52:14B-5.1.c(1), timely filing of this notice extended the expiration date of the chapter seven years from the date of filing.

LAW AND PUBLIC SAFETY

(a)

STATE ATHLETIC CONTROL BOARD

Rules Governing Boxing, Extreme Wrestling, and Sparring Exhibitions and Performances

Adopted Amendments: N.J.A.C. 13:46-8.25, 9.2, 9.17, 11.10, and 12B.8

Proposed: December 2, 2024, at 56 N.J.R. 2268(a).
Adopted: March 12, 2025, by the State Athletic Control Board, Steven W. Katz and Gene Mulroy, Members, with the approval of Matthew J. Platkin, Attorney General.
Filed: May 12, 2025, as R.2025 d.074, **without change**.
Authority: N.J.S.A. 5:2A-4 and 7.c and g, 9, 14.b, 14.1, 15.e and f, and 21.
Effective Date: June 16, 2025.
Expiration Date: October 28, 2031.

Summary of Public Comment and Agency Response:
No comments were received.

Federal Standards Statement

A Federal standards analysis is not required, because there are no Federal standards or requirements applicable to the adopted amendments. The adopted amendments pertain solely to New Jersey law and policy.

Full text of the adoption follows:

SUBCHAPTER 8. REFEREES AND JUDGES

13:46-8.25 Compensation for referees and judges

(a) The compensation to referees and judges shall be paid by the promoter conducting the event and shall be $350.00 for each referee and $300.00 for each judge assigned to an event by the Commissioner. The Commissioner may increase the above compensation fee based upon consideration of the following factors: whether the regulated event includes a championship contest, non-championship bout of special interest, or bout with impact on the top 10 rankings, will be broadcast live, will have re-broadcast rights value, whether the event falls on a designated holiday, the expected number of hours the official will need to be present, the ticket pricing scale and the seating chart capacity, and how many bouts are scheduled.

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

SUBCHAPTER 9. INSPECTORS

13:46-9.2 Attendance at weigh-in

Inspectors who are assigned to attend the weigh-in shall be paid by the promoter and shall be compensated $170.00.

13:46-9.17 Compensation for inspectors

(a) Inspectors shall be assigned by the Commissioner to each event.

(b) The compensation to the inspectors shall be paid by the promoter and the fee for each of the inspectors shall be $170.00.

(c) (No change.)

(d) The Commissioner shall have the discretion to appoint up to a maximum of 20 inspectors to any event.

SUBCHAPTER 11. TIMEKEEPERS

13:46-11.10 Compensation for combative sports timekeepers

(a) The compensation to timekeepers shall be paid by the promoter conducting the event and shall be $300.00. The Commissioner may increase the above compensation fee based upon consideration of the following factors: whether the regulated event includes a championship contest, non-championship bout of special interest or bout with impact on the top 10 rankings, will be broadcast live, will have re-broadcast rights value, whether the event falls on a designated holiday, the expected number of hours the official will need to be present, the ticket pricing scale and the seating chart capacity, and how many bouts are scheduled.

(b) (No change.)

SUBCHAPTER 12B. ADDITIONAL HEALTH AND SAFETY RULES

13:46-12B.8 Compensation for physicians

(a) The compensation to physicians shall be paid by the promoter conducting the event and shall be on the following basis:

1. Each physician assigned by the Commissioner to perform duties at the pre-fight weigh-in at an event shall receive a fee of $400.00.

2. Each physician assigned by the Commissioner to perform ringside duties at an event shall receive a fee of $400.00. The Commissioner may increase the above compensation fee based upon consideration of the following factors: whether the regulated event includes a championship contest, non-championship bout of special interest or bout with impact on the top 10 rankings, will be broadcast live, will have re-broadcast rights value, whether the event falls on a designated holiday, the expected numbers of hours the official will need to be present, the ticket pricing scale and the seating chart capacity, and how many bouts are scheduled.

3. Each physician assigned to perform medical clearance review for an event shall receive a fee of $300.00.

(b) (No change.)

TREASURY—TAXATION

(b)

DIVISION OF TAXATION

Corporation Business Tax Act—Returns, Nexus, Sourcing, Income, and Other Matters

Adopted Amendments: N.J.A.C. 18:7-1.6, 1.8, 1.9, 1.13, 1.15, 1.18, 1.19, 1.25, 2.11, 3.4, 3.6, 3.8, 3.10, 3.12, 3.13, 3.15, 3.23A, 3.26, 3.27, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.14, 5.16, 5.18 through 5.22, 7.3, 7.6, 8.1, 8.4, 8.5, 8.7, 8.9, 8.10A, 8.11, 8,12, 11.5, 11.6, 11.7, 11.12, 11.13, 11.16, 11.17A, 12.1, 13.1, 13.8, 13.11, 14.2, 17.5, 17.8, 19.2, 21.1, 21.3 through 21.8, 21.10, 21.11, 21.13, 21.15 through 21.21, and 21.27

Adopted Repeal and New Rule: N.J.A.C. 18:7-3.17

Adopted Repeals: N.J.A.C. 18:7-3.14, 5.17, 7.1, 7.2, 7.5, 18, 20.1, 20.2, and 20.3

Adopted New Rules: N.J.A.C. 18:7-1.9A and 20.4

Proposed: February 18, 2025, at 57 N.J.R. 305(a).
Adopted: May 19, 2025, by Marita Sciarrotta, Acting Director, Division of Taxation.
Filed: May 19, 2025, as R.2025 d.076, **without change**.
Authority: N.J.S.A. 54:10A-27 and 54:50-1.
Effective Date: June 16, 2025.
Expiration Date: February 20, 2031.

Summary of Public Comments and Agency Responses:

The Division of Taxation (Division) received written comments on the notice of proposal from David Swetnam-Burland and Nathaniel A. Bessey, Brann & Isaacson, on behalf of the American Commerce Marketing Association, and Jeffery Kaszerman, Vice President of Government Relations, New Jersey Society of Certified Public Accountants.

General Comments

1. COMMENT: A comment was submitted by David Swetnam-Burland and Nathaniel A. Bessey on behalf of the American Commerce

Marketing Association. The commenters suggest that adopting the Multistate Tax Commission's 2021 Statement of Information Concerning Practices of the Multistate Tax Commission and Supporting States pursuant to Public Law 86-272 is unsound and unlawful. They further suggest that the Division should withdraw N.J.A.C. 18:7-1.9A because it creates a new category of business activities, "internet activities," which it singles out for special treatment.

RESPONSE: The Division of Taxation thanks David Swetnam-Burland and Nathaniel A. Bessey for their comments. However, the Division respectfully disagrees with the commenters' characterization of the Division's position. The Division believes that the commenters' characterization of the rules is not accurate. The guidance provisions were adopted by the Multistate Tax Commission (MTC) and reflects the MTC's most recent interpretation of Public Law 86-272, as adopted in its 2021 Statement of Information Concerning Practices of the MTC and Supporting States. While P.L. 86-272 protects out-of-State companies from the tax based on income if their sole activities are solicitation activities for the sales of tangible personal property, it does not protect other types of activities, products, and services. The rules set forth at N.J.A.C. 18:7-1.9 and 1.9A provide guidance on protected and unprotected activities, with N.J.A.C. 18:7-1.9(d) and 1.9A(b) providing guidance on activities that are protected.

2. COMMENT: A comment was submitted by Jeffery Kaszerman on behalf of the New Jersey Society of Certified Public Accountants. The commenter suggests deleting N.J.A.C. 18:7-5.2(a)2i, which relates to dividends that are exempt from Federal taxation pursuant to IRC § 959 because those amounts were previously taxed for Federal purposes and the rule would not be necessary.

RESPONSE: The Division thanks Mr. Kaszerman for his comments and continued collaboration with the Division of Taxation. While the Division agrees that dividends that were subject to tax for Federal purposes would not be taxed a second time for Federal purposes, there are instances where due to either timing or structuring of the taxpayer's business where the timing of these dividends and deemed dividends are reported in a later period on the New Jersey CBT-100 return, when the taxpayer had not previously reported and paid tax on those dividends for New Jersey purposes. This may result in taxpayers erroneously paying tax on these dividends and deemed dividend amounts for New Jersey purposes without actual specific guidance in the rules, when the dividends and deemed dividends would otherwise be excluded pursuant to N.J.S.A. 54:10A-4.k(5). The Division proposed this rule because it had become a common error on the New Jersey CBT-100 returns and a common point of confusion, resulting in some taxpayers erroneously paying tax on those dividends and deemed dividends. The rulemaking provides clarity and guidance to taxpayers, tax practitioners, and Division staff, to ensure that these dividends and deemed dividends are properly excluded pursuant to the provisions at N.J.S.A. 54:10A-4.k(5), and not subject to tax. Thus, absent clear guidance on this topic, taxpayers may erroneously pay tax on the dividends and deemed dividends that otherwise would not be reported had they received clear guidance on this topic. This rulemaking is necessary to prevent the erroneous taxation of these dividends and deemed dividends. Accordingly, the Division considers this provision to be necessary and intends to retain it as part of the final rulemaking.

Federal Standards Statement

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

Full text of the adopted amendments and new rules follows:

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX PURSUANT TO THE ACT

18:7-1.6 Subjectivity to tax; how created

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

1. (No change.)

2. If a foreign corporation:

i.-vi. (No change.)

vii. Deriving receipts from sources within this State, if the corporation has in excess of $100,000 in receipts or 200 or more transactions as described at (c) below; or

viii. (No change.)

(b) (No change.)

(c) In addition to the other ways a taxpayer can have nexus for corporation business tax purposes, for privilege periods ending on and after July 31, 2023, notwithstanding the provisions of the Corporation Business Tax Act, P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), or any other law, rule, or regulation to the contrary, for the purpose of N.J.S.A. 54:10A-2, a corporation deriving receipts from sources within this State shall be deemed to have substantial nexus and is subject to the taxes imposed pursuant to the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), if the corporation meets either (c)1 or 2 below.

1. The corporation derives receipts from sources within this State, pursuant to N.J.S.A. 54:10A-6 through 54:10A-10, in excess of $100,000 during the corporation's fiscal or calendar year.

2. The corporation has 200 or more separate transactions delivered to customers in this State during the corporation's fiscal or calendar year. For the purposes of this paragraph, if the transaction is a service transaction, then "delivered to a customer" shall mean where the benefit is received within the meaning at N.J.S.A. 54:10A-6(B)(4).

3. This subsection shall not preclude a corporation from having nexus with this State if the corporation's exercise of its franchise in this State is otherwise sufficient to give this State jurisdiction to impose taxes pursuant to the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), as consistent with the provisions of the United States Constitution, the New Jersey Constitution, and the statutes of the United States and of the State of New Jersey. This subsection shall not preclude a corporation from owing the statutory minimum tax provided at N.J.S.A. 54:10A-5(e) if a corporation has nexus with this State and is otherwise protected from tax based on income pursuant to 15 U.S.C. §§ 381 through 384 (otherwise known as P.L. 86-272).

4. Receipts and the transactions for determining whether a taxpayer has nexus shall be determined according to N.J.A.C. 18:7-7.1 through 10.1. Taxpayers must use the same method of accounting for State tax purposes as used for Federal tax purposes and include such income/receipts, unless such items are excluded from income/receipts for Corporation Business Tax purposes pursuant to N.J.S.A. 54:10A-4(k) or 54:10A-6 or N.J.A.C. 18:7-5.1(b) or 5.4. Thus, the receipts and transactions for determining whether a taxpayer has nexus for New Jersey corporation business purposes pursuant to N.J.S.A. 54:10A-4.16 are based on the tax base and receipts included pursuant to the Corporation Business Tax Act.

5. In determining whether a member has nexus for the purposes of N.J.S.A. 54:10A-4.16 and pursuant to (c) above, a member shall determine its receipts and transactions with customers' pre-intercompany eliminations.

6. The receipts and transactions of a disregarded entity owned by the taxpayer must be included in the taxpayer's receipts and transactions for determining nexus for New Jersey corporation business tax purposes.

7. A corporate partner's proportionate share of receipts and transactions of a unitary partnership must be included in the corporate partner's receipts and transactions for determining nexus for New Jersey corporation business tax purposes as a result of the corporate partner and unitary partnership utilizing the flow-through accounting method.

8. Unless the income from a non-unitary partnership serves an operational purpose, the corporate partner's receipts and transactions for determining nexus for New Jersey corporation business tax purposes do not include the non-unitary partnership as a result of the corporate partner and non-unitary partnership using the separate accounting method. The receipts and transactions from the partnership attributable to the corporate partner's distributive share of partnership income would be counted for nexus purposes.

9. The receipts and transactions of a New Jersey Qualified Subchapter S Subsidiary included as part of its parent S corporation's tax attributes for Federal purposes must also be included in the parent S corporation's receipts and transactions for determining nexus for New Jersey corporation business tax purposes.

10. With regard to a taxpayer with short periods during a 12-month calendar or fiscal period, the amounts set forth at (c)1 and 2 above will be prorated.

18:7-1.8 Foreign corporations subject to tax

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

Examples 1-3 (No change.)

(b) A financial business corporation, a banking corporation, a credit card company, or a similar business that has its commercial domicile in another state is subject to corporation business tax in this State if during any year it obtains or solicits business or receives gross receipts from sources within this State. Sales and activities involving financial products, financial instruments, and financial services are not P.L. 86-272 protected, because financial products, financial instruments, and financial services are not tangible personal property. Therefore, a financial business corporation, a banking corporation, a credit card company, or a similar business that has nexus with New Jersey is subject to corporation business tax in this State based on income, or the minimum tax, whichever is higher.

1. The offering, soliciting, selling, or buying of and/or offering services (for a fee) pertaining to a digital asset (as defined at I.R.C. § 6045(g)(3)(D)) such as virtual currency or non-fungible tokens (NFTs) to in-State customers is the offering and selling of financial products, financial instruments, and financial services or other intangibles or services, except as provided for at N.J.A.C. 18:7-1.9A(b)6.

2. The following are examples of financial products, financial instruments, and/or financial services conducted through the internet:

Example 1. Robo Corp., a robo-adviser, solicits and sells stock through an online website and mobile application for a transaction fee. Robo Corp. actively solicits its services to in-State customers through a variety of means including, but not limited to, the internet. This is the selling and offering of financial products and services through the internet to New Jersey customers. Robo Corp. must file a corporation business tax return and pay the corporation business tax based on income or the minimum tax, whichever is higher.

Example 2. Invest Corp. offers investment advisory services for a fee to customers through the internet. Invest Corp. investment service advisors conduct virtual meetings with New Jersey customers through its internet application. This is the selling and offering of financial products and services through the internet to New Jersey customers. Invest Corp. must file a corporation business tax return and pay the corporation business tax based on income or the minimum tax, whichever is higher.

Example 3. Company A buys, solicits, sells, processes, and accepts virtual currencies and other digital assets to/from New Jersey customers through its website or downloadable mobile application for subscription fees. Company A requires that its business customers prominently display Company A's product offerings and services on the business customer's website, in stores, and in the business customer's own advertising. Company A solicits its product offerings and services to New Jersey through a variety of means, including, but not limited to, the internet. Company A must file a corporation business tax return and pay the corporation business tax based on income or the minimum tax, whichever is higher.

Example 4. Company T offers banking and/or financial products and services to customers located in New Jersey through the internet. Company T solicits its products and services to New Jersey customers through a variety of means. While Company T is not technically a banking corporation or financial business corporation, it is nonetheless offering and selling financial products and services to New Jersey customers. Company T must file a corporation business tax return and pay the corporation business tax based on income or the minimum tax, whichever is higher.

Example 5. Card Co. solicits credit cards, and other financial products and services to New Jersey customers, which Card Co. charges fees and/or interest to its New Jersey customers for its products and services. This is the offering and selling of financial products and services to New Jersey customers. Card Co. must file a corporation business tax return and pay the corporation business tax based on income or the minimum tax, whichever is higher.

Example 6. Max Card Ltd. is a limited liability company treated as a disregarded entity for Federal and State tax purposes that is owned and operated by Merchant Co., an online retailer. Max Card Ltd. solicits Merchant Co. brand credit cards and financial products and services to New Jersey customers on behalf of Merchant Co. and processes all of the customer transactions of Merchant Co. for a series of fees charged to the customers. This is the offering and selling of financial products and services to New Jersey customers. Since Max Card Ltd. is a disregarded entity, and therefore a branch of Merchant Co., Merchant Co. must file a corporation business tax return and pay the corporation business tax based on income or the minimum tax, whichever is higher. Max Card Ltd, as a disregarded entity, does not file a corporation business tax return or pay the corporation business tax.

(c) (No change.)

(d) For a non-U.S. corporation, that is a separate return filer, which has nexus with New Jersey, and all of its income (or loss) is protected by a tax treaty, the corporation is still required to file a complete CBT return and pay the statutory minimum tax.

(e) A non-U.S. corporation with tax treaty protection, that is a member of a water's-edge combined group or an affiliated group, will be a taxable member of the combined group if it has nexus with New Jersey, although the items of treaty protected income (or loss) are excluded from the income of the combined group.

(f) Non-U.S. corporations that are members of a world-wide group combined return must include their treaty protected income, and the group must pay tax on this income pursuant to N.J.S.A. 54:10A-4(kk), and the group members will be taxable members of the combined group, if they have nexus with New Jersey.

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

(a) The term "doing business" is used in a comprehensive sense and includes all activities that occupy the time or labor of men or women for profit. Such activities include, but are not limited to, mechanized means, computerized activities, and activities effected through the Internet.

1.-2. (No change.)

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

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

1. (No change.)

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

i.-x. (No change.)

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

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

xiii. Offering, selling, providing maintenance, or performing such duties under a warranty or extended warranty service contract for the performance of services under the contract through any means, whether in-person or through the internet; and

xiv. For a list of activities conducted in part or in whole through the internet that will subject a corporation to corporation business tax in this State based on or measured by income, see N.J.A.C. 18:7-1.9A(a).

