

1. (No change.)
 [2. Demonstrate that its motor vehicle defensive driving course meets or exceeds the standards of the National Safety Council’s defensive driving course;]

Recodify existing 3. and 4. as **2. and 3.** (No change in text.)

[5.] **4.** For defensive driving courses provided in a traditional classroom setting, demonstrate by written operating procedures and/or on-site visitation by the Chief Administrator or designee, that its instructors are qualified to conduct its motor vehicle defensive driving course; [and]

[6.] **5.** For **DVD/video** or online, computer-assisted, courses, provide sufficient demonstration through written operating procedures and by providing a gratis test of a representative course in its entirety for review by the Chief Administrator or designee and shall further:

i. Provide a description of the technology to be used to present the course, technical specifications, **a DVD/video, or** an online course description document, and a verbatim transcript of the **DVD/video** or online course including all module completion quizzes, proficiency examinations, and answer keys to be presented;

ii.-iii. (No change.)

iv. Require as a condition of satisfactory course completion the licensee’s passage, with a minimum passing grade of 80 percent, of a course content proficiency examination administered using approved security mechanisms. The course provider may permit the licensee, if they do not meet the minimum passing grade, to retake the proficiency examination up to two times after sufficient course review[.]; **and**

6. For DVD/video courses, the provider must include an explanation of the process that will be used for updating all DVD/video course curricula.

(b) (No change.)

(c) The Chief Administrator shall not approve an entity seeking to offer **a DVD/video** or an online, computer-assisted, motor vehicle defensive driving course as a sponsoring agency to conduct such a course, unless the entity can demonstrate to the satisfaction of the Chief Administrator that the security mechanisms, required by this section to be employed in administering such a course, adequately ensure that the identity of the student taking the course can be verified on a continual basis for the duration of the course, and that the security mechanisms eliminate to the extent practicable the potential for abuse or fraud.

(d) (No change.)

13:21-24.4 Instructor qualification; training

(a) (No change.)

(b) For **DVD/video** or online, computer assisted, courses, instructors providing curriculum support on the 24-hour hotline will be certified as instructors in the State of New Jersey and shall have met all the requirements of this section. No person shall be permitted by a sponsoring agency providing **a DVD/video** or an online course to act as instructor for curriculum assistance on an information hotline if such person has accumulated nine or more points by reason of conviction for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2, or 39:4-49.1, or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.

(c) (No change.)

13:21-24.5 Course curriculum; length; content; scope; class size

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

(c) For an approved defensive driving course provided **on DVD/video** or online, by means of a computer-assisted virtual classroom, the sponsoring agency shall provide:

1.-7. (No change.)

8. Technology assistance for **DVD/video**, online, or computer related problems; **and**

9. (No change.)

13:21-24.11 Affiliates

(a) A sponsoring agency shall list all affiliates that will be offering its course(s) in its initial application.

(b) A sponsoring agency that wants to add an affiliate shall notify the Motor Vehicle Commission at least 15 days before the affiliate is scheduled to offer its initial defensive driving course.

(c) A sponsoring agency shall notify the Motor Vehicle Commission when it ends its relationship with an affiliate or when one of its affiliates ceases to exist. Notification shall occur not more than 15 days after the affiliate offers its final defensive driving course.

(d) A sponsoring agency shall properly submit the class rosters of its affiliates. The sponsoring agency shall separately identify the rosters of its affiliates from the rosters of classes taught by the sponsoring agency.

(e) A sponsoring agency shall be responsible for ensuring that its affiliates adhere to the same regulations, guidelines, restrictions, and policies that the sponsoring agency is required to follow.

(f) Any deficiencies in the operations or administration of a sponsoring agency’s courses, regardless of who administered the course, may result in the denial of credit to students of the affected entities and/or result in the suspension or revocation of the authority of the sponsoring agency and its affiliates to offer and administer defensive driving courses.

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

**Corporation Business Tax
 Receipts from Services Performed in the State;
 Allocation for Certain Special Industries**

Proposed Amendments: N.J.A.C. 18:7-1.6 and 8.10

Proposed New Rule: N.J.A.C. 18:7-8.10A

Authorized By: Michael Bryan, Director, Division of Taxation.

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

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

Proposal Number: PRN 2013-060.

