

authorized facilities for testing. Submissions shall include all associated hardware, software, written operating manuals, and technical information in order to allow the testing facility and the Commission to determine whether the electronic amusement complies with applicable requirements established by the Commission. The authorized testing facility shall perform such tests, as shall be necessary, to determine that the electronic amusement meets applicable requirements.

(d) Upon conclusion of testing, the authorized testing facility shall provide the Legalized Games of Chance Control Commission with a report that contains findings, conclusions, and a determination of whether the electronic amusement meets the applicable requirements of the Commission set forth in this chapter.

(e) The Legalized Games of Chance Control Commission shall not be liable for any damage or destruction of an electronic amusement that is submitted for testing pursuant to this section.

(f) The applicant shall pay directly to the authorized testing facility any and all costs associated with testing the electronic amusement.

(g) If granted, approval extends only to the specific electronic amusement approved. Any modification must be approved by the Legalized Games of Chance Control Commission.

(h) Once an electronic amusement certified pursuant to N.J.A.C. 13:3-7.9(a)10 has been approved, the Legalized Games of Chance Control Commission may retain the amusement for further testing and evaluation for, as long as the Commission deems necessary. A licensee shall retrieve the electronic amusement if requested by the Commission at the licensee's expense. Failure to do so will result in the licensee relinquishing its rights to the electronic amusement, and the Commission shall dispose of the electronic amusement, as it deems appropriate.

TREASURY—TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax Act—Combined Reporting, Net Operating Losses, Tax Returns, and Other Matters

Proposed Amendments: N.J.A.C. 18:7-1.3, 1.14, 1.16, 1.17, 2.1, 3.4, 3.6, 3.10, 3.13, 3.15, 3.16, 3.23, 5.2, 5.11, 5.12, 5.13, 5.14, 5.15, 7.6, 8.3, 8.7, 8.8, 8.10A, 8.12, 10.1, 11.6, 11.7, 11.8, 11.12, 11.15, 11.17, 11.18, 12.1, 12.2, 12.3, and 13.8

Proposed New Rules: N.J.A.C. 18:7-1.24, 1.25, 3.23A, 3.26, 3.27, 3.28, 3.29, 5.21, 5.22, 5.23, 11.17A, and 21

Authorized By: John J. Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27 and 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-067.

Submit written comments by July 15, 2022, to:

Elizabeth J. Lipari
Administrative Practice Officer
Division of Taxation
3 John Fitch Way
PO Box 269
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Email: Tax.RuleMakingComments@treas.nj.gov

The agency proposal follows:

Summary

Pursuant to P.L. 2018, c. 48; P.L. 2018, c. 131; P.L. 2020, c. 95; P.L. 2020, c. 118; and P.L. 2021, c. 90, which collectively amend statutes related to the corporation business tax, the Division of Taxation (Division) is proposing amendments and new rules to implement the statutory requirements of the laws. The proposed rulemaking provides new and amended rules for net operating loss deductions and filing combined returns. The proposed rules also make amendments to existing rules to address Federal tax reform measures applicable for tax years beginning on and after January 1, 2017, and to address a reduced dividend exclusion, as well as provisions of the Internal Revenue Code from which New Jersey has decoupled.

P.L. 2018, c. 48, as amended, clarified, and supplemented by P.L. 2018, c. 131, and P.L. 2020, c. 118, revised the law regarding the applicability of net operating losses and net operating loss carryovers, so that the net operating losses and net operating loss carryovers must be taken on a post-allocation basis for privilege periods ending on and after July 31, 2019, (that is, privilege periods beginning on and after August 1, 2018, for a full-year fiscal taxpayer). The law converts pre-allocation net operating loss carryovers from privilege periods ending before July 31, 2019, to post-allocation net operating loss carryovers. P.L. 2020, c. 118, also made further amendments and clarifications that impact net operating losses.

P.L. 2018, c. 48, as amended, clarified, and supplemented by P.L. 2018, c. 131, and P.L. 2020, c. 118, also changed the law to require unitary businesses to file mandatory combined returns. The statutes provide that the water's-edge basis is the default filing method required, unless the managerial member of the combined group elects one of the other two combined return filing methods as set forth below. P.L. 2018, c. 48, defined the meaning of a unitary business in the context of a combined group. P.L. 2020, c. 118, further amended, clarified, corrected, supplemented, and simplified the combined reporting statutes. The unitary business principle and combined reporting both predate the New Jersey Corporation Business Tax Act; however, New Jersey only recently enacted mandatory unitary combined reporting. Combined reporting has been upheld by the Supreme Court of the United States as Constitutional in *Barclays Bank PLC v. Franchise Tax Board of California*, 512 U.S. 298 (1994); and *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159 (1983).

P.L. 2018, c. 48, as amended by P.L. 2018, c. 131, and P.L. 2020, c. 118, permits a unitary business group to elect to include all of their worldwide combined group members. The second elective method, the affiliated group election, permits a combined group to include all U.S. domestic affiliates (as defined by statute), rather than having to determine unitary for the convenience of the taxpayers.

P.L. 2018, c. 48, decoupled from Internal Revenue Code (I.R.C.) § 199A for New Jersey purposes and requires a deduction to be added back in computing entire net income, if the deduction was applicable Federally.

P.L. 2018, c. 48, disallows certain deductions for New Jersey purposes, by decoupling from the deduction and exemption provisions at I.R.C. § 965 and by requiring these deductions to be added back when computing entire net income pursuant to N.J.S.A. 54:10A-6.5. Additionally, P.L. 2018, c. 48 and c. 131, amended N.J.S.A. 54:10A-4(k)(5) to include the I.R.C. § 965(a) "deemed paid" repatriation dividends as an eligible component of the dividend received exclusion. N.J.S.A. 54:10A-4(k)(5) was also amended to reduce the dividend received exclusion from 100 percent to 95 percent for qualified subsidiaries; to provide for the application of a special allocation formula on the five percent reduction of the dividend received exclusion for tax years beginning on and after January 1, 2017, through tax years beginning before January 1, 2019; and to provide an additional tiered subsidiary exclusion.

P.L. 2020, c. 118, simplified and made numerous corrections at N.J.S.A. 54:10A-4(k)(5). P.L. 2020, c. 118, also simplified, phased-out, and subsequently replaced the tiered subsidiary exclusion with a tiered subsidiary dividend tax credit.

P.L. 2020, c. 118, phased out N.J.S.A. 54:10A-34, so that all banking corporations will file a standardized and streamlined New Jersey corporation business tax returns in the same manner as other corporations,

reporting the income from the same year for the privilege period that the taxpayer filed for Federal purposes.

P.L. 2020, c. 118, mandated that taxpayers include their Federal returns and accompanying schedules filed with their Federal returns, as the Director determines necessary, as part of a full and complete New Jersey corporation business tax return.

P.L. 2020, c. 118, amended the due date of the New Jersey corporation business tax return to 30 days after the taxpayer's original due date of the Federal tax return.

P.L. 2021, c. 90, made clear that for New Jersey corporation business tax purposes, New Jersey follows the Federal tax treatment of Federal Paycheck Protection Program loans and the treatment of ordinary business expenses related to the proceeds thereto.

The proposed amendments to existing rules make various typographical, grammatical, and clarifying changes to the existing rules in addition to the substantive amendments and new rules discussed below in further detail.

N.J.A.C. 18:7-1.3 is proposed for amendment to make a typographical correction and to make clear that a combined group is a taxpayer for the purpose of the corporation business tax and to cross-reference new Subchapter 21, which discusses combined groups and combined reporting in further detail.

N.J.A.C. 18:7-1.14 is proposed for amendment to provide clarity based on the changes phasing out the legacy income reporting methods for banking corporations and the Banking and Financial Corporation (BFC-1) returns, pursuant to N.J.S.A. 54:10A-34.1. Additionally, the proposed amendments provide examples of how to report income in years subsequent to the transition period, and cross-reference new Subchapter 21 for banking corporations that are members of a combined group filing New Jersey combined returns. Lastly, the proposed amendments clarify that a short period needs to be filed in existing example 4.

N.J.A.C. 18:7-1.16 is proposed for amendment to provide clarity for the changes to the returns and to cross-reference new Subchapter 21 for financial business corporations that are members of a combined group filing New Jersey combined returns.

N.J.A.C. 18:7-1.17 is proposed for amendment to reflect the changes to the corporation business tax, to provide the proper terminology for combined returns, and to cross-reference new Subchapter 21, in relation to casino licensees.

New N.J.A.C. 18:7-1.24 is proposed to clarify that combinable captive insurance companies are not subject to the insurance premiums tax imposed on regular non-combinable captive insurance companies, but are instead subject to the corporation business tax.

New N.J.A.C. 18:7-1.25 is proposed to clarify nexus in the context of combined reporting. The proposed rules also clarify that pursuant to N.J.S.A. 54:10A-4(h) and (z), a combined group is a taxpayer for the purposes of the Corporation Business Tax Act, and is taxed as one taxpayer on the taxable income from the unitary business activities of the combined group.

N.J.A.C. 18:7-2.1 is proposed for amendment to clarify that the Act is the "Corporation Business Tax Act" and that a combined group is immediately subject to tax if one of the members of the combined group has taxable status (that is, nexus) in New Jersey.

N.J.A.C. 18:7-3.4 is proposed for amendment to make typographic corrections, clarify the statutory minimum tax for separate filers, and to refer taxpayers to Subchapter 21 for the statutory minimum tax regarding members of a combined group filing New Jersey combined returns.

N.J.A.C. 18:7-3.6 is proposed for amendment to clarify the change to N.J.S.A. 54:10A-5, pursuant to P.L. 2018, c. 48 and c. 131, and P.L. 2020, c. 118, that for privilege periods ending on and after July 31, 2019 (privilege periods beginning on and after August 1, 2018, for a full-year fiscal taxpayer), the tax rate will be applied to the tax base resulting from the change from pre-apportionment net operating losses to post-apportionment net operating losses, for both separate and combined returns filers.

N.J.A.C. 18:7-3.10 is proposed for amendment to clarify the current return filing requirements.

N.J.A.C. 18:7-3.13 is proposed for amendment for clarity, because there are multiple New Jersey corporation business tax returns with a variety of names and identifications depending on the privilege period.

Additionally, the proposed amendments clarify that a combined group is a taxpayer and provides a cross-reference to Subchapter 21 for additional information on combined groups filing New Jersey combined returns.

N.J.A.C. 18:7-3.15 is proposed for amendment to clarify that the section applies to all corporation business tax returns, not only the CBT-100.

N.J.A.C. 18:7-3.16 is proposed for amendment for clarity, and to provide the proper cross-references for both banking corporations and financial business corporations. Additionally, the proposed amendments provide a cross-reference to Subchapter 21 for banking corporations and financial business corporations in the context of combined reporting.

N.J.A.C. 18:7-3.23 is proposed for amendment to clarify that the rules for the New Jersey taxpayer credit for certain research and development activities (the research credit) applies for privilege periods beginning before January 1, 2018, for the New Jersey research credit. Furthermore, the proposed amendments clarify that the research credit is not and was never refundable. Lastly, the proposed amendments clarify that the carryover period is 15 years following the research credit's tax year, for qualified expenses in certain fields of research listed at N.J.S.A. 54:10A-5.24.b.

New N.J.A.C. 18:7-3.23A is proposed to provide rules governing the New Jersey Research and Development (R & D) credit for privilege periods beginning on and after January 1, 2018, and January 1, 2020, respectively. Pursuant to P.L. 2018, c. 48, and P.L. 2020, c. 118, N.J.S.A. 54:10A-5.24 was amended to conform the New Jersey research credit to the current Federal corporate research and development credit. P.L. 2020, c. 118, added N.J.S.A. 54:10A-5.24.d, which allows qualified expenses used for the Federal payroll credit to be used in the calculation of the New Jersey research credit. The proposed rule clarifies that the expenses used for the Federal payroll credit are permitted for the New Jersey research credit. The proposed new section provides examples for separate return filers and combined return filers. Lastly, the proposed new rule makes clear that the carryover period is 15 years following the research credit's tax year, for qualified expenses in certain fields of research listed at N.J.S.A. 54:10A-5.24.b.

New N.J.A.C. 18:7-3.26 is proposed to clarify the penalty relief provisions at section 24 of P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.12) and section 18 of P.L. 2020, c. 118 (N.J.S.A. 54:10A-4.6).

New N.J.A.C. 18:7-3.27 is proposed to clarify for privilege periods ending on and after July 31, 2019, the tax rate that applies to the current tax base, consistent with amendments at N.J.S.A. 54:10A-5.c pursuant to P.L. 2018, c. 48; P.L. 2019, c. 131; and P.L. 2020, c. 118.

New N.J.A.C. 18:7-3.28 is proposed to provide detail on the tiered subsidiary dividend tax credit at N.J.S.A. 54:10A-5.46 for privilege periods ending on and after July 31, 2020. The tax credit is intended to prevent double taxation where a middle-tier subsidiary that files separately from the taxpayer and pays the corporation business tax to New Jersey on dividends from a lower-tier subsidiary, and the middle-tier subsidiary, distributes the same dividends up to the taxpayer. The tax credit is a non-refundable tax credit that can reduce a taxpayer's tax liabilities, excluding the surtax, to zero but the unused amounts cannot be carried forward. For the purposes of the credit, the taxpayer can be either a separate return filer or a combined group.

New N.J.A.C. 18:7-3.29 is proposed to clarify aspects of the surtax imposed pursuant to N.J.S.A. 54:10A-5.41 that was enacted and amended pursuant to P.L. 2018, c. 48; P.L. 2018 c. 131; P.L. 2020, c. 95; and P.L. 2020, c. 118. Further, the proposed new section details the surtax's application to combined groups for privilege periods ending before July 31, 2020, and on and after July 31, 2020. Pursuant to N.J.S.A. 54:10A-4(z), as amended at P.L. 2020, c. 118, a combined group is treated as one taxpayer for the purposes of the surtax for privilege periods ending on and after July 31, 2020. Conversely, for periods ending before July 31, 2020, for a combined group, the surtax is applied on an entity-by-entity basis. Lastly, the proposed new section addresses the exclusion of income derived pursuant to N.J.S.A. 54:10A-4(q), public utilities that were not exempted from combined reporting pursuant to N.J.S.A. 54:10A-4.6(k)(2) for the purposes of the surtax.

N.J.A.C. 18:7-5.2 is proposed for amendment to incorporate the statutory changes pursuant to P.L. 2018, c. 48; P.L. 2018, c. 131; and P.L. 2020, c. 118. The proposed amendments also make grammatical and

clarifying changes throughout. Subparagraph (a)li is proposed for amendment to delete the word “specific” pursuant to the amendment at N.J.S.A. 54:10A-4(k)(2)(A), which deleted the word “specific” as part of P.L. 2018, c. 48. The result is that taxpayers now must include all income that is exempt for Federal purposes under any provision of the Internal Revenue Code, unless there is an exemption or exclusion elsewhere in the Corporation Business Tax Act pertaining to an item of income. Subparagraph (a)li is also proposed for amendment to clarify the treatment of worldwide income pursuant to P.L. 2018, c. 131. Additionally, subparagraph (a)li is amended to provide clarity on tax treaties, and also to provide guidance on PPP Loans. Subparagraph (a)lviii is proposed for amendment to clarify the change from pre-allocation net operating losses to post-allocation net operating losses and to cross-reference new N.J.A.C. 18:7-5.21, which goes into further detail on the new net operating loss calculation. Subparagraph (a)lxx is proposed for amendment to conform to the Federal repeal of I.R.C. § 199. Thus, in privilege periods beginning on or after January 1, 2018, there is no I.R.C. § 199 deduction to add back or deduct. New subparagraph (a)lxxiii is proposed to provide detail on the disallowance of any deduction, exemption, or credit allowed pursuant to the Internal Revenue Code § 965, pursuant to section 2 of P.L. 2018, c. 48, retroactive to privilege periods beginning on and after January 1, 2017. New subparagraph (a)lxxiv is proposed to provide detail on the disallowance of the amounts taken as a deduction pursuant to I.R.C. § 199A (26 U.S.C. § 199A), pursuant to N.J.S.A. 54:10A-4(k)(2)(J)(ii). New subparagraph (a)lxxv is proposed to provide detail on N.J.S.A. 54:10A-4(k)(2)(K) while providing a cross-reference to a new section where the provisions at N.J.S.A. 54:10A-4(k)(2)(K) will be illustrated in further detail. Subparagraph (a)2i is proposed for amendment to provide for the statutory changes at N.J.S.A. 54:10A-4(k)(5), which reduced the dividend exclusion to 95 percent for dividends received from 80 percent or more owned subsidiaries, retroactively for privilege periods beginning on and after January 1, 2017, and for all subsequent privilege periods. Additionally, subparagraph (a)2i is proposed for amendment to provide detail on the additional exclusion of dividends that a subsidiary received from a lower tier subsidiary pursuant to N.J.S.A. 54:10A-4(k)(5)(C), which allows for the exclusion of the dividends by a taxpayer where the subsidiary included those dividends in its allocated entire net income and paid tax to New Jersey on those dividends for the applicable periods. P.L. 2020, c. 118, phased out this tiered subsidiary exclusion and replaced the exclusion with a tax credit. The amendments also refer taxpayers to rules on the tax credit. Subparagraph (a)2vii is proposed for amendment to add a cross-reference to the appropriate section at new Subchapter 21 for combined groups that have an international banking facility. New subparagraph (a)2ix is proposed to clarify the deduction pursuant to N.J.S.A. 54:10A-4.15 and cross-references N.J.A.C. 18:7-5.19.

N.J.A.C. 18:7-5.11 is proposed for amendment to clarify that the provisions of this section apply to pre-combined reporting years and provides a cross-reference to new Subchapter 21, for the privilege periods covered by the combined reporting statutes.

N.J.A.C. 18:7-5.12, 5.13, 5.14, and 5.15 are proposed for amendment to reference the transition time from pre-allocation to post-allocation net operating loss application, for privilege periods ending prior to July 31, 2019, and for privilege periods ending on and after July 31, 2019, pursuant to P.L. 2018, c. 48, and P.L. 2018, c. 131, which made the change effective for privilege periods ending on and after July 31, 2019. Further, the proposed amendments add a cross-reference to N.J.A.C. 18:7-5.21, which is the new section detailing the change to post-apportionment net operating losses. N.J.A.C. 18:7-5.14 is proposed for amendment to make clear the survivability of prior net operating loss conversion carryovers (PNOLs) and net operating losses (NOLs) in the context of statutory conversions. Further, N.J.A.C. 18:7-5.14 is proposed for amendment to cross-reference Subchapter 21 and the treatment of PNOLs and NOLs in the context of combined reporting. Finally, N.J.A.C. 18:7-5.12, 5.13, 5.14, and 5.15 are proposed for amendment for clarity.

New N.J.A.C. 18:7-5.21 is proposed to provide detail on the statutory changes implementing the change from pre-allocation net operating losses (and carryovers) for privilege periods ending prior to July 31, 2019, to post-allocation net operating losses (and carryovers) for privilege periods ending on and after July 31, 2019, in conjunction with the changes at

N.J.S.A. 54:10A-4(u) through (w), 54:10A-4.5, and 54:10A-5 enacted through P.L. 2018, c. 48, P.L. 2018, c. 131, and P.L. 2020, c. 118. The proposed section also cross-references Subchapter 21 to direct taxpayers to additional information on PNOLs and NOLs in a combined reporting context.

New N.J.A.C. 18:7-5.22 is proposed to clarify the statutory amendments, which added N.J.S.A. 54:10A-4(k)(2)(K) dealing with the application of Internal Revenue Code § 163(j). The proposed rule also discusses Internal Revenue Code § 163(j) in relation to N.J.S.A. 54:10A-4.6.n.

New N.J.A.C. 18:7-5.23 is proposed to clarify that New Jersey generally follows the Federal stock ownership attribution rules.

N.J.A.C. 18:7-7.6 is proposed for amendment to reference new Subchapter 21, where appropriate. The proposed amendments also make clarifying and grammatical changes. The proposed amendments delete the phrase “property and payroll,” as they refer to the allocation factor, and are unnecessary, since the allocation factor for New Jersey corporation business tax no longer follows a three-factor formula and is instead based on receipts only.

N.J.A.C. 18:7-8.3 is proposed for amendment to clarify that the section applies to combined groups that file New Jersey combined returns.

N.J.A.C. 18:7-8.7 is proposed for amendment to reiterate that New Jersey receipts are included in the numerator.

N.J.A.C. 18:7-8.8 is proposed for amendment so that the section conforms to the changes in the law that were part of P.L. 2018, c. 48, and P.L. 2018, c. 131, which amended N.J.S.A. 54:10A-6 to enact market-based sourcing for New Jersey service receipts.

N.J.A.C. 18:7-8.10A is proposed for amendment to clarify the definition of a place of business for the purposes of market-based sourcing. Additionally, the proposed amendments provide a cross-reference to Subchapter 21 and make clear that, for transportation companies that meet the qualifications at N.J.S.A. 54:10A-4.7.b, the rules for sourcing for those companies are found at Subchapter 21. Finally, the proposed amendments clarify that trucking companies should look to Subchapter 21 for various details, and the proposed amendments delete and relocate the property and payroll provisions applicable to trucking companies that are relevant for combined reporting as part of Subchapter 21.

N.J.A.C. 18:7-8.12 is proposed for amendment to cross-reference N.J.A.C. 18:7-5.19 sourcing rules for I.R.C. §§ 951A and 250 for Global Intangible Low-Taxed Income (GILTI) and Foreign-Derived Intangible Income (FDII), respectively.

N.J.A.C. 18:7-10.1 is proposed for amendment to provide rules for combined groups filing New Jersey combined returns that are similar to the rules for separate return filers and requires that requests must be made by the managerial member. The proposed amendments also make various typographical, grammatical, and clarifying changes about submission of the Claim for Refund (Business Taxes Only) form A-3730.

N.J.A.C. 18:7-11.6 is proposed for amendment to provide guidance, as there are numerous New Jersey corporation business tax returns with different names and indications for different periods.

N.J.A.C. 18:7-11.7 is proposed for amendment to set forth the new due date of the New Jersey corporation business tax returns. Additionally, the amendments add a “convenience rule” for situations where the original month that the Federal return was due was a 31-day month. Finally, the proposed amendments provide that the corporation business tax returns are due in August for taxpayers with an original June Federal return due date, so that such taxpayers are afforded the same duration of time to file their New Jersey corporation business tax returns as other taxpayers.

N.J.A.C. 18:7-11.8 is proposed for amendment to provide guidance, as there are numerous New Jersey corporation business tax returns with different names and identifications. Additionally, the proposed amendments provide the updated procedure for filing amended returns, since returns are now amended electronically.

N.J.A.C. 18:7-11.12 is proposed for amendment to make the extension periods for New Jersey corporation business tax returns uniform. The proposed amendments also delete provisions on the accrual of interest that were effective from December 9, 1987, until July 1, 1993, as these provisions are no longer necessary. The amendments also make several

clarifying changes, updates for current procedures, changes in the return names and formats, and correct the name of the Federal extension form.

N.J.A.C. 18:7-11.15 is proposed for amendment to clarify that consolidated returns are not permitted for privilege periods ending before July 31, 2019, except as otherwise provided for those periods. Additionally, the proposed amendments add a reference to new Subchapter 21 for combined returns.

N.J.A.C. 18:7-11.17 is proposed for amendment to make clear that, for privilege periods ending on and after July 31, 2020, the mandate to include the Federal returns as part of the New Jersey corporation business tax return filing is at N.J.A.C. 18:7-11.17A.

New N.J.A.C. 18:7-11.17A sets forth which Federal returns, forms, extracts, and schedules are required to be included as part of a full and complete New Jersey corporation business tax return. Furthermore, the rules set forth that Federal forms, extracts, and schedules that are not otherwise required, may optionally be included instead of completing CBT schedules that ask for the identical information. Furthermore, the rules provide that the optional Federal forms and schedules that were not included with the return must be provided upon request. Pursuant to N.J.S.A. 54:10A-14.a, as amended by P.L. 2020, c. 118, the Federal return is required as part of a full and complete New Jersey corporation business tax return.

N.J.A.C. 18:7-11.18 is proposed for amendment to provide clarity as to the returns, by removing the specific form numbers, as there are a variety of New Jersey corporation business tax returns.

N.J.A.C. 18:7-12.1 is proposed for amendment to clarify its applicability to combined returns. Furthermore, the proposed amendments clarify when a short period return is required to be filed by a combined group and/or the members of the combined group.

N.J.A.C. 18:7-12.2 and 12.3 are proposed for amendment to clarify their applicability to combined returns.

N.J.A.C. 18:7-13.8 is proposed for amendment to provide clarity for each specific New Jersey corporation business tax return, as there are multiple corporation business tax returns for different periods. Additionally, the proposed amendments clarify the current procedures for filing an amended return, as, generally, amended returns are filed electronically and are no longer filed by mail.