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

i.-vi. (No change.)

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

viii. Mediating customer complaints if just to ingratiate sales personnel with the customer; and

ix. For a list of activities conducted in part or in whole through the internet that will not subject a corporation to corporation business tax in this State based on or measured by income, see N.J.A.C. 18:7-1.9A(b).

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

(f) A corporation, which contracts with a marketplace facilitator to facilitate the sale of the business's products on the facilitator's online marketplace where the marketplace facilitator maintains the corporation's products at fulfillment centers in this State will not have P.L. 86-272 immunity, and the corporation will be subject to the corporation business tax in this State based on or measured by income.

18:7-1.9A Internet activities conducted by a business

(a) Certain business activities conducted by a foreign corporation within New Jersey through the internet in whole or in part exceed the protections at P.L. 86-272 and may subject a corporation to the tax based on or measured by income where the foreign corporation has nexus with New Jersey. Internet activities or contacts with New Jersey that are not P.L. 86-272 protected and will subject a corporation to corporation business tax in this State based on or measured by income if the corporation has nexus include, but are not limited to:

1. Transmitting code or electronic instructions through the internet to fix or upgrade products as part of a service subscription purchased by the customer or as part of a warranty (or extended warranty) service contract purchased by the customer;

2. Placing "internet cookies" on computers of in-State customers that gather market or product research whereby the taxpayer gathers and assembles the data for sale as a package of customer/marketing information to data-brokers or other third parties. An internet cookie is small blocks of data created by a webserver while a user is browsing a website, which is placed on the user's computer or other device by the web browser;

3. Providing and offering a targeted internet advertising service for a fee to in-State business customers of the taxpayer, where based on an individual customers location and/or data gathered from "internet cookies" placed by the taxpayer on computers of customers of the taxpayer, the taxpayer provides targeted advertising for the local business customers (regardless of what products or services the business customers are offering) to in-State individual customers on the taxpayer's website;

4. Providing post-sales assistance through an electronic chat, email, or application that the taxpayer's customers access. Some examples include, but are not limited to: chat rooms for troubleshooting problems, cooking classes for customers streamed through the internet featuring taxpayer-hired celebrity chefs, complaint resolution, or an internet help desk for technical support, whereby the customer can talk to a service representative who then may conduct repair services through the internet;

5. Contracting with in-State customers to stream videos (but not download) and music to electronic devices;

6. Contracting with in-State customers for subscription services.

Example: Tread Co. sells internet connected exercise equipment to customers. Tread Co. also offers a subscription service, named Happy Health, to New Jersey customers through a downloadable app, whereby customers have virtual physical training sessions with certified trainers. Tread Co. charges a fee for this subscription service. Happy Health is a subscription service that is separate and apart from Tread Co.'s primary business—the sale of exercise equipment to customers. Therefore, Tread Co.'s offering and selling the Happy Health subscription service to New Jersey customers exceeds the protections of P.L. 86-272;

7. Contracting with in-State customers to provide business services such as quality control, manufacturing production line maintenance, research and development, product design, logistics, regulatory, and/or other types of services through internet-connected devices, computers, and/or machines, whereby the application is installed on the customer's devices, computers, and/or machines that function through an internet connection between the customer and the taxpayer, where the services are conducted on the taxpayer's computers and the data is transmitted back to the customer's devices, computers, and/or machines based on information received from the customer's in-State devices, computers, and/or machines.

Example: Machine Co. sells industrial 3D printers and offers an additional end-to-end product development-to-consumer subscription service to its business customers, some of which are located in New Jersey or have employees that work remotely in New Jersey that regularly use the subscription service in their job duties. The subscription service allows customers to monitor all stages of research and development, product development, manufacturing (including maintenance of the machines), quality control, logistics processes, and other types of services from anywhere in the world on a customer's computer or other internet connected device. The subscription service is sold separately and is also compatible with other 3D printers made by competitors of Machine Co. because Machine Co. sells subscription services to business customers in New Jersey. Pursuant to these facts, Machine Co. exceeds the protections of P.L. 86-272; and

8. Inviting and/or accepting applications for employment through a web-based platform that are specifically targeted to in-State residents or for in-State job positions other than for sales positions.

(b) Certain business activities conducted by a foreign corporation within New Jersey through the internet do not exceed the protections of P.L. 86-272, and will not subject a corporation to corporation business tax in this State based on or measured by income. The foreign corporation will however, still owe the statutory minimum tax if the foreign corporation otherwise has nexus with New Jersey. Internet activities or contacts with New Jersey that will not, by themselves, subject a corporation to corporation business tax in this State based on or measured by income include, but are not limited to:

1. Posting frequently asked questions (FAQ) on a webpage to assist customers or potential customers;

2. Placing "internet cookies" that are used ancillary to the solicitation of orders and not used to gather data to package and sell to data-brokers or other third parties or for the purposes of gathering data to sell services to business customers of the taxpayer;

3. Offering only tangible personal property for sale on a searchable website or application. The website enables customers to search for items, read product descriptions, select items for purchase, choose among delivery options, and pay for the items. The business does not engage in any other in-State business activities or any of the activities described at N.J.A.C. 18:7-1.8(b), 1.9(d)2, (e), or (f), or (a) above, or any other activity described elsewhere that would defeat the business's P.L. 86-272 immunity;

4. Inviting and/or accepting applications for employment through an internet-based platform if the only positions being offered in-State are sales jobs, where the employee only conducts a solicitation function and non-solicitation job positions in-State are not being offered;

5. Accepting electronic payment using a credit card or some other form of electronic payment method (for example: Bitpay, PayPal, Venmo, or Zelle) for the purchase of tangible personal property on the taxpayer's online store, but not where the taxpayer is receiving a digital asset (as defined at I.R.C. § 6045(g)(3)(D)), which the taxpayer resells as part of the taxpayer's business advertised to in-State customers. See N.J.A.C. 18:7-1.8 for more information on the sales, acceptance, and solicitation of digital assets; and

6. Using non-fungible tokens (NFTs) for a transaction when the sole use and purpose is to transfer the ownership of an item of tangible personal property, and not for any other purpose. This only applies when the NFT transfer solely represents a transfer of the legal ownership rights in the

underlying tangible personal property, and not the transfer of intangible property, intellectual property, real estate, or the purchase of a service.

18:7-1.13 Regulated investment company; definition

(a) "Regulated investment company" means any corporation, which for a period covered by its return is registered and regulated pursuant to the Investment Company Act of 1940 (54 Stat. 789), as amended. (See 15 U.S.C. §§ 80a-1 et seq.)

(b) (No change.)

(c) For privilege periods ending on and after July 31, 2023, a regulated investment company that meets the definition of a captive regulated investment company as defined at N.J.S.A. 54:10A-4(jj) will be taxed in the same manner as a C corporation and N.J.S.A. 54:10A-5(d) shall not apply. None of the deductions and expenses that were permitted for Federal purposes, solely as a result of the entity being a regulated investment company, when computing Federal taxable entire net income shall be permitted.

(d) A regulated investment company not meeting the definition of a captive regulated investment company as defined at N.J.S.A. 54:10A-4(jj) will continue to be taxed in the same manner as a regulated investment company.

18:7-1.15 Investment company; definition

(a)-(g) (No change.)

(h) For privilege periods ending on and after July 31, 2023, an investment company meeting the definition of a captive investment company as defined at N.J.S.A. 54:10A-4(hh) will be taxed in the same manner as a C corporation and N.J.S.A. 54:10A-5(d) shall not apply. None of the deductions and expenses that were permitted for Federal purposes, solely as a result of the entity being an investment company, when computing Federal taxable net income shall be permitted.

(i) An investment company not meeting the definition of a captive investment company as defined at N.J.S.A. 54:10A-4(hh) will continue to be taxed in the same manner as an investment company.

18:7-1.18 Definition of S corporation

"S corporation" means a corporation that has elected to be an "S corporation" pursuant to I.R.C. § 1361, for the taxable year.

18:7-1.19 Definition of New Jersey S corporation

"New Jersey S corporation" means a corporation that is an S corporation that has made a valid election to be an S corporation for Federal tax purposes for the taxable year and that has not made a valid election pursuant to N.J.S.A. 54:10A-5.22(d) or 54:10A-4(ff).

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.

1. In determining whether a member has nexus for the purposes of N.J.S.A. 54:10A-4.16 and pursuant to N.J.A.C. 18:7-1.6(c), a member shall determine its receipts and transactions with customers pre-intercompany eliminations.

(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. (No change.)

2. For privilege periods ending on and after July 31, 2023, the combined group is one taxpayer for the purposes of N.J.S.A. 54:10A-4.7 for calculating the receipts derived from the unitary business of the combined group.

(c) (No change.)

SUBCHAPTER 2. NATURE OF TAX

18:7-2.11 Component factors of tax base

The tax for the period or partial period prescribed at N.J.A.C. 18:7-2.10 is measured by a taxpayer's allocable entire net income in periods ending prior to July 31, 2019, or taxable net income for periods ending on or after July 31, 2019.

SUBCHAPTER 3. COMPUTATION OF TAX

18:7-3.4 Minimum tax of separate return filers

(a) (No change.)

(b) For accounting or privilege periods beginning in calendar year 2012 and thereafter, the minimum tax for corporations that are not New Jersey S corporations shall be based on the following schedule:

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

1. (No change.)

(c) For privilege periods beginning in calendar year 2012 and thereafter, the minimum tax for corporations that are New Jersey S corporations shall be based on the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	$375.00
$100,000 or more but less than $250,000	$562.50
$250,000 or more but less than $500,000	$750.00
$500,000 or more but less than $1,000,000	$1,125
$1,000,000 or more	$1,500

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

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

(a) (No change.)

(b) For privilege periods ending on or after July 1, 2007, there shall be no tax imposed on New Jersey S corporations with total entire net income that is not subject to Federal income tax. For privilege periods beginning on and after December 22, 2022, an S corporation or Qualified Subchapter S Subsidiary that with consent of 100 percent of the shareholders, elects to be taxed as a C corporation shall be taxed in the same manner and at the same rates as a C corporation pursuant to N.J.S.A. 54:10A-5.22(d) or 54:10A-4(ff), and this subsection and (c) below shall not apply.

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

1.-3. (No change.)

4. For privilege periods beginning on and after December 22, 2022, an S corporation or Qualified Subchapter S Subsidiary that elects to be taxed as a C corporation shall be taxed in the same manner and at the same rates as a C corporation pursuant to N.J.S.A. 54:10A-5.22(d) or 54:10A-4(ff), and (b) above and this subsection shall not apply.

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

(h) For privilege periods ending on and after July 31, 2023, captive real estate investment trusts, captive regulated investment companies, and captive investment companies, as those terms are defined at N.J.S.A. 54:10A-4(ii), (jj), and (hh), shall be taxed in the same manner as C corporations, and N.J.S.A. 54:10A-5(d) shall not apply.

(i) For privilege periods beginning on and after December 22, 2022, an S corporation or Qualified Subchapter S Subsidiary that with consent of 100 percent of the shareholders, elects to be taxed as a C corporation shall be taxed in the same manner and at the same rates as a C corporation pursuant to N.J.S.A. 54:10A-5.22(d) or 54:10A-4(ff), and (a) and (d) above (if applicable) shall apply.

18:7-3.8 Investment company other than a captive investment company; tax self-assessed and payable

(a) The tax payable by an investment company entitled and electing to report as such is a tax measured by 40 percent of its taxable net income at the rate provided by law.

(b) (No change.)

(c) A captive investment company meeting the definition at N.J.S.A. 54:10A-4(hh) shall be taxed in the same manner as a C corporation and not as an investment company.

18:7-3.10 Regulated investment company other than a captive regulated investment company; tax payable

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

(f) For privilege periods ending on and after July 31, 2023, a captive regulated investment company meeting the definition at N.J.S.A. 54:10A-4(jj) shall be taxed in the same manner as a C corporation and not as a regulated investment company.

18:7-3.12 Method of accounting

In general, the method of accounting, whether cash, accrual, or other basis, used in computing net income for Federal income tax purposes is to be used in computing entire net income pursuant to the Corporation Business Tax Act. For additional information on methods of accounting for combined groups and members of combined groups, see N.J.A.C. 18:7-21.

18:7-3.13 Estimated tax

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

(c) For privilege periods ending before July 31, 2023, when the tax liability for the preceding tax year is $500.00 or less, a taxpayer may, in lieu of making the installment payments otherwise required, discharge its entire obligation with respect to estimating its tax by making a single payment on or before the original due date for filing its return. For privilege periods ending on and after July 31, 2023, when the tax liability for the preceding tax year is $1,500 or less, a taxpayer may, in lieu of making the installment payments otherwise required, discharge its entire obligation with respect to estimating its tax by making a single payment on or before the original due date for filing its return. The single payment is 50 percent of the tax shown on the face of its return. Such tax must be determined with reference to the tentative return or final return, which was filed or should have been filed on or before the original date of such return. The single payment should be computed by including any payment, which may have been made on the 15th day of the first month of its current tax year.

(d)-(h) (No change.)

(i) For the purposes of (c) above, for a combined group, (c) above shall apply by taxable member in the aggregate for the combined group. This means that you multiply $1,500 by the number of taxable members. For example: Combined group A has 20 taxable members, a total tax based on the income of $20,000, which is less than the $30,000 aggregate minimum tax of the taxable members. The combined group would qualify for the single payment method of making estimated payments set forth at (c) above.

18:7-3.14 (Reserved)

18:7-3.15 Interest on underpayment of installment payments

(a) (No change.)

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

1.-2. (No change.)

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

(f) A taxpayer may petition the Director of the Division of Taxation to have such penalties and interest waived due to undue hardship, good cause shown, or other reasons as may be provided for waiving penalties and interest in the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq.

18:7-3.17 Tax credits

Except in instances where the authorizing statute dictates that the tax credit be applied first, generally a taxpayer may use their tax credits and unexpired tax credit carryovers when applying their tax credits within the limitations specified by statute for each tax credit that the taxpayer earned, purchased, or was awarded. The expiration dates of tax credits and tax credit carryovers will be strictly enforced.

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

(a)-(j) (No change.)

(k) Any New Jersey qualified research expenditures that were qualified research expenditures for Federal purposes pursuant to I.R.C. § 174 are the same for New Jersey purposes since there is no New Jersey provision for a separate modified State tax credit amount under such circumstances; provided, however, for privilege periods beginning on or after January 1, 2022, the deduction taken for such expenditures, for New Jersey purposes, shall be allowed during the same privilege period as the New Jersey tax credit, regardless of the timing schedule required pursuant to I.R.C. § 174 for the deduction of such qualified research expenses or research payments to be taken.

(l)-(s) (No change.)

(t) In the case of a taxpayer that is a cannabis licensee, there shall be allowed as a deduction, an amount equal to any expenditure that would qualify as a specified research or experimental expenditure pursuant to I.R.C. § 174 but is disallowed as a deduction for Federal tax purposes because cannabis is a controlled substance pursuant to Federal law. Any expenditure that is claimed as a deduction pursuant to this subsection may also be claimed as a qualified research expense for purposes of the credit allowed pursuant to N.J.S.A. 54:10A-5.24. For purposes of this subsection, "licensee" means the same as that term is defined at N.J.S.A. 24:6I-33.

18:7-3.26 Additional estimated payments resulting from P.L. 2018, c. 48, P.L. 2020, c. 118, and P.L. 2023, c. 96

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

(d) For privilege periods ending on and after July 31, 2023, but before January 1, 2024, no penalties or interest shall accrue for the underpayment of tax due to any provision at P.L. 2023, c. 96, that creates an additional tax liability; provided, however, for privilege periods ending on and after July 31, 2023, the additional estimated payments shall be made no later than the second estimated payment due following the enactment at P.L. 2023, c. 96 or the second estimated payment due after January 1, 2024, whichever due date is later.

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

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

(c) A taxpayer that is a real estate investment trust, which is not a captive 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, which is not a captive 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)-(h) (No change.)

(i) For privilege periods ending on and after July 31, 2023, captive investment companies, captive real estate investment trusts, and captive regulated investment companies, as those terms are defined at N.J.S.A. 54:10A-4(hh), (ii), and (jj), respectively, shall be taxed in the same manner as C corporations and N.J.S.A. 54:10A-5(d) shall not apply.

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

18:7-5.1 Entire net income; definition

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

(c) Entire net income shall be determined consistent with the taxpayer's method of filing for New Jersey purposes. However, the entire net income reported before New Jersey modifications must match the amount reported by the taxpayer on its Federal return, or in the case of a taxpayer that did not file a Federal return, a pro-forma Federal return or a

form 5471, which was filed for Federal purposes for it as part of a U.S. domestic corporation's tax return. For more information on combined reporting, see N.J.A.C. 18:7-21.

(d) (No change.)

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

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

(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 whether the business entity is a separate return filer or a member of a water's-edge or affiliated group New Jersey combined return. With respect to privilege periods ending on and after July 31, 2022, no other deduction, exclusion, or elimination will be permitted for such income and loss items excluded pursuant to N.J.S.A. 54:10A-4(k)(18). The corporation claiming treaty protection must attach a copy of the form 8833 that was filed with the Federal government, or if the corporation did not file a Federal return, a pro-forma form 8833 must be included with the corporation's pro forma form 1120-F that was included with the corporation business tax return. A member of a combined group is not excluded from the group solely because their income is excluded from combined group entire net income under the terms of a treaty, and must be included as a member of the combined group on the combined return.

