

**TREASURY - TAXATION
DIVISION OF TAXATION**

Corporation Business Tax

Gross Income Tax

Special Adopted and Concurrent Proposed Amendments: N.J.A.C.18:7-1.3, 1.4, 1.6, 1.12, 1.13, 1.15, 1.17, 2.3, 2.11, 2.12, 3.4, 3.6, 3.8, 3.10, 3.13, 3.17, 3.22, 4.11, 5.2, 5.3, 5.13, 7.6, 8.7, 8.10, 8.17, 11.15, 11.17, 13.3, 15.2

Special Adopted and Concurrent Proposed New Rules: N.J.A.C. 18:7-1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 3.14, 5.11, 5.17, 5.18, 17.1, 17.2, 17.3, 17.4, 17.5, 17.6, 17.7, 17.8, 17.9, 17.10, 18.1, 18.2, 18.3, 18.4, 18.5, 18.6, 19.1, 19.2, 19.3, 19.4
18:35-11.1, 11.2, 11.3, 11.4, 11.5, 11.6

Special Amendments and New Rules Adopted and Concurrent Proposed Amendments and New Rules Authorized: February 27, 2003 by Robert K. Thompson, Director, Division of Taxation

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

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These new rules were adopted in accordance with P.L. 2002, c. 40, and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4).

Concurrently, the provisions of these amendments and new rules are being proposed for re-adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted amendments and new rules will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)) if filed on or before the six months expiration date, in accordance with P.L. 2002, c.40.

The agency special adoption and concurrent proposal follows:

Summary

The Business Tax Reform Act, P.L. 2002, c. 40, (sometimes hereinafter referred to as the “BTRA”) was approved July 2, 2002 and became effective for privilege periods beginning on and after January 1, 2002. Assembly Bill 2501 and Senate Bill 1556, the respective Assembly and Senate versions of the legislation, include statements that reflect the legislature’s general and specific intention in passing the bills. By the enactment of the BTRA, a variety of loopholes were closed and some of the underlying reasons for declining revenues under the Corporation Business Tax (sometimes hereinafter referred to as the “CBT”) were addressed. A Business Tax Study Commission was also established by Section 31 of the BTRA (N.J.S.A. 54:10A-41). Its task is to review thoroughly business taxation in New Jersey with respect to some specific areas set forth in the legislation.

The rules set forth herein are intended to supply guidance to taxpayers and interested members of the public and to assist them in meeting their responsibilities under the BTRA. This special adoption and concurrent proposal update the existing regulations to take into account these significant changes.

The issue of the imposition of a tax on a retroactive basis was upheld by the New Jersey Supreme Court in Klebanow v. Glaser, 80 N.J. 367, 403 A.2d 897 (1979).

N.J.A.C. 18:7-1.3 amends the definition of the term “taxpayer” under the corporation Business Tax Act to include partnerships.

N.J.A.C. 18:7-1.4 amends the definition of “corporation” to include savings institutions that formerly had been taxed under the Savings Institutions Tax, N.J.S.A. 54:10D-1 et seq., which was repealed by the BTRA. The term “corporation” also includes entities classified as corporations for federal purposes.

N.J.A.C. 18:7-1.6 amends the subjectivity provision of the regulations to take account of the new statutory nexus standards of deriving receipts from New Jersey and engaging in contacts with New Jersey. The Corporation Income Tax, N.J.S.A. 54:10E-1 et seq., was repealed by the BTRA. Its nexus standard of deriving income from New Jersey sources was effectively incorporated by the BTRA into the Corporation Business Tax Act (“CBT”). The new standard under the new law is explicitly limited by the terms of the United States Constitution.

The proposed and adopted rules also include amendments to current definitions and certain supplementary definitions to bring the rules up to date with statutory developments and to reflect existing administrative practice as these concepts relate to the BTRA. These definitional changes and additions are contained in the following sections: N.J.A.C. 18:7-1.12 Exempt Corporations; N.J.A.C. 18:7-1.13 Regulated Investment Companies; N.J.A.C. 18:7-1.15 Investment Companies; N.J.A.C. 18:7-1.17 Casino Control Act consolidated return; N.J.A.C. 18:7-1.18 Definition of S Corporation; N.J.A.C. 18:7-1.19 Definition of New Jersey S Corporation; N.J.A.C. 18:7-1.20 Definition of a Public Utility; N.J.A.C. 18:7-1.21 Definition of Qualified Investment Partnership; N.J.A.C. 18:7-1.22 Definition of Savings Institution; N.J.A.C. 18:7-1.23 Definition of Partnership.

N.J.A.C. 18:7-2.3 reflects the application of the BTRA to companies having a 52-53 week year for reporting purposes.

N.J.A.C. 18:7-2.11 reflects the new Alternative Minimum Assessment (sometimes hereinafter referred to as the “AMA”) as an element of the business tax base. (See also subchapter N.J.A.C. 18:7-18.1 et seq. below.)

N.J.A.C. 18:7-2.12 corrects an existing typographical error in the present rule.