Proposed new N.J.A.C. 18:7-21 sets forth the rules pertaining to combined returns.

New N.J.A.C. 18:7-21.1 is proposed to set forth definitions found at N.J.S.A. 54:10A-4 as follows: “affiliated group,” “combinable captive insurance company,” “combined group,” “common ownership,” “commonly owned,” “group privilege period,” “managerial member,” “member,” “nontaxable member,” “taxable member,” and “unitary business.” Additionally, the proposed new rule clarifies different aspects of those definitions and adds examples where relevant.

New N.J.A.C. 18:7-21.2 is proposed to further explain the concept of unitary business, the factors the Division considers in a unitary relationship analysis, which tests for unity the Division intends to use and various other aspects of the unitary business principle. The proposed new section also sets forth illustrative examples.

New N.J.A.C. 18:7-21.3 is proposed to set forth which business entities are included and excluded as a member of the New Jersey combined return.

New N.J.A.C. 18:7-21.4 is proposed to set forth the filing requirements for mandatory combined returns.

New N.J.A.C. 18:7-21.5 is proposed to set forth the rules for determining the managerial member of the combined group pursuant to N.J.S.A. 54:10A-4.10.

New N.J.A.C. 18:7-21.6 is proposed to set forth the methods of payment, refunds, filing, and assessments for combined groups filing a combined return.

New N.J.A.C. 18:7-21.7 is proposed to set forth the rules for determining the entire net income of the combined group pursuant to N.J.S.A. 54:10A-4.6. Further, the proposed new section also includes appropriate cross-references to other relevant sections. Additionally, the proposed new section sets forth that the International Financial Reporting Standards (I.F.R.S.), which are issued by the International Accounting Standards Board (IASB) and adopted by over 165 countries, qualify as an acceptable method that “reasonably approximates income” for the

purposes of N.J.S.A. 54:10A-4.6.b, if that is the only method of accounting the specific entity used.

New N.J.A.C. 18:7-21.8 is proposed to set forth the reporting requirements for non-U.S. corporations that are members of a combined group, where the non-U.S. corporation did not file a return for Federal tax purposes. Additionally, the proposed section sets forth that the I.F.R.S. qualify as an acceptable method that “reasonably approximates income” for the purposes of N.J.S.A. 54:10A-4.6.b, if that is the only method of accounting the specific entity used.

New N.J.A.C. 18:7-21.9 is proposed to set forth other areas where combined reporting affects other filing requirements.

New N.J.A.C. 18:7-21.10 is proposed to set forth the ordering of certain provisions of the statutes affecting the computation of taxable net income for members of a combined group.

New N.J.A.C. 18:7-21.11 is proposed to provide detail on the statutory requirements for sharing of net operating losses between taxable members of a combined group filing a combined return.

New N.J.A.C. 18:7-21.12 is proposed to provide detail on the statutory requirements for sharing of tax credits among taxable members of a combined group filing a combined return.

New N.J.A.C. 18:7-21.13 is proposed to set forth the methods for computing the allocation of receipts of members in the combined group pursuant to N.J.S.A. 54:10A-4.7 and 54:10A-4.11, set forth at P.L. 2018, c. 48, as amended at P.L. 2018, c. 131, and P.L. 2020, c. 118. The proposed new section mandates the *Joyce Method* for combined groups filing a default water’s-edge method or worldwide combined return, and the *Finnigan Method* for affiliated group combined returns. The proposed new section mandates that combined groups making an affiliate group election shall include the receipts of all of the members in both the numerator and denominator of the receipts factor, regardless of whether the members are subject to tax, if doing business in this State. See N.J.S.A. 54:10A-4.11.c.

New N.J.A.C. 18:7-21.14 is proposed to provide detail on the statutory requirements of Section 21 at P.L. 2018, c. 48, as amended at P.L. 2020, c. 118, converting the outstanding unexpired alternative minimum assessment tax credits of taxpayers that are in a combined group reporting on a New Jersey combined return.

New N.J.A.C. 18:7-21.15 is proposed to set forth which members are required to be included in the default water’s-edge combined group return for filing mandatory combined returns pursuant to N.J.S.A. 54:10A-4.11. Additionally, the proposed section sets forth the references to sections that provide greater detail on making the worldwide group election and affiliated group election. Finally, proposed subsection (f) relocates the concept previously set forth at N.J.A.C. 18:7-8.10A(a)6ii(1) and (2), allocating movable property and payroll of mobile employees, based upon a New Jersey mileage fraction, to determine whether a business is includable as a member on a water’s-edge basis and not to determine sourcing.

New N.J.A.C. 18:7-21.16 is proposed to set forth the requirements for making a worldwide group combined return election.

New N.J.A.C. 18:7-21.17 is proposed to set forth the requirements for making an affiliated group combined return election.

New N.J.A.C. 18:7-21.18 is proposed to provide detail on the statutory requirements at N.J.S.A. 54:10A-4(k)(16), which allows for a deduction by publicly traded companies and their subsidiaries for the offset of their net deferred tax liability changes, due to conforming to the combined reporting requirements.

New N.J.A.C. 18:7-21.19 is proposed to set forth the minimum tax for each member of a combined group, and to provide that the aggregate sum of the minimum tax of all of the members of the combined group must be reported on the combined return pursuant to P.L. 2018, c. 131 and P.L. 2020, c. 118.

New N.J.A.C. 18:7-21.20 is proposed to set forth the requirements for the accounting and income reporting methods used when filing combined returns.

New N.J.A.C. 18:7-21.21 is proposed to set forth the manner in which a New Jersey S corporation may elect to be included in a combined group filing a New Jersey combined return. The proposed new section also sets forth how a New Jersey S corporation that has elected to be included in a combined return can elect out of the combined return. For New Jersey

corporation business tax purposes, a Federal S corporation that has not elected to be a New Jersey S corporation is still a C corporation for New Jersey purposes and must be included in the combined return.

New N.J.A.C. 18:7-21.22 is proposed to clarify that all of the other rules in Chapter 7 will be applicable to the extent that they are not inconsistent with the intent of P.L. 2018, c. 48, P.L. 2018, c. 131, and P.L. 2020, c. 118.

New N.J.A.C. 18:7-21.23 is proposed to reiterate the Director's authority to include certain taxpayers in a combined return that were not included in the combined group reported on the combined return.

New N.J.A.C. 18:7-21.24 is proposed to set forth conditions upon which the Director may remove an entity from a combined group.

New N.J.A.C. 18:7-21.25 is proposed to clarify the combined reporting requirements for banking corporations. Additionally, the proposed new section sets forth a method by which certain banking corporations can transition to a fiscal reporting basis.

New N.J.A.C. 18:7-21.26 is proposed to set forth various conditions and scenarios where the Director will designate a managerial member of the combined group.

New N.J.A.C. 18:7-21.27 is proposed to clarify that the Federal consolidated return rules apply to New Jersey combined returns to the extent that the rules are consistent with the Corporation Business Tax Act. Further, the proposed new section details the Federal rules in relation to various provisions of the Corporation Business Tax Act, including, but not limited to, N.J.S.A. 54:10A-4(k)(5), (u) and (v); 54:10A-4.5.c; 54:10A-4.6.g, h, m, and n; 54:10A-4.15; and 54:10A-5.

New N.J.A.C. 18:7-21.28 is proposed to clarify the rules pertaining to combined groups that have receipts derived from the transportation of freight by air or land. N.J.S.A. 54:10A-4.7.b provides a sourcing rule for certain specific combined groups, which dictates the use of ton miles if 50 percent or more of the combined group's entire net income is derived from transportation of freight by air or ground. The proposed new section provides clarity for combined groups that meet the qualifications at N.J.S.A. 54:10A-4.7.b and the combined groups that do not meet those qualifications. The proposed new section further details the interaction at N.J.S.A. 54:10A-4(k)(9) and 54:10A-4.7.b for the purposes of determining whether N.J.S.A. 54:10A-4.7.b applies. The proposed new section additionally sets forth its applicability to combined returns filed on a water's-edge group basis, worldwide group basis, and an affiliated group basis.

New N.J.A.C. 18:7-21.29 is proposed to provide detail on the statutory requirements at N.J.S.A. 54:10A-4.10.h that requires members of a combined group to notify the Director, in writing, of a change in the combined group. Notification should be no later than the due date of the combined return, or, if an extension of time to file has been requested and granted, then no later than the extended due date of the combined return for the privilege period in which the change in the combined group occurs. Rather than duplicate this provision in multiple sections, the proposed section sets forth its applicability to all combined filing methods.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and new rules will have a positive social impact by clearly articulating the requirements as set forth within the provisions at P.L. 2018, c. 48, and P.L. 2018, c. 131, and P.L. 2020, c. 118. Specifically, the proposed amendments and new rules will benefit the public by clarifying the calculation of entire net income, the calculation of net operating losses, and the filing requirement of combined returns. This guidance will assist corporate taxpayers in navigating the new combined return filing and reporting requirements.

Economic Impact

The enactment of P.L. 2018, c. 48, P.L. 2018, c. 131, and P.L. 2020, c. 118, significantly changed the Corporation Business Tax Act. The changes will have a positive impact on the business climate and a positive net impact on State revenues. The proposed amendments and new rules are designed to reflect the statutory changes and clarify the statutory law. The proposed amendments and new rules eliminate possible confusion for taxpayers and their advisors over their tax obligations and tax filing

requirements with New Jersey. The proposed amendments and new rules are intended to offer objective but flexible standards for taxpayers' tax and filing obligations.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the proposed amendments and new rules.

Jobs Impact

The proposed amendments and new rules will have no impact on jobs in New Jersey. The Division does not anticipate an increase or decrease in jobs as a result of the proposed amendments and new rules.

Agriculture Industry Impact

The proposed amendments and new rules will not have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed amendments and new rules apply to any company, including those which may be considered a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., where organized as a C or S corporation or limited liability companies taxed as C corporations. The proposed amendments and new rules are not expected to impose any changes in reporting, recordkeeping, or other compliance requirements on small businesses outside of what is mandated by the statutory changes. The proposed amendments and new rules are intended to provide clarification as to the tax and reporting obligations of taxpayers in a unitary business group, which generally does not include small businesses. Small business taxpayers may wish to consult with accountants or legal professionals in order to review the proposed amendments and new rules to determine the potential applicability of the changes to their own tax situations.

The mission of the Division of Taxation is to administer the State's tax laws uniformly, equitably, and efficiently to maximize State revenues to support public services and to ensure that voluntary compliance within the taxing statutes is achieved without being an impediment to economic growth. Consistent with its mission, the Division reviews its rulemakings with a view of minimizing the impact of its rules on small businesses to the extent possible.

Housing Affordability Impact Analysis

The proposed amendments and new rules will not result in a change in the affordability or the average cost associated with housing. The proposed amendments and new rules will have no impact on any aspect of housing because the proposed amendments and new rules deal with the corporation business tax.

Smart Growth Development Impact Analysis

The proposed amendments and new rules will not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. This is because the proposed amendments and new rules have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposed amendments and new rules deal with the corporation business tax.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Division has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

18:7-1.3 Definition of taxpayer

(a) The term "taxpayer" shall mean any corporation required to report or to pay taxes, interest [on], **or** penalties [under this Act] **pursuant to this chapter.**

(b) Any receiver, referee, trustee, assignee, or other fiduciary, or any officer or agent appointed by any court to conduct the business or conserve the assets of any corporation shall be subject to the tax imposed in the same manner and to the same extent as a corporation.

(c) The term “taxpayer” shall also mean any partnership required or consenting to report or to pay taxes, interest, or penalties [under this Act,] pursuant to this chapter; provided that the term does not include a partnership that is listed on a United States national stock exchange.

(d) The term “taxpayer” shall also mean any combined group filing a New Jersey combined return. See N.J.S.A. 54:10A-4(h) and (z) and N.J.A.C. 18:7-21 for more information.

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

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

(d) Foreign banks subject to the corporation business tax shall file [Form CBT-100] the applicable corporation business tax return for the respective privilege period 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] the applicable corporation business tax return for the respective privilege period and pay the applicable tax thereon to the Director of the Division of Taxation. See N.J.S.A. 54:10A-34.1 and N.J.A.C. 18:7-21.25 for information on transitioning accounting periods and normalizing reporting of income of a banking corporation.

(f) Examples of bank activity and income reporting methods (prior to the completion of filing transitional short period returns required at N.J.S.A. 54:10A-34.1 or N.J.A.C. 18:7-21.25) in New Jersey include the following:

1.-3. (No change.)

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. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

5.-9. (No change.)

(g) Examples of bank activity and income reporting methods for periods after the completion of filing transitional short period returns, as required at N.J.S.A. 54:10A-34.1 or N.J.A.C. 18:7-21.25 (for taxpayers that were already filing New Jersey returns and for taxpayers that are subsequently required to file New Jersey returns) include the following:

1. A Pennsylvania state-chartered bank reports on the calendar year basis. The bank began doing business in Pennsylvania in a prior year and it begins doing business in New Jersey on July 1 of Year 1. The bank is required to file on May 15 (30 days after the April 15 Federal due date) of Year 2, its first annual corporation business tax return 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. The national bank is required to file its first annual corporation business tax return for the Year 1 privilege period and to pay the Year 1 corporation business tax on May 15 (30 days after the April 15 Federal due date) 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, PA. Prior to July 1 of Year 1, it was not doing business anywhere. On July 1 of Year 1, it began doing business in both Pennsylvania and New Jersey. The national bank is required to file its first annual corporation business tax return for the Year 1 privilege period and to pay the Year 1 corporation business

tax on May 15 (30 days after the Federal due date of 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 a fiscal year basis for Federal purposes (ending July 31) and has its principal office in Philadelphia, PA began doing business in Pennsylvania prior to July 31. It begins doing business in New Jersey on August 1 of the Fiscal Year 1. It is required to file its first annual corporation business tax return on December 15 (30 days after the Federal due date of November 15) of Fiscal Year 2 for the Fiscal Year 1 privilege period. Thereafter, it would continue to file returns for a 12-month fiscal year period and pay the annual tax due.

5. A calendar year New Jersey State-chartered bank begins doing business on July 1 of Year 1. It is required to file its first annual corporation business tax return for the Year 1 privilege period and to pay a Year 1 corporation business tax on May 15 (30 days after the Federal due date of 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. The New Jersey State-chartered bank will also file corporation business tax returns for the pre-merger short period. The surviving bank's corporation business tax return for the Year 1 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. Thereafter, it would continue to file returns for a 12-month calendar year period and pay the annual tax due.

7. On July 31 of Year 1, a Pennsylvania state-chartered bank merges into a New Jersey State-chartered bank. Prior to the merger, the Pennsylvania state-chartered bank was doing business in New Jersey and reporting on a calendar year basis. The New Jersey State-chartered bank will file on May 15 (30 days after the Federal due date of April 15) of Year 2, for the Year 1 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 a corporation business tax return for the pre-merger short period covering January 1 to July 31 of Year 1 pursuant to N.J.S.A. 54:10A-2, which will be based on reporting the income and tax liabilities for its pre-merger months of Year 1.

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 corporation business tax return filed May 15 (30 days after the Federal due date of 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 December 15 of Year 1 pursuant to N.J.S.A. 54:10A-2, a Year 1 corporation business tax return reporting its pre-merger Year 1 income. This return will be in addition to the corporation business tax return required to be filed by May 15 of Year 2 by the New Jersey State-chartered bank for its prior annual privilege period.

(h) For banks that are members of a combined group, see N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.

18:7-1.16 Financial business corporation; definition

(a)-(f) (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] the applicable New Jersey corporation business tax return for the respective privilege period and complete Schedule L apportioning the financial business conducted in New Jersey, consistent with N.J.S.A. 54:10A-38.

(h) For financial business corporations that are members of a combined group, see N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.

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

(a) Pursuant to N.J.S.A. 5:12-[148(b)]148.b, any business conducted by an individual, partnership, corporation, or any other entity, or any combination thereof, holding a license pursuant to the Casino Control Act shall, in addition to all other taxes imposed by that act, file a consolidated corporation business tax return pursuant to the Corporation Business Tax Act and pay the taxes indicated thereon.

(b) (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] pursuant to 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. (No change.)

[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.]

2. Casino licensees shall file a combined return in order to satisfy the requirements of both the Corporation Business Tax Act and Casino Control Act and shall be taxable members along with their unitary affiliates that are not casino licensees. See N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.

3. Corporations that are not casino licensees, but are under common ownership together with casino licensees, are required to be included as members of the mandatory combined return if the non-casino licensee corporations are unitary with the casino licensees. See N.J.A.C. 18:7-21.3.

4. (No change.)

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

18:7-1.24 Certain insurance companies subject to the corporation business tax

(a) Combinable captive insurance companies, as defined at N.J.S.A. 54:10A-4(y), are subject to the corporation business tax. A combinable captive insurance company is exempt from the tax imposed pursuant to N.J.S.A. 17:47B-12 and any other insurance premiums taxes imposed under any other laws of the State of New Jersey. A combinable captive insurance company that has nexus with New Jersey, but is not included as a member of a New Jersey combined return, must file a separate return.

(b) Captive insurance companies that do not meet the definition of a combinable captive insurance company are exempt from the corporation business tax and are excluded from the combined group reported on the combined return. Such captive insurance companies are subject to the insurance premiums tax at N.J.S.A. 17:47B-12.

(c) For the purposes of determining whether a captive insurance company is a combinable captive insurance company, the entity must use the same method of accounting used for Federal purposes.

(d) For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

18:7-1.25 Nexus and combined groups

(a) For purposes of the Corporation Business Tax Act, the combined group and the members of the combined group are both

taxpayers pursuant to N.J.S.A. 54:10A-4(h) and the combined group is taxed as one taxpayer. A member of a combined group may have nexus with New Jersey by deriving New Jersey receipts from the unitary business (whether such receipts are the member's own receipts or are receipts derived from intercompany transactions with other members of the combined group, regardless of whether the receipts are eliminated). A member may have nexus consistent with other factors giving rise to nexus with New Jersey pursuant to N.J.A.C. 18:7-1.6 through 1.14. A member may also have nexus independent of a combined group. Such member will be a taxable member of the combined group.

(b) Pursuant to N.J.S.A. 54:10A-4(h) and (z), a combined group is a taxpayer for purposes of the Corporation Business Tax Act, and taxed as one taxpayer on the taxable income from the unitary business activities of the combined group.

1. A combined group shall be treated, for privilege periods ending on and after July 31, 2020, as one taxpayer for purposes of paragraph (1) of subsection (c) of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41) for the income derived from the unitary business; provided, however, with regard to the surtax imposed pursuant to section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41) and for that purpose only, the portion of income that is attributable to a member that is a public utility exempt from the surtax shall not be included when computing the surtax due by the combined group.

(c) For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

SUBCHAPTER 2. NATURE OF TAX

18:7-2.1 Nature of tax; in general

(a) The Corporation Business Tax 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] at N.J.A.C. 18:7-1.6.

(b) (No change.)

(c) A combined group shall immediately become subject to the tax if one member of the group is either incorporated in New Jersey or acquires taxable status in New Jersey. For the purposes of the Corporation Business Tax Act, a combined group is a taxpayer pursuant to N.J.S.A. 54:10A-4(h). For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

SUBCHAPTER 3. COMPUTATION OF TAX

18:7-3.4 Minimum tax of separate return filers

(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 (filing separate returns) is set forth [in] at (b) through (d) below.

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

(e) For information regarding the statutory minimum tax of taxable members of a combined group filing a New Jersey combined return, see N.J.A.C. 18:7-21.

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

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

1.-4. (No change.)

5. For privilege periods ending on and after July 31, 2019, the tax rates at (a)1, 2, 3, and 4 above shall be applied to taxable net income, as defined at N.J.S.A. 54:10A-4(w), and the non-operational income that is specifically assigned to New Jersey.

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

(d) For privilege periods ending on and after July 31, 2019, for the members of a combined group filing a New Jersey combined return, a tax rate shall be applied to taxable net income, as defined at N.J.S.A.

54:10A-4(w), and the nonoperational income that is specifically assigned to New Jersey. The rates shall be based on the taxable net income of the taxpayer according to the following schedule:

1. If the taxable net income is more than \$100,000 in a 12-month period, the rate is nine percent;

2. If the taxable net income is \$100,000 or less in a 12-month period, the rate is 7.5 percent; and

3. If the taxable net income is \$50,000 or less in a 12-month period, the rate is 6.5 percent.

(e) See N.J.A.C. 18:7-21 for more information on combined groups and combined returns.

(f) See N.J.A.C. 18:7-3.29 for information on the surtax.

(g) For privilege periods ending on and after July 31, 2020, a combined group shall be treated as one taxpayer for the purposes of (d) above for the income derived from the unitary business pursuant to N.J.S.A. 54:10A-4(z).

18:7-3.10 Regulated investment company; tax payable

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

(c) A regulated investment company, as defined [in] at N.J.S.A. 54:10A-4(g), which also qualifies as an investment company, as defined [in] at 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] **the applicable New Jersey corporation business tax return for the respective privilege period.** 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.)

18:7-3.13 Estimated tax

(a)-(e) (No change.)

(f) Any amount overpaid and appearing on the face of the [return CBT-100] **respective New Jersey corporation business tax return** for the immediate preceding year may be applied in lieu of any payment of estimated tax otherwise due [under] **pursuant to** this section where the taxpayer indicates on the face of such return that it elects to have such overpayment so applied. Such amount will be considered to be a payment of the first installment of the estimated tax for the next succeeding year unless the taxpayer designates otherwise on the face of the return for the year in which the overpayment was made.

(g) The term "taxpayer" as used in this section is defined at N.J.A.C. 18:7-1.3 and includes corporations as defined [in] at N.J.S.A. 54:10A-4(c), **a combined group as defined at N.J.S.A. 54:10A-4(z)**, investment companies, regulated investment companies, real estate investment trusts, financial business corporations, banking corporations, and savings institutions. **For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.**

(h) (No change.)

18:7-3.15 Interest on underpayment of installment payments

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

(c) The rate to be used [in] at (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 **New Jersey corporation business 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] **section** 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	32,500
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) If there has been an underpayment of estimated tax as of the installment date prescribed for its payment and the taxpayer believes that one or more of the exceptions described [in] at (e) below precludes the imposition of the addition to the tax, it should attach to its **New Jersey corporation business tax return, [CBT-100,]** for the taxable year a Form CBT-160 showing the applicability of any exception upon which the taxpayer relied.

(e) (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.] **through 54:10A-40** (regarding banking corporation [general] **and financial business corporation** taxability under the Corporation Business Tax Act in general) **and N.J.A.C. 18:7-21 (for banking corporations and financial business corporations in the context of combined reporting).**

18:7-3.23 Research credit for privilege periods beginning before January 1, 2018

(a) [A] **For privilege periods beginning before January 1, 2018, a taxpayer [shall] may 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] does not apply.**

(b)-(x) (No change.)

(y) The amount of the tax year credit allowable [which] **that cannot be applied for the tax year due to certain limitations may be carried over, if necessary, to the seven accounting years following a credit's tax year[.], except as provided at N.J.S.A. 54:10A-5.24.b and 54:10A-5.24b (which allow a carryover of 15 privilege periods for certain qualifying fields of research (advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology) as defined at N.J.S.A. 54:10A-5.24b.b).**

(z) (No change.)

(aa) N.J.A.C. 18:7-3.23 applies only for privilege periods prior to January 1, 2018. For privilege periods beginning on and after January 1, 2018, the New Jersey research credit must be calculated pursuant to N.J.A.C. 18:7-3.23A.

(bb) The New Jersey research credit for privilege periods prior to January 1, 2018, is not refundable because the credit allowed pursuant to I.R.C. § 41, in effect on June 30, 1992, was not refundable.

18:7-3.23A New Jersey research credit for privilege periods beginning on and after January 1, 2018

(a) A taxpayer may 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 privilege period over the base amount, and 10 percent of the basic research payments for the privilege period determined in accordance with I.R.C. § 41. All of the terms, definitions, rules, methods for calculating the credit, and restrictions are consistent with the terms, definitions, rules, methods for calculating the credit, and restrictions at I.R.C. § 41, and the applicable regulations promulgated by the U.S. Department of the Treasury, except as otherwise noted in this section. Amounts paid, incurred, or accrued by the taxpayer for energy research in New Jersey may also qualify for the New Jersey research credit if the amounts qualify for the Federal corporate income tax credit pursuant to I.R.C. § 41.

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

(c) The New Jersey research credit that is available on and after January 1, 2018, is not refundable; and no provision under the Internal Revenue Code making the Federal research and development credit refundable for any Federal tax shall apply for New Jersey corporation business tax purposes.

(d) Notwithstanding any provision in this section to the contrary, other than calculations made pursuant to (j) below, a credit may be claimed for only those research activities that are performed in New Jersey.