(A) With regard to taxpayers formed in a foreign nation, that has a treaty with the U.S., and the treaty contains a reciprocal tax treaty clause with other foreign nations with tax treaties with the U.S., for example, member nations of the European Union, the taxpayer will not be required to add back treaty protected income that was protected for Federal purposes pursuant to the terms of such tax treaties;

(4) A non-U.S. corporation, that files a Federal tax return, and that is not a member of a combined group filing a New Jersey combined return on a world-wide basis shall only include its income or loss included in Federal taxable income, which, in general, is limited to only the non-U.S. corporation's effectively connected income or loss (as modified by the provisions of the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.)), and the items of expense and the allocation factor receipts attributable to such items of income or loss. For a non-U.S. corporation that is a member of a water's-edge group and has U.S. source income not protected by a treaty, that did not file a Federal return, see N.J.A.C. 18:7-21.7 for more information.

ii.-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; provided, however, for privilege periods beginning on and after January 1, 2022, a deduction for research and experimental expenditures shall be allowed during the same privilege period for which a credit is claimed pursuant to N.J.S.A. 54:10A-5.24, notwithstanding the timing schedule required by the Federal Internal Revenue Code of 1986, 26 U.S.C. § 174, for the deduction of specified research and experimental expenditures.

(1) In the case of a taxpayer that is a cannabis licensee, there shall be allowed as a deduction an amount equal to any expenditure that would qualify as a specified research or experimental expenditure pursuant to I.R.C. § 174 but is disallowed as a deduction for Federal tax purposes because cannabis is a controlled substance pursuant to Federal law. Any expenditure that is claimed as a deduction pursuant to this sub-subparagraph may also be claimed as a qualified research expense for purposes of the credit allowed pursuant to N.J.S.A. 54:10A-5.24. For purposes of this sub-subparagraph, "licensee" means the same as that term is defined at N.J.S.A. 24:6I-33;

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 for privilege periods ending before July 31, 2023;

xx. No deduction for amounts that would have been deductible pursuant to I.R.C. § 199 are allowed after January 1, 2018;

xxi.-xxv. (No change.)

2. Deduct from Federal taxable income:

i. The dividend exclusion is computed as follows:

(1) For privilege periods ending on or before December 31, 2016, 100 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 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 that were added to Federal taxable income in accordance with (a)1 above. For privilege periods beginning on or after January 1, 2017, but ending before July 31, 2023, 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. For privilege periods ending on or after July 31, 2023, 100 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 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 that were added to Federal taxable income in accordance with (a)1 above.

(A) (No change in text.)

(B) For privilege periods beginning on or after January 1, 2017, but ending before July 31, 2019, 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). Taxpayers may request section 8 relief as set forth in the procedures at N.J.A.C. 18:7-10.1, as a result of differing allocation factors.

Recodify existing (3)-(5) as (C)-(E) (No change in text.)

(2) 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)2i(1) 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 that are not considered qualifying dividends for Federal purposes are not eligible for deduction or exclusion from entire net income pursuant to this subsection.

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

(B) For privilege periods beginning on or after January 1, 2017, but ending before July 31, 2019, dividends received from a subsidiary, to the extent to which the subsidiary received the same dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to 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 on which the subsidiary paid tax to New Jersey, based on the subsidiary's

allocation factor used by the subsidiary in determining its tax liability pursuant to N.J.S.A. 54:10A-5. Taxpayers may request section 8 relief, as appropriate, as a result of differing allocation factors.

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

(D) 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.

(E) 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. 54:10A4(k)(5)(E).

(3) For privilege periods ending on and after July 31, 2023, the dividend exclusion shall be deducted from entire net income after the State modifications that increase Federal taxable income but before the other State modifications that reduce entire net income and before the allocation of entire net income to this State.

(4) In computing the total amount of the dividends and deemed dividends excluded, the amount of dividends and deemed dividends excluded shall be reduced by the amount of the expenses and deductions that are attributable to those dividends and deemed dividends that are excludable from entire net income pursuant to N.J.S.A. 54:10A-4(k)(5). For purposes of N.J.S.A. 54:10A-4(k)(5), expenses and deductions related to dividends shall equal five percent of all dividends and deemed dividends received by a taxpayer during an income year that were not eliminated pursuant to N.J.S.A. 54:10A-4.6(d).

(5) For privilege periods ending on and after July 31, 2023, for the purposes of N.J.S.A. 54:10A-4(k)(5) and 54:10A-4.6(d), the income amounts required to be included in Federal taxable income pursuant to 26 U.S.C. § 951A shall be considered a dividend.

(6) For privilege periods ending on and after July 31, 2023, the dividend exclusion shall be taken before the application of the prior net operating loss conversion carryovers (N.J.S.A. 54:10A-4(u)) and the net operating loss deductions (N.J.S.A. 54:10A-4(v)).

(7) Federal previously taxed earnings and profits pursuant to I.R.C. § 959 that are not representative of dividends or deemed dividends that were taxed for New Jersey purposes in previous years, but are recognized for Federal purposes in the current privilege period as Federal previously taxed earnings and profits pursuant to I.R.C. § 959, are generally eligible for exclusion pursuant to N.J.S.A. 54:10A-4(k)(5), except as follows:

(A) Such amounts that are representative of investments in U.S. property pursuant to I.R.C. § 959, are not dividends or deemed dividends, but depreciable assets, and, thus, are not eligible for the New Jersey dividend exclusion and not subject to the claw-back required at (a)2i(4) above, but are instead deductible for New Jersey purposes elsewhere on the CBT return before the dividend exclusion; and

3. Federal previously taxed earnings and profits pursuant to I.R.C. § 959 that were not previously taxed for New Jersey purposes are not eligible for exclusion set forth at N.J.A.C. 18:7-5.20.

Example: Teal Corp directly owns Company 1, Company 2, and Company 3, and indirectly owns Company 4, and Company 5. Company 5 is a separate return subsidiary of Company 3 and neither companies have nexus with New Jersey. Teal Corp, Company 1, Company 2, and Company 4 file a New Jersey combined return. Neither Company 5 nor Company 3 are members of Teal Corp's New Jersey combined return. Company 5 had a deemed dividend distribution to Company 3 in year 1 and Company 3 paid Federal tax on those deemed dividends. In year 2, Company 3 is included as a member on Teal Corp's New Jersey combined return. In year 3, when the dividends are actually distributed, these dividends are treated as Federal previously taxed earnings and profits pursuant to I.R.C. § 959. As the dividends were not previously taxed for New Jersey purposes, N.J.A.C. 18:7-5.20 is inapplicable; however, the dividends are eligible for the dividend exclusion allowable pursuant to N.J.S.A. 54:10A-4(k)(5).

i. In the case of a taxpayer that is a cannabis licensee, there shall be allowed as a deduction an amount equal to any expenditure that is eligible to be claimed as a Federal income tax deduction but is disallowed because cannabis is a controlled substance pursuant to Federal law; income shall be determined without regard to I.R.C. § 280E (26 U.S.C. § 280E) for cannabis licensees. For purposes of this subparagraph, "licensee" means the same as that term is defined at N.J.S.A. 24:6I-33.

Recodify existing iii.-vi. as ii.-v. (No change in text.)

vi. Any banking corporation that is operating an international banking facility (IBF) as part of its business may exclude the eligible net income of the IBF, as described in this section, from its entire net income, as follows:

(1)-(5) (No change.)

(6) For privilege periods ending on and after July 31, 2023, the international banking facility deduction shall be taken before the application of N.J.S.A. 54:10A-4(u) and 54:10A-4(v).

vii. (No change in text.)

viii. For privilege periods beginning on and after January 1, 2018, but ending before July 31, 2023, a taxpayer is allowed as a deduction the amount of the total value of the deduction that the taxpayer was allowed for Federal income tax purposes and for which the taxpayer had claimed 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.

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

(a) With respect to foreign taxes required to be included in income as dividends received pursuant to I.R.C. § 78, no deduction from Federal taxable income is permitted for the amounts that are excluded from the entire net income pursuant to N.J.S.A. 54:10A-4(k)(5) or eliminated pursuant to N.J.S.A. 54:10A-4.6(d).

1. However if the percent of the foreign tax amount is not excludable from entire net income as a dividend pursuant to N.J.S.A. 54:10A-4(k)(5) or eliminated pursuant to N.J.S.A. 54:10A-4.6(d), then the percentage that is taxed may be deducted from Federal taxable income. No other foreign taxes are deductible.

2. For privilege periods prior to the repeal of N.J.S.A. 54:10A-4.15 (that is, privilege periods beginning on and after January 1, 2018, but ending before July 31, 2023), with respect to foreign taxes required to be included in entire net income as dividends received pursuant to I.R.C. § 78 attributable to I.R.C. § 951A Global Intangible Low Taxed Income, only 50 percent can be deducted from entire net income.

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

(a) (No change.)

(b) Combined groups filing a New Jersey combined return report the entire net income of the combined group members based on the group privilege period. See N.J.A.C. 18:7-21 for more information.

18:7-5.7 Right of Director to independently determine net income

If, in the opinion of the Director, the method employed at N.J.A.C. 18:7-5.6 does not correctly reflect the taxpayer's or combined group's net income properly apportionable to New Jersey pursuant to the Act for the period covered by its New Jersey return, the Director may determine entire net income solely on the basis of the taxpayer's or combined group's income during such period. For more information on combined reporting, see N.J.A.C. 18:7-21.

18:7-5.8 Calculation of gain in certain instances

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

(c) Where the target and purchaser corporations are members of the same combined group reporting on the same New Jersey combined return as the parent corporation and continue as members of the same combined group reporting on the same New Jersey combined return in subsequent privilege periods, no gain is recognized for New Jersey purposes, unless such gain would be recognized and taxed for Federal purposes had the corporations been filing a Federal consolidated return together.

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

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

(f) Except in instances where a unitary business relationship exists upon the merger or acquisition of separate return filers, N.J.S.A. 54:10A-4.5(b) does not apply to separate return filers.

18:7-5.16 Effect of audit adjustments

An audit adjustment by the Division to entire net income shall serve to revise the amount of any net operating loss for the year of the change and the net operating loss carryover to which it relates. Alternatively, a taxpayer may request adjustments to their net operating losses during an ongoing audit by the Division by filing an amended return, claim for refund, or through Section 8 relief requests. The ability to make net operating loss adjustments is limited to 10 years after the return was filed.

18:7-5.17 (Reserved)

18:7-5.18 Related party transactions for privilege periods ending before July 31, 2023

(a) For privilege periods ending before July 31, 2023, interest paid, accrued, or incurred to a related member shall not be deducted in calculating entire net income, except that a deduction may be permitted:

1.-6. (No change.)

(b) For privilege periods ending before July 31, 2023, interest expenses and costs, as well as, intangible expenses and costs, directly or indirectly paid, accrued, or incurred in connection with a transaction with one or more related members shall not be deducted in calculating entire net income, except that a deduction may be permitted:

1.-4. (No change.)

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

(e) For privilege periods ending before July 31, 2023, subsections (a), (b), (c), and (d) above do not apply to transactions between related members included in a combined group reported on the New Jersey combined return. Subsections (a), (b), (c), and (d) above only apply to transactions between members of a combined group reported on the New Jersey combined return and related members not included in the combined group reported on the New Jersey combined return.

Example: (No change.)

(f) For privilege periods ending before July 31, 2023, a taxpayer may claim an unreasonable exception, if that taxpayer includes Global Intangible Low Taxed Income (GILTI) in its entire net income from a related party, and the expenses from the same related party would otherwise be required to be added back. See N.J.A.C. 18:7-5.19.

18:7-5.19 Global Intangible Low Taxed Income (GILTI) and Foreign-Derived Intangible Income (FDII) for corporation business tax purposes

(a) For New Jersey corporation business tax purposes, the amount of income reported for Federal income tax purposes pursuant to I.R.C. § 951A (GILTI) and § 250(b) (FDII) must be included in New Jersey entire net income in the same manner as for Federal tax purposes. For privilege periods ending prior to July 31, 2023, neither amounts are considered to be a dividend or a deemed dividend. GILTI and FDII do not qualify for the dividend exclusion at N.J.S.A. 54:10A-4(k)(5). For privilege periods ending on and after July 31, 2023, GILTI is treated as a dividend eligible for exclusion pursuant to N.J.S.A. 54:10A-4(k)(5) or elimination pursuant to N.J.S.A. 54:10A-4.6(d) (in the case of a combined group that also includes the GILTI generating CFCs as members), and FDII income is included in entire net income based on its gross amount subject to the other intercompany elimination provisions at N.J.S.A. 54:10A-4.6 in the case of combined groups, as applicable.

(b) For privilege periods ending prior to July 31, 2023, in computing the allowable I.R.C. § 250(a) deduction, pursuant to N.J.S.A. 54:10A-4.15, in order to arrive at the taxable amount of GILTI and FDII included in the tax base for New Jersey corporation business tax purposes, a deduction will be disallowed if the amounts of income included for Federal tax purposes pursuant to I.R.C. §§ 951A and 250 are exempt or excluded from entire net income pursuant to the provisions of the Corporation Business Tax Act. For privilege periods ending on and after July 31, 2023, no I.R.C. § 250 deduction is allowed.

(c) For privilege periods ending prior to July 31, 2023, the same limitations for claiming the deduction for GILTI and FDII pursuant to I.R.C. § 250 for Federal tax purposes shall also apply for New Jersey tax purposes. For privilege periods ending on and after July 31, 2023, no I.R.C. § 250 deduction is allowed.

(d) For privilege periods ending prior to July 31, 2023, if a taxpayer includes GILTI income from a related member in its entire net income, the taxpayer may claim an exception to the requirement to add back related member expenses pursuant to N.J.S.A. 54:10A-4.4 upon filing with the Director of the Division of Taxation adequate documentation to demonstrate that related member GILTI income is included in the taxpayer's entire net income.

(e) To the extent a combined group can demonstrate that the members included in the combined group on the same New Jersey combined return are controlled foreign corporations that generate the GILTI income, and the income of that controlled foreign corporation is already included in the entire net income of the combined group, the GILTI income may be excluded/eliminated on Schedule A, column b. The combined group must provide the Director with sufficient documentation to prove, by clear and convincing evidence, that income was already included. For privilege periods ending prior to July 31, 2023, the portion of the I.R.C. § 250(a) deduction allowed pursuant to N.J.S.A. 54:10A-4.15, where attributable to the GILTI and FDII income, shall be allowed, regardless of the intercompany eliminations, deferrals, or exclusions on Schedule A, column b, for combined returns. For privilege periods ending on and after July 31, 2023, no I.R.C. § 250(a) deduction is allowed pursuant to the repeal of N.J.S.A. 54:10A-4.15 and GILTI is treated as a dividend for the purposes of N.J.S.A. 54:10A-4.6(d).

(f) For privilege periods beginning on and after January 1, 2018, but ending before July 31, 2023, a taxpayer filing a separate return must include the GILTI, and the receipts attributable to the FDII, after adjustment for the I.R.C. § 250(a) deductions, in the denominator of the allocation factor. For privilege periods ending before July 31, 2023, the net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) are only included in the numerator of the allocation factor if, based on N.J.S.A. 54:10A-6 and 54:10A-6.1 and N.J.A.C. 18:7-8.1 through 8.17, such amounts would be considered to be a New Jersey receipt; otherwise net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) are only included in the denominator of the allocation factor. For privilege periods ending on and after July 31, 2023, no I.R.C. § 250(a) deduction is allowed pursuant to the repeal of N.J.S.A. 54:10A-4.15 and GILTI is treated as a dividend for the purposes of N.J.S.A. 54:10A-4(k)(5); however, the gross amount of the FDII income must be included in the entire net income.

1. (No change.)

2. Separate Return Example for privilege periods ending prior to July 31, 2023:

B forms Shell and Bell as conduits to shift income from high tax nations to lower tax nations in order to lower B's overall tax burden. Shell and Bell are controlled foreign corporations located in a low tax nation. B owns 100 percent of Shell and Bell. B files a separate New Jersey return. Although Shell does not have income effectively connected to a business in the U.S. within the meaning of the Internal Revenue Code, through a series of transactions Shell derives receipts from U.S. sources, including New Jersey sources. Shell also derives income from other countries. Bell does not have any U.S. source income and only has income from Europe. Both Shell and Bell are integrated in B's worldwide business. For Federal purposes, B is required to include in its entire net income the GILTI that was generated from both Shell and Bell. B also sells goods directly to customers in foreign nations for use outside of the U.S. Some of B's export contracts stipulate that the customer will take possession of the goods in B's New Jersey warehouse before the goods are exported.

The portion of the net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) attributable to New Jersey from receipts derived from non-effectively connected U.S. source income would be included in B's numerator. The portion of the net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) attributable to New Jersey receipts would be in B's numerator. The net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction)

and net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) are included in the denominator of the allocation factor.

(g) Pursuant to N.J.S.A. 54:10A-4.7, the combined group's sales fraction denominator includes the receipts of the business entities that are included as members of the combined group on the same New Jersey combined return.

1. For privilege periods ending prior to July 31, 2023, for combined groups where the controlled foreign corporation is not included as a member of the combined group on the same New Jersey combined return, the net GILTI (that is, the GILTI reduced by the I.R.C. § 250(a) GILTI deduction) and net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction), will be in the denominator of the combined group allocation factor, and will be included in the member's numerator where appropriate, as applicable. The combined group denominator factor shall not include the controlled foreign corporation's receipts.

2. For privilege periods ending prior to July 31, 2023, for combined groups where the controlled foreign corporation is included as a member of the combined group on the same New Jersey combined return, and the GILTI is excluded pursuant to (e) above because the controlled foreign corporation's entire net income is included in the combined group entire net income, the GILTI must be excluded from the combined group allocation factor. The controlled foreign corporation's receipts, net of the I.R.C. § 250(a) deduction that was attributable to GILTI income, will be included in the denominator of the combined group allocation factor. The controlled foreign corporation member's receipts, net of (that is, reduced by) the I.R.C. § 250(a) GILTI deduction that was attributable to GILTI income, will be included in that member's numerator where appropriate, as applicable. The net FDII (that is, the receipts attributable to the FDII reduced by the I.R.C. § 250(a) FDII deduction) will be included in the denominator of the combined group allocation factor, and will be included in the appropriate member's numerator, as applicable.