N.J.A.C. 18:7-3.4 updates the computation of minimum tax to conform to statutory changes. Minimum taxes have been increased to \$500 for most corporations and to \$2,000 for each corporation that is part of an affiliated group with payroll of \$5,000,000 or more. The amendments make clear that certain entities such as Subchapter S Subsidiaries are required to file returns and pay minimum tax although their income may be reported on a related party’s return.

N.J.A.C. 18:7-3.6 updates tax rates applicable to S corporations and other corporations. The amendments take into account the decrease in rates to 6.5% for C corporations whose entire net income is \$50,000 or less, which was contained in the BTRA.

N.J.A.C. 18:7-3.8 deals with investment companies and reflects the new 40% measure of an investment company’s income and the new minimum taxes.

N.J.A.C. 18:7-3.10 reflects the new tax paid by Regulated Investment Companies, commonly known as mutual funds. The amendment makes clear that if a regulated investment company also qualifies as an investment company, it thereby would not be subject to the Alternative Minimum Assessment.

N.J.A.C. 18:7-3.13 reflects changes to the payment of estimated taxes. For certain taxpayers having gross receipts of \$50,000,000 or more, a three payment schedule replaces the traditional four payment schedule for privilege periods beginning on or after January 1, 2003.

N.J.A.C. 18:7-3.14 reflects the applicable rule for the fourth estimated tax payment of the 2002 year which is to be 25% of the liability for the current year.

N.J.A.C. 18:7-3.17 clarifies the sequence of tax credits under the Corporation Business Tax Act and makes clear that the credits shall not reduce amounts due under the Alternative Minimum Assessment.

N.J.A.C. 18:7-3.22 reflects increased thresholds for the New Jobs Investment Tax Credit which has been expanded and now applies also to mid-size business taxpayers having annual payroll of \$5,000,000 or less and annual gross receipts of not more than \$10,000,000 for tax year 2002. The updated rule also contains the provisions for inflation adjustments for thresholds.

N.J.A.C. 18:7-4.11 updates the new definition of subsidiaries contained in the BTRA.

N.J.A.C. 18:7-5.2 supplies the regulatory definition of entire net income, the base upon which the corporation tax is calculated. It has been amended and revised significantly in keeping with the changes contained in the BTRA. These changes include the following amended and new subsections of the rule 5.2 containing add backs to federal taxable income:

(a)1.v. reflects an add back of taxes paid to foreign countries now required by the BTRA.

(a)1. xv reflects a new limitation on certain credits for research and development expenditures.

(a)1. xvi reflects the add back of related party interest under N.J.A.C. 18:7-5.18, a new section discussed further, below.

(a)1. xvii reflects the add back of related party costs and expenses under N.J.A.C. 18:7-5.18, a new section, discussed below.

Also, in calculating New Jersey entire net income certain deductions from the statutory starting point, federal taxable income, have also been amended and revised to conform to the statutory changes. These include the following subsections:

(a)2. i clarifies that 100 percent of all dividends for federal purposes (such as sub part F income) may be deducted from federal taxable income.

(a)2. ii clarifies that 50% of dividends received from a 50% to less than 80% owned subsidiary are deducted.

(a)2. iv reflects the add back of federal bonus depreciation created by the Federal Job Creation and Worker Assistance Act of 2002, P.L. 107-147, for periods beginning on and after January 1, 2002. It includes an example for the convenience of taxpayers.

N.J.A.C. 18:7-5.3 amends the provision relating to the deductibility of tax paid to foreign countries to conform to that changed treatment under the BTRA.

N.J.A.C. 18:7-5.11 supplements the rules to set forth provisions relating to the Director's ability to require separate corporate entities to file consolidated returns. One of the developments addressed by the BTRA was the practice of shifting income among related corporations to low tax or no tax jurisdictions in order to minimize tax paid to New Jersey. The BTRA gave the Director strong authority to enforce compliance with corporate tax laws by such related parties. In general, this authority to require consolidated filings will be exercised by the Director in connection with audits. Taxpayers should have the necessary internal controls to maintain the integrity of the reporting of each corporate entity on a separate basis. Once it is clear that the return as reported contains intercompany activity, the taxpayer must be able to identify intercompany transactions and demonstrate the pricing of these transactions. N.J.A.C. 54:10A-10 now goes beyond the terms "fair tax" and "fair price" and includes "true earnings." The BTRA has broadened the existing law to go beyond fair market analysis alone in making redeterminations. A taxpayer must now show by "clear and convincing" evidence that the report as filed discloses true earnings. If the taxpayer does not meet the test, then the standard for the Division of Taxation to meet in requiring a consolidated return is "reasonableness". Once requested by the Director, a consolidated return is required to be produced within 60 days under the BTRA and the rule. The consolidated return will be required to be produced on a preapportionment basis, which is more equitable. Additional information shall be produced within 30 days after it is required by the Director.