(e) The filing of a consolidated tax return by a controlled group of corporations is not permitted for privilege periods ending before July 31, 2019. In calculating the New Jersey research credit, a combined group filing either a mandatory or elective New Jersey combined return must use the Federal rules for calculating the credit pursuant to I.R.C. § 41(f)(1) and N.J.S.A. 54:10A-4.6.n; provided, however, the credit will be calculated based on expenditures in New Jersey by the combined group filing a New Jersey combined return.

(f) Any act of Congress terminating I.R.C. § 41 will not terminate the research credit available for New Jersey corporation business tax purposes. Thus, in the event of the repeal of I.R.C. § 41, the New Jersey research and development credit will be determined based on I.R.C. § 41 that was in effect the last day prior to the effective date of the repeal by Congress.

(g) The research credit is allowed for qualified research in New Jersey. The research expenditures must meet the qualifications of both I.R.C. §§ 41 and 174, subject to applicable restrictions in the Internal Revenue Code and the New Jersey Corporation Business Tax Act. (See I.R.C. §§ 41 and 174, and regulations promulgated thereunder for other definitions and special rules.)

(h) In calculating the New Jersey research credit, a taxpayer is bound by the method for calculating the credit that the taxpayer uses for Federal purposes as reported on their Federal return when taking the credit for Federal tax purposes, except as provided for at (f) above (detailing the effect of repeal of I.R.C. § 41 by Congress). If a taxpayer files an amended Federal return changing the method used or adjusting the amount of credit claimed for Federal purposes, the taxpayer must file an amended New Jersey corporation business tax return reflecting such change in method for calculating the credit or the adjustment for the amount of the credit claimed. If the Internal Revenue Service makes adjustments to the amount of qualifying expenses, the taxpayer must reflect these adjustments by also filing an amended New Jersey corporation business tax return. Adjustments made for qualifying expenses for the Federal credit will

not increase or decrease the New Jersey credit if the expenses are not for research conducted in New Jersey. In the case of repeal by Congress, in calculating the New Jersey research and development credit, a taxpayer would use the method for calculating the credit that the taxpayer would have used for Federal purposes as would have been reported on their Federal return when taking the credit for Federal tax purposes if I.R.C. § 41 had not been repealed by Congress.

(i) Credit for increased research activities must take priority as specified at N.J.S.A. 54:10A-5.24.b. If any amount of property or expenditures is included in the calculation of the research credit, then no such amounts are allowable for the credit, as specified at N.J.S.A. 54:10A-5.24.b.

(j) If a taxpayer has research conducted both within and outside New Jersey and cannot determine the amount of New Jersey qualified research expenses for periods beginning on or after January 1, 2018, the taxpayer may calculate the amount of the New Jersey qualified research expenses to be used for the research credit by multiplying the qualified research expenditures everywhere by a three-factor fraction consisting of New Jersey property, payroll, and receipts in the numerator over property, payroll, and receipts everywhere in the denominator.

1. For a combined group filing either a mandatory or elective New Jersey combined return, where the combined group has research both within and outside New Jersey and cannot determine the amount of New Jersey qualified research expenses for the period, the taxable members of the combined group may calculate the amount of the New Jersey qualified research expenses to be used for the research credit by multiplying the qualified research expenditures everywhere by a three-factor fraction consisting of New Jersey property, payroll, and receipts in the numerator over property, payroll, and receipts everywhere in the denominator.

(k) Any Federal deduction pursuant to I.R.C. § 174 is the same for New Jersey purposes since there is no New Jersey provision for a separate modified State tax credit amount under such circumstances.

(l) The credit allowable in any given privilege period cannot reduce the tax liability to any amount less than the statutory minimum provided at N.J.S.A. 54:10A-5(e). In the case of a New Jersey combined group, the credit that was shared and used by a member shall be subject to the same limitation.

(m) The amount of the tax year credit allowable that cannot be applied for the tax year due to certain limitations may be carried over, to the seven consecutive privilege periods following a credit's tax year, except as provided at N.J.S.A. 54:10A-5.24.b and 54:10A-5.24b (which allows the carryover to be 15 privilege periods for businesses performing qualifying research in certain fields (advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology, and medical device technology) as defined at N.J.S.A. 54:10A-5.24b.b).

(n) Research credits allowable must be applied in the order of the tax years in which the credits were earned.

(o) The provisions at I.R.C. §§ 41(f)(2) and 41(g), and applicable Federal regulations allowing for the flow-through of a credit from a pass-through entity also apply to the New Jersey research credit to the extent that such regulations are consistent with the New Jersey Corporation Business Tax Act.

(p) The Director of the Division of Taxation reserves the right to make adjustments to the New Jersey credit pursuant to N.J.S.A. 54:10A-4(k)(3) and 54:10A-10.

(q) For purposes of the New Jersey research credit, gross receipts for any tax year must be reduced by returns and allowances made during the tax year to the extent such returns and allowances would reduce the gross receipts for the purposes of the Federal credit. In the case of a foreign corporation, only gross receipts that are effectively connected with the conduct of a trade or business within the United States are taken into account.

(r) For privilege periods beginning on and after January 1, 2020, the portion of qualified research expenses and qualified payments of a taxpayer that is a qualified small business within the meaning of I.R.C. § 41(h)(3) that was disallowed for the I.R.C. § 41 corporate

income tax credit because the taxpayer made an election pursuant to I.R.C. §§ 41(h) and 3111(f) to take the I.R.C. § 3111(f) payroll credit in lieu of the I.R.C. § 41 corporate income tax credit, shall be allowed for the purposes of calculating the New Jersey research credit provided for pursuant to this section.

(s) Examples:

Example 1: A taxpayer performs 50 percent of their research in New Jersey and 50 percent in Pennsylvania. Of the expenses that qualify for Federal purposes, only 50 percent are attributable to research performed in New Jersey and may be used for the purposes of the New Jersey research credit.

Example 2: Companies A, B, C, D, E, and F are members of a combined group. Company A performs research in New Jersey and receives payments from the other combined group members for qualified research expenses within the meaning of I.R.C. § 41(b) for research conducted on their behalf. Company E is located in Maine and also receives payments from the other combined group members for qualified research expenses within the meaning of I.R.C. § 41(b) for research conducted on their behalf. Although the research payments made to both Company A and E qualify for a Federal research credit, only the research payments to Company A qualify for the New Jersey research credit. The members of the combined group will be able to share their New Jersey research credit pursuant to N.J.S.A. 54:10A-4.6.i.

Example 3: Company T is a qualified small business and a start-up company that performs research in New Jersey. For Federal purposes, Company T made an election pursuant to I.R.C. § 41(h) for the Federal payroll tax credit at I.R.C. § 3111(f) to use 25 percent of its qualified research expenditures for the Federal payroll credit instead of the Federal corporate income tax research credit. Only 75 percent of the qualified research expenditures may be used for calculating the New Jersey research credit. The other 25 percent of the qualified research expenditures may be used by Company T for other New Jersey credits (such as the Manufacturing Equipment and Investment Tax Credit, the Angel Investor Credit, the New Jobs Investment Credit, etc.), if applicable, and if Company T otherwise qualifies for the other New Jersey credits.

18:7-3.26 Additional estimated payments resulting from P.L. 2018, c. 48, and P.L. 2020, c. 118

(a) If the retroactive provisions at P.L. 2018, c. 48, result in an additional tax liability for privilege periods beginning on or after January 1, 2017, no penalties or interest shall accrue for underpayment of tax; provided, however, that additional payments must be made by either the second next estimated payment subsequent to the enactment of P.L. 2018, c. 48, by December 31, 2018, for privilege periods beginning on or after January 1, 2017, or by the first estimated payment due after January 1, 2019, for privilege periods beginning on or after January 1, 2018.

(b) In the first privilege period that a mandatory combined return is due, no penalties or interest shall accrue due to underpayment that may result from the change from separate returns to mandatory combined returns. Any overpayment by a member of the combined group from the prior privilege period will be credited as an overpayment of the tax owed by the combined group, credited toward future estimated payments by the combined group.

(c) For the first privilege period of the taxpayer impacted by the enactment of P.L. 2020, c. 118, where such privilege period began before January 1, 2021, no penalties or interest shall accrue for underpayment of tax, due to the provisions at P.L. 2020, c. 118, applying retroactively to privilege periods ending on or after July 31, 2020, that create an additional tax liability due to the provisions at P.L. 2020, c. 118; provided, however, the additional estimated payments shall be made by the later of the second next estimated payment subsequent to the enactment of P.L. 2020, c. 118, or the second estimated payment due after January 1, 2021.

18:7-3.27 Tax rate for privilege periods ending on and after July 31, 2019

(a) In computing the tax liability owed pursuant to N.J.S.A. 54:10A-5 for privilege periods ending on and after July 31, 2019

(beginning on and after August 1, 2018, if a full tax year), the tax rate shall be applied against the taxable net income as defined at N.J.S.A. 54:10A-4(w), in addition to the non-operational income specifically assigned to New Jersey, and the rates shall be based on the taxable net income of the taxpayer according to the following schedule:

1. If the taxable net income is more than \$100,000 in a 12-month period, the rate is nine percent;

2. If the taxable net income is \$100,000 or less in a 12-month period, the rate is 7.5 percent; and

3. If the taxable net income is \$50,000 or less in a 12-month period, the rate is 6.5 percent.

(b) A New Jersey S corporation that did not elect to be included as a member of a combined group will compute its tax liability based on a tax rate applied to its taxable net income as defined at N.J.S.A. 54:10A-4(w).

(c) A taxpayer that is a real estate investment trust shall compute its tax liability at a rate applied to four percent of the taxpayer's taxable net income as defined at N.J.S.A. 54:10A-4(w), in addition to the non-operational income specifically assigned to New Jersey.

(d) A taxpayer that is an investment company shall compute its tax liability at a rate applied to 40 percent of the taxpayer's taxable net income as defined at N.J.S.A. 54:10A-4(w), in addition to the non-operational income specifically assigned to New Jersey.

(e) No alternative minimum assessment is owed for privilege periods ending on and after July 31, 2019 (beginning on and after August 1, 2018, if a full tax year).

(f) Minimum tax is owed at the applicable minimum tax rates. See N.J.S.A. 54:10A-5.e.

(g) For privilege periods ending on and after July 31, 2019, but ending before July 31, 2020, all members of a combined group filing either a mandatory or elective New Jersey combined return shall calculate the tax based on the rates imposed pursuant to N.J.S.A. 54:10A-5.c(1) on an entity-by-entity basis and any New Jersey S corporation electing to be included as a member of the combined group shall be taxed at the same rate as the other members of the combined group. For privilege periods ending on and after July 31, 2020, the combined group as a taxpayer (at the group level) filing either a mandatory or elective return shall calculate the tax based on the rates imposed pursuant to N.J.S.A. 54:10A-5.c(1).

(h) The statutory minimum tax of each taxable member of a combined group filing either a mandatory or elective New Jersey combined return shall be \$2,000 for the group privilege period. For privilege periods ending on and after July 31, 2019, if the total tax on income of the combined group exceeds the aggregate value of the statutory minimum tax of the taxable members, only the surtax (if any) and the tax on income will be owed by the combined group.

18:7-3.28 Tiered Subsidiary Dividend Pyramid Tax Credit

(a) Pursuant to N.J.S.A. 54:10A-5.46, for privilege periods ending on and after July 31, 2020, a taxpayer shall be allowed a credit against the tax imposed by subsection c. of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) to the extent a subsidiary of the taxpayer received dividends and deemed dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and paid tax on those dividends and deemed dividends to the State on a timely filed New Jersey corporation business tax return; provided, however, the taxpayer received those same dividends and deemed dividends from the subsidiary that paid tax to the State.

(b) For purposes of this section, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer.

(c) For purposes of this section, "paid tax" means the amount that the subsidiary paid to the State, or would have paid but for the use of other tax credits, or but for subsections (u) and (v) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4), or, for a combined group filing a combined return, but for subsections g and h of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6).

(d) In order for a taxpayer to qualify for the Tiered Subsidiary Dividend Pyramid Tax Credit, the taxpayer must have received the

same dividends and deemed dividends from a subsidiary that paid tax to the State. Such subsidiary must have received the same dividends and deemed dividends from other subsidiaries and included those dividends and deemed dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and paid tax on those dividends and deemed dividends to the State on a timely filed New Jersey corporation business tax return.

(e) The Tiered Subsidiary Dividend Pyramid Tax Credit is a credit for: 1) dividends and deemed dividends from non-combined group subsidiaries that file separate New Jersey returns and paid the corporation business tax on dividends and deemed dividends from other subsidiaries; and 2) dividends and deemed dividends from a separate lower-tier combined group that files a New Jersey combined return separate and apart from another (dividend paying) combined group and that paid the corporation business tax on dividends and deemed dividends from other subsidiaries.

(f) A member of a combined group cannot receive a Tiered Subsidiary Dividend Pyramid Tax Credit for taxes paid by another member because the members of a combined group are one taxpayer. However, intercompany dividends and deemed dividends are 100 percent eliminated between combined group members filing a New Jersey combined return together. For purposes of the Tiered Subsidiary Dividend Pyramid Tax Credit, a combined group is entitled to the credit for dividends and deemed dividends from the non-combined group member subsidiaries that filed New Jersey corporation business tax returns and paid the tax on the dividends and deemed dividends regardless of whether it was a separate return subsidiary or another subsidiary combined group (filing a separate New Jersey combined return), so long as those separate subsidiaries received the dividends and deemed dividends from other subsidiaries and included those dividends and deemed dividends in entire net income.

(g) The Tiered Subsidiary Dividend Pyramid Tax Credit can only reduce the regular tax liability of the taxpayer. However, the Tiered Subsidiary Dividend Pyramid Tax Credit cannot exceed the regular tax liability and is not refundable. The Tiered Subsidiary Dividend Pyramid Tax Credit does not contain a provision permitting the credit to be carried forward.

(h) The credit allowed pursuant to this section shall be claimed on Form 332 on a timely filed New Jersey corporation business tax return.

(i) The tax credit cannot be used against the surtax.

18:7-3.29 Surtax imposed pursuant to N.J.S.A. 54:10A-5.41 for privilege periods beginning on or after January 1, 2018

(a) In addition to the tax paid by each taxpayer determined pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), each taxpayer shall pay a surtax as follows:

1. For a taxpayer, except as provided at (d) below, that has allocated taxable net income in excess of \$1 million for the privilege periods, beginning on or after January 1, 2018, through December 31, 2023, the surtax imposed shall be 2.5 percent.

(b) For purposes of this section:

1. "Taxpayer" shall mean any business entity that is subject to tax as provided in the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

2. "Allocated taxable net income" shall mean allocated entire net income for privilege periods ending before July 31, 2019, or taxable net income as defined in subsection (w) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) for privilege periods ending on and after July 31, 2019.

(c) The surtax imposed pursuant to this section shall be imposed on allocated taxable net income, and shall be due and payable, in accordance with section 15 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-15), and the surtax shall be administered pursuant to the provisions at P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.). Notwithstanding the provisions of any other law to the contrary, no credits shall be allowed against the surtax liability computed pursuant to this section, except for credits for installment payments, estimated payments made with

a request for an extension of time for filing a return, overpayments from prior privilege periods, or the tax credit allowed pursuant to N.J.S.A. 54:10A-5.43.

(d) New Jersey S corporations and public utility companies are not subject to the surtax.

(e) For the purposes of the surtax only, deemed repatriation dividends included in entire net income pursuant to I.R.C. § 965 are to be excluded from the allocated taxable net income computation.

(f) The surtax does not apply to non-operational income and non-unitary partnership income.

(g) For privilege periods ending on and after July 31, 2019, and ending before July 31, 2020, only the taxable members of the combined group are subject to the surtax. In computing the surtax, the taxable members shall take into account their proportionate share of allocated taxable net income of the combined group and their allocated taxable net income derived from their activities, independent of the combined group.

1. For privilege periods ending on and after July 31, 2020, a combined group shall be treated as one taxpayer for purposes of subsection (d) of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41) for the income derived from the unitary business; provided, however, with regard to the surtax imposed pursuant to section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41), and for that purpose only, the portion of income that is attributable to a member that is a public utility exempt from the surtax shall not be included when computing the surtax due.

2. The combined group must keep accurate books and records to permit a proper accounting of the income for purposes of the surtax in order to exclude the portion of the income derived from includable public utilities.

(h) For all separate return taxpayers that are subject to the surtax, the taxpayer shall take into account their allocated taxable net income when computing the surtax.

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

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. The amount of any [specific] exemption or credit allowed in any law of the United States imposing any tax on or measured by the income of corporations, where such [specific] exemption or credit has been deducted in computing Federal taxable income[.];

(1) All income that is exempt under any provision of the Federal law must be included in the entire net income for New Jersey corporation business tax purposes, unless there is a provision of the Corporation Business Tax Act that exempts or excludes such item of income;

(2) New Jersey shall follow the Federal government's treatment of the related expenses paid with Paycheck Protection Program (PPP) loans and forgiven loans will be excluded from entire net income. A taxpayer, pursuant to the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), shall not be denied a deduction for ordinary and necessary business expenses paid for with the proceeds of a Federal Paycheck Protection Program loan by reason of the exclusion from entire net income, pursuant to P.L. 1945, c. 162, of such loan, or portion thereof, forgiven pursuant to § 1106 of the Federal CARES Act, P.L. 116-136, or any subsequent expansion of the Federal Paycheck Protection Program, including the provision of second draw loans pursuant to § 311 of Division N of the "Consolidated Appropriations Act, 2021," P.L. 116-260; and

(3) Items of income excluded from Federal taxable net income pursuant to the specific terms of a treaty do not have to be added back to entire net income;

ii.-v. (No change.)

vi. All taxes paid or accrued to any foreign country, state, province, territory, or subdivision, on or measured by profit or income or business presence or business activity, to the extent such taxes were deducted in computing Federal taxable income with respect to accounting years beginning on or after January 1, 2002;

vii. (No change.)

viii. Net operating losses sustained during any year or period other than that covered by the return, which were deducted in computing Federal taxable income, but a net operating loss deduction shall be allowed to the extent provided [by] at N.J.A.C. 18:7-5.12 through 5.17[.] **for privilege periods ending before July 31, 2019. For privilege periods ending on and after July 31, 2019, net operating losses are calculated on a post-allocation basis, rather than a pre-allocation basis, and are not included in the computation of entire net income. See N.J.A.C. 18:7-5.21;**

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) (No change.)

(2) Any part of a deduction for interest that relates to financing of motor vehicle inventory held for sale to customers, provided that the underlying indebtedness is [owing] **owed** to a taxpayer customarily and routinely providing this type of financing. The portion of such interest which may be deducted is limited to interest on indebtedness relating to floor-planning of motor vehicles evidenced by a trust receipt or similar document and is also limited to interest on unsold inventory items. The interest must be paid or accrued directly to a creditor which is a taxpayer under the act and not indirectly to any related entity. That taxpayer, or a corporation which is a parent or subsidiary of that taxpayer, must be the manufacturer or the motor vehicles financed; and

(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] as 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] **owed** directly or indirectly to holders of [ten] **10** 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] **owed** 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] **owed** to such bank holding company.

x.-xvi. (No change.)

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 **research** 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. (No change.)

xix. 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, except as may be permitted pursuant to N.J.A.C. 18:7-5.18;

xx. For privilege periods beginning after December 31, 2004, **but before January 1, 2018**, 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] **that** 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] **subparagraph**, 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]

xxiii. **For privilege periods beginning on and after January 1, 2017, any deduction, exemption, or credit allowed under the Internal Revenue Code for income reported pursuant to I.R.C. § 965;**

xxiv. **For privilege periods beginning after December 31, 2017, the amounts taken as a deduction pursuant to I.R.C. § 199A; and**

xxv. **For privilege periods beginning after December 31, 2017, see N.J.A.C. 18:7-5.22 for more information on the interest deduction limitation in subsection (j) at I.R.C. § 163; and**

2. Deduct from Federal taxable income:

i. **For privilege periods ending on or before December 31, 2016**, 100 percent of all dividends or [amounts] deemed dividends for Federal purposes included in Federal taxable income [which] **that** were received from subsidiaries meeting the definition of a subsidiary [under] **having the requisite degree of ownership of investment as described at N.J.S.A. 54:10A-4(d)** and 100 percent of all dividends from those subsidiaries [which] **that** were added to Federal taxable income in accordance with (a)1 above[;]. **For privilege periods beginning on or after January 1, 2017, 95 percent of all dividends or deemed dividends for Federal purposes included in Federal taxable income that were received from subsidiaries meeting the definition of a subsidiary at N.J.S.A. 54:10A-4(d) and 95 percent of all dividends or deemed dividends from those subsidiaries that 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] at (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.

(2) **For privilege periods beginning on or after January 1, 2017, dividends or deemed dividends received from a subsidiary shall be excluded from the entire net income of a taxpayer to the extent to which the subsidiary: received the same dividends or deemed dividends from other subsidiaries; included those dividends or deemed dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162**

(N.J.S.A. 54:10A-5); and paid tax to New Jersey on those dividends or deemed dividends, based on the subsidiary's allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). This sub-subparagraph shall not apply to privilege periods ending on and after July 31, 2019. Taxpayers may request section 8 relief as a result of differing allocation factors.

(3) For privilege periods ending on and after July 31, 2019, but before July 31, 2020, the extent to which a subsidiary: received dividends from other subsidiaries; included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and paid tax on those dividends; and the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income.

(4) For privilege periods ending on and after July 31, 2020, for the treatment of tiered subsidiary dividends received from subsidiaries that file a return separate and apart from the taxpayer, please see N.J.A.C. 18:7-3.28.

(5) For privilege periods ending on and after July 31, 2020, for purposes of N.J.S.A. 54:10A-4(k)(5), the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer regarding dividends and deemed dividends that were received as part of the unitary business of the combined group pursuant to N.J.S.A. 54:10A-4(k)(5)(E);

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 percent 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] that are not considered qualifying dividends for [Internal Revenue] Federal purposes are not eligible for deduction or exclusion from entire net income [under] pursuant to this subsection.

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined [under] at I.R.C. § 856, and N.J.S.A. [54:10-A4(1)]54:10A-4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided [in] at (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.

(2) For privilege periods beginning on or after January 1, 2017, dividends received from a subsidiary, to the extent to which the subsidiary: received the same dividends from other subsidiaries; included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and paid tax to New Jersey on those dividends, a taxpayer shall exclude from the entire net income those dividends received from the subsidiary which the subsidiary paid tax on, to New Jersey, based on the subsidiary's allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). This sub-subparagraph shall not apply to privilege periods ending on and after July 31, 2019. Taxpayers may request section 8 relief as a result of differing allocation factors.

(3) For privilege periods ending on and after July 31, 2019, but before July 31, 2020, the extent to which a subsidiary: received dividends from other subsidiaries; included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and paid tax on those dividends; the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income.

(4) For privilege periods ending on and after July 31, 2020, for the treatment of tiered subsidiary dividends received from subsidiaries that file a return separate and apart from the taxpayer please refer to N.J.A.C. 18:7-3.28.

(5) For privilege periods ending on and after July 31, 2020, for purposes of N.J.S.A. 54:10A-4(k)(5), the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer regarding dividends and deemed dividends that were

received as part of the unitary business of the combined group pursuant to N.J.S.A. 54:10A-4(k)(5)(E).

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] pursuant to (a)1xii above using any method, life and salvage value [which] that 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] that 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] pursuant to this [paragraph] subparagraph 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. (No change.)

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] pursuant to (a)1xii above over related depreciation claimed on that property [under] pursuant to (a)2iv above. A statutory merger or consolidation shall not constitute a disposal of recovery property.

vi. (No change.)

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 in this section, from its entire net income, as follows:

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

(2) The eligible net income of an IBF is the amount of income remaining after subtracting the applicable expenses, as defined [by] at (a)2vii(4) below.

(3) Eligible gross income is the gross income derived from an IBF. This will include gross income derived from the following:

(A) Making, arranging for, placing, or carrying loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is controlled, by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, all the proceeds of the loan are for use outside of the United States[;].

(B) Making or placing deposits with foreign persons [which] that are banks or foreign branches of banks (including foreign subsidiaries) or foreign branches of the taxpayers or with other international banking facilities[; or].

(C) Entering into foreign exchange or hedging transactions relating to any transactions [under] pursuant to (a)2vii(3)(A) and (B) above or (D) below.

(D) Any other activities [which] that an IBF may be, at any time, authorized to engage in by Federal or state law, the Board of Governors of the Federal Reserve, the Comptroller of the Currency, the New Jersey Banking Commission, or any other authority.

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

(5) For the international banking facility and combined groups, see N.J.A.C. 18:7-21.25.

viii. (No change.)

ix. For privilege periods beginning on and after January 1, 2018, a taxpayer is allowed as a deduction the amount of the full value of the deduction that the taxpayer was allowed for Federal income tax purposes and for which the taxpayer had taken for Federal income tax purposes pursuant to I.R.C. § 250. See N.J.S.A. 54:10A-4.15 and N.J.A.C. 18:7-5.19 for more information.

18:7-5.11 Right of Director to require [consolidated] **consolidated/combined** 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)-(c) (No change.)