3. For privilege periods ending on and after July 31, 2023, for combined groups where the controlled foreign corporation is not included as a member of the combined group on the same New Jersey combined return, the amount of the GILTI that is not excluded from the entire net income after the application of dividend exclusion, N.J.S.A. 54:10A-4(k)(5) and the receipts attributable to the gross FDII income, will be included in the denominator of the combined group allocation factor, and will be included in the numerator, as applicable. The combined group denominator factor shall not include the controlled foreign corporation's receipts.

4. For privilege periods ending on and after July 31, 2023, for combined groups where the controlled foreign corporation is included as a member of the combined group on the same New Jersey combined return, the GILTI is eliminated from the combined group's entire net income and the combined group's allocation factor. The controlled foreign corporation member's receipts that were not eliminated will be included in the group's denominator. The gross FDII income will be included in the entire net income of the group and the receipts attributable to the gross FDII will be included in the denominator of the combined group's allocation factor, and will be included in the appropriate member's numerator, as may be applicable. No I.R.C. § 250(a) deduction is permitted because N.J.S.A. 54:10A-4.15 has been repealed and is no longer in effect.

5. Combined Return Example privilege periods ending prior to July 31, 2023:

Combined group A includes T, X, Y, Z, Q, and P as members on the same New Jersey combined return. T is the controlled foreign corporation that generated GILTI. In addition to the GILTI generating activities, T also has effectively connected income, some of which is from New Jersey sources. Z is a controlled foreign corporation that generated GILTI income, but had a net tested loss. T's effectively connected income did not generate GILTI. Z has U.S. source income that is not effectively connected income, some of which is New Jersey source income. Q is the member that is required to include the GILTI income for Federal tax purposes because Q is a shareholder of T and Z. X and Y have FDII attributable receipts from sales to non-U.S. customers. Based on the terms of the export contracts and for insurance purposes, the customers take possession at X's and Y's joint New Jersey warehouse before the goods are exported to the customers' respective home countries. P does not have receipts from customers located outside of the U.S. P only has U.S. source income, and does not have FDII or GILTI.

The combined group denominator would not include the GILTI income that Q was required to include in income for Federal purposes, and Q's GILTI income amount would be excluded out of the combined group entire net income because both T's and Z's income/loss is included in the combined group entire net income already, as T and Z are included as members of the combined group on the same New Jersey combined return as Q. T's and Z's receipts that generated the GILTI should be reported net of the I.R.C. § 250(a) GILTI deduction in the group denominator. T's effectively connected income did not generate the GILTI, thus T's New Jersey receipts would not be net of (that is, not reduced by) the I.R.C. § 250(a) GILTI deduction. If Z's U.S. source income generated the GILTI, and that income was from New Jersey sources, then Z's numerator should include GILTI net of (that is, reduced by) the I.R.C. § 250(a) GILTI deduction. X's and Y's receipts attributable to the FDII income should be included net of (that is, reduced by) the I.R.C. § 250(a) FDII deduction in the combined group denominator. X's and Y's New Jersey receipts attributable to the FDII income should be included net of (that is, reduced by) the I.R.C. § 250(a) FDII deduction in their respective numerators. P's receipts will be in the combined group denominator and P's New Jersey receipts will be in P's numerator. The full I.R.C. § 250(a) deductions will be allowed to be taken in computing the combined group entire net income.

(h) (No change.)

18:7-5.20 Previously taxed subsidiary dividends received by a taxpayer

(a) A taxpayer may exclude previously taxed subsidiary dividends from entire net income in a tax year that:

1. The taxpayer receives and includes in entire net income, in the current tax year, dividends from the same subsidiary for which the taxpayer had included, as paid or deemed paid dividends, in entire net income in a previous tax year for New Jersey purposes; and

2. The taxpayer filed, and paid, an amount greater than the minimum tax to New Jersey in that previous tax year on those amounts.

(b) (No change.)

(c) This section does not apply to amounts of Federal previously taxed earnings and profits pursuant to I.R.C. § 959, which are not representative of dividends or deemed dividends that were taxed for New Jersey purposes. However, if such amounts are representative of dividends or deemed dividends, they may be eligible for exclusion pursuant to N.J.S.A. 54:10A-4(k)(5). Investments in U.S. property pursuant to I.R.C. § 959 are not dividends or deemed dividends.

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. (No change.)

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

i. (No change.)

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. For privilege periods ending on and after July 31, 2023, for the purpose of computing taxable net income for a current privilege period, the amount of the prior net operating loss conversion carryover shall be subtracted from entire net income allocated to this State, after the application of N.J.S.A. 54:10A-4(k)(4) and (5) against current privilege period income when the entire net income allocated to this State for the privilege period is greater than zero. Taxpayers are not permitted to adjust their prior net operating loss conversion carryovers to reverse the ordering rules for the prior net operating loss conversion carryovers and the dividend exclusion for the periods the prior net operating loss conversion carryovers were originally generated.

iii. (No change.)

3.-5. (No change.)

(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 over to the earliest of the privilege periods to which the loss may be carried over. For privilege periods ending before July 31, 2023, 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. For privilege periods ending on and after July 31, 2023, 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, after the application of N.J.S.A. 54:10A-4(k)(4) and (5) allocated to this State; provided, however, for the purpose of computing taxable net income for the privilege period, the net operating loss carryover shall only be subtracted from entire net income allocated to this State when the entire net income allocated to this State is greater than zero;

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 regard to any net operating loss carryover, and for privilege periods ending before July 31, 2023, computed without the exclusions at N.J.S.A. 54:10A-4(k)(4) and (5), and for privilege periods ending on and after July 31, 2023, computed after the application of N.J.S.A. 54:10A-4(k)(4) and (5), allocated to this State pursuant to N.J.S.A. 54:10A-6 through 54:10A-10;

3. (No change.)

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

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; and

6. For net operating losses generated in privilege periods ending before July 31, 2023, taxpayers are not permitted to adjust their net operating losses and net operating loss carryovers to reverse the ordering rules for the net operating losses and net operating loss carryovers and the dividend exclusion.

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

(e) Except in instances where a unitary business relationship exists upon the merger or acquisition of separate return filers, N.J.S.A. 54:10A-4.5.b does not apply to separate return filers.

(f) For the purposes of computing taxable net income, "taxable net income" means entire net income allocated to this State as calculated pursuant to N.J.S.A. 54:10A-6 through 54:10A-8, as modified by subtracting any prior net operating loss conversion carryforward calculated pursuant to N.J.S.A. 54:10A-4(u) and any net operating loss calculated pursuant to N.J.S.A. 54:10A-4(v) or 54:10A-4.6.h.

1. For privilege periods ending on and after July 31, 2023, when subtracting any net operating losses calculated pursuant to N.J.S.A. 54:10A-4(v) or 54:10A-4.6.h, the limitation set forth in paragraph (2) of subsection (a) of I.R.C. § 172 (26 U.S.C. § 172(a)(2)) shall apply, except that August 1, 2023, is substituted for the reference to January 1, 2018, in subparagraph (A) of paragraph (2) of subsection (a) of I.R.C. § 172 (26 U.S.C. § 172), and July 31, 2023, is substituted for the reference to December 31, 2017, in subparagraph (B) of paragraph (2) of subsection (a) of I.R.C. § 172 (26 U.S.C. § 172).

2. For privilege periods ending on and after July 31, 2023, for a combined group, before subtracting the prior net operating loss conversion carryforwards and subtracting the net operating losses of the combined group when computing the total taxable net income, the combined group shall first add together the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group and then subtract the prior net operating loss conversion carryforwards and then the net operating losses.

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

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

(c) For privilege periods ending before July 31, 2022, 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. To the extent N.J.A.C. 18:7-5.18 reduces the amount of interest deductible for the privilege period by an amount greater than the deduction limit set forth pursuant to the I.R.C. § 163(j) limitation, the additional disallowed amounts will be allowed to be carried over for use in a future period and deductible in the same manner as the interest that was disallowed for Federal purposes pursuant to the I.R.C. § 163(j) limitation that is permitted to be carried over and used in a future period for Federal purposes.

(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.

(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.

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

SUBCHAPTER 7. ALLOCATION

18:7-7.1 through 18:7-7.2 (Reserved)

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

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

18:7-7.5 (Reserved)

18:7-7.6 Corporate partners and partnerships

(a)-(k) (No change.)

(l) For privilege periods ending on and after July 31, 2023, 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, and the unitary partnership shall not be liable for the portion of the payment imposed pursuant to N.J.S.A. 54:10A-15.11 that is directly, or indirectly in the case of a tiered partnership, attributable to that member.

(m) For the purposes of N.J.S.A. 54:10A-4.16, a corporate partner's proportionate share of receipts and transactions of a unitary partnership must be included in the corporate partner's receipts and transactions for determining nexus for New Jersey corporation business tax purposes as a result of the corporate partner and unitary partnership utilizing the flow-through accounting method.

(n) For the purposes of N.J.S.A. 54:10A-4.16, the corporate partner's receipts and transactions for determining nexus for New Jersey corporation business tax purposes do not include the corporate partner's receipts and transactions from a non-unitary partnership as a result of the corporate partner and non-unitary partnership using the separate accounting method, unless the income from a non-unitary partnership serves an operational purpose.

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

18:7-8.1 Business allocation factor; computation

(a)-(g) (No change.)

(h) Taxpayers in the gaming industry (casinos and online betting) shall report and include their receipts in the same manner as for Federal tax purposes in accordance with U.S. G.A.A.P. or I.F.R.S. (as applicable). Where there are material differences in accounting methods between U.S. G.A.A.P. and I.F.R.S. that cause a material numerical difference, taxpayers must include an explanation for the difference in their books, records, and work papers, which shall be made available to the Division of Taxation upon request.

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

(a) The term "tangible personal property" shall mean corporeal personal property, such as machinery, fixtures, tools, implements, goods, wares, and merchandise. Money, deposits in banks, shares of stock, bonds, notes, digital assets, line digital assets, lines of credit or evidence of an interest in property, and evidence of debt are not tangible personal property.

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

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

(a) (No change.)

(b) The term "taxpayer's real and tangible personal property" shall include property owned, leased, rented, or used by the taxpayer during the period covered by the return and shall exclude property not yet in service or removed from service during that period. Property or equipment under construction (exclusive of inventory work in progress) is excluded from the property fraction until it is completed. Money, deposits in banks, shares of stock, bonds, notes, digital assets, lines of credit or evidence of an interest in property, and evidence of debt are not tangible personal property.

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

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

(a) (No change.)

(b) The receipts of the taxpayer are to be computed on the cash, accrual, or other method of accounting used in computation of its net income for Federal income tax purposes. However, the numerator and denominator of the receipts fraction must, in any event, relate to the entire net income recognized during the period covered by the return and the composition of the receipts fraction must be determined consistent with the entire net income to which it relates. Thus, receipts attributable to excluded items of income are excluded from the receipts fraction.

Examples 1-2 (No change.)

(c) The receipts attributable to items of entire net income shall be included or excluded in the numerator and denominator, as follows:

1. The receipts attributable to income that is included in entire net income (either as part of Federal taxable income or as an item of income required to be added back to Federal taxable income pursuant to the Corporation Business Tax Act) are included in the numerator and denominator of the receipts fraction.

2. The receipts attributable to any income item that is excluded from entire net income (for Federal purposes if not required to be added back pursuant to the Corporation Business Tax Act or excluded from entire net income pursuant to the Corporation Business Tax Act, although such item of income was included in Federal taxable income) are excluded from the numerator (New Jersey receipts) and denominator of the receipts fraction, except for banking corporations with international banking facilities. See N.J.S.A. 54:10A-6.

3. If a non-U.S. corporation, which is not a member of a world-wide group, is excluding an item of income from entire net income because it is either excluded from Federal taxable income pursuant to the terms of a tax treaty or not required to be included in income for corporation business tax purposes, the receipts attributable to such items of excluded income must be excluded from the allocation factor.

4. The members of a world-wide group must include all receipts attributable to all income, except those receipts that are attributable to items of income that are excluded from entire net income pursuant to the Corporation Business Tax Act, as though each member was a U.S. corporation. For more information, see N.J.A.C. 18:7-5.13.

5. Examples:

Example 1:

Dividends recognized as income for purposes of determining Federal income tax that are excluded from entire net income pursuant to N.J.S.A. 54:10A-4(k)(5), must also be excluded in computing the receipts fraction.

Example 2:

For Federal purposes, and in accordance with U.S. G.A.A.P., taxpayer reports their income of $1,000,000 (before returns and allowances) and expenses on the Federal return. Taxpayer has returns and allowances of $250,000. The receipts reported on Schedule J of the New Jersey CBT return must reflect the receipt amounts that are in the tax base, that is, $750,000. Thus, the receipts reported on Schedule J are already reduced by the returns and allowances and are not the receipts prior to taking into account the returns and allowances. A taxpayer is not entitled to an additional deduction (that is, the taxpayer is not entitled to deduct the same amounts they already deducted) for returns and allowances from the sales fraction on Schedule J.

Example 3:

Taxpayer A files an 1120-F (U.S. Income Tax Return of Foreign Corporation) for Federal purposes and a separate return for New Jersey corporation business tax purposes. It reports only their effectively connected income for Federal purposes because the items of non-U.S. income are protected pursuant to the terms of a treaty. Taxpayer A must include the receipts attributable to the effectively connected income and any other income not protected by a treaty that is required to be included in entire net income for New Jersey corporation business tax purposes in both the numerator and denominator, but would not include receipts attributable to items of income that were excluded for Federal or New Jersey purposes.

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

(a) The gross receipts from sales of capital assets (property not held by the taxpayer for sale to customers in the regular course of business) either within or outside New Jersey should not be included in either the numerator or denominator of the receipts fraction. The net gains from such sales that are included in entire net income are the amounts that are properly to be included in the computation of the receipts fraction when the gains are derived from operational income (income derived from operations of the taxpayer that are integrated with the business of the taxpayer). If the gains are derived from non-operational income (income derived from activities of the taxpayer that are not integrated with the business of the taxpayer), such gains would be sourced or specifically assigned to the state of corporate domicile. For the purposes of the numerator in the computation of the receipts fraction, a net loss should not offset a net gain.

ILLUSTRATION FACTS

(No change.)

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

Examples 1-3

(No change.)

(b) Where the taxpayer's business is the buying and selling of real estate or the buying or selling of securities, bonds, digital assets, or other financial products/instruments, for trading purposes, these assets are not deemed to be capital assets and the receipts from the sales thereof are included in the same manner in accordance with their accounting methods used for Federal purposes as other categories of includable receipts in the receipts fraction that are not capital assets. The taxpayer must follow a

consistent year-to-year application, unless the taxpayer changes their Federal accounting method; however, in the year of the Federal accounting change, the taxpayer must attach an explanation to their New Jersey CBT return explaining the accounting change.

(c) If a taxpayer is trading for its own account, the proceeds of such trades would be treated in accordance with their accounting methods used for Federal purposes, and (b) above would not apply. The taxpayer must follow a consistent year-to-year application, unless the taxpayer changes their Federal accounting method; however, in the year of the Federal accounting change, the taxpayer must attach an explanation to their New Jersey CBT return explaining the accounting change.

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. The receipts of the taxpayer must be computed according to the method of accounting used in the computation of the taxpayer's net income for Federal tax purposes, arising during such period. The taxpayer must follow a consistent year-to-year application, unless the taxpayer changes their Federal accounting method; however, in the year of the Federal accounting change, the taxpayer must attach an explanation to their New Jersey CBT return explaining the accounting change. See N.J.A.C. 18:7-21 for additional information on combined groups filing New Jersey combined returns.

1.-2. (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) 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. Information that is verifiable and specific in nature is preferred over unverifiable information that is general in nature. However, if the taxpayer is disproportionately affected, the taxpayer may request Section 8 relief pursuant to the procedures prescribed at N.J.A.C. 18:7-10.1. The following are some methods that are acceptable reasonable approximations to the Division of Taxation:

(A) 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.

(B) As an alternative reasonable approximation method to (a)3iv(1)(A) above, gross domestic product data (in U.S. dollars) is an acceptable method, as the taxpayer's situation or industry may warrant. The gross domestic product data shall be the most recent data available as described at (a)3iv(1)(H) below. 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 gross domestic product of the countries where the benefit of the service(s) is being substantially received shall be added to the U.S. gross domestic product for purposes of determining a reasonable approximation of the total value of the benefit of the services received in all locations. If the taxpayer knows, based on their business or industry, that certain countries represent a larger market share of their services and knows, based on their business or industry, that more customers are based in certain countries than others, gross domestic product data is the more acceptable approach to population data.

(C) If either the population method or the gross domestic product method, described at (a)3iv(1)(B) above, do not fully provide an accurate reasonable approximation based on the taxpayer's business and industry, but either per-capita gross domestic product or gross domestic product adjusted for the purchasing power parity provides a more accurate reasonable approximation, taxpayers may use either of these measures in the same manner as set forth for gross domestic product at (a)3iv(1)(B) above.

(D) As an alternative, if information that is verifiable and specific in nature is not readily available to the taxpayer, the taxpayer may use certain industry standard approximations. Industry standard approximations, if the taxpayer can show such approximations are more accurate than population or gross domestic product, are preferable than (a)3iv(1)(A), (B), or (C) above.

(E) Either Global Positioning System (GPS) and Internet Protocol (IP) address location data usage are acceptable methods to use if the taxpayer knows or has reason to know, based on their business or industry, that its services being offered are used in a manner where billing address is not the best indication of where the benefit of the service is received or where the product is being used. In such instances where the taxpayer has GPS or IP address location data, this method is a preferable method for determining a reasonable approximation over (a)3iv(1)(A), (B), (C), or (D) above. However, if it is determined that customers frequently use a Virtual Private Network (VPN) and the taxpayer lacks the technology to look through the VPN to determine the actual location of the customer, then the taxpayer may use the methods described at (a)3iv(1)(A), (B), (C), or (D) above.