In addition under subsection (g) of this section the taxpayer may be required to produce disclosure by spreadsheet of certain data within 90 days. (Before enactment the original version of the bill that became the BTRA (A2501 Section 11 c) contained a provision under which this filing would have been mandatory. N.J.S.A. 54:10A-14.)

N.J.A.C. 18:7-5.13 is amended to contain a cross reference to the new statute, N.J.S.A. 54:10A-4.5, which codifies certain principles related to the survival to net operating loss carry forwards in the context of corporate reorganizations. See for example, Richard's Auto City, Inc. v. Director, Division of Taxation 140 N.J. 523, 659 A2d 1360 (1995). A.H. Robins Co., Inc., 251 B.R. 312 (Bkrcty. E.D .Va. 2000). A. H. Robins Company v. Director, Division of Taxation Docket 005682-95 (Feb. 21, 2002).

N.J.A.C. 18:7-5.17 provides for the suspension of net operating losses for two years. If a net operating loss (sometimes hereinafter referred to as an "NOL") would otherwise expire during the suspension period, a taxpayer may obtain relief in the extended year of expiration based upon the tax significance of the NOL's lost in 2002 and 2003. Such relief cannot reduce the CBT liability of the expiration year below the minimum tax. Examples demonstrate the interaction of this NOL provision with the dividends received deduction, and also make clear that the NOL suspension does not apply to Tax Benefit Certificates which can be acquired and applied during the NOL suspension period. Cf. N.J.S.A. 34:1B-7.42a.

N.J.A.C. 18:7-5.18 is a new rule that demonstrates the operation of the BTRA's statutory provisions addressing related party transactions, including but not limited to, royalty payments and interest payments. The statutory provision, N.J.S.A. 54:10A-4.4, addresses intangible costs and expenses, and N.J.S.A. 54:10A-4(k)(2)I addresses interest payments. Both sections begin with the principle that such payments must be added back to net income when made between related parties. The exceptions to this principle, however, contained in these two sections are not identical. A new tax reporting schedule, G-2, for the form CBT-100 has been developed so that a taxpayer, by completing the schedule, can determine whether or not certain related party transactions, in fact, do qualify for deductibility as exceptions to the add back rule.

The interest add back exceptions from N.J.S.A. 54:10A-4(k)(2)I are the basis for N.J.A.C. 18:7-5.18(a). The first exception, at (a)1 relates to the situation where a party related to the taxpayer pays a tax equal to or greater than a rate of three percentage points less than the rate of tax applied to taxable interest in New Jersey. In instances where the recipient of the interest income is losing money (and therefore pays no tax) the taxpayer would have to qualify under a different exception in order to be able to deduct the interest expense. In order for this tax payment exception to apply, N.J.S.A. 54:10A-4(k)(2)I(iii)(aa) requires specifically that the related member must be subject to a tax (emphasis added) on its net income or receipts in this State or another state or possession of the United States or a foreign country. This means the taxpayer must actually pay tax for the exception to apply, not merely be subject to tax.

Second, subsection (a)2 addresses an exception allowing the deductibility of interest where the affiliate receiving the interest actually pays a tax to New Jersey on the income stream. This is designed to prevent the single economic event from effectively being taxed twice by New Jersey. The Director's discretion is exercised through the taxpayer's proper completion of Exception 3, in Part I, Schedule G-2.

Third, subsection (a)(3)(i) addresses the statutory exception where the related member pays a tax in a foreign nation which has in force a comprehensive income tax and makes the proper disclosures to the Division of Taxation. See G-2, Part 1, exception

Fourth, (a)(3)(ii) addresses an exception where an independent lender makes a loan through a related member conduit, and the taxpayer legally guarantees the debt. The statement to A2501 refers to commonly used financing vehicles where a borrowing from a bank is used by a parent and "pushed down" to a subsidiary to enable the parent to buy the assets of the subsidiary and allow the subsidiary to deduct the interest. This is distinguished from situations involving tax avoidance schemes. Since guaranteeing a debt to a third party may be difficult in practice, the result can be achieved when the borrower structures a new loan to the subsidiary rather than guaranteeing the debt. The new loan and related documents are subject to examination on the basis of arm's length principles discussed elsewhere. In a cash sweep situation interest must be credited to the entity relinquishing the funds; each party must make a profit on the transaction.

According to the committee statements, one purpose of the provision is to prevent push down debt unless the taxpayer supplies documentation, such as copies of contracts, for example.

A pledge of stock does not meet the guarantee requirement where a public holding company pledges the subsidiary's assets or stock in the subsidiary as security. If all entities are listed on the note and there is a flow of funds, this documentation would satisfy the exception.

The rule proposed contains several examples to illustrate the application of the rule.