(d) A consolidated return required [by this rule] **pursuant to this section** shall be filed within 60 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq.

(e) The member of an affiliated group or controlled group shall incorporate in its return, required [under this rule] **pursuant to this section**, information needed to determine its taxable entire net income, and shall furnish any additional information the Director requires within 30 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq.

(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.)

(h) **Subsections (a) through (g) above shall not apply to members of a combined group reported on the same New Jersey combined return. See N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.**

(i) **For privilege periods ending on and after July 31, 2019, (a) through (g) above shall apply to taxpayers that are not included together as members of a combined group reported on the same New Jersey combined return. See N.J.A.C. 18:7-21 for more information on combined groups and combined reporting.**

18:7-5.12 Net operating loss deduction

[A] **For privilege periods ending before July 31, 2019, a taxpayer may deduct a New Jersey net operating loss carryover as defined [in] at N.J.A.C. 18:7-5.13 in computing its entire net income before exclusions and before the net operating loss deduction. For privilege periods ending on and after July 31, 2019, net operating loss deductions will be determined pursuant to N.J.A.C. 18:7-5.21.**

18:7-5.13 New Jersey net operating loss carryover

(a) [A] **For privilege periods ending before July 31, 2019, a New Jersey net operating loss, as defined [in] at N.J.A.C. 18:7-5.15, for any [taxable year] privilege period 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] privilege periods and is reduced in each such succeeding [year] privilege period by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven [year] privilege periods following the [year] privilege period of the loss, taking into account the normal or extended due date for filing the return for the seventh [year] privilege period succeeding the [year] privilege period of the loss. The net operating loss carryover may not be carried back to any [year] privilege period preceding the [year] privilege period of the loss. For this purpose, [taxable year] privilege period 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] privilege period. 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)-(d) (No change.)

(e) **For privilege periods ending on and after July 31, 2019, see N.J.A.C. 18:7-5.21.**

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] **of the corporation's** capital stock redemptions and sales after June 30, 1984, is a [50 percentage point] **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)-(c) (No change.)

(d) **Subsections (a), (b), and (c) above do not apply to combined returns and combined groups. See N.J.S.A. 54:10A-4.5 and N.J.A.C. 18:7-21 for more information on prior net operating loss conversion carryovers (PNOLS) and net operating losses (NOLs) in the context of combined reporting and combined groups.**

(e) **Subsections (a), (b), and (c) do not apply to statutory conversions where, under the business formation laws of the state the business entity was formed in, the business entity merely changes form while remaining the same entity taxed as a corporation for Federal and New Jersey corporation business tax purposes. For example: where a C corporation merely changes form to a limited liability company through a statutory conversion pursuant to the laws of this State or another state, and remains taxed as a C corporation, the PNOLS and NOLs will survive, since the business entity is the same business entity that originally generated the PNOLS and NOLS.**

18:7-5.15 Net operating loss

(a) A net operating loss is the excess of allowable deductions over gross income used in computing entire net income. **For privilege periods ending on and after July 31, 2019, see N.J.A.C. 18:7-5.21.**

(b) Neither a net operating loss deduction nor any exclusion[s] from entire net income [are] **is an** allowable deduction[s] in computing a net operating loss.

(c) There is no net operating loss for any year that a [Corporation Business Tax Return (CBT-100)] **New Jersey corporation business tax return** is not filed or if filed does not report entire net income as a negative amount.

18:7-5.21 Net operating losses for privilege periods ending on and after July 31, 2019

(a) **For privilege periods ending on and after July 31, 2019, unused unexpired net operating losses incurred in a privilege period ending prior to July 31, 2019, are converted to a post-allocation basis (prior net operating loss conversion carryovers) pursuant to N.J.S.A. 54:10A-4(u). Net operating losses incurred in a privilege period ending prior to July 31, 2019, are converted from pre-allocation net operating losses to prior net operating loss conversion carryovers, as follows:**

1. Terms used in calculating the prior net operating loss conversion carryover are, as follows:

i. "Base year" means the last privilege period ending prior to July 31, 2019.

ii. "Base year BAF" means the taxpayer's business allocation factor as provided in sections 6 through 10 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-6 through 54:10A-10) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period ending prior to July 31, 2019. The base year BAF is the allocation factor reported on the taxpayer's Schedule J of its respective New Jersey corporation business tax return.

iii. "UNOL" means the unabsorbed portion of a net operating loss, as calculated at N.J.S.A. 54:10A-4(k)(6), that was in effect for the base

year, the last privilege period ending prior to July 31, 2019. The UNOL is the amount that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year subject to the limitations for deduction pursuant to this paragraph, including any net operating loss sustained by the taxpayer during the base year. The UNOL is the amount reported on Form 500;

2. The prior net operating loss conversion carryover shall be calculated, as follows:

i. The taxpayer shall first calculate the tax value of its UNOL for the base year and for each preceding privilege period for which there is a UNOL. The tax value of the UNOL for each privilege period is equal to the product of:

(1) The amount of the taxpayer's UNOL for a privilege period; and
(2) The taxpayer's base year BAF. This result shall equal the taxpayer's prior net operating loss conversion carryover.

ii. The taxpayer shall continue to carry over its prior net operating loss conversion carryover to offset its allocated entire net income as provided in sections 6 through 10 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-6 through 54:10A-10) for privilege periods ending on and after July 31, 2019. Such carryover periods shall not exceed the 20 privilege periods following the privilege period of the initial loss. The entire amount of the prior net operating loss conversion carryover for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the prior net operating loss conversion carryover that shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the prior net operating loss conversion carryover over the sum of the entire net income, computed without the exclusions permitted at N.J.S.A. 54:10A-4(k)(4) and (5) allocated to this State.

iii. The prior net operating loss conversion carryover computed pursuant to this paragraph shall be applied against the entire net income allocated to this State before the net operating loss carryover computed pursuant to N.J.S.A. 54:10A-4(v);

3. In calculating the prior net operating loss conversion carryovers, taxpayers must complete Worksheet 500-P (Form 500U-P in the case of combined group members). Taxpayers must retain a copy of Worksheet 500-P (Form 500U-P) in their books and records for inspection until 2044 (that is, four years subsequent to the original due date of the return representing the last period for which the prior net operating loss conversion carryover could be carried over for use before expiring);

4. The limitations provided for at N.J.S.A. 54:10A-4(k)(6)(D) and 54:10A-4(k)(6)(F) shall apply to the prior net operating loss conversion carryovers; and

5. Extension of net operating loss carryovers generated pursuant to N.J.S.A. 54:10A-4.3. All unused unexpired net operating loss carryovers that were unexpired after July 31, 2019, and that were converted to prior net operating loss conversion carryovers have an additional five-year carryover period, in addition to the original 15-year carryover period pursuant to N.J.S.A. 54:10A-4.3.

(b) For the purposes of the net operating loss deduction calculation pursuant to N.J.S.A. 54:10A-4(v), a net operating loss deduction is the amount allowed as a deduction for the net operating loss carryover to the privilege period, and is calculated, as follows:

1. A net operating loss for any privilege period ending on or after July 31, 2019, shall be a net operating loss carryover to each of the 20 privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried over. The portion of the loss that shall be carried over to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted at N.J.S.A. 54:10A-4(k)(4) and (5) allocated to this State;

2. For purposes of this subsection, the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income, without the net operating loss deduction provided for at N.J.S.A. 54:10A-4(k)(6)(A), and computed without the exclusions at N.J.S.A. 54:10A-4(k)(4) and (5), allocated to this

State pursuant to sections 6 through 10 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-6 through 54:10A-10);

3. A net operating loss for any privilege period ending on or after July 31, 2019, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from Federal taxable income pursuant to subparagraphs (A), (B), or (C) of paragraph (1) of subsection (a) at section 108 of the Federal I.R.C., 26 U.S.C. § 108, for the privilege period relating to the discharge of indebtedness;

4. A net operating loss carryover shall not include any prior net operating loss conversion carryovers; and

5. Where there is a change in 50 percent or more of the ownership of a corporation because of redemption or sale of stock and the corporation changes the trade or business giving rise to the loss, no net operating loss sustained before the changes may be carried over to be deducted from income earned after such changes. In addition, where the facts support the premise that the corporation was acquired under any circumstances for the primary purpose of the use of its net operating loss carryover, the Director may disallow the carryover; provided, however, this paragraph shall not apply between members of a combined group reported on a New Jersey combined return.

(c) For privilege periods beginning on and after January 1, 2020, the provisions of the Internal Revenue Code, the Federal rules, limitations, and restrictions, thereto, governing Federal net operating losses and Federal net operating loss carryovers with regard, but not limited to: mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business, or any other provision that limits or reduces Federal net operating losses and Federal net operating loss carryovers, shall apply to New Jersey net operating loss carryovers pursuant to subsection (v) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6).

1. The Federal rules and regulations governing Federal consolidated return net operating losses and net operating loss carryovers shall apply to New Jersey net operating loss carryover provisions at N.J.S.A. 54:10A-4.6.h, as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes to the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

(d) For more information on PNOs and NOLs in relation to combined groups and combined reporting, see N.J.A.C. 18:7-21.

18:7-5.22 Application of Internal Revenue Code Section 163(j)

(a) For privilege periods beginning after December 31, 2017, the interest deduction limitation in subsection (j) at I.R.C. § 163 shall apply on a pro-rata basis to interest paid to both related and unrelated parties, regardless of whether the related parties are subject to N.J.A.C. 18:7-5.18.

(b) The limitation will be applied based on the Federal rules and guidance for I.R.C. § 163(j).

(c) The I.R.C. § 163(j) limitation is applied first, before applying the related party add backs at N.J.A.C. 18:7-5.18.

(d) Members of a Federal consolidated group that did not file one Federal consolidated return together, which also file separate New Jersey tax returns, must follow the Federal rules for I.R.C. § 163(j), applying the limitation to those members as each separate taxpayers, and then apply the limitations at N.J.A.C. 18:7-5.18.

(e) If members of a Federal consolidated group file a Federal consolidated return, the Federal rules treating the taxpayers as one entity for the purposes of applying the limitation at I.R.C. § 163(j) shall apply when determining the limitation, even though the taxpayers file a separate New Jersey return. The Federal regulations, as amended for the changes to the Internal Revenue Code, governing the application of the limitation at I.R.C. § 163(j) to Federal consolidated returns shall apply. However, such members are still subject to the limitations set forth at N.J.A.C. 18:7-5.18, if otherwise applicable.

(f) For members of a combined group filing a New Jersey combined return, the members included on the combined return shall be treated as one single taxpayer for the purposes of applying the limitation at I.R.C. § 163(j) as though the members of a combined group were members of a Federal consolidated group that filed a consolidated return, regardless of whether such members had filed a Federal consolidated return. For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

(g) If members of a combined group filing a New Jersey combined return are part of a Federal consolidated group with taxpayers that are not included on a New Jersey combined return and the Federal consolidated group files one Federal consolidated return, for the purposes of applying the limitation at I.R.C. § 163(j), all of the members of the Federal consolidated group filing a single Federal consolidated return will be treated as one taxpayer, even though some of the taxpayers were not included in the New Jersey combined return and filed separate New Jersey returns. For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

(h) For corporation business tax purposes, New Jersey conforms to the CARES Act amendments and any other subsequent amendments at I.R.C. § 163(j).

18:7-5.23 Application of Federal stock ownership attribution rules

Except as otherwise provided either in this chapter or for specific purposes in certain sections of the Corporation Business Tax Act, the Federal stock ownership attribution rules apply for New Jersey corporation business tax purposes, except as set forth in this section. However, if a provision of the Internal Revenue Code regarding stock ownership attribution rules or subsequent amendments to any provision of the Internal Revenue Code result in less favorable treatment of a non-U.S. business entity than a U.S. domestic business entity, such provision shall not apply, and the same rules that otherwise would apply to a U.S. domestic business entity shall apply to that non-U.S. business entity for New Jersey corporation business tax purposes. For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

SUBCHAPTER 7. ALLOCATION

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] at 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)-(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 the purpose[s] 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. (No change.)

4. For further information about combined returns and unitary businesses, see N.J.A.C. 18:7-21.

[4.] 5. (No change in text.)

(h) The accounting methods described [in] at (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. **For further information about combined returns and unitary businesses, see N.J.A.C. 18:7-21.**

1. (No change.)

(i)-(k) (No change.)

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

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

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

(c) For privilege periods ending on and after July 31, 2019, if it appears that the allocation factor(s) computed on the basis of the receipts fraction does not properly reflect the activity, business, receipts, capital, entire net worth, or entire net income of the combined group (as a whole or the members thereof) in New Jersey, the Director may adjust or the managerial member of a combined group filing a New Jersey combined return may request an adjustment of the allocation factor(s), of either the managerial member or the other members of the combined group included on the same New Jersey combined return, in accordance with N.J.S.A. 54:10A-4.8 and 54:10A-4.10.

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

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

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

1. (No change.)

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

Example:

(No change.)

(d)-(g) (No change.)

18:7-8.8 Scope of allocable receipts

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

1. (No change.)

2. Services [performed] **if the benefit of the service is received in New Jersey;**

3.-4. (No change.)

5. All other business receipts earned in New Jersey. See example [in] at N.J.A.C. 18:7-8.7(c).

18:7-8.10A Receipts from services in the State; allocation for certain special industries

(a) For privilege periods ending on and after July 31, 2019, receipts from service transactions shall be allocated to New Jersey in accordance with this section. **See N.J.A.C. 18:7-21 for additional information on combined groups filing New Jersey combined returns.**

1. (No change.)

2. In determining whether the benefit of the services is received within this State, a taxpayer shall include in the numerator of the sales fraction receipts derived from customers within this State as provided in this paragraph.

[i. For purposes of this paragraph, a customer within this State is either a recipient that is:]

i. For purposes of this subparagraph, a customer is considered located within this State if a recipient is either:

(1) Engaged in a trade or business and maintains a [regular] place of business in this State; or

(2) (No change.)

ii. A [regular] place of business in this State is not limited to the principal place of business of the customer and includes any office, factory, warehouse, or other business location in this State where the customer conducts business in a regular and systematic manner or maintains property or employees.

iii. (No change.)

3. In the event that services are provided to a recipient engaged in a trade or business for use in that trade or business located in this State and another state(s), a taxpayer shall include in the numerator of the sales fraction receipts based on the percentage of the total value of the benefit of the services received in all locations both within and outside of this State, as determined in this paragraph, or a reasonable approximation as defined at (a)3iv(1) below.

i.-iii. (No change.)

iv. In determining the “proportion to the extent to which the recipient receives the benefit of the service(s) in this State,” a taxpayer may use a reasonable approximation to attribute the location of receipts if none of the items listed at (a)3iii above provide the information necessary to determine how much of the benefit of the service(s) is received in this State.

(1) (No change.)

4.-5. (No change.)

6. Lump sum payments for services where the benefit is received both inside and outside of New Jersey must be apportioned in the manner described [in] at (a)6i and ii below in order to result in a fair and reasonable receipts fraction. **For transportation companies that meet the qualifications at N.J.S.A. 54:10A-4.7(b), see N.J.A.C. 18:7-21 for additional information and applicable rules for transportation combined groups filing New Jersey combined returns.**

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 in New Jersey and the denominator [of], which is the mileage 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 N.J.A.C. 13:18-3.12 shall make calculations using such records. **For transportation companies that meet the qualifications at N.J.S.A. 54:10A-4.7(b), see N.J.A.C. 18:7-21 for additional information and applicable rules for transportation combined groups filing New Jersey combined returns.**

[(1) With regard to the property fraction, movable property, such as tractors and trailers, shall be allocated to this State using the mileage fraction set forth in this subparagraph. Such allocated movable property shall be added to the fraction formed by 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 this subparagraph. 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 taxpayer’s overall payroll fraction.]

7.-10. (No change.)

18:7-8.12 Other business receipts

(a)-(f) (No change.)

(g) For sourcing of I.R.C. § 951A income, I.R.C. § 250(b) income, and the related I.R.C. §250(a) deduction, see N.J.A.C. 18:7-5.19.

SUBCHAPTER 10. SECTION 8 ADJUSTMENTS

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

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

(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.-2. (No change.)

3. The taxpayer must [also] attach a rider [to the return with a Form A-3730 setting forth in full the data on which its application is based, together with a computation of the amount of tax which would be due under the proposed method.] **and documentation setting forth, in full, the data on which its application is based, together with a computation of the amount of tax that would be due under the proposed method with the submission of Form A-3730 when making such request.**

(d) For privilege periods ending on and after July 31, 2019, the Director may adjust the business allocation factor, or the managerial member of a combined group filing a New Jersey combined return may request an adjustment of the business allocation factor, of either the managerial member or the other members of the combined group included on the same New Jersey combined return, in accordance with N.J.S.A. 54:10A-4.8 and 54:10A-4.10. For more information on combined groups and combined reporting, see N.J.A.C. 18:7-21.

1. A combined group may not change the allocation factor formula pursuant to N.J.S.A. 54:10A-4.7 without the prior consent of the Director.

2. A combined group making an application for an adjustment of its business allocation factor must file the New Jersey combined return and compute and pay its tax, in accordance with the allocation factor formula pursuant to N.J.S.A. 54:10A-4.7. The member submitting such application on behalf of the combining group must be the managerial member of the combined group.

3. The managerial member (on behalf of the combined group) must attach a rider and documentation setting forth, in full, the data upon which the application is based, together with a computation of the amount of tax that would be due under the proposed method with the submission of Form A-3730 when making a request for an adjustment of the business allocation factor.

SUBCHAPTER 11. RETURNS

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.] **the applicable New Jersey corporation business tax return published by the Division of Taxation for the respective privilege period for the taxpayer.**

2. In the case of all taxpayers entitled and electing to allocate entire net income, the supplemental sheet, to be used in conjunction with [Form CBT-100] **the return** and containing the allocation schedules, must be completed and [annexed] **attached** to [Form CBT-100] **the New Jersey corporation business tax return.**

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

18:7-11.7 Time for filing returns

(a) [The] **For privilege periods ending before July 31, 2020, 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. **For privilege periods beginning on and after July 31, 2020, the due date of the New Jersey corporation business tax return shall be 30 days after the original due date for filing the taxpayer's Federal corporate income tax return for such privilege period, or part thereof, and the full amount of the tax pursuant to this section shall be due and payable on or before the date prescribed in this section for the filing of the return.**

(b) [A] For a return that is permitted to be mailed instead of being filed according to the electronic filing mandate, such 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] submitted to the Division of Taxation on the next business day, if the due date falls on a Saturday, Sunday, or State holiday.

(d) **For privilege periods beginning on and after July 31, 2020, if the 30th day after the original due date for filing the taxpayer's Federal corporate income tax return is a business day on the 14th of the month and the 15th of said month is also a business day, then the 15th of the month shall be deemed the due date of the New Jersey corporation business tax return.**

(f) **For privilege periods beginning on and after July 31, 2020, if the original due date of the taxpayer's Federal corporate income tax return is June, the taxpayer's New Jersey corporation business tax return shall be due on August 15th.**

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] **New Jersey corporation business tax return**. To amend [Form CBT-100 or Form CBT-100S] **New Jersey corporation business tax returns**, [use Form CBT-100 or Form CBT-100S for the appropriate tax year and write "AMENDED RETURN" clearly on the front page of that form] **file the amended return electronically (except the BFC-1, which may be mailed) selecting the "AMENDED RETURN" option and writing the appropriate privilege period.**

(b) (No change.)

(c) After the filing of a report of change or correction on an amended [Form CBT-100 or amended Form CBT-100S] **New Jersey corporation business tax 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] **agent's report.**

(d) (No change.)

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

(a) No extension will be granted unless request is made on a 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. Show the information required, including the exact name, address, New Jersey [serial] **corporation** number, the Federal employer identification number, if any, and the amount of the estimated tax liability;
2.-3. (No change.)

(b) Taxpayers using the New Jersey [Corporation Business Tax Return Form CBT-100] **corporation business tax return** may request an extension for a period not exceeding six months and will generally receive [automatic] approval, provided that the taxpayer has complied with the instructions set forth on the Tentative Return [Form CBT-200T] **on the electronic portal application, and has paid any unpaid balance of its estimated tax and the taxpayer has subsequently timely filed their return no later than the extension period due date.**

1. (No change.)

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

2. **Requests are to be submitted electronically.**

3. (No change.)

(c) Banking and financial corporations may request an extension of time to file **their respective New Jersey corporation business tax 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] **the taxpayer's respective New Jersey corporation business tax return**, including the exact name, address, New Jersey [Serial] **corporation** number, if applicable, the Federal employer identification number, if any, and the amount of tentative tax liability;

3. [Be] **The request shall be** accompanied by a remittance to cover the unpaid balance of the tentative tax due for the accounting year for which an extension of time to file the return is requested; [and]

4. [Be] **The request shall be** accompanied by a completed copy of Schedule L from [Form BFC-1] **the taxpayer's respective New Jersey corporation business tax return**, and a copy of the taxpayer's Federal extension request[.]; **and**

5. **The extension request may be for a period not exceeding six months.**

(d) In general, extension requests shall not be granted for any period exceeding [five] **six months** from the original due date.

(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] **six months**. In cases where the taxpayer has failed to obtain a Federal extension, the taxpayer, upon request, may be granted a [two month] **two-month extension** for filing the return **from the original due date of the return**, if sufficient cause is **established and the request is submitted in writing**. 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.)

(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] **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. (No change.)

(i) Where a taxpayer makes an election on Federal Form [8023] **7004**, 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] **the New Jersey extension** 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.

(k) The managerial member of a combined group filing a New Jersey combined return for the group privilege period may request an extension of time to file on behalf of the combined group pursuant to (b) above, as though the combined group were one taxpayer and shall include the unitary I.D. number for the combined group.

18:7-11.15 Consolidated returns

(a) [Corporations] **For privilege periods ending before July 31, 2019, corporations** are not permitted to file consolidated returns. Provided, however for those privilege periods:

1.-3. (No change.)

(b) Except as provided [in] at (a) above, where a taxpayer has filed a consolidated return with the Internal Revenue Service for Federal income tax purposes, it must complete its return under the act and must reflect its

entire net income and entire net worth as if it had filed its Federal return on its own separate basis.

(c) A taxpayer [under], pursuant to (b) above, shall also file a copy of the Affiliations Schedule Form 851, which is filed with Form 1120 for Federal income tax purposes.

(d) For mandatory unitary combined returns and elective combined returns in privilege periods ending on and after July 31, 2019, see N.J.A.C. 18:7-21.

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

(a) [The] For privilege periods ending prior to July 31, 2020, the Director may by general rule or by special notice require any taxpayer to submit copies or pertinent extracts of its Federal income tax returns, or of any other tax return made to any agency of the Federal [Government] government, or of this or any other state, or of any statement or registration made pursuant to any state or Federal law pertaining to securities or securities exchange regulations. For privilege periods ending on and after July 31, 2020, taxpayers are required to submit their Federal return and applicable schedules as part of a full and complete New Jersey corporation business tax return pursuant to N.J.S.A. 54:10A-14(a), as amended at P.L. 2020, c. 118. See N.J.A.C. 18:7-11.17A for more information on the Federal return mandate.

(b) The Director may require all taxpayers to keep records [he or she] that the Director 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] the Director may prescribe under law.

(d) (No change.)

18:7-11.17A Federal returns, forms, schedules, and extracts mandatory to include as part of a full and complete New Jersey corporation business tax return

(a) For privilege periods ending on and after July 31, 2020, as part of a full and complete New Jersey corporation business tax return, a taxpayer or managerial member of a combined group must submit copies or pertinent extracts of its Federal income tax returns, or of any other tax return filed with any agency of the Federal government, or of this State or any other state, or of any statement or registration made pursuant to any state or Federal law pertaining to securities or Securities Exchange Commission regulations. The following Federal returns, forms, schedules, and extracts are necessary to include:

1. A copy of the Federal return (or returns of each member in the case of a combined group) that was filed with the Internal Revenue Service for the privilege period (for example, Forms 1120, 1120-F, 1120-S, etc., as applicable);

2. Form 8993;
3. Form 8992;
4. Form 8990;
5. Form 5471;
6. Form 1125-A;
7. Form 851;
8. Form 1125-E;
9. Form 8858;
10. Form 4562;
11. Form 5472;
12. Form 1118;
13. Schedule M-3;
14. Schedule D;
15. Form 4797; and
16. Schedule UTP.

(b) Failure to include a copy of the Federal return and the above forms and schedules (if the taxpayer attached said forms or schedules as part of their original or amended Federal return) filed with the Internal Revenue Service, shall result in an incomplete New Jersey corporation business tax return and the taxpayer may be assessed penalties and interest for noncompliance.

(c) In lieu of completing certain riders for certain parts of the New Jersey corporation business tax return or certain schedules of the New Jersey corporation business tax return, where the taxpayer completed and filed certain forms or schedules for Federal purposes, other than the forms and schedules required to be included as prescribed at (a) above, that contain identical or substantially similar information, the taxpayer may include such Federal forms or schedules.