(F) Customer data lawfully purchased from third party data-brokers by a taxpayer is an acceptable method for determining a reasonable approximation. However, customer data gathered and sold in violation of privacy, confidentially, and/or consumer protection laws by a third-party data-broker is unacceptable and cannot be used for determining a reasonable approximation.

(G) If after filing a return pursuant to (a)3iv(1)(A), (B), (C), (D), (E), or (F) above, or some combination of (a)3iv(1)(A) through (F) above, or other method providing the taxpayer with a more accurate, reasonable approximation that is only readily obtainable through the use of artificial intelligence, the taxpayer may amend its returns and file form A-3730, to claim a refund. However, as part of their request, the taxpayer must provide to the Division information about the computer code, language model, datasets used to develop and test the artificial intelligence, the data used to develop the reasonable approximation, the system rules and parameters in place when developing the approximation, the data-weights used for the approximation, and any other information that the Director determines necessary to determine that the artificial intelligence and the approximation were developed properly and not for the purpose of tax avoidance.

(H) For the purposes at (a)3iv(1)(A), (B), and (C) above, acceptable sources of GDP or population data include the International Monetary Fund, the U.S. Census Bureau, the U.S. Central Intelligence Agency Fact-book, Organisation for Economic Co-operation and Development, the World Bank, U.S. Bureau of Economic Analysis, World Economic Forum, and Federal Reserve.

(2) Examples:

Examples 1-6 (No change.)

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 with its advertising division offices in Florida. The project was requested from and directed by the client's advertising division located in Florida for use by the advertising division. The deliverable is a memo detailing the results of a marketing study

performed by the taxpayer on behalf of the customer's advertising division, which will be sent to the advertising division leader in Florida to determine whether the information will be useful for the advertising division to incorporate into its marketing strategy. The information from the study, if useful and acceptable for the advertising division's intended purposes of the study, which would, if useful, ultimately be incorporated into an advertising strategy used companywide, nationwide by the customer, and not solely for the use of the customer's advertising division. 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, unless the taxpayer knows or has reason to know, based on the taxpayer's business relationship with its customer or industry practices, that some of the customer's intended target consumer audience is located in New Jersey. If the taxpayer knows or has reason to know that part of the target consumer audience of the customer is in New Jersey, the taxpayer may use one of the reasonable approximation methods described at (a)3iv(1)(A) through (H) above. Otherwise, since the service was performed for the customer's advertising division located in Florida for use by the advertising division, the benefit of the services is received in Florida.

Examples 8-10 (No change.)

Example 11: ABC is a corporation in the business of buying, selling, trading, and creating artwork, digital works, websites, animation, and designs for customer goods as a service. In addition to paintings, drawings, animations, sculptures, digital works, websites, and consumer good designs, ABC also develops non-fungible tokens (NFTs) for a fee to be sold by ABC's business customers to third-party customers. Big Shoe, located in Oklahoma, contracted with ABC to design X-shoe. Additionally, Big Shoe contracted with ABC to design NFTs featuring X-shoes being worn by major athletes to be sold to customers. Big Shoe intends to sell X-shoes across the U.S., Canada, Mexico, and Europe, and sell the X-shoe NFTs to customers in the U.S. and Canada. Big Shoe pays ABC a fee to develop the shoe design and a fee to develop the NFTs. Since the sales of the X-shoe by Big Shoe will be across the U.S., Canada, Mexico, and Europe, a reasonable approximation by ABC would be the population data from U.S., Canada, Mexico, and Europe for sourcing the fee from the shoe design. Since Big Shoe only intends to sell the NFTs in the U.S. and Canada, a reasonable approximation by ABC would be to use the population data from the U.S. and Canada for sourcing the fee for the development of the NFTs.

Example 12: Bold Co., a developer of digital services and products that are available on various augmented reality and digital platforms, but not the actual physical world, performs various services for Tech Co. in order to enhance and grow Tech Co.'s market share for Tech Co.'s digital world, Blue Green 7. Tech Co.'s digital world is available to individual customers and business customers around the world, and is on a series of servers located in the U.S. (including in New Jersey), Europe, and Asia. Bold Co. is located in Florida but has an office in New Jersey. Tech Co. has offices in New Jersey, Seattle, Paris, and Osaka. Tech Co. pays Bold Co. various fees. Since the benefit of the services are received worldwide, population data constitutes a reasonable approximation. If Bold Co. knowns certain countries represent a larger market share of Tech Co. and knows that more customers are based in certain countries than others, then gross domestic product data is the more acceptable approach compared to population data.

Example 13: Fridge Co. charges a subscription service fee to customers for its internet connected refrigerators and freezers and for services that allow customers through a software application ("app") to monitor various goods the customer has in the refrigerator or freezer. The app allows the customer to place orders with local stores or online retailers to have goods delivered when the goods run low or expire. Unless the customer selects a different option, the deliveries are made to the location the customer inputs through the app as the location of the refrigerator or freezer. When orders are placed for goods, Fridge Co. charges a processing fee. The benefit of the service is received at the physical location of the refrigerators and freezers of the customers who subscribed to the service because the refrigerators and freezers are at a physical location and the goods that are ordered to restock such refrigerators and freezers are delivered to such location. Thus, the fees charged by Fridge Co. must be sourced to such locations.

Example 14: New Money Co. is a financial technology business, not regulated by the Federal or State financial regulatory agencies. New Money Co. offers various digital assets over the internet and charges service fees for the purchasing, selling, processing, and storage of the digital assets in a virtual wallet. New Money Co. offers additional services for a fee to business customers seeking to accept digital assets as payment on their websites for their various wares. New Money Co. accepts various payment methods for its services including more traditional payment methods where the customer's actual address (i.e., the billing address) is known. They also accept-traditional payment methods such as virtual currency or other digital assets where New Money Co. does not know the location of the customer except as may be traceable through GPS data if the customer did not use a virtual private network. For the fees paid through traditional payments, the fees would be sourced based on the customer's address. For fees paid through non-traditional means, New Money Co. would source the receipts using GPS data if reliable. However, if GPS data is unreliable, population data is an acceptable method as a reasonable approximation.

Example 15: Data Co. collects and aggregates data from various businesses, which in turn collects the data from individuals through various means. Through a series of subscription service fees, Data Co. offers data analytics, security, verification, and data reports services to its customers. Data Co.'s customers use such services to send such things as target advertisements, and coupons, or to make business decisions either to accept a new customer or to hire an individual. Some of Data Co.'s customers only have customers in New Jersey, the tri-State area limited to New Jersey, New York, and Pennsylvania, or have customers in every state. For the fees generated by customers located in a limited geographic location, the benefit of the service would be the customer's billing address if the activities are being performed solely at the one office of the customer or between the states Data Co.'s customer has offices in, as applicable, and the receipts from fees paid by the customers must be sourced accordingly. For customers that have offices and customers in every state, population data would be a reasonable approximation to source the receipts from the fees paid by those customers.

Example 16: Game Co. is a company that hosts online games (not online betting) through a cloud that are offered to individual customers for a subscription service fee. Game Co. charges a basic yearly subscription fee, which allows customers to play a variety of games. Subscribers can pay additional fees for premium games. Game Co. has the billing address of its customers as part of its books and records, and the locations where the customers are playing the games based on GPS and IP data on its services. In most instances, though not all instances, the state in which the game is played is the same state as the billing address. However, based on data in its servers, Game Co. is able to identify when a customer is in a different state without overly burdening Game Co. The benefit of the service must be sourced based on GPS and IP data identifying the locations where the customers are playing the games, since it was not burdensome for Game Co. to track. However, if it had been burdensome for Game Co. to track, the benefit of the service would be sourced to the billing address of the customer.

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 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.-ii. (No change.)

iii. Taxpayers engaged in transportation, shipping, and logistics services as intermediaries shall source their receipts in the same manner as the industries of their third- party carriers (that is, the transportation, airline, trucking, and shipping companies with whom the taxpayer subcontracts) engaged in transportation businesses in order to determine ton miles. The taxpayer's receipts are multiplied by a fraction, the numerator, which is the number of ton miles in New Jersey, and the denominator, which is the number of ton miles in all jurisdictions. 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 combined groups engaged in the transportation business filing New Jersey combined returns.

iv. Taxpayers formed in a foreign nation and engaged in international shipping by sea or air shall exclude the receipts and miles that are attributable to items of income excluded from entire net income either by treaty or excluded pursuant to N.J.S.A. 54:10A-4(k)(9).

v. Taxpayers in the transport, shipping, and logistics service industry with blended transport methods shall source their receipts using the ton miles from the land (truck, cargo van, or rail), air, and sea transit, as may be applicable to the methods of transport used by the taxpayer. This includes the ton miles of the subcontractors (that is, the third-party carriers) a taxpayer may have used to transport the goods of its customers. The taxpayer's receipts are multiplied by a fraction, the numerator, which is the number of ton miles in New Jersey, and the denominator, which is the number of ton miles in all jurisdictions.

7. (No change.)

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. (No change.)

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, intermediaries, 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 of the countries the business customer does business in, the gross domestic product of the countries the business customer does business in, the per capita gross domestic product of the countries the business customer does business in, 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. The taxpayer must use the same reasonable proxy from year to year, unless the taxpayer can identify a more accurate proxy in a later year.

iii.-v. (No change.)

9.-10. (No change.)

11. Taxpayers in the gaming industry (that is, a casino, online gambling business, etc.) shall report and include their receipts in the same manner as reported for Federal tax purposes in accordance with U.S. G.A.A.P. or I.F.R.S. (as applicable).

i. Gaming receipts that are derived from New Jersey sources are includable in the numerator of the allocation factor for corporation business tax purposes. The receipt amounts reported on Schedule J of the taxpayer's New Jersey CBT return must reflect the amounts that are in the taxpayer's tax base. Accordingly, the receipts reported on Schedule J of the taxpayer's New Jersey CBT return in both the numerator and denominator must reflect the sales receipts reported on line 1c of the taxpayer's Federal return. For gaming receipts, this would mean net gaming receipts (that is, the total of the gross amount wagered less the payout from any transaction with a casino patron, less returns, bonuses, and chargebacks) as reported for Federal tax return purposes in accordance with U.S. G.A.A.P. or I.F.R.S.

ii. With regard to a combined group that contains entities in the gaming industry, net gaming receipts are sourced as reported for Federal tax return purposes in accordance with U.S. G.A.A.P. or I.F.R.S. However, if the accounting period (privilege period) of the entities within the combined group are not identical, then the net gaming receipts will be sourced in accordance with the accounting period (privilege period) of the combined group.

iii. If there are material differences in accounting methods between U.S. G.A.A.P. and I.F.R.S. that cause material numerical differences, the taxpayer must include an explanation in their books, records, and work papers. Information supporting the material differences must be made available to the Division of Taxation upon request.

iv. With regard to sourcing receipts for online gaming activity captured on New Jersey-based servers and I.P. address data (that is, data captured as part of the taxpayer's books and records using the server and I.P.), application of data so captured by such New Jersey-based servers and I.P. address data is the correct method for determining where the benefit of the service is received.

18:7-8.11 Receipts; rents and royalties

(a) Receipts from rentals of real and personal property situated in New Jersey, and royalties from the use in New Jersey of patents or copyrights, are allocable to New Jersey.

1. (No change.)

2. Receipts from royalties include all amounts received by the taxpayer for the use of patents, licensing agreements of intellectual property (for example, a licensing agreement to manufacture or sell a patented product), or copyrights, whether such patents, licensing agreements, or copyrights were originally issued to, or are owned, by the taxpayer. This also includes amounts received for licensing intellectual property in digital form.

3. A patent, licensing agreement, or copyright is used in New Jersey to the extent that activities thereunder are carried on in New Jersey.

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

1. Receipts from royalties derived from trademarks or other intellectual property utilized both within and outside New Jersey will be allocated to New Jersey based upon the use of the trademarks or other intellectual property in New Jersey in relation to all use by the licensee.

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

Example 1: (No change.)

18:7-8.12 Other business receipts

(a)-(g) (No change.)

(h) Generally, receipts derived from (or involving) digital assets are integrated in the business of a taxpayer and most of the income from transactions involving digital assets is operational income. Receipts from the sales, gains, or disposition of digital assets or involving digital assets shall be sourced based on the nature of the underlying transaction and the digital asset, otherwise such receipt shall be sourced according to (e) above if none of the other rules are applicable.

(i) Receipts from or involving the sales, gains, or disposition of central bank digital currency shall be sourced based on the nature of the underlying transaction and asset (as though the central bank digital currency was fiat currency unless classified differently by the original central bank issuing the central bank digital currency), otherwise such receipt shall be sourced according to (e) above if none of the other rules are applicable.

(j) Gaming receipts (from wagering) should be included and reported as other business receipts (to the extent such receipts are not services described at N.J.A.C. 18:7-8.10A) in the same manner they are included for Federal purposes in accordance with U.S. G.A.A.P. or I.F.R.S.

SUBCHAPTER 11. RETURNS

18:7-11.5 Change of accounting period

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

(b) (No change.)

(c) For specific accounting rules applicable to combined groups, see N.J.A.C. 18:7-21.

18:7-11.6 Forms of returns

(a) Returns are required to be made on forms prescribed by the Director. In the case of all taxpayers, annual returns (including accompanying schedules and forms) are required to be filed on the applicable New Jersey corporation business tax return prescribed by the Division of Taxation for a taxpayer's privilege period.

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

(d) Taxpayers must include the credit forms for tax credits claimed for the privilege period even when the tax credit is not being claimed during that privilege period.

18:7-11.7 Time for filing returns

(a) 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, but before July 31, 2023, 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. For privilege periods ending on and after July 31, 2023, the due date of the New Jersey return shall be the 15th day of the month following the month of the original due date of the Federal return for such privilege period (that is, the 15th day of the fifth month after the end of the 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)-(c) (No change.)

(d) For privilege periods beginning on and after July 31, 2020, but before July 31, 2023, 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.

(e) For a taxpayer (not including a taxpayer filing as a New Jersey S corporation) with a fiscal year ending June 30, the original due date of the CBT return is November 15th.

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

(a) (No change.)

(b) Taxpayers using the New Jersey corporation business tax return may request an extension for a period not exceeding six months and will generally receive approval, provided that the taxpayer has complied with the instructions set forth on the Tentative Return 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.-3. (No change.)

4. The due date of the extended return is the 15th day of the month following the month of the extended due date of the Federal return in the case of a taxpayer, which received an extension for Federal purposes. In general, this is six months from the original due date of the New Jersey return. Taxpayers must timely notify the Division of Taxation through the CBT extension portal that the taxpayer received a Federal extension.

(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.-3. (No change.)

4. The request shall be accompanied by a completed copy of Schedule L from the taxpayer's respective New Jersey corporation business tax return, and a copy of the taxpayer's Federal extension request;

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

6. The due date of the extended return is the 15th day of the month following the month of the extended due date of the Federal return in the case of a taxpayer, which received an extension for Federal purposes. Taxpayers must timely notify the Division of Taxation through the CBT extension portal that the taxpayer received a Federal extension.

(d) (No change.)

(e) Where the taxpayer has requested a Federal extension, the Division shall grant the taxpayer an extension for a period not exceeding six months. The due date of the extended return is the 15th day of the month following the month of the extended due date of the Federal return in the case of a taxpayer, which received an extension for Federal purposes. In cases where the taxpayer has failed to obtain a Federal extension, the taxpayer, upon request, may be granted a two-month extension for filing the return from the original due date of the return, if sufficient cause is established and the request is submitted in writing. Sufficient cause exists if it is impossible or wholly impracticable for the taxpayer to file a return within two months from the original due date of the return.

(f)-(k) (No change.)

(l) For a taxpayer with a June 30th privilege period end date that receives an extension, the extended due date to file their CBT return is May 15th.

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

(a) Amended returns, documents, and associated remittances must be filed electronically. However, in certain limited instances, for example for the BFC-1 returns, if the taxpayer's software does not permit the electronic filing of the return, or if the amended return is filed after the time which the electronic system allows filing for that period but is within the statute of limitations, taxpayers may file amended returns by mail. When filed by mail, amended returns and related documents together with remittances payable to "State of New Jersey" must be mailed to the New Jersey Division of Taxation, Revenue Processing Center, PO Box 666, Trenton, NJ 08646-0666. See N.J.A.C. 18:7-11.19 for electronic filing requirements.

(b) (No change.)

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

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

(c) With respect to tax years beginning after July 7, 1993, but before December 22, 2022, S corporation status may be elected for New Jersey purposes by the shareholders of a Federal S corporation. For privilege periods beginning on or after December 22, 2022, a separate New Jersey S corporation election is not required for a Federal S corporation. A New Jersey S corporation is entitled to pay its tax at a preferential rate as provided at N.J.S.A. 54:10A-5(c)(2) and (3) and to report and pay its tax liability on Form CBT-100S. For privilege periods beginning on and after December 22, 2022, an S corporation electing to be taxed as a C corporation for New Jersey purposes must elect to file on the applicable corporation business tax return (other than Form CBT-100S). S corporations doing business in New Jersey must register with the Division of Revenue and Enterprise Services. For more information on S corporation and Qualified Subchapter S Subsidiary procedures, see N.J.A.C. 18:7-20.4.

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) or the pro forma version of such return if no return was filed with the Internal Revenue Service;

2.-14. (No change.)

