

6. Written prescription for care or a care plan signed by a physician or such other health care practitioners authorized by law to prescribe, or a verbal order or prescription memorialized by the prescriber in writing pursuant to the provisions of N.J.A.C. 13:44F-3.1(c)3. The licensee shall document verbal prescriptions in the patient record contemporaneously with administration of treatment;

7.-9. (No change.)

(b) (No change.)

(c) In addition to the requirements of (a) above, a licensee employed in a setting regulated by the Department of Health shall comply with all applicable Department of Health rules.

(d) (No change.)

13:44F-8.4 Office location; Board information

(a) (No change.)

(b) Information related to Board operations may be obtained at the following website: <http://www.njconsumeraffairs.gov/resp/Pages/regulations.aspx>.

SUBCHAPTER 9. UNLICENSED PRACTICE

13:44F-9.1 Acts amounting to unlicensed practice

(a) The following acts or practices shall be deemed to be the unlicensed practice of respiratory care:

1. (No change.)

2. The use of the words inhalation therapy, respiratory care, respiratory therapy, pulmonary therapy, or other such similar words or their related terms, letters, insignia, or abbreviations in connection with the offering of measures or services that are utilized in the rendition of respiratory care by any person who does not hold a license to render respiratory care services or is not otherwise exempt from the licensure requirement;

3. The use of the designation respiratory care practitioner, respiratory therapist, respiratory therapy technician, pulmonary technician, or other such similar terms, letters, insignia, and their related abbreviations in connection with the offering of measures or services that are utilized in the rendition of respiratory care by any person who does not hold a license to render respiratory care services or is not otherwise exempt from licensure; or

4. (No change.)

SUBCHAPTER 10. CONTINUING EDUCATION

13:44F-10.2A Performance-based competency assessment; approval; determination of credits

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

(d) Notwithstanding the provisions of (a), (b), and (c) above, pursuant to N.J.S.A. 45:14E-16.b(3), the Board shall not grant credit for continuing education for any program of activities designed to fulfill assigned general employment responsibilities specific to the expectations of an employer.

(a)

DIVISION OF STATE POLICE

**Notice of Readoption
Rules Relating to Personal Watercraft Operation
Readoption: N.J.A.C. 13:64**

Authority: N.J.S.A. 45:19A-12.

Authorized By: Colonel Patrick Callahan, Office of the Superintendent, Division of State Police, with the approval of Gurbir S. Grewal, Attorney General.

Effective Date: August 3, 2020.

New Expiration Date: August 3, 2027.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 13:64 were scheduled to expire September 25, 2020. These rules establish the standards for Personal Watercraft Operation, created pursuant to N.J.S.A. 12:1-86. The rules prescribe the procedures for the operation of rented personal watercraft on the waters of the State and apply to persons engaged in the business of renting personal watercraft.

The Division of State Police has reviewed these rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 45:19A-12, and in accordance with N.J.S.A. 52:14B-5.1.c(1), these rules are readopted without amendment and shall continue in effect for a seven-year period.

(b)

DIVISION OF GAMING ENFORCEMENT

**Notice of Readoption
Internet and Mobile Gaming**

Readoption: N.J.A.C. 13:690

Authority: N.J.S.A. 5:12-69.a, 70.a(7), 95.21, 95.22, and 100.e.

Authorized By: David L. Rebeck, Director, Division of Gaming Enforcement.

Effective Date: August 3, 2020.

New Expiration Date: August 3, 2027.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 13:690 were scheduled to expire on October 21, 2020. N.J.A.C. 13:690 establishes the rules for Internet and mobile gaming and wagering. The rules pertain to the general provisions for the chapter, Internet gaming reciprocal agreements, and remote gaming systems.

The Director of the Division of Gaming Enforcement has reviewed N.J.A.C. 13:690 and has determined that the chapter remains necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which it was originally promulgated, as amended and supplemented over time, and should be readopted without amendment. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), N.J.A.C. 13:690 is readopted without amendment and shall continue in effect for a seven-year period.