(d) If the taxpayer was not required to complete a form or schedule listed at (a) above as part of their full and complete Federal tax return filed with the Internal Revenue Services, then the taxpayer is not required to attach said form or schedule with their New Jersey corporation business tax return.

(e) All Federal forms and schedules not required pursuant to this section must be made available to the Division of Taxation, upon request.

18:7-11.18 Reproduction of return 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] corporation business tax return 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] the New Jersey corporation business tax returns must meet the following conditions and requirements:

- 1.-11. (No change.)

SUBCHAPTER 12. SHORT PERIOD RETURN

18:7-12.1 Short period returns; when required

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

(d) In the case of a combined group filing a New Jersey combined return, in addition to (b)4 above, where the managerial member is changing its accounting period, a short period return is required pursuant to (b)3 above, if the corporation is the managerial member of the combined group, or in the case of (b)2 above, when the combined group first gains taxable status with New Jersey. A short period return would only be required pursuant to (b)1 above, if the new corporation is designated the managerial member by the combined group; in which case the previous managerial member of the combined group, would file a short period return for the applicable period and then the new corporation that is designated the managerial member will file a short period return beginning the month that the new corporation was formed.

1. For a combined group that files combined returns in New Jersey, where the managerial member remains part of the combined group, the accounting period of the managerial member remains the same, and the managerial member is not required to file a short period return for Federal purposes, the combined group does not need to file a short period combined return.

2. A taxpayer that was a member of a combined group filing a New Jersey combined return for part of the group privilege period and subsequently departs the combined group must report its income for the months prior to its departure on the combined group return. The departing taxpayer shall report the income for the months subsequent to departing the combined group on a short period separate return, unless the member joined a second combined group that files a New Jersey combined return. The taxpayer that joined a second combined group that files a New Jersey combined return would report on the second group's return, the income for the months the member was part of the second combined group. To determine the amount of income that is attributable to the periods before and after departing a combined group, the taxpayer must prorate their income/losses and receipts.

i. In a group privilege period where all of the members depart from the combined group (resulting in the combined group no longer existing for the remaining portion of the period), the managerial member shall file a short period New Jersey combined return for the

portion of the group privilege period where the combined group existed, and all of the taxpayers (former members of the group) shall file short period separate returns (if the taxpayer is a separate filer) for the remaining portion of the period. Where a taxpayer (former member of the group) has joined a second combined group that files a New Jersey combined return, such taxpayer would only report on the second group's return the income for the months the member was part of the second combined group. After separating from a combined group, a taxpayer must prorate its income, losses, and receipts between the return of its former combined group and its new combined group return, separate entity return, or other appropriate return.

3. For a taxpayer that is a member of a combined group filing a New Jersey combined return, and that member properly dissolves and receives a tax clearance during the group privilege period, the income and tax liabilities of that member for the part of the group privilege period the member existed must be reported on the combined return and no short period combined return is required, unless the member had been the managerial member of the combined group. If the taxpayer was the managerial member, a short period combined return must be filed for the short period and the combined group will designate a new managerial member and the new managerial member shall file a short period combined return for the combined group for the remaining months in the 12-month period after the previous managerial member departed the group.

4. Where the combined group loses its taxable status with New Jersey, the managerial member of the combined group must file a short period return for the part of the group privilege period that the combined group had taxable status in New Jersey.

(e) For transitional short period returns for banks switching accounting periods, see N.J.S.A. 54:10A-34.1 for more information.

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.-4. (No change.)

(b) Subsection (a) above shall apply to a combined group when a short period return is required to be filed for the combined group. See N.J.A.C. 18:7-21 for more information on combined reporting.

18:7-12.3 Short period returns; allocation

(a) (No change.)

(b) In the case described [in] at (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] at N.J.A.C. 18:7-12.2.

(c) Subsections (a) and (b) above shall apply to combined groups required to file a short period combined return. See N.J.A.C. 18:7-21 for more information on combined reporting.

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

18:7-13.8 Claims for refund; when allowed

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

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

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

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

2. The taxpayer shall file the applicable New Jersey corporation business tax for the respective period; 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] New Jersey corporation business tax return for the appropriate tax year, with the words "AMENDED RETURN" clearly [written] indicated on the front page of the form, is an amended return.

(d) (No change.)

(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] the claim

will be considered a timely refund claim [such claim must be] if it is 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)-(h) (No change.)

(i) To claim a refund and amend [Form CBT-100 or CBT-100S] the applicable New Jersey corporation business tax returns, the [Form CBT-100 (or the Form CBT-100S for New Jersey S corporations)] applicable return for the appropriate tax year shall be used. The words "AMENDED RETURN" shall be clearly [written] indicated on the front page of the [form] New Jersey corporation business tax return, and it shall be submitted electronically except in the case of the BFC-1, which is mailed to:

Corporation Business Tax Refund Section

[50 Barrack Street] 3 John Fitch Way

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] corporation business tax return. A penalty for late filing of the [Form CBT-100] corporation business tax return may be imposed [under] pursuant to N.J.S.A. 54:49-4.

Example 2: One year after filing a [Form CBT-100] corporation business tax return 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] pursuant to N.J.S.A. 54:49-6 and to file claims for refund [under] pursuant to 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: (No change.)

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] corporation business tax return 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.

SUBCHAPTER 21. COMBINED RETURNS

18:7-21.1 Definitions relevant to combined returns

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

1. "Affiliated group" means for purposes of section 23 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.11), an affiliated group as defined at I.R.C. § 1504, except such affiliated group shall include all U.S. domestic corporations that are commonly owned, directly or indirectly, by any member of such affiliated group, without regard to whether the affiliated group includes: (1) corporations included in more than one Federal consolidated return; (2) corporations engaged in one or more unitary businesses; or (3) corporations that are not engaged in a unitary business with any other member of the affiliated group.

As used in this definition, “U.S. domestic corporations” means: (1) business entities wherever incorporated or formed that are U.S. domestic corporations, are deemed to be, or are treated as U.S. domestic corporations pursuant to the provisions of the Internal Revenue Code; or (2) any entities incorporated or formed under the laws of a foreign nation that are required to file Federal tax returns if such entities have effectively connected income within the meaning of the Internal Revenue Code. “Commonly owned” means that more than 50 percent of the voting control of each member of an affiliated group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether the owner or owners are members of the affiliated group. Whether voting control is indirectly owned shall be determined, in accordance with I.R.C. § 318.

In cases where the “commonly owned” ownership standard is met, a New Jersey affiliated group shall include: (1) business entities wherever incorporated or formed that are U.S. domestic corporations, that are deemed to be, or are treated as U.S. domestic corporations pursuant to the provisions of the Internal Revenue Code; or (2) any entities incorporated or formed under the laws of a foreign nation that are required to file Federal tax returns, if such entities have effectively connected income within the meaning of the Internal Revenue Code.

2. “Combinable captive insurance company” means an entity that is treated as an association taxable as a corporation under the Internal Revenue Code, where:

- i. More than 50 percent of the voting stock of which is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation pursuant to the Internal Revenue Code, and not exempt from Federal income tax;
- ii. The entity is licensed as a captive insurance company pursuant to the laws of this State or another jurisdiction;
- iii. The business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent, members of its affiliated group, or both; and
- iv. Fifty percent or less of whose gross receipts for the privilege period consist of premiums from arrangements that constitute insurance for Federal income tax purposes.

For purposes of this definition, “affiliated group” shall have the same meaning as that term is given at I.R.C. § 1504, except that the term “common parent corporation” as used at I.R.C. § 1504, shall mean any person, as defined at I.R.C. § 7701, and references to “at least 80 percent” at I.R.C. § 1504, shall be read as “50 percent or more.” I.R.C. § 1504, shall be read without regard to the exclusions provided for at subsection (b) of that section. The affiliated group is also otherwise known as the commonly owned group. “Gross receipts” includes the amounts included in gross receipts for purposes of paragraph (15) of subsection (c) at § 501 of the Internal Revenue Code, 26 U.S.C. § 501(c)(15), except that those amounts also include all premiums. “Premiums” includes consideration for annuity contracts and excludes any part of the consideration for insurance, reinsurance, or annuity contracts that do not provide bona fide insurance, reinsurance, or annuity benefits. A combinable captive insurance company shall not be exempt pursuant to section 3 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-3). A captive insurance company that does not meet the definition of combinable captive insurance company will be excluded as provided in subsection k. of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6) and is exempt pursuant to section 3 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-3).

3. “Combined group” means the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax pursuant to this chapter, and shall include all business entities, except as otherwise provided for under any section of the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

A combined group shall be treated, for privilege periods ending on and after July 31, 2020, as one taxpayer for purposes of paragraph (1) of subsection (c) of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and section 1 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-5.41) for the income derived from the unitary business; provided however, with regard to the surtax imposed pursuant to section 1 at P.L. 2018, c. 48

(N.J.S.A. 54:10A-5.41), and for that purpose only, the portion of income that is attributable to a member that is a public utility exempt from the surtax shall not be included when computing the surtax due.

i. The combined group shall consist of one or more taxable members of the group, irrespective of their place of incorporation or formation, and the additional non-taxable members of such group.

ii. In the case of an affiliated group election, the term “combined group” refers to the group to which the election applies, which may constitute more than one Federal affiliated group.

iii. The combined group shall consist of members irrespective of their place of incorporation and include businesses operating as a unitary business. The determination of whether a group of entities constitutes a combined group occurs prior to determining the method (water’s-edge, worldwide, or affiliated group) of combined returns to file. However, a combined group will file on a water’s-edge basis if no election to file a worldwide or affiliated group basis is made. See N.J.A.C. 18:7-21.15 for more information on determining which members are included on a water’s-edge basis.

4. “Common ownership” means that more than 50 percent of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with I.R.C. § 318.

i. Direct and indirect voting control, and tiered ownership. If the same person (and/or any related persons) holds directly or indirectly more than 50 percent of the voting control of a corporation (a parent corporation), that person shall be considered to hold indirectly any stock or other interest in ownership or control in a lower-tier corporation (a subsidiary corporation) that is directly or indirectly held by the parent corporation. Thus, by way of illustration, a parent corporation and any one or more corporations (whether in a direct chain) connected through direct or indirect stock ownership, where more than 50 percent of the voting control of each subsidiary corporation is directly or indirectly owned by a corporation (and/or any related persons), are treated as commonly owned or under common ownership, and subject to inclusion in a combined group.

Example 1. Corporation A, a widely-held, publicly traded corporation, owns 51 percent of the stock of Corporation B; Corporation B owns 51 percent of Corporation C; and Corporation C owns 60 percent of Corporation D. Corporations A, B, C, and D are all treated as commonly owned or under common ownership, and subject to inclusion in a combined group.

Example 2. Same facts as Example 1, except Corporation C owns 40 percent of Corporation D, with another 20 percent of Corporation D being owned by an individual who owns 100 percent of Corporation A. Corporations A, B, C, and D are all treated as commonly owned or under common ownership, and subject to inclusion in a combined group. Corporation D is treated as commonly owned through the aggregation of Corporation C’s 40 percent ownership in Corporation D and the related individual’s 20 percent ownership in Corporation D.

ii. Related versus unrelated owners. Two or more corporations, where stock representing more than 50 percent of the voting control of each corporation is owned directly or indirectly by the same person (and/or any related persons), whether corporate or non-corporate, are treated as commonly owned or under common ownership, and subject to inclusion in a combined group. A common owner or owners need not be members of the combined group.

Example 1. Individual (W) owns 51 percent of Corporation A, 60 percent of Corporation B, and 100 percent of Corporation C. Corporations A, B, and C are all treated as commonly owned or under common ownership, and subject to inclusion in a combined group. The same conclusion would be reached if W owned 35 percent of Corporation B and W’s husband, a related person, owned 25 percent of Corporation B, so that together W and her husband owned 60 percent of Corporation B.

Example 2. Foreign corporation (F) owns 100 percent of the stock of Corporation A (organized in the U.S.) and of Corporation B (also organized in the U.S.). Corporations A and B each directly or

indirectly own various corporate subsidiaries in separate chains leading up to Corporations A and B, where the voting control of each subsidiary is more than 50 percent owned by a higher-tier corporation in the chain. Corporations A and B, and all of their respective direct and indirect subsidiaries, are treated as commonly owned or under common ownership, and subject to inclusion in a single combined group.

(1) Two or more corporations shall not be treated as commonly owned or under common ownership, and subject to inclusion in a combined group, where aggregation of the ownership of such unrelated owners would be necessary in order to represent more than 50 percent of the voting control of any of such corporations.

Example 1. Individual I-1 owns stock representing 40 percent of the voting control of Corporation A and stock representing 20 percent of the voting control of Corporation B. Individual I-2 owns 30 percent of Corporation A and 45 percent of Corporation B. I-1 and I-2 are not related persons, and Corporations A and B are not otherwise related persons. Corporations A and B are not treated as commonly owned or under common ownership, and, thus, are not subject to inclusion in a combined group.

(2) In applying I.R.C. § 318 for determining whether indirect ownership exists, the beneficial and constructive ownership rules of Internal Revenue Code § 318 shall apply for the purposes of determining common ownership.

(3) Two or more corporations that are “stapled entities” are treated as commonly owned or under common ownership, and subject to inclusion in a combined group. Stapled entities are entities where, by reason of their form of ownership, or restrictions on transfer of ownership, or other terms or conditions (whether existing by operation of law, by written contract, or otherwise), in the case of a transfer of one or more ownership interests, more than 50 percent of the voting control of each entity is required to be transferred. See 26 CFR 1.269B-1 for additional information on stapled entities.

(4) A group of corporations under common ownership may be engaged in one or more unitary businesses.

(5) Related parties; constructive ownership. In determining whether a person is a related person or is considered to hold stock or other ownership or control interests in an entity that is directly held by another person, the constructive ownership rules described at I.R.C. § 318 shall generally apply, to the extent not inconsistent with the rules or requirements described in this definition or elsewhere in this chapter or at N.J.S.A. 54:10A-1 et seq., except that:

(A) In applying I.R.C. § 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the voting control of a corporation, it shall be considered to own all of the stock or other ownership or control interests in such corporation; and

(B) If a person has an option to acquire stock or other ownership interests in an entity, such stock or other ownership interests shall be treated as owned by such person only to such extent as determined by the Director, as necessary, to prevent tax avoidance.

(6) In determining common ownership, the Director may take into account any plan or arrangement, whether existing by operation of law, by contract, or otherwise, for bestowing or shifting ownership or voting control, in addition to the terms of any actual stock ownership or control.

5. “Group privilege period” means, if two or more members in the combined group file in the same Federal consolidated tax return, the same income year as that used on the Federal consolidated tax return and, in all other cases, the privilege period of the managerial member.

6. “Managerial member” means, if the combined group has a common parent corporation and that common parent corporation is a taxable member, the managerial member shall be the common parent corporation. In other cases, the combined group shall select a taxable member as its managerial member or, in the discretion of the Director, or upon failure of the combined group to select its managerial member, the Director shall designate a taxable member of the combined group as managerial member.

7. “Member” means a business entity that is a part of a combined group.

i. A disregarded entity is not itself a member. See N.J.A.C. 18:7-21.3 for more information.

ii. A partnership is not a member of a combined group. See N.J.A.C. 18:7-21.3 for more information.

iii. A business entity that is treated as a corporation for either the purposes of the corporation business tax or for Federal purposes shall be a member of the combined group, unless some other exception or exclusion applies.

iv. A corporation exempt pursuant to section 3 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-3) from the tax imposed pursuant to P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), shall not be a member of a combined group.

8. “Nontaxable member” means a member that is: not subject to tax pursuant to the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

9. “Taxable member” means a member that is subject to tax pursuant to the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.). A member shall be a taxable member even if such member only owes the minimum tax. A New Jersey S corporation shall only be included as a taxable member of a combined group filing a New Jersey combined return if the New Jersey S corporation elects to be included as a member and taxed at the same rate as the other members of the combined group. A New Jersey S corporation that does not elect to be included shall be excluded as a member of the combined return and shall file a separate return.

10. “Unitary business” means a single economic enterprise that is made up either of separate parts of a single business entity or of a group of business entities under common ownership that are sufficiently interdependent, integrated, and interrelated through their activities, so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value among the separate parts. “Unitary business” shall be construed to the broadest extent permitted under the Constitution of the United States. A business conducted by a partnership that is in a unitary business with the combined group shall be treated as the business of the partners that are members of the combined group, whether the partnership interest is held directly or indirectly through a series of partnerships, to the extent of a partner’s distributive share of partnership income. The amount of partnership income to be included in the partner’s entire net income shall be determined in accordance with subsection a. of section 3 at P.L. 2001, c. 136 (N.J.S.A. 54:10A-15.6) or subsection a. of section 4 at P.L. 2001, c. 136 (N.J.S.A. 54:10A-15.7), as applicable. A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another corporation through its direct or indirect interest in a partnership.

i. A group of corporations related by common ownership may be engaged in more than one unitary business.

ii. See N.J.A.C. 18:7-21.2 for more information on unitary business.

18:7-21.2 Unitary business

(a) The definition of unitary business for New Jersey corporation business tax purposes is defined at N.J.S.A. 54:10A-4(gg). New Jersey construes the term “unitary business” to the broadest extent permitted under the United States Constitution.

1. A determination as to whether an entity forms part of a unitary business with another entity is based on the facts and circumstances of each case. Such analysis is both quantitative and qualitative.

2. A unitary business is characterized by significant flows of value evidenced by factors, such as functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence.

i. One or more related business organizations engaged in business activity—entirely within this State or both within and without this State—are unitary if there is interdependence in their functions. The United States Supreme Court has expressed the constitutional test using a variety of language; in some cases holding that a finding of unitary relationship requires “contribution or dependency” between

businesses, in others requiring “substantial mutual interdependency” or “flow of value,” and also finding that it requires functional integration, centralized management, or economy of scale.

3. The participants in an economic enterprise under common ownership may also be considered a unitary business if there is unity of operation and use. See *Butler Brothers v. McColgan*, 315 U.S. 501, 508 (1942). Unity of operation and use indicates the existence of interdependence of functions.

4. An affiliated group/commonly controlled group may be engaged in one or more unitary businesses. Therefore, an affiliated group/commonly controlled group may contain more than one combined group and file more than one New Jersey combined return.

5. If the entities meet either the “Interdependence of Functions Test” or the “Unity of Use and Management Test,” the entities are part of the unitary business.

(b) Interdependence of Functions Test - any of the following circumstances demonstrate that an interdependence of functions may exist:

1. The principal activities of the entities are in the same general line of business. Examples of the same line of business are manufacturing, wholesaling, retailing, servicing, and/or repairing of tangible personal property; transportation; or finance (these examples are for illustration purposes and are not meant to be all inclusive). In determining whether two entities are in the same general line of business, consideration is given to the nature and character of the basic operations of each entity. This includes, but is not limited to, sources of supply, goods or services produced or sold, labor force, and market. Two entities are in the same general line of business when their operations are sufficiently similar to reasonably conclude that the entities are likely to depend upon or contribute to one another;

2. The principal activities of the entities are different steps of a vertically structured business. For example, in a natural resource business-exploration, mining and drilling, production, refining, marketing, and transportation to market (whether wholesale or retail);

3. Centralized management, as may be evidenced by executive-level policy made by a central person, board, or committee and not by each entity in areas such as, but not limited to, purchasing, accounting, finance, tax compliance, legal services, human resources, health and retirement plans, product lines, capital investment, and marketing;

4. Goods or services, or both, are not supplied at arm’s length prices between, or among, entities. Existence of arm’s-length pricing between entities, however, does not indicate lack of unity;

5. The existence of benefits from joint, shared, or common activity by entities. A discount, cost-saving, or other benefit can result from joint purchases, leaseholds, or other forms of joint, shared, or common activities between or among entities;

6. The relationship of joint, shared, or common activity to income-producing operations. When determining whether there exists a joint, shared, or common activity that is indicative of a unitary relationship, consideration is given to the nature and character of the basic operations of each entity. Such consideration includes, but is not limited to, the entity’s sources of supply, its goods or services produced or sold, and its labor force and market. These considerations are used to determine whether the joint, shared, or common activity is directly beneficial to, related to, or reasonably necessary to the income-producing activities of the unitary business;

7. Transfers or sharing of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of a unitary relationship when the information or property transferred or shared is significant to the business’ operations;

8. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities, if the financing activity serves an operational purpose;

9. Significant sales, exchanges, or transfers of products, services, and/or intangibles between corporations related by common ownership; and

10. The exercise of control by one entity over another entity is indicative of a unitary relationship.

(c) Unity of Operations and Use Test. “Unity of use” means there is functional integration among the entities and is evidenced generally by shared support functions. “Unity of operations” is evidenced, generally, by centralized management or utilization of centralized policies. These unities exist if each entity that is to be included in the unitary business benefits or receives goods, services, support, guidance, or direction arising from the actions of common staff resources or common executive resources, personnel, third-party providers, or operations under the direction of such common resources. The tests are overlapping and the indicators of each test also indicate the existence of interdependence of functions. The existence or non-existence of the following factors will assist in the determination of whether unity of use and management exist with respect to a combined group. The existence or non-existence of any one factor, by itself, is normally not determinative of whether there is a unity of use and management. Factors that may be considered include, but are not limited to:

1. Common purchasing;
2. Common advertising;
3. Common employees, including sales force;
4. Common accounting;
5. Common legal support;
6. Common retirement plan;
7. Common insurance coverage;
8. Common marketing;
9. Common cash management;
10. Common research and development;
11. Common offices;
12. Common manufacturing facilities;
13. Common warehousing facilities;
14. Common transportation facilities;
15. Common computer systems and support;
16. Common or significant financing support;

17. Common management (meaning that one or more officers or directors of the parent corporation are also officers or directors of the subsidiary);

18. Control of major policies (for example, the parent corporation’s board of directors requires that it approve any acquisition by either the parent or subsidiary of any interest in any other company; or the parent corporation’s board of directors requires that it approve any lending in excess of a minimum amount to any one or more of either the parent or subsidiary’s suppliers);

19. Inter-entity transactions (for example, a subsidiary corporation licenses the use of personal property it developed to the parent corporation and the parent corporation uses the property in its production activities);

20. Common policy or training manuals (for example, the parent corporation’s employee handbook applies to all of a subsidiary’s employees; or the subsidiary’s employees are required to attend the parent corporation’s employee training courses; or disciplinary procedures are the same for both corporations’ employees, even if the appeal process is only through their respective entities);

21. Required budgetary approval (for example, the parent corporation’s board of directors requires that it approve the budget and expenditure plans of the subsidiary on a periodic basis); and

22. Required capital asset purchases approval (for example, the parent corporation’s board of directors requires that it approve any capital expenditures by the subsidiary in excess of a minimum set amount).

(d) Without limiting the scope of a unitary business, the presumptions and inferences concerning whether, and when, two or more corporations under common ownership will be deemed to be engaged in a unitary business, as explained at (d)1 through 5 below, do not purport to set forth all the indicators of a unitary business, as

that determination is to be made pursuant to U.S. Constitutional principles.

1. Without limiting the scope of a unitary business as determined in other situations, business activities conducted by corporations under common ownership that are in the same general line of business, such as a multi-state grocery chain, will generally constitute a unitary business. Business activities conducted by corporations under common ownership that comprise different steps in a vertically structured business will generally constitute a unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business.

2. When the common ownership standard is first met by reason of merger, acquisition, or business formation, it is presumed that a unitary business relationship exists. Unity is generally presumed for newly acquired or newly formed entities.

i. Where a voting interest is directly or indirectly acquired by, or in, a corporation, or in a member of a corporation's combined group, that results in achieving the common ownership standard, there is presumption of unity where the combined group and the acquired corporation had been previously engaged in an otherwise unitary relationship but did not meet the common ownership standard.

ii. Where a member, or one or more other members of the member's combined group, forms a new corporation it shall be presumed that the formed corporation(s) is engaged in a unitary business with the forming corporation(s) from the date of its formation.

3. A parent holding company, that directly or indirectly controls one or more operating company subsidiaries engaged in a unitary business, shall be deemed to be engaged in a unitary business and includable in a combined report with the subsidiary or subsidiaries. An intermediate holding company shall be deemed to be engaged in a unitary business with the parent and subsidiary or subsidiaries and includable in a combined report with them.

4. Transfers or sharing of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provides evidence of a unitary relationship when the information or property transferred or shared is significant to the businesses' operations. Similarly, a unitary relationship is indicated when there is significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities, if the financing activity serves an operational purpose.

5. Other indicators of a unitary business conducted between corporations related by common ownership include, but are not limited to, sales, exchanges, or transfers of products, services, and/or intangibles between such corporations. When such evidence exists, this evidence is not negated by the use of market-based or "arm's length" pricing as to the transactions by the corporations in question.