15. Form 4797;
16. Schedule UTP;
17. Form 8833; and
18. Form 7205.
(b)-(e) (No change.)

SUBCHAPTER 12. SHORT PERIOD RETURN

18:7-12.1 Short period returns; when required
(a)-(b) (No change.)
(c) If a corporation ceases to exist as the result of an action, such as a merger, or if its Federal S status terminates, for example, the short period return for the terminating corporation or corporation losing its S status would be due on the 15th day of the month subsequent to the Federal return due date after the close of the short year ending on the date of the merger or on the day before the S corporation disqualifying event.
1. New Jersey generally conforms to the Federal rules and revenue procedures regarding mergers, acquisitions, and reorganizations. As a result of a merger, acquisition, or reorganization, the Federal S status or Qualified Subchapter S Subsidiary status transfers automatically, and the new entity is automatically an S corporation or Qualified Subchapter S Subsidiary for New Jersey purposes. For any short period return that is due Federally, a CBT return is due on the 15th day of the month after the due date of its Federal return.
2. Example: A corporation had been granted S status for the period beginning January 1 of the calendar year. The election terminated on April 6 of the calendar year due to merger. If the entity is filing as an S corporation for New Jersey purposes, the due date for the return for the short period January 1 to April 6 of the calendar year (that is, through the close of business on the date that the merger occurs) is August 15 of the calendar year, which is the 15th day of the 4th month after the close of the period. If the entity is filing as a C corporation for New Jersey purposes, the due date for the return for the short period of January 1 to April 6 of the calendar year (that is, through the close of business on the date that the merger occurs) is September 15 of the calendar year, which is the 15th day of the 5th month after the close of the period. An automatic six-month extension of the time to file Form CBT-100S is available by making a tentative return and paying the tentative tax on Form CBT-200T by August 15 of the calendar year.
(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. (No change.)
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 the income for the months the member was part of the second combined group on the second group's return. 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, which results 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 each of the taxpayers that are former members of the group shall file short period separate returns when the taxpayer is a separate filer for the remaining portion of the period. Where a taxpayer that is a 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 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 served as the managerial member of the combined group. If the taxpayer served as the managerial member, then a short period combined return must be filed for the short period, and the combined group will designate a new managerial member. 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. (No change.)
(e) (No change.)

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

18:7-13.1 Assessment and reassessment
(a) On its return, a taxpayer must compute the amount of tax payable pursuant to the Corporation Business Tax Act and must remit the amount of the reported tax.
1.-2. (No change.)
3. There shall be added to the amount of any deficiency assessment or reassessment, interest calculated 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.
4. (No change.)
(b) The Director may assess an additional tax at any time within four years from the date of the filing of the return or amended return (which is amended in accordance with N.J.S.A. 54:10A-13).
1.-2. (No change.)
3. The Director may assess an additional tax, recompute, and reassess the tax at any time within four years from the due date of the return, or from the date of filing of the return or amended return (which was amended in accordance with N.J.S.A. 54:10A-13), whichever is later.
(c)-(d) (No change.)
(e) The period of limitation to make a deficiency assessment runs for an additional four-year period from the date that taxable income is finally changed or corrected by the Commissioner of Internal Revenue. The additional period of limitation will only be applicable to the increase or decrease in tax attributable to the adjustments in the changed or corrected income.

18:7-13.8 Claims for refund; when allowed
(a) The four-year statute of limitations period for filing a claim for refund commences to run from the later of the payment of the original tax for the taxable year or from the filing of the taxpayer's tax return for the taxable year or payment of the additional tax assessed against the taxpayer. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. For purposes of this section, the term "due date" means the original due date of the return. The term does not mean or include any extended due date.
(b) The four-year period for filing a claim for refund relating to an amended return (amended in accordance with N.J.S.A. 54:10A-13) commences on the later of payment of the additional self-assessment or the filing of an amended return.
(c)-(i) (No change.)

18:7-13.11 Lien of tax
(a)-(b) (No change.)

(c) The members of a combined group are jointly and severally liable.

SUBCHAPTER 14. TAX CLEARANCE

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

(a)-(d) (No change.)

(e) Mergers between members of a combined group filing a combined return are presumed to qualify for (a) above, even if the surviving corporation is not a domestic corporation or an authorized foreign corporation, as long as the combined group as a whole continues to exist and the managerial member files the New Jersey combined return on behalf of the combined group. However, if the non-surviving member of the merger was the managerial member, then the combined group must designate another taxable member as the managerial member and the combined group must continue to file New Jersey combined returns.

(f) Statutory conversions or domestications, where the entity remains registered with New Jersey or continues to maintain a valid certificate of authority with New Jersey without applying for a Tax Clearance Certificate.

SUBCHAPTER 17. PARTNERSHIPS

18:7-17.5 Calculation of tax

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

(c) For privilege periods ending on and after July 31, 2023, if a member of a combined group receives income from the unitary business from a partnership, then the combined group's entire net income shall include the member's direct and indirect distributive share of the partnership's unitary business income, and the unitary partnership shall not be liable for the portion of the payment imposed pursuant to N.J.S.A. 54:10A-15.11 that is directly, or indirectly in the case of a tiered partnership, attributable to that member.

18:7-17.8 Certain corporate partners; exemption form

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

(c) If a New Jersey S corporation, that does not have a place of business (for example, an office or an employee routinely teleworking from home) in New Jersey is a partner in a partnership, a tax payment is made on its behalf at the nine percent rate, since the corporation does not have a place of business in New Jersey.

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

(e) (No change.)

(f) For privilege periods ending on and after July 31, 2023, if a member of a combined group receives income from the unitary business from a partnership, then the combined group's entire net income shall include the member's direct and indirect distributive share of the partnership's unitary business income, and the unitary partnership shall not be liable for the portion of the payment imposed pursuant to N.J.S.A. 54:10A-15.11 that is directly, or indirectly in the case of a tiered partnership, attributable to that member.

SUBCHAPTER 18. (RESERVED)

SUBCHAPTER 19. FILING FEE PAYMENTS BY PROFESSIONAL CORPORATIONS

18:7-19.2 Payment of filing fee

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

(f) If the privilege period of the professional corporation is shorter than a year, the fee and fee cap may be prorated by months. In such an instance, a fraction of a month is deemed a month.

(g) In the event a professional is employed by two or more professional corporations, the fee for that professional shall be prorated between the professional corporations by the number of months and the days per month the professional worked at each professional corporation.

(h) In the event the professional corporation is part of a combined group, the fee is calculated on an entity by entity basis, but in situations where the fee is allocated, the professional corporation shall use the group denominator and not its own denominator.

SUBCHAPTER 20. TREATMENT OF S CORPORATIONS

18:7-20.1 through 18:7-20.3 (Reserved)

18:7-20.4 New Jersey S corporation status and New Jersey Qualified Subchapter S Subsidiary status

(a) For privilege periods beginning on and after December 22, 2022, Federal S corporations and Federal Qualified Subchapter S Subsidiaries automatically receive New Jersey S corporation and New Jersey Qualified Subchapter S Subsidiary status, respectively. There is no longer a requirement for a separate New Jersey S corporation election for a Federal S corporation. Any S corporation or Qualified Subchapter S Subsidiary doing business in New Jersey, or having or exercising its franchise in New Jersey, or deriving receipts, engaging in contracts, or employing or owning capital or property in New Jersey, or registered to do business in New Jersey, that does not elect to be taxed as a C corporation for New Jersey purposes will be taxed as a New Jersey S corporation or New Jersey Qualified Subchapter S Subsidiary. For New Jersey S corporation or New Jersey Qualified Subchapter S Subsidiary that are taxed as C corporations, see (e) and (f) below.

(b) S Corporations and Qualified Subchapter S Subsidiaries with Federal acceptance letters with a starting date in said letter before December 22, 2022, that made an affirmative New Jersey S corporation or Qualified S corporation election in privilege periods beginning before December 22, 2022, continue to file the CBT-100S as New Jersey S corporations and New Jersey Qualified Subchapter S Subsidiaries in the manner that New Jersey S corporations and New Jersey Qualified Subchapter S Subsidiaries would normally file. However, they may prospectively elect C corporation status for New Jersey purposes, as described below.

(c) Any Federal S corporation or Federal Qualified Subchapter S Subsidiary that never elected that status for New Jersey purposes for periods beginning before December 22, 2022, and is seeking retroactive New Jersey S corporation or Qualified Subchapter S Subsidiary status, will need to make an affirmative retroactive New Jersey S corporation or Qualified Subchapter S Subsidiary election for those periods, and follow the administrative procedures set forth by the Division of Revenue and Enterprise Services for making such retroactive election filings.

(d) Businesses that receive their Federal approval letter authorizing them to file as a Federal S corporation or Federal Qualified Subchapter S Subsidiary after December 22, 2022, will submit the letter to New Jersey when they complete their business registration with the Division of Revenue and Enterprise Services; or if the business did not submit their Federal acceptance letter at the time of registration, they can either provide the documentation when filing the S corporation return (Form CBT-100S) or use the Division of Revenue and Enterprise Services' S Corporation election system to submit the documentation.

(e) Federal S corporations and Qualified Subchapter S Subsidiaries that were taxed as a C corporation for New Jersey purposes for privilege periods before December 22, 2022, may continue to be so taxed by filing the applicable CBT return (other than the CBT-100S) and by checking the applicable box on the return.

(f) Federal S corporations and Qualified Subchapter S Subsidiaries that were taxed as a C corporation for New Jersey purposes for privilege periods before December 22, 2022, but elect to be taxed as a New Jersey S corporation or a New Jersey Qualified Subchapter S Subsidiary thereafter, must submit Shareholder Jurisdictional Consents either through the Division of Revenue and Enterprise Services S corporation election portal or as part of the CBT-100S.

(g) Federal S corporations and Qualified Subchapter S Subsidiaries that first elect to be taxed as a C corporation for New Jersey purposes for privilege periods beginning on and after December 22, 2022, must file/maintain a C Corporation Tax Status Election Consent. The S corporation or Qualified Subchapter S Subsidiary has until the later of the original due date of the return or the extended due date of the return (if an extension to file a return was submitted) to elect to be taxed as a C corporation for New Jersey purposes. Taxpayers can make such an election by filing the applicable CBT return (other than the CBT-100S),

and checking the applicable box on the return. A taxpayer electing to be taxed as a C corporation is required to make installment payments of estimated tax and is subject to interest on the underpayment of estimated tax unless an exception applies. See N.J.A.C. 18:7-3.13.

1. The election to be taxed as a C corporation as set forth at N.J.S.A. 54:10A-5.22(d), requires 100 percent shareholder consent. However, N.J.S.A. 54:10A-5.22(d) does not require the consent to be attached to the returns. The taxpayer must retain proof of the consent as part of their books and records and provide it upon request to Division of Taxation.

2. An S corporation or Qualified Subchapter S Subsidiary has until the later of the original due date of the return or the extended due date of the return (if an extension to file a return was submitted) to elect to be taxed as a C corporation, and this is also the last day for shareholders to consent. However, if there are reasonable delays in obtaining shareholder consent, the Division of Taxation will not penalize the S corporation by revoking its election to be taxed as a C corporation and refunding the taxes paid if an S corporation or Qualified Subchapter S Subsidiary obtains shareholder consent within a reasonable time.

3. If the S corporation filed a CBT return other than CBT-100S, paid the tax as though it were a C corporation, and had not received 100 percent of shareholder consent during the original period, the S corporation may amend its CBT-return, and file a CBT-100S. In such cases, a taxpayer will receive a refund of the amounts paid as a C corporation, but not owed as a New Jersey S corporation. However, such Corporation Business Tax payments are not credited to the Business Alternative Income Tax.

4. If the S corporation made estimated tax payments as a C corporation, and had not received 100 percent of shareholder consent during the original period, the S corporation may file a CBT-100S, and will receive a refund of the amounts paid as a C corporation, but not the amounts owed as a New Jersey S corporation. However, such Corporation Business Tax payments are not credited to the Business Alternative Income Tax.

(h) An election to be taxed as a C corporation for New Jersey purposes may be revoked if shareholders holding more than 50 percent of the shares of stock of the S corporation on the date on which the revocation is made consent to the revocation. Such revocation shall be effective on the first day of the taxpayer's taxable year if made on or before the 15th day of the third month of the privilege period. If the revocation is made after such date, the revocation shall be effective for the following taxable year, unless the shareholders revoke such revocation before December 31 of the current year. The revocation is made by filing the CBT-100S, submitting the Shareholder Jurisdictional Consents either through the Division of Revenue and Enterprise Services S corporation election portal or as part of the CBT-100S, and maintaining the shareholder revocation consents as part of the taxpayer's books and records.

(i) For Federal S corporations and Federal Qualified Subchapter S Subsidiaries that are part of a larger corporate group that files New Jersey combined returns, an election made pursuant to either N.J.S.A. 54:10A-5.22(d) or 54:10A-4(ff) results in an S corporation or Qualified Subchapter S Subsidiary being included as a taxable member of its combined group and taxed as a C corporation for New Jersey purposes.

1. If a Federal S corporation and its Federal Qualified Subchapter S Subsidiaries each make an election pursuant to either N.J.S.A. 54:10A-5.22(d) or 54:10A-4(ff), the Federal S corporation and its Federal Qualified Subchapter S Subsidiaries shall file a New Jersey combined return and be taxed as C corporations for New Jersey purposes.

2. Federal S corporations and Qualified Subchapter S Subsidiaries do not have to make two elections to be taxed as a C corporation for New Jersey purposes because either the election made pursuant to N.J.S.A. 54:10A-5.22(d) or 54:10A-4(ff) results in being taxed as a C corporation. However, a Federal S corporation that is not part of a group can only make an election to be taxed as a C corporation pursuant to N.J.S.A. 54:10A-5.22(d).

(j) New Jersey conformity to Federal rules and revenue procedures regarding mergers and reorganizations depends on the applicable time the event took place. New Jersey conformity to Federal rules, revenue rulings, and revenue procedures regarding mergers and reorganizations is as follows:

1. Pre-December 22, 2022, entities that became Federal S corporations and Federal Qualified Subchapter S Subsidiaries as a result of a merger or reorganization must proactively elect New Jersey S corporation and New Jersey Qualified Subchapter S Subsidiary status.

2. For mergers or reorganizations on or after December 22, 2022, New Jersey S corporation status and New Jersey Qualified Subchapter S Subsidiary status is automatic for Federal S corporations and Federal Qualified Subchapter S Subsidiaries, and New Jersey generally conforms to the Federal rules, revenue rulings, and revenue procedures regarding mergers and reorganizations.

3. The business shall also register to do business with the Division of Revenue and Enterprise Services, if otherwise required to do so pursuant to Title 14A or Title 42, if it has not registered with the State previously.

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.-9. (No change.)

10. "Unitary business" means, for privilege periods ending before July 31, 2023, 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. For privilege periods ending on and after July 31, 2023, "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, or 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 pursuant to 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.-ii. (No change.)

11. "World-wide basis" and "world-wide group" means, for privilege periods ending on and after July 31, 2022, for the purposes of N.J.S.A. 54:10A-4.6 through 54:10A-4.11 and for the purposes of combined reporting in general pursuant to the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), that the combined group shall include all of the members of the combined group, wherever located or formed. For privilege periods ending on and after July 31, 2022, the combined group shall include all of the income and attributes of those members regardless of how or whether those members file Federal returns or report or include their income in Federal taxable income for Federal purposes, and without regard to any exemption or exclusion from Federal taxable income pursuant to the terms of a tax treaty; provided, however, any deductions that are allowed pursuant to the Federal Internal Revenue Code that are also allowable pursuant to the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), that would apply to a U.S. corporation, but that a non-U.S. corporation is prohibited from claiming for Federal corporation income tax purposes because the corporation's income was not included in Federal taxable income for any reason or because the corporation is a non-U.S. corporation shall be allowed for the non-U.S. corporation members of the combined group for New Jersey corporation business tax purposes as though those non-U.S. corporation members were U.S. corporations. For more information, see N.J.A.C. 18:7-21.7.

12. "Captive Real Estate Investment Trust" means, for privilege periods ending on and after July 31, 2023, a real estate investment trust that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock 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, is not exempt from Federal income tax, and is not a real estate investment trust. For purposes of this definition, a "Captive Real Estate Investment Trust" shall not include any Captive Real Estate Investment Trust of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or Federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion. For privilege periods ending on and after July 31, 2023, any voting stock in a real estate investment trust that is held in a segregated asset account of a life insurance corporation, as described at section 817 of the Internal Revenue Code (26 U.S.C. § 817), shall not be taken into account for purposes of determining whether a real estate investment trust is a Captive Real Estate Investment Trust. For purposes of this definition, an association taxable as a corporation shall not include any listed Australian property trust or any qualified foreign entity.

For privilege periods ending on and after July 31, 2023, a Captive Real Estate Investment Trust shall be taxed in the same manner as a C corporation, and subsection d. of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5(d)) shall not apply. A Captive Real Estate Investment Trust shall not be permitted to claim any deductions or expenses that were permitted for Federal purposes, solely as a result of the entity being a real estate investment trust, when computing Federal taxable net income. A Captive Real Estate Investment Trust shall be a member of a combined group and shall be included as a member on the combined return. For more information, see N.J.A.C. 18:7-21.3(g).

As used in this definition:

"Australian property trust" means an Australian unit trust that is registered as a managed investment scheme pursuant to the Australian Corporations Act, and in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market; or an entity organized as a trust, provided that a listed Australian property trust owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests of shares of the trust.

"Qualified foreign entity" means a corporation, trust, association, or partnership that is organized outside the laws of the United States and that satisfies the following criteria:

1. At least 75 percent of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined at subparagraph (B) of paragraph (5) of subsection (c) of section 856 of the Internal Revenue Code (26 U.S.C. § 856), including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and United States Government securities;

2. The entity is not subject to tax on amounts distributed to its beneficial owners, or is exempt from entity-level taxation;

3. The entity distributes, on an annual basis, at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest;

4. No more than 10 percent of the voting power or value in the entity is held directly, indirectly, or constructively by a single entity or individual, or the shares or certificates of beneficial interests of the entity are regularly traded on an established securities market; and

5. The entity is organized in a country that has a tax treaty with the United States.

13. "Captive regulated investment company" means, for privilege periods ending on and after July 31, 2023, a regulated investment company that is not regularly traded on an established securities market, and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than a regulated investment company, that is not exempt from Federal income tax. For purposes of this definition, a "captive regulated investment company" shall not include any captive regulated investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or Federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion.