The second part of the rule, N.J.A.C. 18:7-5.18(b), addresses related party transactions in connection with intangible costs. The underlying statutory provision, N.J.S.A. 54:10A-4.4, is designed to prevent income shifting by multi-state taxpayers. This technique, is sometimes in shorthand referred to as a Geoffrey situation, after Geoffrey, Inc. v. South Carolina Tax Commission, 313 S.C.15, 437 S.E. 2d 13 (S.C. 1993), *cert. denied* 510 U.S. 992, 114 S. Ct. 550, 126 L.Ed.2d 451 (1993). For example, a taxpayer may place its intangible trademarks in a holding company in a low tax or no tax state, license the intangible back to its New Jersey corporation to deduct royalty payments from the New Jersey subsidiary to the intangible holding company. Sometimes income shifting goes further, and the fees received by the out-of-state holding company are then lent back to the New Jersey subsidiary with the result that the New Jersey subsidiary would also claim an interest paid deduction when the payments are made back to the trademark holding company, which lent the money. In this context see the factual

situations, for example, Syms Corp. v. Commissioner of Revenue, 436 Mass. 505, 765 N.E.2d 758 (Mass. 2002) and Sherwin-Williams Company v. Commissioner of Revenue, 438 Mass. 71, 778 N.E.2d 504 (Mass. 2002).

First under subsection (b)1 a deduction for the intangible payments is allowed for payments made to a related party in a foreign nation which has in force a comprehensive income tax treaty. See Schedule G-2, Part II, Exception 1.

Second under subsection (b)2 a deduction would be permitted if the related member during the same income year received the portion from a non-related party and the transaction giving rise to the deduction did not have as a principal purposes the avoidance of tax. Taxpayer must meet these tests by a preponderance of evidence. See N.J.S.A. 54:10A-4.4(b)3.

Third, subsection N.J.A.C. 18:7-5.18(b)3 allows the deduction of costs if disallowance would be unreasonable since the payee paid tax to New Jersey on the same income stream. See Schedule G-2, Part II, Exception 2.

Finally subsection (b)4 addresses the possible use of another apportionment methodology and (b)5 provides definitions of terms used in the subsection. Subsection (b)6 provides examples.

N.J.A.C. 18:7-7.6 dealing with corporate partners has been amended. Changes to this rule point to the expansion of nexus principles that are set forth under the BTRA.

N.J.A.C. 18:7-8.7 has been amended to reflect statutory changes to the state's apportionment methodology used by multi-state taxpayers that have a bona fide office outside the state. The BTRA codifies the use of a "throwout rule." Under this principle receipts that are not taxed in a foreign jurisdiction are thrown out of the denominator of the allocation factor. Receipts that are thrown back to other states will be subject to New Jersey's throwout provision, since not to require the throw out under these circumstances would mean that New Jersey's tax policy is controlled by the tax policy of other states. Such situations are essentially a matter of priorities and credits.

In situations where a taxpayer believes that application of the throwout rule produces an improper or disproportionate allocation result, the taxpayer should file a return in accordance with the statute and claim a refund, using its proposed alternative apportionment methodology. See N.J.S.A. 54:10A-8 and N.J.A.C.18:7-13.8(h). The affect of the throwout is capped at \$5,000,000 for both single entities and entities that are a part of consolidated or controlled groups.

N.J.A.C. 18:7-8.10 has been revised to reflect apportionment rules for asset management services as well as securities and commodities dealers as contained in N.J.S.A. 54:10A-6.2. It should be noted that this sourcing rule operates in conjunction with the throwout rule. If the allocating taxpayer does not pay a tax to the state where the customer is located, for example, then that receipt is thrown out of the denominator of taxpayer's receipts fraction.

N.J.A.C. 18:7-8.17 is updated to reflect the statutory change in the sourcing for non-operational income where the principal place from which a taxpayer's trade or business is conducted is in New Jersey. This change brings New Jersey's tax policy into line with the policy of other states.

N.J.A.C. 18:7-11.15 is updated to take into account that air carriers pursuant to 49 U.S.C.A. 40102 may file consolidated returns and that the director may require consolidated returns in certain instances.

N.J.A.C. 18:7-11.17 is updated to reflect that certain taxpayers may be required to file consolidated returns. See above, N.J.A.C. 18:7-5.11.

N.J.A.C. 18:7-13.3 is updated to reflect the new statutory provision that the filing of a complaint by a taxpayer in the Tax Court suspends the running of the statute of limitations for the contested issue or issues for all subsequent periods.

N.J.A.C. 18:7-15.2 clarifies that the Urban Enterprise Zone credit may flow through to corporate partners for consistency with N.J.A.C. 18:7-7.6.

N.J.A.C. 18:7-17.1 commences a new subchapter which deals with the corporation business tax responsibilities of partnerships. The first rule of the subchapter provides the applicable definitions for it.

Under this subchapter and the underlying statute, N.J.S.A. 54:10A-15.11 (BTRA Section 12), a tax is imposed upon a partnership which is due and payable on the fifteenth day of the fourth month following the close of the year. This payment facilitates

compliance by out-of-state partners with their New Jersey tax responsibilities. The tax payment is made by those partnerships which have non-resident corporate and non-corporate partners. In cases of tiered partnerships, where a partnership is a partner, the tax payment on behalf of the partnership is required to be made at the corporate tax rate. The tax payment is credited to the partner at the time of receipt by the Division.