TREASURY—TAXATION

(c)

DIVISION OF TAXATION

Corporation Business Tax Act

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

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

Proposed: March 16, 2020, at 52 N.J.R. 508(a).

Adopted: August 10, 2020, by John J. Ficara, Acting Director, Division of Taxation.

Filed: August 10, 2020, as R.2020 d.082, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 54:10A-27 and 54:50-1; and P.L. 2018, c. 48, and P.L. 2018, c. 131.

Effective Date: September 8, 2020.

Expiration Date: May 18, 2024.

Summary of Public Comments and Agency Responses:

The Division of Taxation (Division) received written comments on the notice of proposal from the following persons (each commenter is identified at the end of their comment by the number below):

1. Craig Peterson, State Income Tax Manager, United Parcel Service Inc. (UPS); and

2. Angela Miele, Vice President, State Government Affairs & State Tax Policy, Motion Picture Association of America (MPAA).

1. COMMENT: The commenter believes that the proposed notice of proposal is inconsistent with N.J.S.A. 54:10A-4.7. The commenter suggests that changes to the amendments and new rule are needed to include all aspects of the combined reporting statutes, with regard to

combined groups engaged in the transportation of freight. The commenter suggests a reference to N.J.S.A. 54:10A-4.7 should be added to paragraph 3 of the “Summary” section that describes the statutes that assign the sourcing of receipts. To remove ambiguity, the commenter suggests that the Division could add a sentence within the “Summary” expressly stating that “taxpayer groups that file under the apportionment methodology of N.J.S.A. 54:10A-4.7 are not subject to N.J.A.C. 18:7-8.10A.” The commenter also suggests that at the beginning of N.J.A.C. 18:7-8.10A(a), a sentence be added as follows: “For service company taxpayers that are part of a combined group engaged in the transportation of freight by air or ground that do not meet requirements of N.J.S.A. 54:10A-4.7, the following rules shall apply.”

In addition, the commenter requests the paragraph starting “6. Lump sum payments for services where the benefit is received ...” be clarified to include the following clause at the beginning of the section: “For taxpayers that are part of a combined group engaged in the transportation of freight by air or ground that do not meet requirements of N.J.S.A. 54:10A-4.7, the following rules shall apply.” (1)

RESPONSE: The Division agrees that the rulemaking does not address the various details of combined reporting and the special allocation rule for certain freight transportation combined groups at N.J.S.A. 54:10A-4.7(b). The intent of this rulemaking is to address market sourcing rules in general. However, the Division intends to address various aspects of N.J.S.A. 54:10A-4.7 in a subsequent rulemaking that will address freight transportation companies and combined reporting.

2. COMMENT: The commenter suggests the Division delete the last sentence of N.J.A.C. 18:7-8.10A(a)10 because the commenter believes that this sentence is irrelevant and runs counter to the intent of the other provisions in the proposed rule. Additionally, the commenter believes that there would never be a situation in which the taxpayer would not have access to the population of a jurisdiction, which is established in that subsection as the default measure, and that once the population standard is obtained, the taxpayer would not have to demonstrate any additional evidence regarding the broadcaster’s customer. (2)

RESPONSE: The Division disagrees with the suggestion that the last sentence is irrelevant and counter to the intent of the proposed rule. The rule is intended to cover market-based sourcing based on where the benefits of the service are received. N.J.A.C. 18:7-8.10A(a)10 provides a general rule for a broadcaster to source the service receipts from a broadcast customer based on the viewing office, or if that information isn’t readily available, then on population data. However, there could be situations where there is not a viewing audience in New Jersey and a broadcaster has the necessary documentation and evidence that a broadcast customer did not have a viewing audience in New Jersey, and, thus, the benefit of the service was not received in New Jersey. This last sentence was intended to be an exception to the general rule for such a situation. To reduce confusion and to highlight that this last sentence is an exception to the general rule, the Division will add the word “However.”