For privilege periods ending on and after July 31, 2023, any voting stock in a regulated investment company that is held in a segregated asset account of a life insurance corporation, as described at section 817 of the Internal Revenue Code (26 U.S.C. § 817), shall not be taken into account for purposes of determining whether a regulated investment company is a captive regulated investment company.

For privilege periods ending on and after July 31, 2023, a captive regulated investment company shall be taxed in the same manner as a C corporation and subsection d. of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) shall not apply. A captive real estate investment company shall not be permitted to claim any deductions or expenses that were permitted for Federal purposes, solely as a result of the entity being a regulated investment company, when computing Federal taxable net income. A captive regulated investment company shall be a member of a combined group and shall be included as a member on the combined return. For more information, see N.J.A.C. 18:7-21.3(g).

14. "Captive investment company" means, for privilege periods ending on and after July 31, 2023, an investment company that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than an investment company, that is not exempt from Federal income tax. For purposes of this definition, a "captive investment company" shall not include any captive investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or Federally chartered bank, savings bank, or savings and loan association with assets that do not exceed $15 billion. For privilege periods ending on and after July 31, 2023, any voting stock in an investment company that is held in a segregated asset account of a life insurance corporation, as described at section 817 of the Internal Revenue Code, shall not be taken into account for purposes of determining whether an investment company is a captive regulated investment company.

For privilege periods ending on and after July 31, 2023, a captive investment company shall be taxed in the same manner as a C corporation, and subsection d. of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) shall not apply. A captive investment company shall not be permitted to claim any deductions or expenses that were permitted for Federal purposes, solely as a result of the entity being an investment company, when computing Federal taxable net income. A captive investment company shall be a member of a combined group and shall be included as a member on the combined return. For more information, see N.J.A.C. 18:7-21.3(g).

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.-5. (No change.)

6. S corporations, except as provided at (b) below;

7. (No change.)

8. Qualified Subchapter S Subsidiaries that have elected to be taxed as a C corporation for New Jersey purposes;

9. Qualified Subchapter S Subsidiaries that elected to be included in the combined group;

10.-11. (No change.)

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

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);

14. Captive investment companies;

15. Captive regulated investment companies; and

16. Captive real estate investment trusts.

(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, but are permitted to petition for inclusion pursuant to (f) below;

2. An S corporation that does not elect to be included as part of the combined group reported on the combined return either pursuant to N.J.S.A. 54:10A-4(ff) or as a result of electing C corporation status pursuant to N.J.S.A. 54:10A-5.22(d). Such S corporations shall file separate returns. S corporations that do elect to be taxed as a C corporation and included as a member of a combined group as a result of N.J.S.A. 54:10A-4(ff) or 54:10A-5.22(d) are subject to the rules of combined reporting;

3.-6. (No change.)

(c) (No change.)

(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)-(f) (No change.)

(g) For the purposes of determining whether a real estate investment trust, investment company, or regulated investment company that is owned by a bank or savings and loan association is included as a member of the combined group as a captive, the bank or savings and loan association will determine whether its assets exceed $15 billion by using an average value for the group privilege period. If the average assets of the bank or savings and loan association for the group privilege period are $15 billion or less, a real estate investment trust, investment company, or regulated investment company owned by the bank is not a "captive" and would file a separate return. The combined group cannot file a short-period return merely because the value of the bank's or savings and loan association's assets changed during the group privilege period.

1. The average value of the assets shall be determined in accordance with U.S. G.A.A.P. or I.F.R.S. as reported for financial and regulatory reporting purposes using the quarterly reports filed with the FDIC and Federal Reserve.

2. There are instances where a bank or savings loan association may determine whether its assets exceed the $15 billion threshold without using the average value of the group's 12-month privilege period. The following are some of the scenarios, but are not all inclusive:

i. If there is a merger or acquisition occurring during the last month of the group privilege period that involves two or more banks or savings and loan associations and the combined annual average assets exceed $15 billion, the bank or savings and loan association can use the average value of the assets during the preceding 11 months in the group privilege period.

ii. If there is a merger or acquisition occurring during the first 11 months of the group privilege period that involves two or more banks or savings and loan associations and the combined annual average of the assets exceed $15 billion, the surviving bank can use a weighted average value of the assets from the pre-merger months and the post-merger months to determine whether its assets exceed the annual $15 billion limit.

iii. Regardless of whether two combined groups are merging or a combined group is reorganizing its business structure, if the banks or savings and loan associations merge into a newly created entity that is also a bank or savings and loan association that is the surviving entity in the merger, then the assets of the non-surviving entity are treated as the assets of the new entity. Thus, for the months during the privilege period, each bank would determine its own average assets for the months the non-surviving entities existed during the period and not for the full 12 months. If the new corporation is the new managerial member of the combined group, the combined group must update its managerial member information instead of requesting a new NU (combined group identification) number.

iv. If two previously unrelated separate return filing banks or savings and loan associations merge into a newly created entity ("NewCo") that is also a bank or savings and loan association that is the surviving entity in the merger, then the assets of the two non-surviving entities are treated as the assets of the newly created entity. The two non-surviving banks would file short period returns for the months prior to the merger, and each bank would determine its own average assets for the months prior to the merger. If, as a result of the merger, NewCo's assets exceed $15 billion for its privilege period, then it would file a combined return with its "captives." In addition, NewCo must register as the managerial member of the combined group.

v. If there is a temporary (less than 30 days) abnormal market fluctuation that results in the value of the bank's or savings and loan association's assets temporarily increasing or decreasing, the annual average asset values may be calculated without including the temporary abnormal increase or decrease in assets values.

vi. If an event, such as a natural disaster (Act of God), nationalization by a government, war, civil unrest, or riot, results in the bank or savings and loan association having to write off certain assets as a total loss during the group privilege period, the bank or savings and loan association must include the value of the impacted assets in the same manner as it is required to report for financial and regulatory reporting purposes. For example, a bank owns $2 billion commercial bonds in an insurance company and during the group privilege period a Category 4 hurricane directly hits the areas where the insurance company insures the majority of its customers' risks resulting in the insurance company declaring insolvency because the bonds' worth decreased to negative $1 billion. As a result, the bank has to report the negative $1 billion as the asset value of the bonds for the group privilege period for financial and regulatory purposes. For the group privilege period, the bank would report the value of the bonds as negative $1 billion.

vii. If an event, such as a natural disaster (Act of God), nationalization by a government, war, civil unrest, or riot, results in the bank or savings and loan association having to mark down the value of the assets impacted by the event, the bank or savings and loan association must include the value of the impacted assets in the same manner as it is required to report for financial and regulatory reporting purposes. For example, a bank owns commercial real estate in County A valued at $150 million and a drought caused a riot that damaged, but did not destroy, the real estate. As a result, the bank had to mark down the value of the building to $140 million for financial and regulatory reporting purposes. For the group privilege period, the bank would report the asset value of the real estate at $140 million.

3. Captive investment companies, captive regulated investment companies, and captive real estate investment trusts that are part of a combined group cannot file separate returns except to align the income reporting for the group privilege period. If the "captives" have a different privilege period than the group privilege period, the investment companies, regulated investment companies, or real estate investment trusts must file short period returns for the months preceding the start of the group privilege period. If they have a different Federal tax year than the group privilege period, the income of the investment companies, regulated investment companies, and real estate investment trusts occurring during the months of the group privilege period must be reported on the combined return, and a short period return must be filed for the months preceding the investment companies, regulated investment companies, and real estate investment trusts being included as members of the combined group.

i. If in a subsequent group privilege period, the investment companies, regulated investment companies, and real estate investment trusts were excluded from the combined group, due to their parent meeting the exception for bank and savings and loan associations with assets valued at $15 billion or less, then the investment companies, regulated investment companies, and real estate investment trusts would file separate returns. However, the investment companies, regulated investment companies, and real estate investment trusts will maintain the same 12-month reporting period that these entities had while they were members of the

combined group, even if the months differ from the entity's tax year months for Federal purposes. This is so that if/when the bank's or savings and loan association's average annual assets exceed $15 billion in a subsequent group privilege period, these investment companies, regulated investment companies, and real estate investment trusts will not have to file short period returns to subsequently realign their income reporting with the combined group for New Jersey purposes.

4. Banks or savings and loan associations and the captive investment companies, captive regulated investment companies, or captive real estate investment trusts are subject to the rules of combined reporting and ordinarily are included as members of a New Jersey combined return (CBT-100U). However, there are some instances where banks and savings and loan associations have previously filed separate returns in periods ending before July 31, 2023, and as a result of the law changes now must file combined returns.

i. If the annual average value of the bank's or savings and loan association's assets exceed $15 billion for the privilege period, the bank or savings and loan association and its captive investment companies, regulated captive investment companies, and captive real estate investment trusts must file a New Jersey combined return. If the bank or savings and loan association is not already a member of a combined group, it must register as the managerial member; and the group privilege period will be the bank's or savings and loan association's 12-month privilege period. However, if the bank or savings and loan association is a member of an existing combined group, then the privilege period for the existing combined group will be the same as that existing group's managerial member.

ii. If the bank's or saving and loan association's assets are $15 billion or less for the privilege period, and the bank or saving and loan association is not part of a combined group, then the bank or savings and loan association and its investment companies, regulated investment companies, and real estate investment trusts must each file separate returns. However, if the bank or savings and loan association is a member of a combined group, the bank or savings and loan association will continue to be a member of the combined group, and the investment companies, regulated investment companies, and real estate investment trusts owned by the bank or savings and loan association will file separate returns for the privilege period.

5. Whether investment companies, regulated investment companies, and real estate investment trusts are included in the combined group or file separate returns varies depending on the value of the assets of the bank or savings and loan association owner, and the timing of the merger or acquisition. The following examples illustrate whether the investment companies, regulated investment companies, and real estate investment trusts file as part of the combined group or file separate returns:

i. Example 1:

Bank A is a member of Combined Group A. The value of Bank A's assets is $15.5 billion at the start of the group privilege period. Bank A owns REIT A and Investment Co A. Bank B is a member of Combined Group B. The value of Bank B's assets is $10 billion at the start of the group privilege period. Bank B owns RIC B. Combined Group A acquires Combined Group B on August 1. Shortly thereafter, Bank B is merged into Bank A. Note: The average value of Bank A's assets for the 12-month group privilege period exceeds $15 billion. The average value of Bank B's assets for the pre-merger and acquisition months is less than $15 billion.

Combined Group A files a combined return for the full 12-month group privilege period on which REIT A and Investment Co A are included as members of the combined group as "captives." Combined Group B will file a short period combined return for the months January 1 through July 31. For the period of August 1 through December 31, they will be included as members of Combined Group A's combined return. RIC B will file a separate short period return for the months January 1 through July 31. For the period of August 1 through December 31, RIC B will be included as a member of Combined Group A since Bank A's average assets exceed $15 Billion.

ii. Example 2:

Bank C is a member of Combined Group C. The value of Bank C's assets is $12.5 billion at the start of the group privilege period. Bank C owns REIT C and Investment Co C. Bank D is a member of Combined Group D. Bank D owns RIC D. The value of Bank D's assets is $11 billion at the start of the group privilege period. Combined Group C acquires Combined Group D on December 1. Shortly thereafter, Bank D is merged into Bank C. Combined Group C files a combined return for the full 12-month group privilege period.

Combined Group D will file a short period combined return for the months January 1 through November 30. For the period of December 1 through December 31, they will be included as members of Combined Group C's combined return. As the merger and acquisition happened in the last month of the group privilege period and Bank C's and Bank D's average value of their respective assets was less than $15 billion during the preceding 11 months, REIT C, Investment Co C, and Regulated Investment Co D are not included as "captives" for the group privilege period. REIT C, Investment Co C, and RIC D will file separate returns for the full 12-month period beginning January 1 and ending December 31. In the subsequent group privilege period for Combined Group C, REIT C, Investment Co C, and Regulated Investment Co D will be included as members of the combined group since they are "captives," assuming Bank C's average asset value for the group privilege period is in excess of $15 billion.

iii. Example 3:

Same facts as in Example 2 above, except Bank D also owns REIT D and Investment Co D. Shortly after the December 1 acquisition, REIT D and Investment Co D merged into REIT C and Investment Co C, respectively.

Combined Group C files a combined return for the full 12-month group privilege period. Combined Group D will file a short period combined return for the months January 1 through November 30. For the period of December 1 through December 31, they will be included as members of Combined Group C's combined return. As the merger and acquisition happened in the last month of the group privilege period and Bank C's and Bank D's average value of their respective assets was less than $15 billion during the preceding 11 months, REIT C, Investment Co C, Investment Co D, and REIT D, are not included as "captives" for the group privilege period and must file separate returns for the period. However, REIT D and Investment Co D will file short period returns for the months prior to the merging into REIT C and Investment Co C (that is, January 1 through November 30). Assuming the average annual assets of Bank C remains in excess of $15 billion during the subsequent group privilege period for Combined Group C, REIT C and Investment Co C will be included as members of the Combined Group C since they are "captives."

iv. Example 4:

The voting stock of REIT ABC is owned as follows: 95 percent by a life insurance company ("X") in a segregated asset account described at I.R.C. § 817, one percent by X in its general account, and four percent by an unaffiliated insurance company ("Y") in a segregated asset account. REIT ABC is not captive because the voting stock held by X and Y in segregated asset accounts pursuant to I.R.C. § 817 are not taken into account in determining the ownership of total voting stock, that is:

$$\frac{\text{1\% voting stock owned by X in general account}}{\text{100\% of REIT voting stock}} = 1\% \ (<50\%)$$

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

(a) (No change.)

(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) or N.J.S.A. 54:10A-4.16. 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 the current privilege period plus five 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)-(j) (No change.)

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

(a) (No change.)

(b) Members of a combined group are jointly and severally liable.

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. (No change.)

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 pursuant to 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. (No change.)

ii. For water's-edge combined group or affiliated group combined return, for a member that is incorporated or formed in a foreign nation with a comprehensive tax treaty with the United States, entire net income shall not include an item of income or loss excluded or exempted from Federal taxable income pursuant to the terms of the treaty, and no other deduction, exclusion, or elimination will be permitted for such income and loss items excluded by this paragraph.

iii. For a non-U.S. corporation that is a member of a water's-edge group or affiliated group New Jersey combined return, the member shall only include in entire net income the following: in the case of a member that files a Federal tax return, the member shall only include the member's effectively connected income or loss reported for Federal purposes, as modified by the provisions of the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.); and in the case of a member that does not file a Federal tax return but that has United States source income or loss, the member shall only include that United States source income or loss, as modified by the provisions of the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), to the extent that United States source income or loss would otherwise be effectively connected income or loss if the member would have been conducting a business that is effectively connected to the United States. For the purpose of determining what income or loss to include in entire net income pursuant to this paragraph, the member shall take into account only the items of expense and allocation factor receipts attributable to that income or loss.

(1) With regard to a member that has U.S. source income or loss but did not file a Federal tax return, when computing its entire net income or loss, the member will compute its income or loss as though the member was conducting a business effectively connected to the United States, and only include the U.S. source income that would be effectively connected income or loss pursuant to the Internal Revenue Code, had the member been conducting a business effectively connected to the United States.

(2) Non-U.S. corporations that are members of combined groups (filing on an affiliated group or water's-edge group basis) are not required to add back the items of income (or loss) not included in Federal taxable income because those items are excluded from Federal taxable income as the result of the tax treaty between the nation of incorporation and the United States. The member must report such items of income (or loss) and amounts reported to the Federal government by providing a copy of the form 8833 filed with the Federal government to the managerial member to attach to the combined return. In the event that the member did not file any return or form with the Federal government, but the member is treaty protected, a pro forma form 1120-F and a pro forma form 8833 must be prepared and attached to the combined return for that member.

iv. For a world-wide group, pursuant to N.J.S.A. 54:10A-4(kk), the combined group shall include all of the income and attributes of such members regardless of how or whether such members file Federal returns or report or include such income in Federal taxable income, without regard to any exemption or exclusion from Federal taxable income pursuant to the terms of a tax treaty; provided, however, any deductions allowed pursuant to the Federal Internal Revenue Code that are allowable pursuant to the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.), that would apply to a U.S. corporation but for which a non-U.S. corporation is prohibited for Federal corporation income tax purposes because said income was either not included in Federal taxable income for any reason or because said corporation is a non-U.S. corporation, shall be allowed for such non-U.S. corporation members of the combined group for New Jersey Corporation Business Tax purposes as though said non-U.S. corporation members were U.S. corporations.

v. Where there are material differences in accounting methods between U.S. G.A.A.P. and I.F.R.S. that cause a material numerical difference, taxpayers must include an explanation for the difference in their books, records, and work papers, which shall be made available to the Division of Taxation upon request.

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

1.-2. (No change.)

3. For privilege periods ending on and after July 31, 2023, 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, and the unitary partnership shall not be liable for the portion of the payment imposed pursuant to N.J.S.A. 54:10A-15.11 that is directly, or indirectly in the case of a tiered partnership, attributable to that member.

(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.-3. (No change.)

4. For privilege periods ending on and after July 31, 2023, the income amounts required to be included in Federal taxable income pursuant to 26 U.S.C. § 951A, shall be considered a dividend.

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

(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.