N.J.A.C. 18:7-17.2 sets forth responsibilities to file and remit tax. This section provides exemptions from withholding in the case of certain income from investment partnerships and hedge funds whose income is exempt from Gross Income Tax.

N.J.A.C. 18:7-17.3 provides the due date of the return to be the fifteenth day of the fourth month following close of the year.

N.J.A.C. 18:7-17.4 provides for extensions of time to file the partnership return, Form NJ-1065.

N.J.A.C. 18:7-17.5 provides for the calculation of tax for non-resident corporate and non-resident non-corporate partners. The payment is based upon the distributive share of the partnership's income multiplied by the partnership allocation fraction determined under the corporate business tax rules. Subsection 17.5(c) provides that if a partner is unitary with the partnership, then for purposes of determining the need for payment, the partnership office is considered the partner's office, and the partner would not be considered a non-resident. See N.J.A.C. 18:7-17.8.

N.J.A.C. 18:7-17.6 provides for credits or refunds of tax for partners.

N.J.A.C. 18:7-17.7 provides that partnerships are not required to file or pay estimated tax.

N.J.A.C. 18:7-17.8 provides that a corporate partner that has an office in New Jersey, or is unitary with the partnership may issue an exemption form to relieve the partnership of responsibility for tax payment on its behalf. The principle is also applicable to a non-corporation partner entity, such as a Limited Liability Company or partnership, that has a unitary relationship with the taxpaying partnership.

N.J.A.C. 18:7-17.9 provides a summary of apportionment rules for partnerships.

N.J.A.C. 18:7-17.10 provides for filing and payment of tax by electronic means where the partnership has ten or more partners.

N.J.A.C. 18:7-18.1 begins new Subchapter 18 dealing with the Alternative Minimum Assessment. The first section provides definitions. In the BTRA, the legislature created an alternative calculation in addition to the net income base under which certain taxpayers are required to measure their tax liability. Taxpayers may elect to calculate the AMA liability under either the New Jersey Gross Profits Method or the New Jersey Gross Receipts Method. The election is made in the first year the AMA is higher than the CBT.

The term New Jersey gross receipts is a concept that is related specifically to the receipts fraction numerator. This idea is set forth in the tax court opinion, A.T.&T. v. Director, Division of Taxation, 4 N.J. Tax 638 (1982), 194 N.J. Super. 168 (App. Div. 1984), certification denied 97 N.J. 627 (1984). “Specifically, the composition of the receipts fraction must be determined in harmony with the definition of entire net income.

That the Legislature intended this result is evidenced by the treatment of dividend income. The portion of such income excluded from the tax base is likewise excluded from the receipts fraction. To put it differently, the tax base and the receipts fraction are symmetrical. That which is excluded from the former is excluded from the latter and, conversely, that which is included in the former is also included in the latter” at N.J. Tax 648. For example, receipts are considered nontaxable under N.J.S.A. 54:10A-4(K)(9)and(10).

Returns and allowances will be determined on the same basis as the receipts fraction for the gross profits methods.

The term “New Jersey gross profits” reflects New Jersey gross receipts adjusted by returns and allowances less the cost of goods sold. In calculating the cost of goods sold, the federal methodology would be used and that amount would be multiplied by the allocation factor or the receipts fraction at the election of the taxpayer. In permitting this election using the receipts fraction, the Director is exercising the authority under N.J.S.A. 54:10A-8 to prevent distortions from occurring by use of the allocation factor.

N.J.A.C. 18:7-18.2 provides details of the imposition of the AMA as well as its duration and “sunset” with respect to current CBT taxpayers. The AMA is scheduled to continue beyond the sunset date for taxpayers that otherwise would have claimed protection of Public Law 86-272.

N.J.A.C. 18:7-18.3 contains a list of types of taxpayers that are exempt from the AMA. These include New Jersey S Corporations, Investment Companies, professional corporations, cooperatives, and partnerships.

N.J.A.C. 18:7-18.4 describes the application of the tax base to the tax rates. There is no AMA on companies whose New Jersey Gross Receipts are \$2,000,000 or less or whose New Jersey Gross Profits are \$1,000,000 or less. The rates are “cliffs,” so that, for example, a dollar more of gross receipts or gross profits at a certain level would push the taxpayer into a higher rate to be paid on all its receipts or profits. The rule contains proration methodology for short period returns, and related ceiling for AMA payment.

N.J.A.C. 18:7-18.5 provides for the carry forward of excess AMA payments which become a credit against CBT liability in years the AMA is no longer applicable. In effect the AMA is currently a system for accelerating payment of business tax liability.

N.J.A.C. 18:7-18.6 elaborates on a calculation of gross receipts that can be used by certain agency businesses, such as real estate and insurance agencies. Under this approach the taxpayer may report as its gross receipts, the administrative fees it received from its customers as for federal purposes. Certain evaluation factors may be used federally in determining whether or not property constitutes a receipt. In general, the Division will give attention to federal authorities in making classifications of receipts.