3. COMMENT: The commenter suggests several additional changes for clarity. Specifically, at N.J.A.C. 18:7-8.10A(a)10, in the first sentence, the commenter requests the Division delete the phrase “in all states” and replace it with “everywhere (domestic and/or if applicable international).” In the second sentence of this paragraph, the commenter asks to have language added to state “including lack of any information that is a reasonable approximation”; and the word “states” be replaced with the phrase “jurisdictions (domestic and if applicable, international).” In addition, in the Example to paragraph (a)10, it is requested that a sentence be added at the end of the example to read, “If Network Corp is unable to source such receipts based on broadcast customer’s viewing audience in New Jersey in proportion to the viewing audience everywhere (domestic and if applicable, international) and they have no other information that is a reasonable approximation, then.” (2)

RESPONSE: The Division agrees in principle that the suggested technical changes help to add clarity; however, the changes appear to be unintentionally inconsistent and may add confusion. Thus, while the Division agrees with the intent of the request, the Division disagrees with the exact wording of the changes. For clarity and consistency, however, the Division will make several technical changes, consistent with the principles the commenter suggested. The Division will use the phrase “in all jurisdictions in which the broadcast customer has a viewing audience”

and other “jurisdictions” since both changes add clarity and are consistent with the intention of the rules. The Division agrees to add “including lack of any information that is a reasonable approximation,” as it also adds clarity and is consistent with the intention of the rules. In the Example to paragraph (a)10, the Division agrees to add “If Network Corp. is unable to source such receipts based on broadcast customer’s viewing audience and it has no other information that is a reasonable approximation, then” because it is consistent with the intent of the example contained in the rule.

Federal Standards Statement

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

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[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 at N.J.A.C. 18:7-8.10(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 ending before July 31, 2019, 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.)

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.)

iv. As used in (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.)

(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 this 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)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.)

v. (No change in text.)

6. (No change in text.)

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.

1. The numerator of the sales fraction developed in accordance with this section includes receipts from services not otherwise apportioned, if the benefit of the service is received by the customer at a location within this State.

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:

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

(2) Is an individual that is not a sole proprietor, who is located in this State. If the location of the individual cannot be determined, the benefit of the services will be deemed to be received at the individual's billing address.

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. 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 are mailed, or the location where services are provided to the customer.

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

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

iii. 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 the terms of a contract, the taxpayer's books and records kept in the normal course of business, or the nature of the taxpayer's or recipient's business and/or the service(s) at issue, to determine how much of the benefit of the service(s) is received in this State.

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) A "reasonable approximation" for attributing receipts under this subparagraph means that, considering all sources of information other than the terms of a contract, the taxpayer's books and records kept in the normal course of business, or the nature of the taxpayer's or recipient's business and/or the service(s) at issue, the location 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 the countries where the benefit of the service(s) is being substantially received shall be added to the U.S. population for purposes of determining a reasonable approximation of the total value of the benefit of the services received in all locations. Information that is verifiable and specific in nature is preferred over unverifiable information that is general in nature. If the information is not readily verifiable or not readily available to the taxpayer, the taxpayer may request to use certain industry standard approximations.

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 taxpayer's 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 headquartered 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 its service in New Jersey at the building site and additional service in its home state. All of the receipts from the taxpayer's 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 headquartered 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 taxpayer's 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 headquartered 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 taxpayer's receipts from the software services that are attributable to New Jersey and included in the numerator of the taxpayer's sales fraction shall be equal to the proportion of the software used in New Jersey to the software used everywhere (domestic and/or international).

Example 5: A taxpayer derives advertising revenues in the course of providing or distributing content (for example, broadcasting television or radio programs or any other content over the air, satellite, cable system, or Internet). It sets its advertising rates based upon the audience it reaches or has the potential to reach. The portion of the taxpayer's advertising revenues or receipts that is attributable to New Jersey and included in the numerator of the taxpayer's sales fraction shall be equal to the proportion of the taxpayer's audience in New Jersey to the audience everywhere (domestic and/or international).

Example 6: A taxpayer performs prescription fulfillment service. The company is headquartered in State X and manages a prescription plan on behalf of a client that is headquartered in State Y with offices in 50 states. 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 acceptable to verify receipts to be sourced to this State. If the company is unable to track the percentage of the 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: The taxpayer is a company that 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

taxpayer's service would not be sourced to New Jersey since the benefit of the service 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 for the car owner to renew the service directly with the GPS company, such that upon renewal, payments to the company are paid by the car's owner. In the first instance, where the periodic update 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 company's receipts from the service will be sourced to the customer's billing address.