(e) It is possible that a portion of a member's business operations are independent of the unitary business activity of the combined group. Only the income, attributes, and allocation factors related to the portion of a company's operations that are part of a unitary business of the combined group are included in the calculation of the combined group's entire net income and allocation factor. The remaining (independent) portion of a member's business operations may be subject to tax separately from the combined group if such member conducts business in New Jersey individually or with another combined group (if it is engaged in a unitary business with that combined group that also conducts business in New Jersey).

1. In lieu of filing a separate return to report such income, such member of a combined group must complete Schedule X to report the separate portion of its business operations (and provided those operations are not part of another combined group). Schedule X will be used to calculate the New Jersey taxable net income of that separate activity income that must be reported on Schedule A of the New Jersey combined return.

(f) If a member of a combined group is completely spun off from the group, that spun-off business entity and the combined group must show, to the Director's satisfaction, that a unitary business relationship no longer exists. However, the Director may impose such conditions necessary to prevent the evasion of tax, for example, provide notice to the Division of a change in combined group composition as further explained at N.J.A.C. 18:7-21.29 pursuant to N.J.S.A. 54:10A-4.10(h).

(g) Former members of a combined group will no longer be presumed unitary if sold to an unrelated third party. However, the Director may impose such conditions necessary to prevent the evasion of tax, for example, provide notice to the Division of a change in combined group composition as further explained at N.J.A.C. 18:7-21.29 pursuant to N.J.S.A. 54:10A-4.10(h).

18:7-21.3 Entities included and excluded from a combined return

(a) For the purposes of the corporation business tax, the following business entity types must be included as members of the combined group filing a New Jersey combined return:

1. Corporations;
2. Combinable captive insurance companies;
3. Banking corporations and financial corporations;
4. Limited liability companies (taxed as corporations);
5. Foreign limited liability companies (taxed as corporations);
6. S corporations, except as provided at (c) below;
7. Casino licensees;
8. Qualified Subchapter S Subsidiaries that have not made a New Jersey S corporation election;
9. New Jersey Qualified Subchapter S Subsidiaries that elected to be included in the combined group;
10. Business entities that are treated as corporations for Federal purposes;

11. Professional corporations;
12. Business entities included in the combined group include entities incorporated under the laws of a foreign country as business entities that would be corporations if such entities had been incorporated under the laws of the United States; and

13. Public utilities, as defined at N.J.S.A. 54:10A-4(q), that are not excluded pursuant to N.J.S.A. 54:10A-4.6(k).

(b) For the purposes of the corporation business tax, the following business entity types are excluded as members of the combined group filing a New Jersey combined return:

1. Public utility companies that are excluded pursuant to N.J.S.A. 54:10A-4.6(k) are not included in the combined group reporting on the combined return. Such public utility companies shall file separate returns;

2. A New Jersey S corporation that does not elect to be included as part of the combined group reported on the combined return. Such New Jersey S corporations shall file separate returns;

3. Insurance companies that are not combinable captive insurance companies are excluded from the combined group reported on the combined return, except that dividends from the insurance companies may be included in the income reported by the combined group members pursuant to N.J.S.A. 54:10A-4.6(k)(1);

4. A business entity that is treated as a disregarded entity for Federal income tax purposes;

5. Partnerships, limited partnerships, or limited liability companies treated as partnerships for Federal purposes; and

6. Corporations exempt from the corporation business tax pursuant to N.J.S.A. 54:10A-3.

(c) A business entity that is treated as a disregarded entity for Federal income tax purposes is also treated as a disregarded entity for New Jersey corporation business tax purposes pursuant to N.J.S.A. 42:2C-92. Disregarded entities also include legal partnerships that are disregarded entities for Federal purposes.

1. While a disregarded entity itself is not a member of a combined group, the tax attributes of a disregarded entity are reported by a member of a combined group when the member owns the disregarded entity. The attributes of a disregarded entity owned by a member of a combined group are included in the income and allocation factor of

that member and the combined group. In making a determination of which members are included in a water's-edge combined group pursuant to N.J.S.A. 54:10A-4.11, the disregarded entity's attributes shall be used by the member that owns the disregarded entity. A disregarded entity is not subject to the \$2,000 minimum tax as a member of a combined group because a disregarded entity is not a member of the combined group. However, if a disregarded entity is part of a unitary business of a combined group, the owner of the disregarded entity will be a member of the combined group and must be included as part of the combined return, except as otherwise excluded.

(d) Partnerships, limited partnerships, or limited liability companies treated as partnerships, for Federal purposes are business entities that can be unitary with a combined group. However, these entities are not members of a combined group for New Jersey corporation business tax purposes. With regard to unitary partnerships, limited partnerships, or limited liability companies treated as partnerships, the respective income and attributes flow through to the corporate partners that are members of the combined group for the purposes of computing entire net income, allocation, and for the purposes of determining inclusion in the water's-edge basis pursuant to N.J.S.A. 42:2C-92(a), 54:10A-4(gg), 54:10A-4.6(c)(1), 54:10A-15.6, and 54:10A-15.7. Partnerships, limited partnerships, and limited liability companies that are treated as partnerships for Federal purposes are not subject to the \$2,000 minimum tax as a member of a combined group because they are not a member of the combined group. However, Form NJ-CBT-1065 must still be filed.

(e) Newly acquired business entities under common ownership with a combined group must be included as one of the members of the combined group if it is operating as part of the combined group's business enterprise as described at N.J.A.C. 18:7-21.2(a).

(f) The Director may permit by petition of the taxpayer and the members of its unitary business group that a certain otherwise excluded taxpayer that is a member of a combined group be included in the combined group reported on the combined return. However, all of the members of the combined group, including such otherwise excluded taxpayer must disclose all of their books and records to the Director. The otherwise excluded taxpayer will be denied inclusion as a member of the combined group on the combined return if the Director determines the principal purpose of such inclusion is to exploit the tax attributes of either the other members or the otherwise excluded taxpayer.

18:7-21.4 Mandatory combined returns for unitary combined groups.

(a) In general, a business entity is required to file a New Jersey combined return when it is subject to tax pursuant to N.J.S.A. 54:10A-2 and is engaged in a unitary business with one or more other business entities that meet the requirements for inclusion as part of a combined group. In such cases, if any member of the group has income from the activities of the group's unitary business that is taxable in another state, the taxable member shall calculate its taxable net income derived from such unitary business as its allocated share of the income or loss of the combined group engaged in the unitary business, as determined in accordance with such combined return. The managerial member shall file a combined return on behalf of the combined group. The combined return shall include the income and allocation information of all members of the combined group and such other information as required by the Director. The composition of the combined group and the computation of the taxable member's income and its allocation formula are explained at N.J.A.C. 18:7-21.7 through 21.28. A combined return is also required in cases where a corporation is engaged in a unitary business with one or more corporations and no member of the combined group has income from the activities of the group's unitary business that is taxable in another state. In some cases, the managerial member may make an election to treat as its combined group all corporations that are members of its New Jersey affiliated group, on such terms and in keeping with such requirements of this subchapter. The requirement to file a combined

return is not dependent upon an evidentiary showing that there is a distortion of income between corporations that are related by common ownership or that there is a lack of arm's length pricing in transactions between such corporations.

1. The business entities that are included in a combined group generally retain their separate identities pursuant to N.J.S.A. 54:10A-1 et seq. The combined reporting requirements do not disregard the separate identity of an individual taxable member of a combined group. However, the combined group is also one taxpayer pursuant to N.J.S.A. 54:10A-4(h) and 54:10A-4(z). In determining the corporation business tax liability on such taxable income, the rules promulgated pursuant to the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), generally apply to the computation of such income, the allocation formulas, tax attributes, and tax rate, as applicable, subject to modifications pursuant to N.J.S.A. 54:10A-1 et seq., or this subchapter. A taxable member may have tax attributes or tax consequences apart from those determined through the means of a combined return. For example, in any case where no affiliated group election is made, a taxable member of a combined group may have, in addition to its allocable share of the combined group's unitary business income, allocable income from activities that were conducted by the taxable member that are not part of the combined group's unitary business. In these cases, the taxable member shall be subject to tax on such other income under the general rules as set forth in the Corporation Business Tax Act (N.J.S.A. 54:10A-1 et seq.).

2. Where 100 percent of the activities of the member are part of the unitary business of the combined group, the member does not have to file an additional separate tax return. The combined return filed by the managerial member of the combined group, shall count as the taxpayer's return.

3. A member that has any other activities and income that are non-unitary with the combined group shall complete Schedule X and the managerial member shall attach the member's Schedule X to the combined return. The member does not have to file an additional separate tax return.

(b) For privilege periods ending on and after July 31, 2019, business entities in a combined group shall be required to file a mandatory combined return. A combined group engaged in a unitary business in this State shall file a combined return that includes the income and allocation factors of all entities that are members of the unitary business, and such other information as required by the Director. The combined group shall be required to file a combined return if one member has sufficient contacts within this State to be subject to tax in this State pursuant to section 2 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-2). Pursuant to N.J.S.A. 54:10A-4(h) and 54:10A-4(z), a combined group is a taxpayer for the purposes of the Corporation Business Tax Act, and taxed as one taxpayer on the taxable income from the unitary business activities of the combined group.

18:7-21.5 Determining the managerial member of the combined group and the managerial member's responsibilities

(a) If the combined group has a common parent corporation within the meaning of the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), and that common parent corporation is a taxable member of the combined group, the managerial member shall be the common parent corporation. In other cases, the combined group shall select a taxable member as its managerial member or, at the discretion of the Director, or upon failure of the combined group to select its managerial member, the Director shall designate a taxable member of the combined group as the managerial member. Once the election of the managerial member is made, the election shall be binding for 10 successive privilege periods, pursuant to N.J.S.A. 54:10A-4.10(a), except as otherwise provided for by the Director (based on the facts and circumstances of the combined group and the specific business entity).

(b) The managerial member of the combined group shall file the mandatory combined return on behalf of the members of the combined group. The managerial member shall be required to: file

member returns; file member extensions for filing tax returns and other documents with the Director; pay member liabilities; receive member findings, assessments, and notices; make and receive member claims or file member protests and appeals; and shall be the responsible party liable for filing and paying the tax on behalf of the combined group.

1. A combined group shall file a mandatory combined return in a form and manner prescribed by the Director. If a member of a combined group does not have any activities or income outside of the unitary business, the combined return filed by the managerial member shall constitute the member's New Jersey corporation business tax return.

(c) Each taxable member of a combined group shall be jointly and severally liable for the tax due from any taxable member pursuant to P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), whether that tax has been self-assessed, and for any interest, penalties, or additions to tax due.

(d) The privilege period for the combined group is the privilege period of the managerial member. If a member of a combined group has a different fiscal or calendar accounting period from the combined group's privilege period, that member with a different period shall report amounts from its return for its fiscal or calendar accounting year that ends during the group privilege period.

(e) If a combined group is eligible to elect the managerial member of the combined group, notice of the election shall be submitted, in writing, to the Director (by registering for a unitary I.D. number on the online portal) not later than the due date or, if an extension of time to file has been requested and granted, not later than the extended due date of the mandatory combined return for the initial privilege period for which a return is required. The managerial member shall be the designated agent and the responsible person for filing the combined return and paying the tax for the combined group. If another taxable member is subsequently designated as the managerial member, the subsequent designation shall be subject to the approval of the Director.

(f) For privilege periods ending on and after July 31, 2019, a combined group must file a mandatory combined return. However, if privilege periods of the members of the combined group differ, the first mandatory combined return for the combined group shall be required, in accordance with the privilege period of the managerial member.

(g) If a managerial member leaves the combined group, the unitary I.D. number (NU number) shall stay with the group. The NU number shall be used for filing the return, making estimated payments, and requesting payments.

(h) The members of a combined group shall notify the Director of a change in the combined group composition as described in further detail at N.J.A.C. 18:7-21.29. Such notification shall satisfy the requirements at N.J.A.C. 18:7-14.1, 14.2, 14.3, 14.4, and 14.5.

(i) Any notice shall be sent to the managerial member of the combined group at the last known address of the managerial member as indicated on either the last filing required or made pursuant to this section or a subsequent electronic or written notice provided by the managerial member under rules prescribed by the Director.

(j) For more information on situations where the Director of the Division of Taxation may appoint a managerial member, see N.J.A.C. 18:7-21.26.

18:7-21.6 Methods for filing combined returns, assessments, making payments, requests for a refund

(a) Installment payments, estimated payments, overpayments, refunds, and any other filing or payment matters related to combined groups filing combined returns shall be based on the same rules as apply generally at N.J.A.C. 18:7-11.1 through 13.13, except as follows:

1. Deficiency assessments for the combined group shall be assessed against either the managerial member or a taxable member of the combined group, where applicable;

2. Refunds or credits for any overpayment will be submitted to either the managerial member or a taxable member of the combined group as indicated on the return;

3. All payments by the combined group shall be made by electronic funds transfer;

4. All combined returns shall be filed electronically;

5. All safe harbor provisions for installment payments and estimated tax payments shall apply in aggregate by the number of members of the combined group;

6. Unless a member ceases to be a member of the combined group during the group privilege period, the member shall not otherwise be required to file a separate return; and

7. A member with activities that are not part of the unitary business of the combined group, and for which the member independently conducts business in New Jersey, shall not file a separate return to report said portion, and instead shall complete Schedule X and include that portion of the member's taxable net income as part of the member's total taxable net income on the New Jersey combined return.

18:7-21.7 Determining the entire net income of the combined group

(a) Each taxable member of a combined group shall determine its entire net income from the unitary business as its share of the entire net income of the combined group in accordance with a combined unitary tax return. The combined group's entire net income is the aggregate sum of entire net income or loss, subject to allocation and derived from a unitary business, or the aggregate sum of entire net income or loss of a New Jersey affiliated group in the case of an affiliated group election, as reported on a combined return of every taxable member and non-taxable member of the combined group. The entire net income from the unitary business of a combined group shall be determined, as follows:

1. For a member incorporated in the United States, the entire net income to be included in the income of the combined group shall be the member's entire net income otherwise determined pursuant to the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.).

2. For a member not incorporated in the United States, the income to be included in the entire net income of the combined group shall be determined from a profit and loss statement that shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained, and shall be adjusted to conform to the accounting principles generally accepted in the United States for the presentation of those statements and further adjusted to take into account any book-tax differences required by Federal or State law. The profit and loss statement of each foreign member of the combined group and the allocation factors related thereto, whether United States or foreign, shall be translated into or from the currency in which the parent company maintains its books and records on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. Income shall be expressed in United States dollars. In lieu of these procedures and subject to the determination of the Director that the income to be reported reasonably approximates income as determined under the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), income may be determined on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. See N.J.A.C. 18:7-21.8 for more information.

i. The International Financial Reporting Standards (I.F.R.S.), which are issued by the International Accounting Standards Board (I.A.S.B.), qualifies as an acceptable method that "reasonably approximates income" if that is the only method of accounting the specific entity used.

(b) Income from a partnership where a member of the combined group is a partner is as follows:

1. If a member of a combined group receives income from the unitary business from a partnership, the combined group's entire net income shall include the member's direct and indirect distributive share of the partnership's unitary business income.

2. The distributive share of income received by a limited partner from a qualified investment partnership shall not be considered to be derived from a unitary business, unless the general partner of such

investment partnership and such limited partner have common ownership. To the extent that the limited partner is otherwise carrying on or doing business in New Jersey, it shall allocate its distributive share of income from a qualified investment partnership, in accordance with subsection (a) of section 3 at P.L. 2001, c. 136 (N.J.S.A. 54:10A-15.6) or subsection (a) of section 4 at P.L. 2001, c. 136 (N.J.S.A. 54:10A-15.7), as applicable. If the limited partner is not otherwise carrying on or doing business in New Jersey, its distributive share of income from an investment partnership is not subject to tax pursuant to this chapter.

(c) All the dividends and deemed dividends paid by one member to another member of the combined group shall be eliminated from the income of the recipient. Any dividends that are not eligible for elimination (that is, dividends from subsidiaries not included as members of the combined group) may be eligible for exclusion pursuant to N.J.S.A. 54:10A-4(k)(5).

1. Where a taxpayer is a member of a combined group and receives dividends from a subsidiary that is not included in the combined return, the dividends must be included in the entire net income of the taxpayer pursuant to N.J.S.A. 54:10A-4(k)(5). For privilege periods ending on and after July 31, 2020, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group.

2. If the dividends and deemed dividends are not part of the unitary business of the combined group and are paid to a member of the group, the income is included on Schedule X in such recipient member's income and the dividend exclusion pursuant to N.J.S.A. 54:10A-4(k)(5) is applied against the separate income of such member on Schedule X.

3. For a combined group with a fiscal 2018 privilege period that ended on or after July 31, 2019, where the combined group included both U.S. domestic corporations as members and non-U.S. corporations as members, and pursuant to the applicability dates at 26 CFR 1.965-9(a) for U.S. domestic corporations that were required to include the deemed repatriation dividends from those non-U.S. corporations in entire net income during that fiscal period for which the first New Jersey combined return is due, the deemed repatriation dividends shall be eligible for the intercompany dividend elimination.

(d) Except as otherwise provided for in this section, business income from an intercompany transaction among members of the same combined group shall be deferred in a manner similar to the deferral at 26 CFR 1.1502-13. If one of the events at either (d)1 or 2 below occurs, deferred income resulting from an intercompany transaction among members of a combined group shall be restored to the income of the seller and shall be included in the net income of the combined group as if the seller had earned the income immediately before the event.

1. The object of a deferred intercompany transaction is:

- i. Resold by the buyer to an entity that is not a member of the combined group;
- ii. Resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged; or
- iii. Converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged; or

2. The buyer and seller cease to be members of the same combined group, and no portion of the income or loss is included in the entire net income of the unitary group, regardless of whether the buyer and seller remain sufficiently interdependent, integrated, and interrelated through their activities, so as to provide a synergy and mutual benefit that produces a sharing or exchange of value between them.

i. In the case of an event set forth at (d)2 above, no portion of the income or loss shall be included in entire net income of the combined group, but shall be included in the entire net income of the respective member.

(e) A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to I.R.C. § 170, be subtracted first from the combined group's entire net income, subject to the income limitations of that section applied to the

entire net income of the group. A charitable deduction disallowed pursuant to I.R.C. § 170, but allowed as a carryover deduction in a subsequent privilege period, shall be treated as originally incurred in the subsequent year by the same member and the provisions of this section shall apply in the subsequent privilege period in determining the allowable deduction for that privilege period.

(f) Pursuant to N.J.S.A. 54:10A-4.6.j, an expense of a member of the combined group that is directly or indirectly attributable to the income of any member of the combined group, which income this State is prohibited from taxing pursuant to the laws or Constitution of the United States, shall be disallowed as a deduction for purposes of determining the combined group's entire net income.

1. In determining such amounts, the members may use such attribution ratio methods and tracing protocols that the members used for Federal tax purposes.

2. Amounts disallowed pursuant to N.J.S.A. 54:10A-4.6.j will not be required to be added back for the purposes of N.J.S.A. 54:10A-4(k)(2)(I) or 54:10A-4.4.

(g) To the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), the Federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers shall apply to the New Jersey net operating loss carryover provisions pursuant to N.J.S.A. 54:10A-4.6.h as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes.

(h) The principles and provisions set forth in Federal regulations promulgated pursuant to I.R.C. § 1502, shall apply to the extent consistent with the Corporation Business Tax Act, New Jersey combined group membership principles, New Jersey combined unitary return principles, and rules set forth by the Director. For more information, see N.J.A.C. 18:7-21.27.

(i) For purposes of the deduction allowed in paragraph (4) of subsection (k) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4), a combined group shall be treated as one taxpayer; provided, however, a combined group shall only be eligible for the deduction if at least one of the taxable members is a banking corporation and the taxable member has an international banking facility. The income of the combined group shall not be eligible for the deduction allowed in paragraph (4) of subsection (k) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4), if such income was already eliminated pursuant to this section.

(j) This section shall apply to worldwide group elective combined returns and affiliated group elective combined returns in accordance with section 23 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.11). An election to file an affiliated group combined return shall be an election to treat all of the member's attributes and income as though they were from one unitary business.

(k) Income excluded from Federal taxable income pursuant to a tax treaty is not added back into the entire net income of the combined group, and, thus, no elimination, deduction, or additional exclusion is permitted when computing the entire net income, since said income is not included in the entire net income of the combined group.

1. Example: Member 1 reports GILTI income for Federal purposes and receives a corresponding I.R.C. § 250 deduction, and member 2 is incorporated in a high tax jurisdiction that has a comprehensive tax treaty with the U.S., such as Germany, that results in member 2's non-U.S. income being excluded from the Federal taxable income of member 2 and also qualifying for the high tax exclusion in the GILTI computation of member 1. When computing the income of the combined group, member 2's treaty protected income is excluded from entire net income of the combined group and member 1 cannot eliminate the GILTI amount by member 2's income that was never included in entire net income or member 1's GILTI reported for Federal purposes, nor would member 1 be entitled to an I.R.C. § 250 deduction corresponding to said amount for either Federal or New Jersey purposes.

18:7-21.8 Reporting the income of certain members

(a) For a member not incorporated in the United States and where the foreign corporation did not file a Federal Form 1120-F, the income to be included in the entire net income of the combined group shall be reported, as follows:

1. The combined group may complete and attach a 1120-F, as though the member had filed the return with the Federal government; or

2. If the other members of the combined group have a Form 5471 that was filed for Federal purposes reporting the income from that non-U.S. member, the combined group shall use the income information reported on Federal Form 5471 and attach a copy of the form that was filed with the Federal government.

(b) The International Financial Reporting Standards (I.F.R.S.), that are issued by the International Accounting Standards Board (I.A.S.B.), qualify as an acceptable method that “reasonably approximates income” pursuant to the Corporation Business Tax Act for the purposes at N.J.S.A. 54:10A-4.6.b, if that is the only method of accounting the specific entity used.

18:7-21.9 Combined groups, combined returns, and the interrelation with other New Jersey laws

(a) The members of the combined group shall each be subject to N.J.S.A. 54:10A-20, 54:10A-21, and 54:11-1 et seq., on an individual basis.

(b) The members of the combined group filing a combined return in New Jersey will be individually subject to the business registration requirements at N.J.S.A. 52:32-44 for public contracts.

18:7-21.10 Ordering of the dividend elimination, subsidiary dividend received exclusion, and net operating losses in a combined group context

(a) In calculating entire net income, the members of a combined group filing a combined return shall first eliminate 100 percent of the intercompany dividends received from the other members of the combined group reported on the same New Jersey combined return.

(b) If the combined group has a loss in the current tax year, the entire group is deemed to have a net operating loss in the current tax year and the members of the combined group shall be entitled to their respective share of the net operating loss as a net operating loss carryover in subsequent privilege periods.

(c) If the entire net income of the combined group is a positive number, the combined group is deemed to have entire net income for the year. The taxable members of the combined group shall be assigned their portion of the combined group’s entire net income for the year using the allocation factor and shall subtract the unused unexpired converted prior net operating loss carryovers if the combined group allocated entire net income is greater than zero.

(d) If, after allocating the entire net income and subtracting the unused unexpired converted prior net operating loss carryovers, the taxable members of the combined group still have combined group allocated entire net income greater than zero, then the taxable members may use their share of the combined group net operating loss carryovers or use the portion of the combined group net operating loss carryovers received from other taxable members.

(e) Only dividends from subsidiaries that are not part of the combined group included in the combined return are excluded pursuant to N.J.S.A. 54:10A-4(k)(5). For privilege periods ending on and after July 31, 2019, the dividend exclusion is an allocated dividend exclusion. The exclusion occurs only if, after the application of N.J.A.C. 18:7-21.19(b) and (d), the allocated entire net income is greater than zero.

1. For privilege periods ending on and after July 31, 2019, but before July 31, 2020, when computing the allowable dividend exclusion for dividends received from excluded subsidiaries that are unitary with the combined group, the pre-allocated dividend exclusions of each member of the combined group are aggregated together and then distributed for use by each member using the member’s allocation factor from Schedule J to arrive at the allocated dividend exclusion each member may deduct against allocated entire net income.

2. For privilege periods ending on and after July 31, 2020, for purposes of the dividend exclusion, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer with regard to dividends and deemed dividends that were received as part of the unitary business of the combined group.

i. In computing the combined group dividend exclusion, the combined group shall use the group allocation factor on Schedule J.

3. A member of a combined group that independently has separate activities to give rise to sufficient nexus with New Jersey is entitled to take the allocated dividend exclusion on Schedule X when the dividends from the excluded subsidiaries are not part of the unitary business of the combined group and not included in the entire net income of the combined group. In circumstances where New Jersey is prohibited from taxing said subsidiary dividends, the member must, nonetheless, disclose such dividends and attach a rider with an explanation.