N.J.A.C. 18:7-19.1 supplies definitions of licensed professionals and professional corporation. The rule introduces new Subchapter 19 on the subject of filing fee payments by professional corporations. The BTRA amended N.J.S.A. 54:10A-18 to require a filing fee payment by professional corporations. For purposes of administration of the fee, only those professionals listed in the regulatory definition will be considered professionals to which the fee calculation is applicable.

N.J.A.C. 18:7-19.2 makes clear that the calculation of professionals is not limited only to those who may be shareholders of the corporation. The calculation includes employees as well as the section also provides for the use of a quarterly average in counting professionals. It also includes apportionment methodology for situations where professionals do not have nexus with New Jersey.

N.J.A.C. 18:7-19.3 deals with the installment payment for the succeeding year required to be made along with the payment of the current year's fee. The installment becomes a credit against the next year's liability. If a corporation dissolves, it is not required to make a prepayment for the succeeding year. There is no provision for refunds, however.

N.J.A.C. 18:7-19.4 provides that the terms of the State Uniform Tax Procedure Law applies to the administration of the fee.

N.J.A.C. 18:35-11.1 supplies definitions relating to a new subchapter N.J.A.C. 18:35-11 which deals with filing fee payments by partnerships. The fee is imposed by the BTRA's amendment to N.J.S.A. 54A:8-6. The definition section makes clear that small investment clubs are not within the definition of subject partnerships that are required to pay the fee. See News Release November 26, 2002 on the website of the New Jersey Department of the Treasury, <http://www.state.nj.us/treasury>.

N.J.A.C. 18:35-11.2 supplies an apportionment methodology which partnership fee payers may use. Apportionment has the effect of decreasing the liability for partnerships whose direct physical connection with New Jersey is remote. Since the calculation applies the use of the corporation business tax allocation factor, adjustment of the factor may be sought in instances that its application produces a distortion, such as instances where there is no property or payroll, for example.

N.J.A.C. 18:35-11.3 deals with the mechanisms for payment of the fee. It describes the return voucher with which payments are to be made.

N.J.A.C. 18:35-11.4 deals with installment payments of the fee and provides that no installment is due for the year succeeding the year of dissolution.

N.J.A.C. 18:35-11.5 makes clear that the State Uniform Tax Procedure Law applies to the administration of this fee.

N.J.A.C. 18:35-11.6 provides certain examples of the application of the fee for the guidance of taxpayers.

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

Social Impact

With the passage of time the regime established by the Corporation Business Tax Act (1945) has become increasingly unsuited to the business realities of the current era. The tax was originally enacted based upon a taxpayer's net worth; but a net income base was substituted for the net worth base during the 1980's. Thus, a net income tax is applied to separate corporate entities for the privilege of doing business in New Jersey, and New Jersey is thus considered a "separate entity state." The separate entity concept was further restricted during the 1980's and 1990's by court decisions that created a

constitutional exclusion within single entities themselves that have “non-unitary income.” John Metzger, Unitary Taxation in New Jersey, 28 Seton Hall Law Review 162 (1997). In addition, alternative business formats and structures, including limited liability companies, have become popular alternatives to the corporate structure. Modern communications technology and transportation infrastructure has further changed the business environment since 1945. This combination of factors has resulted in a proliferation of tax planning opportunities for taxpayers under New Jersey’s Corporation Business Tax Act (1945).

The Business Tax Reform Act, P.L. 2002, c. 40, addressed a number of features which had allowed New Jersey’s tax structure to be exploited by taxpayer’s with sufficient resources to engage in significant tax planning. The statute also updates the Corporation Business Tax Act in a number of other respects as well, such as increasing minimum tax payments.

The social impact of the BTRA and the regulations implementing it will be a step in the direction of restoring an even playing field to the taxation of business enterprises in New Jersey. Good tax policy should result in similarly situated or comparable taxpayers paying a comparable tax. It should not reward taxpayers simply because they are capable of structuring their enterprises in a particular fashion.

In implementing the statute by the regulations the Director has exercised his discretion in a variety of ways intended to increase the equitable treatment of similarly

situated taxpayers. These include allowing allocating taxpayers to elect to use the receipts fraction in calculating cost of goods sold for the New Jersey gross profits Alternative Minimum Assessment calculation, and providing an apportionment methodology for partnerships and professional corporations liable for the partnership fee or the professional corporation fee that have partners or professionals that never enter New Jersey.

The rules adopted and proposed also include instances where tax reporting methodologies have been created (such as portions of N.J.A.C. 18:7-5.18 dealing with related party transactions) to prevent unreasonable taxation upon transactions from occurring simply because of the way the transaction may have been structured. For example, the rule addresses instances in which taxing the interest received by one taxpayer while denying a corresponding deduction to the related party paying the interest would create an economic distortion.

The structure of the AMA is intended as a possible general approach to taxing businesses that would avoid the administrative complexity and burden of resources relating to calculating “income.” As such it is intended to decrease both the costs to taxpayers of complying and to the state of administering this revenue raising function. Accordingly, the rules are intended to facilitate taxpayer compliance with the new calculation.