1. For privilege periods ending on and after July 31, 2023, when subtracting any net operating losses calculated pursuant to N.J.S.A. 54:10A-4(v) or the combined group net operating losses calculated pursuant to N.J.S.A. 54:10A-4.6(h), the limitation set forth at I.R.C. § 172(a)(2)) shall apply, except that August 1, 2023, is substituted for the reference to January 1, 2018, in subparagraph (A) of paragraph (2) of subsection (a) at I.R.C. § 172 (26 U.S.C. § 172), and July 31, 2023, is substituted for the reference to December 31, 2017, in subparagraph (B) of paragraph (2) of subsection (a) of I.R.C. § 172 (26 U.S.C. § 172).

(h)-(j) (No change.)

(k) Income excluded from Federal taxable income pursuant to a tax treaty is not added back into the entire net income of a combined group filing on either a water's-edge or affiliated group basis, 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 1: Group A files a water's-edge combined return. Member 1 reports intercompany income for Federal purposes from member 2, 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. Although the income would have been eliminated had the non-U.S. income of member 2 not been treaty protected, 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 income amount by member 2's income that was never included in entire net income for Federal purposes.

2. Example 2: Same facts as (k)1 above except that the income was not income attributable to intercompany transactions between member 1 and member 2. Member 2's non-U.S. treaty protected income is attributable to operations from international shipping. Although the income would have been excludable for member 2 pursuant to N.J.S.A. 54:10A-4(k)(9), since member 2's income is already excluded pursuant to the terms of a treaty, member 2 cannot exclude the income twice.

3. Example 3: Same facts as (k)1 above, except that the income was not income attributable to intercompany transactions between member 1 and member 2. Member 2's non-U.S. treaty protected income is attributable to international banking facility eligible activities in Europe. Although the income would have been eligible for the international banking facility deduction pursuant to N.J.S.A. 54:10A-4(k)(4), since member 2's income is excluded pursuant to the terms of a treaty. Member 2 cannot deduct the income twice.

18:7-21.8 Reporting the income of certain members

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

(c) Non-U.S. corporations that are members of combined groups (filing on an affiliated group or water's-edge group basis) are not required to add back the items of income (or loss) not included in Federal taxable income because those items are excluded from Federal taxable income as the result of the tax treaty between the nation of incorporation and the United States. The member must report such income items and amounts reported to the Federal government by providing a copy of the form 8833 filed with the Federal government to the managerial member to attach to the combined return. In the event that the member did not file any return or form with the Federal government but the member is treaty protected, a pro forma form 1120-F and a pro forma form 8833 must be prepared and attached to the combined return for that member.

(d) Where there are material differences in accounting methods between U.S. G.A.A.P. and I.F.R.S. that cause a material numerical difference, taxpayers must include an explanation for the difference in their books, records, and work papers, which shall be made available to the Division of Taxation upon request.

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

(a) (No change.)

(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 combined group shall be entitled to 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 combined group shall apply the group allocation factor and shall subtract the unused unexpired converted prior net operating loss carryovers.

(d) If, after allocating the entire net income and subtracting the unused unexpired converted prior net operating loss carryovers, the combined group still has combined group allocated entire net income greater than zero, then the combined group may use the net operating loss carryovers.

(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, but ending before July 31, 2023, the dividend exclusion is an allocated dividend exclusion and 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. For privilege periods ending on and after July 31, 2023, the dividend exclusion is pre-allocation regardless of whether entire net income is zero or less than zero.

1. (No change.)

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 for privilege periods ending before July 31, 2023, the combined group shall use the group allocation factor on Schedule J.

ii. In computing the total amount of the dividends and deemed dividends excluded for privilege periods ending on and after July 31, 2023, the exclusion shall be deducted from entire net income after the State modifications that increase Federal entire net income but before the other State modifications that reduce entire net income and before the allocation of entire net income to this State.

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 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. For privilege periods ending before July 31, 2023, prior net operating loss conversion carryover deductions of members may be used as follows:

Recodify existing 1.-5. as i.-v. (No change in text.)

2. For privilege periods ending on and after July 31, 2023, prior net operating loss conversion carryover deductions of members may be used as follows:

i. The remaining balance of prior net operating loss conversion carryover deductions of the members of the combined group shall be pooled together and allowed to offset the entire net income allocated to this State of either the combined group for which the corporation is a member, while said corporation is a member, or the corporation that created the prior net operating loss conversion carryover if the corporation departs the combined group before the corporation's respective prior net operating loss conversion carryover has been completely used.

ii. The prior net operating loss conversion carryover deduction shall be applied against the entire net income allocated to this State before the net operating loss carryover.

iii. When pooling and using the prior net operating loss conversion carryovers of members, the group shall use tracing measures to track the member's prior net operating loss conversion carryovers in case the member departs the combined group before the member's prior net operating loss conversion carryovers are completely used. Such tracing must be done on a worksheet that is maintained by the combined group and members as part of their books and records, and made available upon request to the Division of Taxation.

iv. A member of a combined group may not sell a prior net operating loss conversion carryover to other members of the combined group.

3. Taxpayers are not permitted to adjust their prior net operating loss conversion carryovers to reverse the ordering rules for the prior net operating loss conversion carryovers and the dividend exclusion for the periods the prior net operating loss conversion carryovers were originally generated.

(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 ending before July 31, 2023, the members and the combined group shall calculate and use the net operating losses and net operating loss carryovers as follows:

Recodify existing 1.-5. as i.-v. (No change in text.)

vi. For net operating losses generated in privilege periods ending before July 31, 2023, taxpayers are not permitted to adjust their net operating losses and net operating loss carryovers to reverse the ordering rules for the net operating losses and net operating loss carryovers and the dividend exclusion.

2. For privilege periods ending on and after July 31, 2023, the members and the combined group shall calculate and use the net operating losses and net operating loss carryovers as follows:

i. For privilege periods beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required, if the computation of a combined group's entire net income allocated to this State results in a net operating loss, a combined 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 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;

ii. Where 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, then the combined group may use the net operating loss carryover. Any amount of net operating loss carryover that is deducted by the combined group shall reduce the amount of net operating loss carryover that may be carried over by the combined group;

iii. Net operating loss carryovers of the taxable members of the combined group may be pooled together with the combined group net operating loss carryover for use by the combined group or for use by the taxable member that generated the net operating loss carryover for such member's activities that are independent of the unitary business of the combined group; provided, however, the combined group and the members of the combined group shall use tracing protocols for all net operating loss carryovers. Such tracing must be done on a worksheet that is kept by the combined group and members as part of their books and records, and made available upon request to the Division of Taxation;

iv. A net operating loss carryover or combined group net operating loss carryover shall not include any net operating loss incurred during any privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required;

v. The taxable members of the combined group shall track their proportionate share of the combined group net operating loss carryovers used. 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 (1945), 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;

vi. For privilege periods ending on and after July 31, 2023, each taxable member of a combined group shall track that member's proportionate share of any combined group net operating loss carryovers used; and

vii. The limitation set forth at I.R.C. § 172(a)(2) shall apply, except that August 1, 2023, is substituted for the reference to January 1, 2018, in subparagraph (A) of paragraph (2) of subsection (a) at I.R.C. § 172 (26 U.S.C. § 172), and July 31, 2023, is substituted for the reference to December 31, 2017, in subparagraph (B) of paragraph (2) of subsection (a) at I.R.C. § 172 (26 U.S.C. § 172).

3. (No change in text.)

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

(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 described at (b) 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, but before July 31, 2023, 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. In privilege periods ending on and after July 31, 2023, 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 net income on Schedule X (if applicable), or the taxpayer may share these separate return post-allocation net operating loss carryovers with 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 for privilege periods ending before July 31, 2023. 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 for privilege periods ending before July 31, 2023. In privilege periods ending on and after July 31, 2023, the allocated entire net income of the combined group and the separate activity entire net income (allocated to this State) of combined group members derived from activities that are not part of the unitary business of the combined group are added together and the separate activity net operating loss carryovers may be pooled with the combined group net operating loss carryovers for use by the group, or the member may apply their separate activity net operating loss carryovers against their portion of entire net income allocated to this State.

(h)-(k) (No change.)

(l) For privilege periods ending on and after July 31, 2023, a combined group shall, before subtracting the prior net operating loss conversion carryforwards and subtracting the net operating losses of the combined group when computing the total taxable net income, first add together the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group, and then subtract the prior net operating loss conversion carryforwards, and then the net operating losses.

Thus, whether a member with separate net operating loss carryovers shares with the group or only uses it against their portion of allocated entire net income, is a decision by the member.

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. For privilege periods ending on or after July 31, 2019, but before July 31, 2023, the members of a combined group shall source the receipts for allocation purposes as follows:

Recodify existing 1.-2. as i.-ii. (No change in text.)

2. For privilege periods ending on or after July 31, 2023, all combined groups must use the *Finnigan Method* of sourcing receipts and the combined group (regardless of the combined return filing method) shall source the receipts for allocation purposes as follows:

i. The allocation and sourcing of unitary receipts is done at the group level, not the member level; and

ii. In computing the numerator and denominator of the allocation factor of the combined group, the combined group, as one taxpayer, shall take into account all of the unitary receipts of all of the members.

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

(f) Member receipts that are non-unitary to the combined group or are attributable to income that is excluded from entire net income are excluded from the allocation factor of the combined group.

(g) (No change in text.)

(h) Receipts attributable to items of income excluded or exempt from entire net income shall not be included in the allocation factor.

1. For non-U.S. corporations that are members of either water's-edge or affiliated groups, the receipts attributable to treaty protected income shall be excluded from the allocation factor.

2. For non-U.S. corporations that are members of either water's-edge or affiliated groups, only the receipts attributable to effectively connected income (or what would be effectively connected income for such members that did not file a Federal return but have U.S. source income) shall be included in the allocation factor.

3. World-wide group members shall include world-wide receipts; however, with respect to the non-U.S. corporations, the receipts shall be reported in the same manner as a U.S. corporation, taking into account the amounts of any resulting reduction in receipts from the corporation computing its entire income as though it were a U.S. corporation for Federal purposes.

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. (No change.)

2. Each member, incorporated or formed pursuant to the laws of a foreign nation, 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. (No change.)

4. Any member, wherever incorporated or formed, that is not included at N.J.S.A. 54:10A-4.11.a(1), (2), or (3), that has effectively connected income or loss within the meaning of the Federal Internal Revenue Code, as modified by the provisions of the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.). For any member that is included pursuant to N.J.S.A. 54:10A-4.11.a(5), the member shall be included in the combined group only to the extent of its effectively connected income or loss, taking into account items of expense and allocation factors associated with the effectively connected income or loss.

(b)-(f) (No change.)

18:7-21.16 World-wide group election

(a)-(g) (No change.)

(h) For a world-wide group, pursuant to N.J.S.A. 54:10A-4(kk), the combined group shall include all of the income and attributes of such members regardless of how or whether such members file Federal returns or report or include such income in Federal taxable income for Federal purposes and without regard to any exemption or exclusion from Federal taxable income pursuant to the terms of a tax treaty; provided, however, any deductions allowed pursuant to the Federal Internal Revenue Code that are allowable pursuant to the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.) that would apply to a U.S. corporation, but for which a non-U.S. corporation is prohibited for Federal corporation income tax purposes because said income was either not included in Federal taxable income for any reason or because said corporation is a non-U.S. corporation, shall be allowed for such non-U.S. corporation members of the combined group for New Jersey Corporation Business Tax purposes as though said non-U.S. corporation members were U.S. corporations.

(i) The election can be revoked prior to the expiration of the binding period by written request to the Director of Taxation for reasonable cause including, but not limited to, a substantial change in ownership, members of the combined group or principal business, or changes in tax law, regulation, or policy.

18:7-21.17 Affiliated group election

(a)-(d) (No change.)

(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. (No change.)

2. With respect to (e)1 above, only the members that are treated as corporations pursuant to the Federal I.R.C. and Federal S corporations that have elected to be taxed as a C corporation as a result of either N.J.S.A. 54:10A-5.22.d or because the S corporation elected to be included in the combined return, the S corporation will be included as a member.

3. The New Jersey affiliated group shall be determined by including corporations, as prescribed 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)-(k) (No change.)

(l) The election can be revoked prior to the expiration of the binding period by written request to the Director of Taxation for reasonable cause including, but not limited to, a substantial change in ownership, members of the combined group or principal business, or changes in tax law, regulation, or policy.

18:7-21.18 Net deferred tax liability deduction

(a)-(o) (No change.)

(p) The net deferred tax liability deduction, as amended at P.L. 2023, c. 96, may still be taken for privilege periods beginning on and after January 1, 2023. However, the deduction is to be taken according to the following schedule outlined at N.J.S.A. 54:10A-4(k)(16):

1. For group privilege periods beginning on and after January 1, 2023, but before January 1, 2030, the combined group may deduct one percent of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or aggregate change from a net deferred tax asset to a net deferred tax liability, during a group privilege period.

2. For group privilege periods beginning on and after January 1, 2030, the combined group may deduct up to five percent of any remaining unused amount of the deduction during the group privilege period, until the group privilege period in which the total deduction amount has been fully utilized.

3. Example: Group A timely applied for a net deferred tax liability deduction totaling $100 million with the Division, and for most privilege periods averages an entire net income of $8,500,000. For group privilege periods beginning on January 1, 2023, but before January 1, 2030, Group A would be entitled to a $1,000,000 per group privilege period deduction, for a total of $7,000,000 the first seven group privilege periods. For each group privilege period starting with the group privilege period beginning on or after January 1, 2030, Group A would be entitled to a $4,650,000 deduction (($100M - $7M)*0.05) per group privilege period. Subsequently, in 2024, 2031, 2037, 2040, 2044, and 2049, Group A had a net operating loss for each of those respective periods. This would mean that 2056, not 2050, would be the last potential group privilege period year for which Group A could take the net deferred tax liability deduction.

18:7-21.19 Application of the minimum tax

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

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

1. For privilege periods ending on and after July 31, 2023, 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, and the unitary partnership shall not be liable for the portion of the payment imposed pursuant to N.J.S.A. 54:10A-15.11 that is directly, or indirectly in the case of a tiered partnership, attributable to that member.

18:7-21.20 Combined group tax return accounting methods

(a)-(i) (No change.)

(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.

1. Where there are material differences in accounting methods between U.S. G.A.A.P. and I.F.R.S. that cause a material numerical difference, taxpayers must include an explanation for the difference in their books, records, and work papers, which shall be made available to the Division of Taxation upon request.

2. The non-U.S. corporations that are members of combined groups (filing on an affiliated group or water's-edge group basis) are not required to add back the items of income (or loss) not included in Federal taxable income because those items are excluded from Federal taxable income as the result of the tax treaty between the nation of incorporation and the United States. The member must report such income items and amounts reported to the Federal government by providing a copy of the form 8833 filed with the Federal government to the managerial member to attach to the combined return. In the event that the member did not file any return or form with the Federal government but the member is treaty protected, a pro forma form 1120-F and a pro forma form 8833 must be prepared and attached to the combined return for that member.

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 pursuant to N.J.S.A. 54:10A-4(ff). Subsequent to electing to be included in the combined group on the combined return, the S corporation shall be taxed in the same manner and rate as the other members of the combined group. The S corporation does not have to make an additional election to be taxed as a C corporation pursuant to N.J.S.A. 54:10A-5.22(d), as such election for inclusion as a member of a combined group is an election to be taxed as a C corporation.

(b) A Qualified Subchapter S Subsidiary of a New Jersey S corporation that has elected to be included on a combined return pursuant to N.J.S.A. 54:10A-4(ff) must also be included along with its corporate parent S corporation and shall be taxed in the same manner as the other members of the combined group. The Qualified Subchapter S Subsidiary does not have to make an additional election to be taxed as a C corporation pursuant to N.J.S.A. 54:10A-5.22(d), as such election for inclusion as a member of a combined group is an election to be taxed as a C corporation.

(c) An S corporation that has elected to be taxed as a C corporation pursuant to N.J.S.A. 54:10A-5.22(d) must be included as a member of the combined group.

(d) A Qualified Subchapter S Subsidiary that has elected to be taxed as a C corporation pursuant to N.J.S.A. 54:10A-5.22(d) must be included as a member of the combined group.

(e) Only one election is necessary for either an S corporation or a Qualified Subchapter S Subsidiary to be taxed as a C corporation and to be included in the combined group.

18:7-21.27 Principles of Federal consolidated returns applicable

(a)-(g) (No change.)

(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.-2. (No change.)

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) for net operating losses and net operating loss carryovers generated in privilege periods ending before July 31, 2023, but not to net operating losses and net operating loss carryovers generating in privilege periods ending on and after July 31, 2023.

4. The Federal rules and limitations at I.R.C. § 172(a)(2) apply for privilege periods ending on and after July 31, 2023, when subtracting any net operating losses (and when they are utilized by the taxpayer as a carryover) when calculated pursuant to N.J.S.A. 54:10A-4(v) or 54:10A-4.6.h (and when they are utilized by the taxpayer as a carryover) when calculating taxable net income. The limitation set forth in paragraph 2 of subsection (a) at I.R.C. § 172 (26 U.S.C. § 172(a)(2)) shall apply, except that August 1, 2023, is substituted for the reference to January 1, 2018, in subparagraph (A) of paragraph (2) of subsection (a) at I.R.C. § 172 (26 U.S.C. § 172), and July 31, 2023, is substituted for the reference to December 31, 2017, in subparagraph (B) of paragraph (2) of subsection (a) at I.R.C. § 172 (26 U.S.C. § 172).

(i) There are interactions between N.J.S.A. 54:10A-4.15 (in periods prior to repeal), 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.-2. (No change.)

3. For periods ending before July 31, 2023, 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) and none of the other Federal rules governing Federal special deductions apply. For periods ending on and after July 31, 2023, New Jersey does not conform to any of the Federal special deductions, and none of the rules governing Federal special deductions are applicable.

(j)-(k) (No change.)

(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(w), 54:10A-4.6, and 54:10A-4.5.c.