Submit written comments by June 14, 2013 to:

Mitchell C. Smith
 Administrative Practice Officer
 Division of Taxation
 50 Barrack Street
 P.O. Box 269
 Trenton, NJ 08695

The agency proposal follows:

Summary

The Division is proposing new N.J.A.C. 18:7-8.10A, Receipts from services performed in the State; allocation for certain special industries. The proposed new rule provides a method for the allocation of receipts from certain service transactions for privilege periods beginning on and after January 1, 2014. Existing N.J.A.C. 18:7-8.10, Receipts compensation for services; allocation for certain special industries, is amended to provide that the rule applies to privilege periods beginning prior to January 1, 2014.

New N.J.A.C. 18:7-8.10A is proposed in order to provide sourcing rules for privilege periods beginning on or after January 1, 2014. Proposed paragraph (a)1 requires that the numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned if the service is performed within this State. This paragraph differs from N.J.A.C. 18:7-8.10 by no longer requiring that the numerator of the receipts fraction include receipts from services based upon the cost of performance or amount of time spent in the performance of such services or by some other reasonable method, if the service is performed both within and outside this State. Proposed new paragraph (a)2 requires that in determining whether services are

performed in the State, a taxpayer shall include in the numerator of the receipts fraction receipts derived from customers within this State. Proposed new paragraph (a)3 requires that in the event services are provided to a recipient engaged in a trade or business in this State and another state(s), a taxpayer shall include in the numerator of the receipts fraction those receipts attributable to the State's marketplace. Examples are provided dealing with real estate surveying services, engineering services, computer software services, advertising services, prescription services, market analysis services, GPS services, legal information services, and payroll processing services. Proposed new paragraph (a)4 provides that all amounts received by the taxpayer in payment for such services are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons and regardless of whether the receipt is accounted for as an item of income or a reduction in expense. Proposed new paragraph (a)5 provides that it is immaterial where the amounts were payable or where they actually were received. Proposed new paragraph (a)6 provides a method for allocating certain lump sum payments and includes a method for allocating airline revenues. Paragraphs (a)7, 8, and 9 are identical to N.J.A.C. 18:7-8.10(a)4, 5, and 6, as proposed for recodification in this rulemaking.

New Jersey determines the portion of the total income of a corporation subject to the Corporation Business Tax by using formulas that measure specific activities of the corporation assigned to that state. The New Jersey Corporation Business Tax employs a three-fraction formula that apportions a share of the corporation's income to the State based on a weighted average of the following fractions: (1) a corporation's property in this State over the corporation's total property; (2) a corporation's sales in this State over the corporation's total sales; and (3) the corporation's payroll in this State over the corporation's total payroll. P.L. 2011, c. 59, enacted on April 28, 2011, replaced the aforementioned allocation formula used to determine a corporation's taxable income under the Corporation Business Tax with a single sales fraction allocation formula to be phased-in over three tax years beginning on or after January 1, 2012. Thus, as of January 1, 2014, the single sales allocation formula will be fully phased in.

Proposed new N.J.A.C. 18:7-8.10A deals with the measurement of receipts from services performed within the State for purposes of the sales fraction. The enactment of a single sales fraction allocation formula emphasizes the amount of sales or receipts attributable to the State when allocating a taxpayer's income, while the taxpayer's property and payroll factors no longer play a role. Consequently, the method(s) for assigning or sourcing receipts from specified services should also reflect this statutory change to assign and allocate to this State income earned by a taxpayer based upon where receipts are earned or sales are undertaken, and not where performance of the service(s) is undertaken or how much time and/or resources is spent performing said service(s).

Because 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 rule will have a positive social impact by clearly setting forth the manner in which receipts from certain service transactions shall be allocated to New Jersey for privilege periods beginning on and after January 1, 2014.

Adoption of the proposed amendments and new rule will benefit the public by providing clarification as to the calculation of the sales fraction in the case of affected taxpayers. In particular, the proposed amendments and new rule will benefit the public by replacing the percentage formula in existing N.J.A.C. 18:7-8.10(c) with a flexible market-based allocation method.

The Division believes that the proposed amendments and new rule are consistent with P.L. 2011, c. 59, which replaced the existing weighted three-factor apportionment formula used to determine a multi-state corporation's taxable income under the Corporation Business Tax Act with a single sales apportionment formula over a three-year phase-in period. The new apportionment formula is fully effective for privilege periods beginning on or after January 1, 2014. The proposed new rule is

consistent with the resulting emphasis on "receipts" in determining the allocation of income under N.J.S.A. 54:10A-6.