The proposed and adopted rules will also facilitate public compliance with the BTRA and assist taxpayers in complying with their statutory obligations.

Economic Impact

Tax payments under the corporation business tax have not kept pace with corporate profits. Corporate profits in New Jersey grew from \$15.6 billion in 1990 to \$31.2 billion in 2000, according to information included in the Governor's FY2003 budget. Meanwhile in 1990 the yield of the corporation business tax was \$1.13 billion and in 2000 corporate business tax yielded \$1.45. The BTRA addresses some of the causes of this stagnation in revenue growth to the State.

The Alternative Minimum Assessment was one of the means designed to address the issue in a narrowly crafted fashion. For example, it may be noted that 70% of corporations will not be impacted by the AMA. Certain groups that have high cost of goods sold are organized as S corporations and are not subject to the AMA.

The Business Tax Reform Act creates a "Corporation Business Tax Excess Revenue Fund," N.J.S.A. 52:9H-38. Under the statute a "target amount" of \$1.823 billion for State fiscal year 2003 has been established, and excess amounts are to be placed in the Fund. If balances remain in this Fund on December 30, 2005 the Director of Taxation is required to adjust proportionately the tax rates in N.J.S.A. 54:10A-5 as that section applies to privilege periods commencing during calendar year 2006, so as to reduce the expected revenue thereunder by an amount equal to the balance in the Fund.

The rules as proposed and adopted are expected to, and have minimal economic impact in and of themselves because they primarily state and implement basic requirements of the statute. It is anticipated that the rules would have the effect of

diminishing the administrative costs of compliance for taxpayers and the administrative costs of the Division.

In developing implementing rules for the Business Tax Reform Act, administrative decisions have been made in so far as is possible to correspond with original revenue estimates for provisions of the BTRA. In certain instances the economic consequence of a particular decision is indeterminate because there is no data available upon which to base the estimate. Certain small investments clubs that would be unduly burdened by the impact of the statute are excluded from the definition of partnership under N.J.A.C. 18:35-11.1 (see News Release of the State Treasurer, November 26, 2002, Partnership Fee Waived for Investment Clubs Below \$60,000). This exception is estimated to decrease revenue about \$1.15 million based upon assumptions of approximately 1400-1500 clubs in the state and 11 members in the clubs, and an average asset base of \$63,000.

The economic impact of the administrative rules on business activity in New Jersey independent from the impact of the statute itself is difficult to quantify.

Federal Standards Statement

A Federal standards statement is not required because the authority for the rules proposed and adopted is derived from the Business Tax Reform Act and other provisions of state law. The rules proposed and adopted are, therefore, independent from any Federal standards or requirements.

Jobs Impact

Studies have shown that factors other than and in addition to the features of a tax regime are more significant in a decision to hire employees or create new jobs. These may include geographical location and labor market, for example. To the extent that the BTRA may have put New Jersey at a relative disadvantage for one year by tightening loopholes, this relative disadvantage will be changed next year as other states address their own budget deficits.

It is not expected that the proposal and adoption of the rules implementing the BTRA will have an independent impact on creation or loss of jobs in New Jersey separate from the impact of the BTRA itself.

Agricultural Industry Impact

No impact on the agricultural industry beyond the general impact and applicability to subject taxpayers pursuant to the business tax reform act is expected to occur as a result of the rules adopted or proposed for adoption.

Regulatory Flexibility Analysis

The rules adopted and proposed for adoption impose recording and recordkeeping requirements on taxpayers under P.L. 2002, c.40, with regard to the collection and payment of a tax on partnerships and corporations including calculations under the AMA.

Some of the taxpayers may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance requirements, to pay the taxes and fees on professional corporations, partnerships and other corporations was imposed by P.L. 2002, c. 40; the reporting and payment requirement is related to the Tax Reform Act itself. The Division anticipates that the rules will not increase small businesses' capital costs or their need for certain professional services. However, there may be some additional costs of accountants' fees related to the need to monitor certain accounts and/or to file returns with the Division. No exemptions from, or differentiation in, these requirements on large or small businesses was provided, since to do so would not have been in compliance with the applicable statute.

Smart Growth Impact

The Division anticipates that the rules adopted and proposed for adoption will have no impact on smart growth in New Jersey or on the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the special adoption and concurrent proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 7. CORPORATION BUSINESS TAX ACT

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

18:7-1.3 Definition of taxpayer

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

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

(c) Any partnership required or consenting to report or to pay taxes, interest or penalties under this act, provided that the term does not include a partnership that is listed on a United States national stock exchange.

18:7-1.4 Definition of corporation

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

The term includes any other entity classified as a corporation for federal income tax purposes.

The term includes any state or federally chartered building and loan association or state or federally chartered savings and loan association.