18:7-21.11 Net operating losses (NOLs) of members in a combined group

(a) Usage of prior net operating loss conversion carryovers in a combined group context. A prior net operating loss conversion carryover (PNOL) of a member of a combined group shall be deducted from the entire net income allocated to this State, as follows:

1. Such prior net operating loss conversion carryover deduction shall be allowed to offset only the entire net income, allocated to this State, of the corporation that created the prior net operating loss; the prior net operating loss conversion carryover cannot be shared with other members of the combined group;

2. The prior net operating loss conversion carryover deduction computed pursuant to N.J.A.C. 18:7-5.21 shall be applied against the entire net income, allocated to this State, of the corporation that created the prior net operating loss prior to subtracting the net operating loss carryover computed pursuant to N.J.A.C. 18:7-5.21(b);

3. Each member shall apply its prior net operating loss conversion carryover against its share of entire net income allocated to this State, as if filing on a separate entity basis;

4. For information on PNOLs of a corporation or combined group that is a party to a merger or acquisition, see (i) below; and

5. A member of a combined group may sell a prior net operating loss conversion carryover to other members of the combined group, if otherwise applicable and allowable pursuant to section 2 at P.L. 1997, c. 334 (N.J.S.A. 54:10A-4.2) and section 1 at P.L. 1997, c. 334 (N.J.S.A. 34:1B-7.42a); provided, however, such sale of a prior net operating loss conversion carryover must be made at arm’s length price at the same rate as though the sale was to an unrelated taxpayer. The members must qualify and be eligible and meet the terms and conditions of the program.

(b) The calculation of the combined group net operating losses and the combined group members’ share of the net operating loss carryovers shall be deducted from entire net income allocated to this State pursuant to N.J.S.A. 54:10A-4.6.h, as follows:

1. For privilege periods beginning on or after the first day of the initial privilege period on or after July 31, 2019, for which a combined return is required pursuant to N.J.A.C. 18:7-21.4, if the computation of a combined group’s entire net income allocated to this State results in a net operating loss, a taxable member of such group may carry over the net operating loss allocated to this State, as calculated pursuant to this section and N.J.A.C. 18:7-21.7, 21.8, 21.10, and 21.13, and shall be deductible from entire net income allocated to this State derived from the unitary business in a future privilege period to the extent that the carryover and deduction is otherwise consistent with N.J.A.C. 18:7-5.21;

2. Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred by a combined group in a privilege period beginning on or after the first day of the initial privilege period on or after July 31, 2019, for which a combined return is required, then the taxable member may share the net operating loss carryover with other taxable members of the combined group if such other taxable members were members of the combined group in the privilege period that the loss was incurred. Any amount

of net operating loss carryover that is deducted by another taxable member of the combined group shall reduce the amount of net operating loss carryover that may be carried over by the taxable member that originally incurred the loss;

3. Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred in a privilege period during which the taxable member was not a member of such combined group, the carryover shall remain available to be deducted by that taxable member or other group members that, in the year the loss was incurred, were part of the same combined group as such taxable member. Such carryover shall not be deductible by any other members of the combined group;

4. A net operating loss carryover shall not include any net operating losses (PNOLs pursuant to N.J.A.C. 18:7-5.21(a) or separate return NOLs pursuant to N.J.A.C. 18:7-5.21(b)) incurred during privilege periods beginning prior to the first day of the initial privilege period for which a combined return is required for the combined group;

5. Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred by a combined group in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required and the taxable member departs the combined group and continues to be a taxpayer for the purposes of the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), the taxable member shall be entitled to take its respective portion of the combined group net operating loss carryover and the combined group shall not be entitled to use such portion of the net operating loss carryover; and

6. To the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), the Federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers shall apply to the New Jersey net operating loss carryover provisions pursuant to this subsection as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes.

(c) The provisions at N.J.A.C. 18:7-5.14 shall not apply between members of the combined group reported on the combined return.

(d) Subsections (a) and (b) above will apply in the same manner to taxpayers that are included as members on the New Jersey elective combined returns.

(e) Where a taxable member leaves a combined group and has net operating loss carryovers from the privilege periods the taxable member was a member of the combined group, and the former member files a separate New Jersey corporation business tax return, the former member may deduct their portion of those net operating loss carryovers at (b)5 above on their return.

(f) Post-allocation net operating losses of a separate return taxpayer that subsequently joins a combined group are not shareable. In privilege periods ending on and after July 31, 2019, where a taxpayer was filing a separate return and subsequently joined the combined group in later privilege periods, the taxpayer may use its separate return year post-allocation net operating loss carryovers either against its assigned portion of the combined group entire net income or its allocated entire income on Schedule X (if applicable), but may not share these separate return post-allocation net operating loss carryovers with the other members of the combined group.

(g) Separate activity net operating losses of combined group members derived from activities that are not part of the unitary business of the combined group are not shareable with other members of the combined group. Where the member of the combined group has activities that are not part of the unitary business of the combined group, and those independent activities of that member generate a net operating loss that the member reports on Schedule X for the privilege period, the net operating loss is a separate net operating loss that can be used by the member in future privilege periods on Schedule X or a separate return in the case of a member that leaves the group, but cannot be shared with other members of the combined group or used on the combined return.

(h) For more on the reduction by the amount of the allocated discharge of indebtedness income excluded from Federal tax purposes, see N.J.S.A. 54:10A-4(k)(6)(F), 54:10A-4(u)(1), 54:10A-4(v)(3), 54:10A-4.6.c, 54:10A-4.6.h(1), 54:10A-4.6.n, and 54:10A-4.6.m.

(i) The Director may disallow the prior net operating loss carryovers or net operating loss carryovers at (a) through (g) above if the Director determines that the merger or acquisition was for the principle purpose of harvesting the members tax attributes. However, the prior net operating loss carryovers or net operating loss carryovers will survive where the merger or acquisition is: (1) between members of a combined group reported on a combined return in New Jersey; (2) between members of an affiliated group reported on the elective combined return in New Jersey; or (3) if corporations that were parties to the merger would be members of the combined group reported on a combined return in New Jersey within one group privilege period subsequent to the date of the merger, unless there is an unforeseen delay due to required approvals from Federal or other state regulatory authorities that delays the finality of the merger or acquisition. In a situation where there is delay due to the regulatory approval requirements of Federal or other state regulatory authorities, the corporations may petition the Director, in a form and manner prescribed by the Director, documenting that the corporations' plan to be a combined group filing a New Jersey combined return upon approval of the merger or acquisition by the Federal or other state regulatory authorities. Within 180 days of approval by the Federal or other state regulatory authorities of the merger or acquisition, the corporations shall notify the Division of the approval and the Director shall issue a stamped certificate of attestation (CBT-M) attesting that the net operating loss carryovers are not extinguished. The provisions of this subsection shall only apply to mergers and acquisitions occurring on or after November 4, 2020, and shall not apply to a binding agreement in effect prior to November 4, 2020.

(j) Members must keep accurate books and records to keep track of the various PNOLs and NOLs.

(k) For privilege periods beginning on and after January 1, 2020, the provisions of the Internal Revenue Code, the Federal rules, limitations, and restrictions, thereto, governing Federal net operating losses, Federal net operating loss carryovers with regard to, but not limited to: mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business, or any other provision that limits or reduces Federal net operating losses and Federal net operating loss carryovers, shall apply to New Jersey net operating loss carryovers pursuant to subsection (v) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6).

18:7-21.12 Tax credits earned by a member of a combined group

(a) Tax credits earned by a member of a combined group shall be utilized as follows:

1. If a taxable member of a combined group earns a tax credit in a privilege period beginning on or after the first day of the initial privilege period for which a combined return is required, the taxable member may share the credit with other taxable members of the combined group. Any amount of credit that is utilized by another taxable member of the combined group shall reduce the amount of credit carryover that may be carried over by the taxable member that originally earned the credit. If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning on or after the first day of the initial privilege period for which a combined return is required, the taxable member may share the carryover credit with other taxable members of the combined group;

2. If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning prior to the first day of the initial privilege period for which a combined return is required, then the taxable member may share the carryover credit with other taxable members of the combined group;

3. If a taxable member of a combined group has a tax credit carryover derived from a privilege period during which the taxable member was not a member of such combined group, the credit carryover shall remain available to be utilized by such taxable member or other group members; and

4. To the extent a taxable member has more than one corporation business tax credit that it may utilize in a privilege period, whether such credits were earned by said member or are available to said member, the order of priority of the application of the credits shall be as prescribed by the Director.

(b) Tax credits purchased and transferred by a taxable member of a combined group from an unrelated third-party taxpayer may be shared by a taxable member of the combined group with its combined group members.

(c) Subsections (a) and (b) above will apply in the same manner to taxpayers that are included as members on the New Jersey elective combined returns.

(d) Taxable members are not required to share the tax credits. Refundable tax credits are refunded to the taxable member that earned the credit, unless otherwise agreed upon by the members of the combined group.

(e) When a taxable member leaves the combined group, the departing taxable member shall be allowed to take its unused-unshared-unexpired tax credit carryovers for which the departing taxable member is entitled.

(f) For the purposes of the tax credit authorized pursuant to N.J.S.A. 54:10A-5.46, the members of a combined group filing a New Jersey combined return shall be treated as one taxpayer.

(g) For the purposes of the tax credit authorized at N.J.S.A. 54:10A-5.43, only the shareable portion of the credit is shareable with the other members of the combined group.

18:7-21.13 Allocation factor computation for combined groups

(a) A taxable member of a combined group shall determine its allocation factor for determining its share of the entire net income of the combined group, provided however:

1. Each taxable member shall determine its allocation factor based on the otherwise applicable allocation provided in sections 6 through 10 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-6 through 54:10A-10). In computing its denominator, the taxable member shall use the combined group's denominator. The combined group's denominator equals the receipts of both the taxable and nontaxable members. In computing the numerator of its receipts factor, each taxable member shall include in its numerator its receipts assignable to this State, as provided in this subchapter.

2. A combined group that makes an affiliated group election shall include the receipts of all of the members in both the numerator and denominator of the receipts factor, regardless of whether the members are subject to tax, if doing business in this State. See N.J.S.A. 54:10A-4.11.c.

(b) All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies if 50 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground. See N.J.A.C. 18:7-21.28 for more information.

(c) In determining the numerator and denominator of the allocation factors of taxable members, transactions between or among members of the combined group shall be eliminated. Intercompany transactions between a combined group member and a partnership whose income is included in the unitary business of the combined group are also disregarded where the transactions relate to the unitary business to the extent of the group member's distributive share interest in partnership income.

1. A sale by a member of a combined group to a purchaser that is not a member of the combined group is attributed to the group member that books the sale, subject to the adjustments to be made to

avoid distortion of applicable allocation formulas in the case of intra-group sales.

2. Where a combined group member makes a sale to a purchaser that is not a member of the combined group, and previously acquired the property or services sold from another combined group member, the activities of both the member producing the property or services and the member making the sale to the non-member must jointly be considered for purposes of determining the appropriate allocation formula of the member making the sale.

(d) Where a taxable member of a combined group receives unitary business income through a direct or indirect ownership interest in a partnership or disregarded entity, the sales/receipts factors of such taxable member shall include its pro rata share of the factors relating to such income as attributed to the taxable member through such ownership interest. In the case of an affiliated group election, a taxable member of a combined group shall include in its sales/receipts factors its pro rata share of the sales/receipts factors relating to all income that is attributed to the taxable member through its direct or indirect ownership interest in a partnership or disregarded entity. See N.J.A.C. 18:7-7.6.

(e) Receipts of the members of the combined group shall otherwise be determined based on the same methods as prescribed at N.J.A.C. 18:7-7.1 through 7.6 and 8.1 through 8.17 that are not inconsistent with (a), (b), (c), or (d) above.

(f) Nothing at (a) through (e) above shall preclude the Director from making adjustments pursuant to N.J.S.A. 54:10A-4(k)(3), 54:10A-8, or 54:10A-10.

18:7-21.14 Conversion of the outstanding alternative minimum assessment credits

For privilege periods beginning on and after January 1, 2019, a combined group filing a combined return that has any outstanding alternative minimum assessment credit or credits at the time of the effective date of the repeal of section 7 at P.L. 2002, c. 40 (N.J.S.A. 54:10A-5a) shall be allowed to use the credit to offset the combined group's tax liability pursuant to paragraph (1) of subsection c. of section 5 at P.L. 1945, c. 165 (N.J.S.A. 54:10A-5) for the group privilege period. The remaining balance of the credit carryovers of members of the combined group from prior to the effective date of the repeal of section 7 at P.L. 2002, c. 40 (N.J.S.A. 54:10A-5a) shall not reduce the combined tax liability below 50 percent of the tax owed by the group. The remaining balance of the credit may be carried over until used by the combined group.

18:7-21.15 The water's-edge combined group default return filing method

(a) Unitary combined returns are mandatory. The water's-edge group basis filing method is the default, if no election is made. The combined group shall take into account the income and allocation factors of only the following members of the combined group:

1. Each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States, excluding such a member if 80 percent or more of both its property and payroll during the privilege period are located outside the United States, the District of Columbia, or any territory or possession of the United States;

2. Each member, wherever incorporated or formed, if 20 percent or more of both its property and payroll during the privilege period are located in the United States, the District of Columbia, or any territory or possession of the United States;

3. Any member that earns more than 20 percent of its income, directly or indirectly, from intangible property or related service activities that are deductible against the income of other members of the combined group; and

4. Each member that has income as defined under the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), and has sufficient nexus in New Jersey pursuant to section 2 of P.L. 1945, c. 162 (C.54:10A-2) (see N.J.A.C. 18:7-1.6 through 1.14 for more detail on nexus).

(b) Although the water's-edge combined group filing method is the mandatory default filing method, the managerial member of the combined group may elect the worldwide election or an affiliated group election. See N.J.S.A. 54:10A-4.11 and N.J.A.C. 18:7-21.16 and 21.17 for more information on elective combined return filing methods.

(c) For changes in the composition of the combined group, the members shall notify the Director, as set forth pursuant to the procedures at N.J.A.C. 18:7-21.29.

(d) For the purposes at (a)1 and 2 above, property and payroll are determined, in accordance to the rules at N.J.A.C. 18:7-8.1 through 8.17.

(e) In determining which members are included in a water's-edge combined group, the disregarded entity's attributes shall be used by the member that owns the disregarded entity. In making a determination of which members are included in a water's-edge combined group pursuant to N.J.S.A. 54:10A-4.11, the attributes of the unitary partnerships, unitary limited partnerships, or unitary limited liability companies treated as partnerships, of which a member is a corporate partner shall be used as part of the member's attributes, based on the member's proportionate share of the partnerships, limited partnerships, or limited liability companies.

(f) For corporations with movable property and mobile employees transporting/shipping such mobile property, the following criteria, which is not all inclusive, are to be used for the purposes of guidance as to determining whether an entity should be included on a water's-edge basis as a member on the combined return pursuant to N.J.S.A. 54:10A-4.11:

1. With regard to the property, movable property, such as tractors and trailers, shall be allocated to the U.S. using a mileage fraction consisting of the miles driven in the U.S. over the miles driven everywhere. Such allocated movable property shall be added to the non-movable property in the U.S. for the purposes of determining the percentage of property in the U.S.

2. With regard to the payroll, wages of mobile employees, such as drivers, shall be allocated to the U.S. based upon mileage driven in the U.S. over miles driven everywhere. Such allocated payroll shall be added to the non-mobile employee wages in the U.S. for the purposes of determining the percentage of payroll in the U.S.

3. With regard to such movable property and such mobile employees, if the terms of an international transportation, shipping, export/import, or income tax treaty or agreement specify the allocation/apportionment of mileage/time/location method for determining when such property or employee is considered to be located in, or assigned to, the respective nation, the corporation may rely on such allocation/apportionment methods dictated by such treaties or agreements.

18:7-21.16 Worldwide group election

(a) A worldwide election shall be made by the managerial member of the combined group. The election shall be made on an original, timely filed return or as otherwise required, in writing, by the Director. A return shall be considered timely if it is filed on or before the original due date or extended due date for the filing of the managerial member's return. No return filed after this date, whether filed with an application for abatement or otherwise, shall constitute a valid worldwide election. The election, to be valid, must indicate in the manner required by the Director that every corporation that is a member of the combined group has agreed to be bound by such election, including an agreement by each member of the group that such election shall apply to any member that subsequently enters the group and an agreement that each member continues to be bound by the election in the event that such member is subsequently the subject of a reverse acquisition as described at U.S. Treas. Reg. § 1.1502-75(d)(3).

(b) A worldwide election shall be binding for, and applicable to, the group privilege period for which it is made and for the next five group privilege periods. Any corporation entering the unitary combined group after the year of the election shall be deemed to have consented to the application of the election and to have waived any

objection thereto. Reverse acquisition rules based on the Federal rules set forth at U.S. Treas. Reg. 1.1502-75(d)(3) shall be applied in determining whether a corporation is bound by a worldwide election.

(c) The renewal of an election shall be made on an original, timely filed return by the combined group's managerial member. A renewal shall be effective for the first privilege period after the completion of the six privilege periods for which the prior election was in place. If a prior worldwide election is not affirmatively renewed after six privilege periods, the election shall terminate for the subsequent privilege period, but a new worldwide election may be made thereafter by election.

(d) If either the water's-edge method or affiliated group method was used to account for the combined group members' income and allocation data in the preceding privilege period and the worldwide method is to be used for the combined group's combined return for the current privilege period, adjustments to the income and allocation data of the group members shall be made to prevent income and allocation data from being omitted or duplicated.

(e) A managerial member may not make a worldwide election and an affiliated group election for the same group privilege period and may not make a worldwide election for any year in which an affiliated group election is in effect.

(f) An election shall constitute consent to the production of documents or other information that the Director reasonably requires. The documents shall be provided in language and forms acceptable to the Director.

(g) For changes in the composition of the combined group, the members shall notify the Director as set forth at N.J.A.C. 18:7-21.29.

18:7-21.17 Affiliated group election

(a) The managerial member of the combined group may make an election to treat all corporations that are members of its New Jersey affiliated group (as defined at N.J.S.A. 54:10A-4(x)) as the combined group filed on the New Jersey combined return. Once the affiliated group election is made, the election shall be binding for and applicable to the privilege period for which it is made and for the next five group privilege periods. If an affiliated group election is made, all of the corporations that are members of their New Jersey affiliated group shall be treated as the members of a single New Jersey combined group irrespective as to, whether:

1. The corporations are included in more than one Federal consolidated return filed by more than one Federal consolidated group;

2. The corporations are engaged in one or more unitary businesses; or

3. The corporations are not engaged in a unitary business with any other member of the affiliated group.

(b) The examples at (a)1, 2, and 3 above are not an exhaustive list.

(c) Upon making the election, the New Jersey affiliated group shall calculate the combined group's taxable income and the respective taxable income of the taxable members of the group, in accordance with N.J.A.C. 18:7-21.7 through 21.28. An election to file an affiliated group combined return shall be an election to treat all of the member's attributes and income as though they were from one unitary business pursuant to N.J.S.A. 54:10A-4.6.p. An affiliated group election can only be made if the New Jersey affiliated group to which the election is to apply in the first year of application includes one or more Federal affiliated groups filing a consolidated Federal income tax return.

(d) An affiliated group election and a worldwide election cannot be made together. An affiliated group election cannot be made for any period in which a worldwide election is in effect.

(e) The membership of a combined group as determined pursuant to an affiliated group election is not limited to those corporations that are members of one or more affiliated groups pursuant to I.R.C. § 1504 that are filing a Federal consolidated return. As the New Jersey affiliated group is broader pursuant to N.J.S.A. 54:10A-4(x), it shall also include corporations that meet the following standards:

1. A New Jersey affiliated group shall include a corporation that meets either of the following standards, even though such corporations would not be included in a Federal consolidated return:

i. Each member is incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States.

(1) Each member, wherever incorporated or formed, that is treated as a U.S. domestic corporation under the provisions of the Internal Revenue Code; or

ii. Each member incorporated or formed under the laws of a foreign nation that are required to file Federal tax returns if such entities have effectively connected income within the meaning of the Internal Revenue Code.

2. With respect to (e)1 above, only the members that are treated as domestic corporations pursuant to the Federal I.R.C. and Federal S corporations that have not made a validly approved New Jersey S corporation election will be included. In instances in which a New Jersey S corporation also elects to be included in the combined return, the New Jersey S corporation will also be included and taxed in the same manner as a C corporation.

3. The New Jersey affiliated group shall be determined by including all U.S. domestic corporations, as defined at N.J.S.A. 54:10A-4(x), that are related by common ownership applying the commonly owned test described in this subchapter (that is, direct or indirect ownership of more than 50 percent of voting control), rather than applying the standard applicable for Federal consolidated return purposes that looks to 80 percent control of certain stock by vote and value. Further, control of members of the New Jersey affiliated group may be direct or indirect, and a common owner or owners may be corporate or non-corporate. Whether voting control is indirectly owned shall be determined in accordance with I.R.C. § 318. For example, two or more Federal consolidated groups would be combined in one New Jersey affiliated group filing, if both consolidated groups were commonly owned by a non-U.S. corporation.

(f) An affiliated group election shall be made by the managerial member of a combined group. The election shall be made on an original, timely filed return or as otherwise required, in writing, by the Director. A return shall be considered timely if it is filed by the managerial member on or before the original due date or extended due date for the filing of the combined group's combined return. No return filed after this date, whether filed with an application for abatement or otherwise, shall constitute a valid affiliated group election. To be valid, the election must indicate that every corporation that is a member of a New Jersey affiliated group has agreed to be bound by such election, including an agreement by each member of the group that such election shall apply to any member that subsequently enters the group and an agreement that each member continues to be bound by the election in the event that such member is subsequently the subject of a reverse acquisition, as described at U.S. Treas. Reg. § 1.1502-75(d)(3).

(g) An affiliated group election shall be binding for, and applicable to, the privilege period for which it is made and for the next five privilege periods. The election shall continue in place irrespective of whether a Federal consolidated group to which the combined group belongs discontinues the filing of a Federal consolidated return. Any corporation that enters a New Jersey affiliated group during the time that the affiliated group election is in effect shall be included in the New Jersey combined group beginning with the first group's tax reporting period after the corporation enters the group, and shall be considered to have consented to the application of the election and to have waived any objection to its inclusion in the combined group. Reverse acquisition rules based on the Federal rules set forth at U.S. Treas. Reg. § 1.1502-75(d)(3) shall be applied in determining whether a corporation is bound by an affiliated group election.

(h) When an election is made, it may be renewed after six privilege periods for another six privilege periods. The renewal of an election shall be made on an original, timely filed return by the managerial member of the New Jersey affiliated group or as otherwise required, in writing, by the Director. A renewal shall be effective for the first

privilege period after the completion of the six privilege periods for which the prior election was in place.

(i) If the water's-edge group filing method or the worldwide group method was used to account for the combined group members' income and allocation data in the preceding privilege period and the affiliated group method is to be used for the combined group's combined return for the current privilege period, adjustments to the income and allocation data of the group members shall be made to prevent income and allocation data from being omitted or duplicated.

(j) An affiliated group election shall constitute consent to the production of documents or other information that the Director reasonably requires to support that the return was properly filed. Examples include, but are not limited to, verification of the inclusion of the appropriate members of the group, that the requirements of the affiliated group election have been met, that the tax computations and tax reporting are proper, and to determine the revenue implications of the affiliated group election.

(k) For changes in the composition of the combined group, the members shall notify the Director as set forth at N.J.A.C. 18:7-21.29.

18:7-21.18 Net deferred tax liability deduction

(a) There shall be allowed as a deduction an amount computed, in accordance with N.J.S.A. 54:10A-4(k)(16) for publicly traded companies. Affiliated corporations participating in the filing of a publicly traded company's financial statements prepared, in accordance with generally accepted accounting principles, shall also be eligible for this deduction. The deduction shall be allowed beginning with the combined group's first privilege period beginning on or after January 1, 2023, that is, the fifth year after the effective date of combined reporting pursuant to N.J.S.A. 54:10A-4(k)(16)(E).

(b) A combined group claiming this deduction shall also be allowed the credit at N.J.A.C. 18:7-21.14, since the alternative minimum assessment credit pursuant to N.J.A.C. 18:7-21.14 is intended for all combined groups filing combined returns in New Jersey, not just publicly traded companies.

(c) A combined group claiming the deduction shall file the claim by July 1, 2020.

(d) The Division of Taxation will only accept U.S. Generally Accepted Accounting Principles (U.S. G.A.A.P.) and International Financial Reporting Standards (I.F.R.S.).

(e) Only taxpayers that are publicly traded companies, or their affiliates (subsidiaries), included in the financial statements filed with the U.S. regulatory authorities or the financial statements filed with the regulatory authorities of a foreign nation with which the U.S. has a reciprocal agreement will qualify, so long as the financial statements are prepared, in accordance with U.S. G.A.A.P. or in accordance with the I.F.R.S.

(f) A publicly traded company is a company that is listed on a stock exchange or traded on over-the-counter markets.

(g) To qualify for the purposes of N.J.S.A. 54:10A-4(k)(16), a U.S. stock exchange or U.S. over-the-counter market must be regulated by a U.S. regulatory authority, and a foreign stock exchange or foreign over-the-counter market must be regulated by a regulatory authority of the foreign nation (so long as there is a reciprocal agreement with the U.S. government or U.S. regulatory authority).

