jersey allocation factor in order to determine its net income or loss allocated to New Jersey.

(e) If a corporation that has elected New Jersey S corporation status loses its Federal S corporation status during the taxable year, and, therefore, ceases to be a New Jersey S corporation, but continues its corporate existence, the corporation must file a New Jersey S corporation return (Form CBT-100S) for the short period ending on the day before the disqualifying event and a C corporation short period return (Form CBT-100) for the remainder of the year.

1. The due date for the return for the short period is the 15th day of the fourth month after the close of the period. An automatic six-month extension of time to file the Form CBT-100S is available by making a tentative return and paying the tentative tax on Form CBT-200 T on or before the due date of the return.

(f) In general, once an election is made and accepted, a corporation remains a New Jersey S corporation as long as it is a Federal S corporation unless the election is revoked pursuant to N.J.S.A. 54:10A-5.22(d).

1. To revoke an election, a letter of revocation signed by all shareholders holding more than 50 percent of the outstanding shares of stock on the day of the revocation must be filed. A copy of the original election form must accompany the letter of revocation.

2. (No change.)

(g) A foreign business entity that is not required to be authorized to transact business in New Jersey in accordance with N.J.S.A. 14A:13-3 but that wishes to elect a New Jersey S Corporation status must submit to the Division of Revenue and Enterprise Services a completed New Jersey S Corporation Certification form (Form CBT-2553-Cert), along with a completed Form CBT-2553. A properly executed certification form affirms that the corporation has not engaged in any activities within New Jersey that would require the corporation to obtain a Certificate of Authority as required by N.J.S.A. 14A:13-3.

18:7-20.2 Qualified Subchapter S Subsidiaries (QSSS)

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

1. "Qualified Subchapter S Subsidiary" (QSSS) means and includes a domestic corporation that is a wholly owned subsidiary of a Federal S corporation and for which a valid election has been made by the parent S corporation to be treated as a QSSS for Federal income tax purposes.

2. "New Jersey Qualified Subchapter S Subsidiary" (NJ-QSSS) means and includes a Federally qualified QSSS, wholly owned by a New Jersey S corporation, and for which the parent and the New Jersey S corporation make a valid NJ-QSSS election as set forth in these regulations.

(b) (No change.)

(c) A New Jersey S corporation seeking recognition as a New Jersey Qualified Subchapter S Subsidiary (NJ-QSSS), must meet the following requirements:

1. (No change.)

2. The parent shareholder must consent to New Jersey taxation of its QSSS's income allocation by filing a Form CBT-100S that includes the assets, liabilities, income, and expenses of the QSSS. The property, receipts, and payroll of the QSSS must be included in the parent's allocation factor. Failure of the parent either to consent or to file a Form CBT-100S for any period will result in the denial of NJ-QSSS status, and the subsidiary will be subjected to taxation in New Jersey as a C corporation;

3. The New Jersey S corporation electing to be recognized as a QSSS must file a completed and properly executed Form CBT-2553 by which its parent New Jersey S corporation consents to taxation of the QSSS's income and calculation of allocation fractions and factor by New Jersey. Form CBT-2553 must be executed by a qualified corporate officer of the New Jersey S corporation and by an authorized officer of the parent New Jersey S corporation. Form CBT-2553 must be filed before the 16th day of the fourth month of the first tax year that the NJ-QSSS election is to take effect; and

4. Any Federal S corporation that is treated Federally as a QSSS may be recognized in New Jersey as a NJ-QSSS provided that the conditions of this subsection have been met.

(d) Regardless of any provision in this section, every qualified NJ-QSSS must file a Form CBT-100S and pay the applicable minimum tax. Unless the NJ-QSSS formally dissolves by making the requisite filing through the Division of Revenue and Enterprise Services, it is required to file annually a corporation business tax return, remit the required tax, and make an annual report to the New Jersey Division of Revenue and Enterprise Services. A failure to file a New Jersey Form CBT-2553 containing the corporate parent's consent to taxation by New Jersey will result in the denial of New Jersey QSSS status and will subject the entity to taxation in New Jersey as a C corporation.

(e) A Federal QSSS that elects to be treated as a NJ-QSSS for New Jersey tax purposes and that has previously filed the necessary election form (Form CBT-2553) may request to have the estimated corporation business tax payments transferred to its parent corporation's account for the year in which the New Jersey QSSS election was made. The NJ-QSSS must submit a written request, signed by an officer of the NJ-QSSS, together with a copy of the New Jersey S corporation election form (Form CBT-2553) to the New Jersey Division of Taxation. The Division of Taxation will transfer to the parent all of the NJ-QSSS's estimated payments except for a designated amount that will be used to satisfy the NJ-QSSS's current year minimum tax liability and the 50 percent estimated tax payment for the subsequent year.

(f) The following examples are provided for illustration.

Example 1:

Taxpayer is an S corporation for Federal and New Jersey purposes, is headquartered in Illinois, and has branches in New Jersey and other states. It recently set up a North Carolina QSSS, which made the appropriate election to be treated as a disregarded entity for Federal purposes. Other than being a subsidiary of the parent, the QSSS has no operations in New Jersey.

The taxpayer intends to include income of the North Carolina QSSS in its allocation factor in order to allocate the parent's income among the various states in which it does business, including New Jersey. This treatment is permitted in New Jersey provided that the North Carolina QSSS registers with New Jersey or has filed a Form CBT-2553-Cert, files a separate Form CBT-100S, and pays the minimum tax. If the foreign QSSS does not register or file a completed Form CBT-2553-Cert, the income does not flow up to the parent's return.

Example 2:

A holding company was set up in November with a calendar year end. An S election for Federal and New Jersey purposes was made for the new holding company effective from its inception. After the new company was set up, it acquired all the shares of two existing Federal S corporations having a calendar-year accounting period, from the same owner. Federal and New Jersey QSSS elections are made effective in November. One of the acquired corporations is a New Jersey S corporation, the other is a New Jersey C corporation.

The new holding company can make a timely New Jersey S corporation election since it was set up in November. The two acquired corporations, which change shareholders during their accounting year, cannot make New Jersey elections because their taxable years began in January. For the acquired corporations, the time limit to make valid New Jersey S corporation elections had already passed for that year.

18:7-20.3 Retroactive New Jersey S corporation elections

(a) A taxpayer that is authorized to do business in New Jersey, is registered with the Division of Taxation, and has filed Form NJ-CBT-100S tax returns with New Jersey but has failed to file a timely New Jersey S corporation election may file a retroactive election to be recognized as a New Jersey S corporation.

(b) (No change.)

(c) A retroactive New Jersey S corporation or Qualified Subchapter S Subsidiary election will not be granted if:

1.-2. (No change.)

3. The Division of Taxation has issued a notice denying a previous late filed New Jersey S election request, and the taxpayer has not protested the denial within 90 days; or

4. All shareholders have not filed appropriate tax returns and paid tax in full when due as if the New Jersey S corporation election request had been previously approved, and the taxpayers have not reported the appropriate S corporation income on their returns.