Economic Impact

The proposed amendments and new rule eliminate possible confusion for a class of taxpayers and their advisors over the manner in which receipts from sales of certain services are allocated to New Jersey. The effect on State revenues is indeterminate. The proposed amendments and new rule are intended to offer an objective but flexible standard to allocate income to New Jersey. While the elimination of the 25-50-25 percent rule may be considered a new policy, the proposed amendments and new rule may also be said to clarify existing policy on how corporations should source receipts from services to New Jersey by reorganizing the placement of examples and adding new examples to the rule.

The enactment of P.L. 2011, c. 59, replacing the allocation formula used to determine a corporation's taxable income under the Corporation Business Tax with a single sales fraction allocation formula, was intended to have a generally positive effect on the business climate in New Jersey. The proposed amendments and new rule are designed to reflect the statutory change and to have a similarly positive effect on business climate.

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 rule.

Jobs Impact

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

Agriculture Impact

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

Regulatory Flexibility Analysis

The proposed amendments and new rule 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. The proposed amendments and new rule are not expected to impose any changes in reporting, recordkeeping, or other compliance requirements on small businesses. To the contrary, the proposed amendments and new rule may reduce recordkeeping and compliance requirements by allowing for reasonable approximations in determining where to allocate receipts from services. The proposed amendments and new rule are intended to provide clarification as to how and when to allocate receipts from certain sales to New Jersey and to provide a standard allocation method. Small businesses may wish to consult with accountants or legal professionals in order to review the proposed amendments and new rule 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 of Taxation reviews its rule proposals 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 rule would not result in a change in the average cost associated with housing. The proposed amendments and new rule would have no impact on any aspect of housing because the proposed amendments and new rule deal with the Corporation Business Tax.

Smart Growth Development Impact Analysis

The proposed amendments and new rule would 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 rule 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 rule deals with the Corporation Business Tax.

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

18:7-1.6 Subjectivity to tax; how created

(a) (No change.)

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

Example 1: An entity regularly providing asset management services as defined in N.J.A.C. 18:7-[8.10(e)]**8.10(a)5** from a location outside New Jersey to customers within New Jersey is subject to tax in New Jersey.

Example 2: (No change.)

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

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

(a) For privilege periods beginning before January 1, 2014, receipts from service transactions shall be allocated to New Jersey in accordance with this section.

Recodify existing (a)-(d) as **1.-4.** (No change in text.)

[(e)] **5.** Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the following procedures:

Recodify existing 1.-3. as **i.-iii.** (No change in text.)

[4.] **iv.** As used in [(e)1 through 3] **(a)5i through iii** above, **the following words and terms shall have the following meanings:**

Recodify existing i.-iv. as **(1)-(4)** (No change in text.)

[v.] **(5)** "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-2m in the case of an individual and under N.J.S.A. 54A:1-2o in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the mailing address of the beneficiary of the plan, account, or other similar pool of assets based upon the sponsor's records with respect to any such beneficiary or the shareholder's mailing address on the records of the regulated investment company. For purposes of [(e)3] **(a)5iii** above, in the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

Recodify existing vi.-viii. as **(6)-(8)** (No change in text.)

[5.] **v.** (No change in text.)

[(f)] **6.** (No change in text.)

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

(a) For privilege periods beginning on and after January 1, 2014, receipts from service transactions shall be allocated to New Jersey in accordance with this section.

1. The numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned if the service is performed within this State.

2. In determining whether services are performed within the State, a taxpayer shall include in the numerator of the receipts 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:

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

(2) Not engaged in a trade or business whose billing address is in the State.

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

iii. A billing address is the location indicated in the pertinent customer order or records of the taxpayer as the address of record where notices, statements, or bills relating to the customer's account or services provided to the customer are mailed.

3. In the event that services are provided to a recipient engaged in a trade or business for use in that trade or business in this State and another state(s), a taxpayer shall include in the numerator of the receipts fraction receipts attributable to the State's marketplace as determined in this paragraph.

i. For purposes of this paragraph, receipts are attributable to the State's marketplace if the recipient of the service(s) receives all of the benefit of the service(s) in the State.

ii. If the recipient of the service(s) receives some of the benefit of the service(s) in the State, receipts arising from the service(s) shall be attributable to the State's marketplace in proportion to the extent the recipient receives the benefit of the service(s) in the State.

iii. In determining the proportion to the extent the recipient receives the benefit of the service(s) in the State, a taxpayer may use the terms of the contract and the taxpayer's books and records kept in the normal course of business, or the nature of the taxpayer's or recipient's business or the service(s) at issue, to determine how much of the benefit of the service(s) is received in the State.

iv. In determining the proportion to the extent the recipient receives the benefit of the service(s) in the State, a taxpayer may use a reasonable approximation if the terms of the contract and the taxpayer's books and records kept in the normal course of business and the nature of the taxpayer's or recipient's business and the service(s) at issue do not provide the information necessary to determine how much of the benefit of the service(s) is received in the State.