(h) Financial statements are statements that are required to be filed annually, quarterly, etc. such as, but not limited to, the 10-K, 10-Q, or 8-K filings with the U.S. Securities and Exchange Commission (S.E.C.).

(i) The terms "net deferred tax liability" and "net deferred tax asset," as defined at N.J.S.A. 54:10A-4(k)(16), shall otherwise have the same meaning as prescribed by the Financial Accounting Standards Board (F.A.S.B.) or International Accounting Standards Board (I.A.S.B.) and calculated in accordance with U.S. G.A.A.P. or I.F.R.S., as applicable.

(j) The surtax imposed at N.J.S.A. 54:10A-5.41 shall be taken into account by the combined group when computing the deduction.

(k) Only the changes resulting from a change to filing combined returns apply for the purposes of computing the deduction.

(l) Where U.S. subsidiaries are required to file a mandatory unitary combined return with New Jersey and are included in the non-U.S. parent corporation's financial statements filed with the regulatory authorities of a foreign nation, the combined group filing a New Jersey return shall be eligible for the deduction if the parent corporation files its financial statements, in accordance with I.F.R.S. and is listed on a foreign stock exchange of a foreign nation that has a reciprocal agreement with the U.S. government.

(m) Where a publicly traded U.S. parent corporation is not unitary with its subsidiaries that constitute the combined group required to file a New Jersey combined return for New Jersey corporation business tax purposes, the combined group shall be eligible for the deduction where the combined group is included in the parent corporation's financial statements that are filed with the S.E.C.

(n) A combined group that is privately held does not qualify for the deduction. Only publicly traded companies that file financial statements, in accordance with U.S. G.A.A.P. or I.F.R.S. are eligible. Privately held combined groups are not eligible for the Net Deferred Tax Liability Deduction.

(o) A taxpayer that files a gross income tax return that is the owner of a closely held group of companies that is not a publicly traded group of companies is not eligible for the deduction.

18:7-21.19 Application of the minimum tax

(a) A taxable member of a combined group that is subject to the minimum tax must separately calculate that measure pursuant to N.J.A.C. 18:7-3.4. The payment of the minimum tax is required even when a corporation is not subject to tax on its income either through the means of a combined return or otherwise. However, for privilege periods ending on and after July 31, 2020, if the regular tax liability of the combined group exceeds the aggregate minimum tax of all of the taxable members of the combined group, then the combined group will only pay the regular tax liability and the taxable members will not additionally owe the statutory minimum tax.

(b) For privilege periods ending on or after July 31, 2019, the minimum tax shall be \$2,000 for each taxable member of the combined group filing a New Jersey combined return if the member has nexus with New Jersey.

(c) A business entity that is a disregarded entity for Federal purposes is not considered a member of the combined group itself, and, therefore, does not have to pay the minimum tax. However, the income and attributes of the disregarded entity flow-through to the owner and will be included in the income and attributes of the combined group if a member owns the disregarded entity.

(d) A partnership is not itself a member of a combined group.

18:7-21.20 Combined group tax return accounting methods

(a) Tax returns filed by taxable members of a combined group and by members of a combined group shall be filed consistent with the provisions set forth in this subchapter (and specifically, N.J.A.C. 18:7-21.15, 21.16, and 21.17).

(b) The combined group's privilege period is determined, as follows:

1. If two or more members of the group file a Federal consolidated return, the group's privilege period is the tax year of the Federal consolidated group (or the Federal consolidated group with the most total assets, in the case where the members of the combined group file more than one Federal consolidated return); and

2. In all other cases, the group's privilege period shall be the privilege period of the managerial member.

(c) Where a corporation files Federal income tax returns on the basis of an annual period, which varies from 52 to 53 weeks, its privilege period shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of such privilege period or ending with the last day of the calendar month ending nearest to the last day of such period.

(d) If the privilege period of one or more members of a combined group does not begin or end on the same dates as the group privilege period of the combined group, those members' accounting periods must be adjusted in order for the appropriate share of the combined group's unitary business income or affiliated group income, as the

case may be, to be properly attributed to those members' privilege period.

(e) In general, any member that has a privilege period different from that of the combined group should determine its income and allocation data for the group privilege period of the combined group by using the interim closing method. This method requires an interim closing of the books for members whose privilege period differs from that of the combined group. However, a pro rata method of converting income to the combined group's privilege period will be accepted in certain instances, provided that the pro rata method does not produce a material misstatement of income allocated to New Jersey. Further, the Director reserves the right to require the use of the interim closing method in certain instances. Unless otherwise permitted or required by the Director, the treatment of both the income and the allocation data of any particular member must be determined based on the same method. If one method was used to account for a member's income and allocation data in the preceding privilege period and another method will be used in the combined return for the current group privilege period, adjustments to income and allocation data of the member shall be made to prevent income and allocation data from being omitted or duplicated.

(f) Under the interim closing method, the unitary business or affiliated group income or loss attributable to a member of a combined group is determined by first calculating the income or loss from the books and records of the member for the two periods that together encompass the combined group's single group privilege period. The allocation data shall also be determined by reference to the member's books and records for the appropriate partial privilege period. Interim income and allocation data from the respective partial privilege periods is then combined with the income and allocation data of the group privilege period of the combined group, along with the income and allocation data of other members of the combined group for the same period, and the members' share of the combined group's taxable income for the combined group's privilege period is computed.

(g) Under the pro rata method, the income and allocation data of the member, as adjusted to reflect the determination of income pursuant to New Jersey law, is assigned to the respective portion of the combined group's privilege period based on the ratio of months in common with the group privilege period of the combined group. The income and allocation data from the member's recomputed privilege period is then combined with the income and allocation data of the privilege period of the combined group, along with the income and allocation data of other members of the combined group for the same period, and is similarly recomputed, if necessary. The combined group's taxable income is then allocated to each of the taxable members of the combined group.

1. In the event that the pro rata method requires the determination of income and allocation data of a corporation whose privilege period has not yet closed, and the information cannot be obtained in time for the other members to file an accurate return, the income and allocation data for that period shall be estimated based on available information. If the use of actual income and allocation data results in a material misstatement of income allocated to New Jersey by the combined group, the taxable members must file an amended return to reflect the change.

2. For the purpose of determining whether a redetermination of income made with respect to the pro rata method results in a material misstatement of income allocated to New Jersey by the combined group, it is presumed that there is a material misstatement where the aggregate tax liability of the combined group members that filed returns based on a pro rata estimate is found to have understated the aggregate amounts pursuant to N.J.A.C. 18:7-5.10 and 13.1 or a change in the allocated group income for any one taxable member of the group increases or decreases.

(h) After determining the combined group's taxable income allocated to New Jersey of a taxable member that is not filing its return for the same privilege period, that income is then proportionately assigned to the applicable portion of that member's

privilege period based on the number of months falling within the common group privilege period of the combined group.

(i) Where a member enters the combined group after the start of the combined group's privilege period, only the income, allocation data, and other tax attributes of the group member after it qualifies for inclusion are used to calculate and allocate the combined group's taxable income. Where a member leaves the combined group after the start of the combined group's privilege period, through a change of control or otherwise, only its tax attributes before it ceases to qualify for inclusion are used to calculate and allocate the combined group's taxable income. Whenever the income, allocation data, and other tax attributes of one or more members of the combined group are includible for only part of the period for which the combined group's taxable income is being determined and allocated, the value of the member's owned or rented property will be reduced to reflect the ratio of the number of months for which the member's tax attributes are included in the combined group's taxable income determination and the total number of months in the combined group's privilege period.

(j) The International Financial Reporting Standards (I.F.R.S.), which are issued by the International Accounting Standards Board (I.A.S.B.), qualifies as an acceptable method that "reasonably approximates income" pursuant to the Corporation Business Tax Act for the purposes of N.J.S.A. 54:10A-4.6.b, if that is the only method of accounting the specific entity used.

18:7-21.21 Subchapter S corporations and combined returns

(a) A New Jersey S corporation may elect to be included in a combined group reported on a combined return pursuant to this subchapter. Subsequent to electing to be included in the combined group on the combined return, the New Jersey S corporation shall be taxed in the same manner and rate as the other members of the combined group.

(b) A qualified NJ-QSSS of a New Jersey S corporation that has elected to be included on a combined return must also be included along with its corporate parent New Jersey S corporation. A qualified NJ-QSSS of a Federal S corporation that has not elected New Jersey S corporation status must be included in a combined group on a combined return.

(c) A Federal S corporation making a validly accepted retroactive New Jersey S corporation election cannot retroactively be excluded or included from the combined group filing a combined return. After being approved for a valid, retroactive New Jersey S corporation election, the approved New Jersey S corporation may prospectively elect to be included in the combined group filing a New Jersey combined return.

18:7-21.22 Application of other rules unaffected

All other rules pursuant to this chapter shall be otherwise unaffected; provided, however, any statute, rule, or regulation in the Corporation Business Tax Act or this chapter that is inconsistent with this subchapter, as applied to taxpayers that are members of a combined group reporting on a combined return, shall not apply to New Jersey combined returns only, but shall not affect the taxpayers reported on a combined return if and when the taxpayer has to also file a separate return.

18:7-21.23 Authority of the Director of the Division to require that a taxpayer be included in a combined return in certain instances

(a) If the Director determines that a combined group's income or loss does not properly reflect the unitary business activities of the combined group, the Director may require that the combined return of the combined group include the income, as well as the associated allocation factor or factors of any taxpayer who is not otherwise included in the combined group on the combined return, but who is a member of a unitary business with the combined group, in order to cure the improper reflection of the allocation of income of the entire unitary business. The Director may require that a combined return include the income and associated allocation factor or factors of taxpayers that are not corporations, such as disregarded entities,

limited liability companies (that are not corporations for tax purposes), and partnerships.

(b) If the Director determines that a combined group's income or loss does not reflect a proper allocation of income or represents an evasion of tax, the Director may require that a combined return include or exclude the income and associated allocation factor or factors of taxpayers that may or may not have been included as members on the combined return. The Director may require that a combined return include or exclude the income and associated allocation factor or factors of taxpayers that are not corporations, such as disregarded entities, limited liability companies (that are not corporations for tax purposes), and partnerships.

(c) If the Director determines that the reported income or loss of a member of a combined group engaged in a unitary business with any taxpayer not otherwise included in the combined group on the combined return represents an avoidance or evasion of tax by the taxpayer or the combined group member, the Director may require all, or any part, of the income or loss and associated allocation factor or factors of the taxpayer be included in or excluded from the combined return for the unitary business or may require the use of a different allocation factor or factors.

(d) The Director may require that a combined return include or exclude the income or loss and associated allocation factor or factors of taxpayers that are not corporations.

(e) Such inclusion or exclusion in a combined return is in addition to, and not a limitation of or dependent on, the provisions in Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), enacted to prevent tax avoidance or evasion or to clearly reflect the income of any taxpayer.

(f) If the taxpayer disagrees with the Director's determination pursuant to (a) through (e) above, the taxpayer challenging the determination has the burden of proving by cogent evidence that is definite, positive, and certain in quality and quantity to overcome the Director's presumption of correctness.

18:7-21.24 De-combination of a combined group

The Director, upon audit of the combined return and review of the facts and circumstances, may de-combine and require a member or members to file a separate return instead of the member(s) being included as part of the combined group filing a mandatory unitary combined return, if the Director determines that the member(s) were not unitary and the principle purpose of including the members was to either shelter income, dilute the allocation factor of the combined group, improperly increase the combined group net operating losses, or the inclusion was for the purpose of sharing tax credits that were not related to any function of the combined group.

18:7-21.25 Banking corporations and combined groups

(a) Where at least one of the members of the combined group is a banking corporation, as defined at N.J.S.A. 54:10A-36, and the group privilege period has a fiscal year end, then before being included as a member of the combined group on the New Jersey combined return, the banking corporation must first file a short period return to align its privilege period with the combined group. Subsequent to filing a short period combined return, the banking corporation shall include and report its income and attributes as part of the combined group.

(b) Where a banking corporation that switched to a fiscal privilege period as a result of (a) above departs from a combined group, the banking corporation shall continue to file a fiscal privilege period return.

(c) Where at least one of the members of the combined group is a banking corporation, and the combined group has a calendar year privilege period, the banking corporation does not need to file a transitional return.

(d) For purposes of the deduction allowed in paragraph (4) of subsection (k) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4), a combined group shall be treated as one taxpayer; provided, however, a combined group shall only be eligible for the deduction if at least one of the taxable members is a banking corporation and the taxable member has an international banking facility. The income of the combined group shall not be eligible for the deduction allowed in

paragraph (4) of subsection (k) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4), if such income was already eliminated pursuant to the provisions at N.J.S.A. 54:10A-4.6.

(e) Any banking corporation member of a combined group (or the managerial member electing on the banking corporation member's behalf), having an international banking facility that elects to take the deduction from entire net income provided for at N.J.A.C. 18:7-5.2(a)2vii, shall complete the allocation factor at N.J.S.A. 54:10A-4.7, after intercompany eliminations. 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 at N.J.S.A. 54:10A-4(n), shall be included in both the numerator and the combined group denominator after intercompany eliminations, whether or not such international banking facility income amounts are otherwise attributable to New Jersey.

(f) All other banking corporations that have not filed transitional returns must do so for privilege periods ending on and after July 31, 2020. See N.J.S.A. 54:10A-34.1 for more information.

18:7-21.26 Conditions warranting the designation of a managerial member by the Director

(a) The Director shall designate one of the members of the combined group as the managerial member of the combined group, if one of the following conditions applies:

1. The parent corporation that is a member of the combined group does not have nexus with New Jersey and the combined group refuses to select a new managerial member of the combined group;

2. The managerial member dissolves or otherwise leaves the combined group because the managerial member is purchased by an unrelated third party or is no longer unitary with the combined group, and the combined group does not elect a new managerial member of the combined group;

3. The managerial member, which is not the parent corporation, no longer has nexus with New Jersey and the combined group refuses to elect a new managerial member of the combined group;

4. The Director determines, based on the facts and circumstances, that separate return taxpayers and their affiliates are unitary and should be filing a New Jersey combined return, but they refuse to file a New Jersey combined return and designate a managerial member; or

5. Where the non-U.S. parent corporation is otherwise the managerial member of the combined group, there are other non-U.S. corporations that are unitary with the combined group and meet the requirements for inclusion on a water's-edge basis pursuant to N.J.S.A. 54:10A-4.11, but the U.S. corporations make an affiliated group election, and the non-U.S. parent corporation otherwise refuses to file a water's-edge combined return for the non-U.S. corporations.

(b) The items at (a) above shall not represent an all-inclusive list of circumstances, where the Director may exercise the right to designate the managerial member of the combined group.

18:7-21.27 Principles of Federal consolidated returns applicable

(a) The principles and provisions set forth in Federal regulations promulgated pursuant to I.R.C. § 1502, shall apply to the extent consistent with the Corporation Business Tax Act, New Jersey combined group membership principles, New Jersey combined unitary return principles, and rules promulgated by the Director.

(b) When computing the combined group entire net income, the principles set forth in the U.S. Treasury regulations promulgated at I.R.C. § 1502 shall generally apply to the extent consistent with the New Jersey Corporation Business Tax Act and the unitary business principle to a combined group filing a New Jersey combined return as though the combined group filed a Federal consolidated return.

(c) For New Jersey corporations business tax purposes, tax rates, tax computations, estimated payment provisions, and due dates are different than Federal requirements.

(d) The New Jersey Corporation Business Tax Act (Act) has its own definitions and its own included and excluded entity provisions, which differ from the Internal Revenue Code. The Act has its own additions, deductions, exclusions, and other modifications to the

entire net income. New Jersey combined returns are filed using a default mandatory water's-edge filing method or the elective worldwide or affiliated group filing method. To be included on a water's-edge return or worldwide return, an entity needs to be part of a unitary business of the combined group as defined in the Act. Water's-edge and worldwide returns are State tax concepts, not Federal consolidated return concepts (see N.J.S.A. 54:10A-4.11 and N.J.A.C. 18:7-21.15 and 21.16 for more information). The composition of the New Jersey affiliated group combined return for New Jersey purposes may be larger than the Federal affiliated group because there are specific New Jersey inclusions and exclusions. For combined groups, New Jersey has its own payment, accounting period, and liability provisions (N.J.S.A. 54:10A-4.8 and 54:10A-4.10). The managerial member of the New Jersey combined group (which may be a different corporation than the corporation filing the Federal consolidated return on behalf of a Federal consolidated group) files the combined return on behalf of the combined group.

(e) For New Jersey combined reporting purposes, the requisite ownership threshold is more than 50 percent. Although the Federal rules otherwise apply, New Jersey does not conform to the 80 percent ownership required for Federal consolidated returns. If a New Jersey combined group composition is different than the Federal consolidated return, the group must compute the combined group entire net income as though the entire group filed a Federal consolidated return and then make the New Jersey additions, deductions, exclusions, and other modifications.

(f) Generally, the provisions at 26 CFR 1.1502-13 apply, except as otherwise noted at N.J.S.A. 54:10A-4.6.e and except where 26 CFR 1.1502-13 deals with specific provisions of the Internal Revenue Code to which New Jersey does not conform.

(g) The Federal consolidated return rules in relation to depreciation and expensing apply, except that New Jersey has decoupled from I.R.C. §168(k) bonus depreciation and I.R.C. § 179 expensing provisions and certain other depreciation and expensing provisions. See N.J.S.A. 54:10A-4(k)(1), 54:10A-4(k)(2)(F), 54:10A-4(k)(12), and 54:10A-4(k)(13). Adjustments must be made, accordingly.

(h) To the extent consistent with the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), the Federal rules and regulations governing consolidated return net operating losses and net operating loss carryovers shall apply to the New Jersey net operating loss carryover provisions at N.J.S.A. 54:10A-4.6.h as though the combined group filed a Federal consolidated return, regardless of how the members of the combined group filed for Federal purposes.

1. Federal carrybacks do not apply because New Jersey net operating losses can only be carried forward for 20 privilege periods.

2. For privilege periods beginning on and after January 1, 2020, the provisions of the Internal Revenue Code, the Federal rules, limitations, and restrictions, thereto, governing Federal net operating losses and Federal net operating loss carryovers with regard to, but not limited to, mergers, acquisitions, reorganizations, spin-offs, split-offs, dissolution, bankruptcy, or any form of cessation of a business, or any other provision that limits or reduces Federal net operating losses and Federal net operating loss carryovers, shall apply to New Jersey net operating loss carryovers pursuant to subsection (v) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6).

3. The provisions of the I.R.C. governing the interaction between I.R.C. §172 and 250 that limits or reduces Federal net operating losses and Federal net operating loss carryovers, shall apply to New Jersey net operating loss carryovers pursuant to subsection (v) of section 4 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-4) and the New Jersey net operating loss carryover provisions of subsection h. of section 18 at P.L. 2018, c. 48 (N.J.S.A. 54:10A-4.6).

(i) There are interactions between N.J.S.A. 54:10A-4.15, 54:10A-4.6.d, 54:10A-4(k)(5), 54:10A-4.5.c, 54:10A-4.6.n, 54:10A-4(v), 54:10A-4.6.h, 54:10A-4.6.m, and 54:10A-5.46, impacting dividends,

the dividend exclusion, GILTI, FDII, Net Operating Losses (NOLs), and special deductions as noted in this subsection.

1. The Federal dividend received deductions (DRD) are special deductions for Federal purposes, which are adjustments below line 28. As such, these provisions in the Federal consolidated rules do not apply for New Jersey purposes. New Jersey has its own dividend exclusion (see N.J.S.A. 54:10A-4(k)(5)). The rules and limitations governing the Federal dividend received deductions were not incorporated into N.J.S.A. 54:10A-4(k)(5). Pursuant to N.J.S.A. 54:10A-4.6.d, dividends paid by one member to another member of the combined group are eliminated from the income of the recipient. Furthermore, there also is a New Jersey corporation business tax credit for certain dividends received from non-combined subsidiaries (or a separate combined group that files its own New Jersey combined return and is itself a subsidiary), see N.J.A.C. 18:7-3.28.

2. The NOL-DRD ordering rules found at N.J.S.A. 54:10A-4(u), 54:10A-4(v), and 54:10A-4.6.h(1) (by operation of N.J.S.A. 54:10A-4(v)) also apply because they are provisions of the Corporation Business Tax Act. The Federal limitations that govern the interaction of the Federal net operating losses/net operating loss carryovers and the Federal dividend received deductions do not apply because the Federal dividend received deductions are special deductions under the Internal Revenue Code. Likewise, the Federal dividend deduction rules do not apply to N.J.S.A. 54:10A-4(k)(5) since the Federal dividend received deductions are special deductions for Federal purposes.

3. The only Federal rules with regard to a Federal special deduction that apply are the rules in relation to I.R.C. § 250 (see N.J.S.A. 54:10A-4.15, which specifically coupled the Act to I.R.C. § 250). None of the other Federal rules governing Federal special deductions apply. If a combined group has GILTI and FDII, and the members are eligible for the I.R.C. § 250 deductions and take the deductions for Federal tax purposes, the Federal consolidated return rules, and Federal rules governing the interaction of net operating losses and the I.R.C. § 250 deductions apply.

(j) New Jersey has its own tax credits and its own rules for tax credits, except regarding the New Jersey Research Tax Credit. Although the New Jersey Research Tax Credit has its own specific limitations, the Federal rules governing I.R.C. § 41 apply.

(k) In general, New Jersey follows the guidelines set forth pursuant to the Federal consolidated return regulations regarding I.R.C. § 108.

(l) For more on the interaction of the Federal rules in relation to New Jersey net operating losses and net operating loss carryovers (but not prior net operating loss conversion carryovers), see N.J.S.A. 54:10A-4.5.c.

18:7-21.28 Combined groups engaged in transportation of freight by air or ground

(a) All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies if 50 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground. See N.J.A.C. 18:7-21.13(b).

(b) If 50 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground, as described at (a) above, then (a) above applies, and N.J.A.C. 18:7-8.10A (dealing with the sourcing of receipts for certain services) does not apply.

(c) If less than 50 percent of the combined group's entire net income is derived from the transportation of freight by air or ground, then N.J.A.C. 18:7-8.10A (dealing with the sourcing of receipts for certain services) applies.

(d) This section shall apply to combined groups filing on a water's-edge group basis, a worldwide group basis, or an affiliated group basis.

(e) For the purposes at (a) above, receipts attributable to the income of certain international shipping companies and international airlines that were excluded from entire net income pursuant to N.J.S.A. 54:10A-4(k)(9) are not considered when determining whether 50 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground. Thus, when the income is excluded from the entire net income of the group pursuant to N.J.S.A. 54:10A-4(k)(9), but 50 percent or more of the remaining income that is included in the combined group's entire net income is derived from the transportation of freight by air or ground the income, (a) above shall apply.

18:7-21.29 Change in combined group composition

(a) Members of a combined group shall notify the Director of a change in the combined group where a member dissolves, a merger of any kind occurs, a member withdraws from the group, a member ceases doing business, a member of the group is acquired by a third party not in the group, or additional members enter the group that are required to be included. Such notice shall be submitted in written form, as determined by the Director, not later than the due date, or, if an extension of time to file has been requested and granted, not later than the extended due date of the combined unitary tax return for the privilege period in which a change in the combined group occurs. See N.J.S.A. 54:10A-4.10.h.

(b) Such notification shall satisfy the requirements at N.J.A.C. 18:7-14.1 through 14.5.

(c) Subsections (a) and (b) above shall also apply to elective combined returns.

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Notice of Proposed Substantial Changes Upon Adoption

Authority Assistance Programs Emerge Program Rules

Proposed Changes: N.J.A.C. 19:31-22.9 and 22.15

Proposed: January 18, 2022, at 54 N.J.R. 124(a).

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2021, c. 160.

Submit written comments by July 15, 2022, to:

Allyson Jones, Director of Legislative and Regulatory Affairs
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
ajones@njeda.com

Take notice that the New Jersey Economic Development (NJEDA) proposed amendments and a repeal and new rule on January 18, 2022 pertaining to the EmERGE Program Rules. That rulemaking did not include language necessary to delineate the exception established at N.J.A.C. 19:31-22.9(a)2i. Specifically, language must be added to the original rulemaking (adopted elsewhere in this issue of the New Jersey Register) to clarify, consistent with NJEDA's rules and practice in similar prior programs, that a qualified business facility that consists of new construction has additional time to submit the required information pursuant to N.J.A.C. 19:31-22.9(a)2.

The prior rulemaking also included a provision regarding the relocation of a qualified business facility, which is unintentionally inconsistent with the EmERGE statute. Specifically, N.J.S.A. 34:1B-344(c)1 provides that "an eligible business may change the location of the qualified business facility" if the relocation meets one of two criteria. In the original notice of proposal, at N.J.A.C. 19:31-22.15(b)1, the relocation is limited to