Example 9: Taxpayer, 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 contracts negotiated with each customer. The updates shipped to the customers consist of pocket parts for bound books or loose leaf 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 included in the taxpayer's sales fraction will be sourced based on the percentage of updates that are received in the client's New Jersey office.

Example 10: Taxpayer, 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 taxpayer's 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 monies for those employees are remitted to New Jersey.

4. All receipts obtained by the taxpayer in payment for services provided in the regular course of business 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 taxpayer reports the receipt as an item of income or a reduction in expense.

5. It is immaterial where the receipts from the sales of services were payable or where they were actually received.

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 (a)6i and ii below in order to result in a fair and reasonable receipts fraction.

i. Transportation revenues of an airline are from services 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 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. If a taxpayer receives a lump sum in payment for services and for materials or other property, the sum received must be apportioned on a reasonable basis by providing:

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

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

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 procedures described in this paragraph.

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:

(1) The portion of receipts deemed to arise from services 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 at 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 this 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 at N.J.S.A. 54:10A-4(g) and meets the requirements of Section 851 of the Federal Internal Revenue Code; and

(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 this 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; and

(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.

10. Receipts from a broadcaster’s licensing of film programming to a broadcast customer shall be sourced to New Jersey based on the broadcast customer’s viewing audience in New Jersey in proportion to the viewing audience in all *[states]* ***jurisdictions in which the broadcast customer has viewers***. If the information is indeterminable, ***including lack of any information that is a reasonable approximation,*** a

broadcast customer shall be deemed to receive the benefit of such license in New Jersey and the receipts from the licensing of the film programming shall be sourced based on the ratio of the population of New Jersey over the population of the other *[states]* ***jurisdictions*** in which the broadcast customer has viewers. ***[If]* ***However, if*** a broadcaster can prove to the Director of the Division of Taxation by cogent evidence that is definite, positive, and certain in quantity and quality that the broadcast customer does not have any viewers in New Jersey, the receipts from licensing of film programming to the broadcast customer shall be sourced to the commercial domicile of the broadcast customer.**

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

(1) “Broadcast customer” means a person, corporation, partnership, limited liability company, or other entity, such as a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by the broadcaster. The term “broadcast customer” includes, but is not limited to, a licensee of film programming (for example, a platform distribution company paying a licensing fee to the broadcaster to air the broadcaster’s film programming);

(2) “Broadcaster” means a taxpayer that is engaged in the business of broadcasting, and includes a television broadcast network, a cable program network, or a television distribution company. The term “broadcaster” does not include a platform distribution company;

(3) “Broadcasting” means the transmission of film programming by an electronic or other signal conducted by microwaves, wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions, or through any other means of communication directly or indirectly to viewers and listeners;

(4) “Commercial domicile” means, in the case of a business entity, the principal place where the actual seat of management or control is located;

(5) “Film programming” means one or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, including, but not limited to, news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works; and

(6) “Platform distribution company” means a cable service provider, a direct broadcast satellite system, an Internet content distributor (domestic and/or international), or any other distributor that directly charges viewers for access to any film programming.

Example: Taxpayer Network Corp. is a broadcaster that licenses rights to its film programming to platform distribution companies (broadcast customers). Broadcast Customer A pays licensing fees to Network Corp. for the rights to distribute Network Corp.’s film programming to Broadcast Customer A’s customers who are located inside and outside of New Jersey. Broadcast Customer A broadcasts to viewers in New Jersey, Pennsylvania, New York, and Maine. ***If Network Corp. is unable to source such receipts based on the broadcast customer’s viewing audience and it has no other information that is a reasonable approximation, then*** Network Corp.’s receipts from Broadcast Customer A will be sourced to New Jersey based on a ratio of the New Jersey population over the population of New Jersey, Pennsylvania, New York, and Maine.