(1) A reasonable approximation under this subparagraph means that, considering all sources of information other than the terms of the contract and the taxpayer's books and records kept in the normal course of business, the location of where the benefit of the service(s) is received is determined in a manner that is consistent with the activities of the recipient to the extent such information is available to the taxpayer. Reasonable approximation shall be limited to the jurisdictions or geographic areas where the recipient, at the time of purchase, will receive the benefit of the service(s), to the extent such information is available to the taxpayer. If population is a reasonable approximation, the population used shall be the U.S. population as determined by the most recent U.S. census data. If it can be shown by the taxpayer that the benefit of the service(s) is being substantially received outside the U.S., then the populations of those other countries where the benefit of the service(s) is being substantially received shall be added to the U.S. population. Information that is specific in nature is preferred over information that is general in nature.

Example 1: A taxpayer is in the business of providing real estate surveying services to developers and potential borrowers. A real estate development firm from another state is developing a tract of land in New Jersey. The real estate development firm from another state utilizes the services of the taxpayer to survey the land in New Jersey. The survey work is completed and the plans are drawn in New Jersey. All of the receipts from this survey work are attributable to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 2: A taxpayer is in the business of providing engineering services and is based in another state. A corporation headquartered in another state is building an office complex in New Jersey. The corporation contracts with the taxpayer to oversee construction of the buildings on the site. The taxpayer performs some of their service in New Jersey at the building site and additional service in its home state. All of the receipts from the engineering service are attributable

to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 3: A taxpayer based outside this State enters into an agreement with a corporation from another state to develop and provide customized computer software for the corporation's business office that is located in New Jersey. The software will only be used by the business office in New Jersey. The software development occurs in another state. All of the receipts from the software services are attributable to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 4: A taxpayer based outside this State enters into an agreement with a corporation from another state to develop and provide customized computer software for the corporation's business offices that are located in New Jersey and several other states. The software development occurs in another state. The receipts from the software services are attributable to New Jersey and included in the numerator of the receipts fraction in proportion to the extent the software is used in New Jersey.

Example 5: A taxpayer derives advertising revenues in the course of broadcasting television or radio programs. It sets its advertising rates based upon the listening audience it has succeeded in reaching. The portion of its advertising revenues or receipts that are attributable to New Jersey and included in the numerator of the receipts fraction shall be in proportion to the extent of the taxpayer's listening audience in New Jersey.

Example 6: A company performs prescription fulfillment service. They are based in State X and manage a prescription plan on behalf of a client with offices in 50 states that is headquartered in State Y. The client's employees are located in all 50 states, including New Jersey, but frequently travel and may fill prescriptions from their home pharmacy or pharmacies on the road. For lump sum payments from the client to the fulfillment service, the sourcing may be based on the percentage of the client's employees working in New Jersey. Alternatively, for pay as you go services where there is adequate documentation of where the prescription is filled, the percentage of prescriptions filled in New Jersey would be sufficient. If the company is unable to track the percentage of client's employees working in New Jersey or the percentage of prescriptions filled in New Jersey, a reasonable approximation considering all sources of information, or a population based methodology would be acceptable.

Example 7: A company performs marketing analysis services in California and New York for a client that is headquartered in New Jersey. The project was requested from and directed by the client's advertising division leader who is located in the client's Florida office. The deliverable is a memo detailing the results of the marketing analysis, which will be sent to the division leader in Florida. The information contained in the deliverable will ultimately be incorporated into an advertising strategy used companywide, nationwide. The bill was sent to the client's accounts payable function in Illinois. This service would not be sourced to New Jersey since it is not utilized in New Jersey, nor is the benefit of the service received in New Jersey.

Example 8: A person purchases an in-dashboard GPS system that includes a periodic update service when the person brings the car to the dealership for periodic car maintenance. The update service ends after one year with an option to renew the service directly with the GPS company, whereby payments to the company are paid by the car's owner. In the first instance, where the service and GPS are bundled together the sale would be sourced to the location of the dealership. When the owner of the car renews the update service, the receipts from the service will be sourced to the customer's billing address.

Example 9: A legal information company provides a periodic legal research materials/service. The service consists of periodic shipments of the latest statutes/regulations and court cases based on the terms of the contract with each customer. The updates themselves consist of pocket parts or binder inserts. A customer with offices in New Jersey and three other states contracts with the legal information company

to receive weekly updates of the materials that are shipped to each office. The receipts will be sourced based on the percentage of updates that are received in the client's New Jersey office.

Example 10: A payroll processing corporation provides a payroll processing and remittance service to clients for a fee. The payroll processing corporation receives the data from clients and impounds funds from its clients for disbursing payroll checks and remitting tax monies to government agencies. The payroll processing corporation transmits the processed data back to its client that has offices and employees in New Jersey, Pennsylvania, South Carolina, California, and Ohio. The client hires the payroll processing corporation to process its payroll. The receipts from the payroll services will be sourced to New Jersey based on the number of the client's employees located in New Jersey since the payroll tax monies are remitted to New Jersey.

4. All amounts received by the taxpayer in payment for such services are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons and regardless of whether the receipt is accounted for as an item of income or a reduction in expense.

5. It is immaterial where the amounts were payable or where they were actually received.

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

i. Transportation revenues of an airline are from services performed in New Jersey based on the ratio of an airline's revenue miles in New Jersey divided by an airline's total revenue miles. Where an airline is engaged in the transportation of passengers, the transportation of freight, or the rental of aircraft, the ratio shall be determined by an average of a passenger revenue mile fraction, freight revenue mile fraction, and rental revenue mile fraction weighted to reflect the taxpayer's relative gross receipts from passenger transportation, freight transportation, and rentals.

(1) Revenue miles means passenger revenue miles for passenger transportation, freight revenue miles for freight, or transportation rental revenue miles for aircraft rentals.

(2) The passenger revenue mile fraction is determined by multiplying the number of revenue-paying passengers aboard the aircraft by the distance traveled in New Jersey divided by the number of revenue paying passengers aboard the aircraft multiplied by the distance traveled everywhere.

(3) The freight revenue mile fraction is determined by dividing the freight ton revenue miles in New Jersey by the freight revenue miles everywhere. A freight revenue ton mile is equal to one ton carried one mile.

(4) The rental revenue mile fraction is determined by dividing the number of rental miles flown in New Jersey by total rental miles flown.

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.

(1) With regard to the property fraction, movable property, such as tractors and trailers, shall be allocated to this State using the same mileage fraction set forth in 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 payroll fraction.

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

i. The part apportioned to services performed is includible in receipts from services; and

ii. The part apportioned to materials or other property is includible in receipts from sales;

iii. Full details must be submitted with the taxpayer's return.

8. Receipts arising from the sale of asset management services shall be allocated to New Jersey in accordance with the following procedures.

i. In the case of asset management services directly or indirectly provided to individuals, receipts shall be allocated to New Jersey if the domicile of the individual is in New Jersey.

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

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

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

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

iv. As used in this paragraph, the following words and terms shall have the following meanings:

(1) "Asset management services" means the rendering of investment advice, making determinations as to when sales and

purchases are to be made, or the selling or purchasing of assets and related activities. As used in this sub-subparagraph, "related activities" means administration services, distribution services, management services, and other related services.

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

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

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

(5) "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-2.m in the case of an individual and under N.J.S.A. 54A:1-2.o in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the mailing address of the beneficiary of the plan, account, or other similar pool of assets based upon the sponsor's records with respect to any such beneficiary or the shareholder's mailing address on the records of the regulated investment company. For purposes of (a)8iii above, in the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

(6) In addition to amounts received directly from a regulated investment company, "receipts" shall also include amounts received directly from the shareholders of such regulated investment company in their capacity as such.

(7) "Regulated investment company" means a regulated investment company as defined in N.J.S.A. 54:10A-4(g) and meets the requirements of Section 851 of the Federal Internal Revenue Code.

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

v. See N.J.A.C. 18:7-1.6 regarding foreign advisors having customers in New Jersey.

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

i. For purposes of this paragraph, the following words or terms shall have the following meanings.

(1) "Securities" has the meaning provided by paragraph (2) of subsection (c) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475.

(2) "Commodities" has the meaning provided by paragraph (2) of subsection (e) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475.

(3) "Registered securities or commodities broker or dealer" means a broker or dealer registered as such by the Federal Securities and Exchange Commission or the Federal Commodities Futures Trading Commission.