18:7-1.6 Subjectivity to tax; how created

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

1. Existing under the laws of the State of New Jersey; or
2. If a foreign corporation,
 - i. Holding a general certificate of Authority to do business in this State issued by the Secretary of State; or
 - ii. Holding a certificate, license or other authorization issued by any other State department or agency, authorizing the company to engage in corporate activity within this State; or
 - iii. Doing business in this State; or
 - iv. Employing or owning capital in this State; or
 - v. Employing or owning property in this State; or
 - vi. Maintaining an office in this State[.]; or
 - vii. Deriving receipts from sources within this state; or
 - viii. Engaging in contacts within this State.

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

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

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

18:7-1.12 Exempt corporations

(a) Corporations exempted from taxation under the Act include:

1. Telegraph, telephone, cable or telecommunications companies subject to tax under N.J.S.A. 54:30A-16 et seq. (including, without limitation, N.J.S.A. 54:30A-18.6, P.L. 1991, c.184, Section 2); or any statute or law imposing a similar tax or taxes;
2. Railroad companies subject to tax under N.J.S.A. 54:29A-1, et seq.;
3. Energy, gas and electric companies subject to tax under N.J.S.A. 54:30A-49, et seq.; or any statute or law imposing a similar tax or taxes;
4. Corporations subject to a tax upon the basis of gross receipts, other than the tax pursuant to N.J.S.A. 54:10A-5a. or insurance premiums collected;
5. [Railroad,] [c] Canal corporations, [savings banks,] agricultural cooperative associations incorporated or domesticated under N.J.S.A. 4:13-1 et seq. and exempt under Section 521 of the Federal Internal Revenue Code (26 U.S.C. 521)[, or building and loan or savings and loan associations];
6. Cemetery corporations not conducted for pecuniary profit of any private shareholder or individual;
7. Nonprofit corporations, associations or organizations not conducted for pecuniary profit of any private shareholder or individual, and established, organized or chartered without capital stock under the provisions of Titles 15, 15A, 16 or 17 of the

Revised Statutes; or a special charter; or any similar general or special law of this or any other state (see N.J.A.C. 18:1-1.4(a) for exemption opinion procedures);

8. Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under Federal law by tenants, but:

i. The exemption under this subsection shall continue only as long as:

(1) The corporations remain subject to rules and regulations of the Federal Housing Authority; and

(2) The Commissioner of the Federal Housing Authority holds membership certificates in the corporations; and

(3) The corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat. 1246) as amended by subsequent Acts of Congress. (See 12 U.S.C.A. § 1701, et seq.)

ii. In order to be exempted under this subsection, corporations shall:

(1) Annually file a report on or before August 15 with the Director, in the form required by the Director, to claim exemption; and

(2) Shall pay a filing fee of \$25.00.

9. A corporation not for profit organized under any law of this State where the primary purpose of it is to provide for its shareholders or members housing in a retirement community as defined under the "Retirement Community Full Disclosure Act," N.J.S.A. 45:22A-1, et seq.;

10. Corporations which are licensed as insurance companies under the laws of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Insurance pursuant to section 11 of P.L. 1960, c.32 (N.J.S.A. 17:22-6.45) to insure risks within this State; and

11. Corporations exempt from the corporation business tax by virtue of the provisions of another New Jersey statute.

(b) See N.J.A.C. 18:1-1.4 for the procedure to obtain exemption opinion letters.

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 under the Investment Company Act of 1940 (54 Stat. 789), as amended. (See 15 U.S.C.A. § 80a-1 et seq.)

(b) A regulated investment company may also qualify as an investment company.

18:7-1.15 Investment company; definition

(a) – (f) (No change.)

(g) An Investment Company may also qualify as a Regulated Investment Company. See N.J.A.C. 18:7-1.13.

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

casino business consolidated return

(a) – (b) (No change.)

(c) 1. – 2. (No change.)

3. Certain corporations that are members of affiliated or controlled groups

may be required to file consolidated returns pursuant to N.J.S.A. 54:10A-10. See

N.J.A.C. 18:7-5.11.

(d) – (f) (No change.)

18:7-1.18 Definition of S Corporation

“S Corporation” means a corporation included in the definition of an “S corporation” pursuant to section 1361 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

18: 7-1.19 Definition of New Jersey S corporation

“New Jersey S corporation” means a corporation that is an S corporation; which has made a valid election pursuant to section 3 of P.L. 1993, c.173 (C.54:10A-5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L. 1993, c.173 (C.54:10A-5.22).

18:7-1.20 Definition of Public Utility

“Public Utility” means “public utility” as defined in R.S.48:2-13.

18:7-1.21 Definition of Qualified Investment Partnership

“Qualified Investment Partnership” means a partnership under this act that has more than 10 member or partners with no member or partner owning more than a 50% interest in the entity and that derives at least 90% of its gross income from dividends, interest, payments with respect to securities loans, and gains from the sale or other

disposition of stocks or securities or foreign currencies or commodities or other similar income (including but not limited to gains from swaps, options, futures or forward contracts) derived with respect to its business of investing or trading in those stocks, securities, currencies or commodities, but “investment partnership” shall not include a “dealer in securities” within the meaning of section 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

18:7-1.22 Definition of Savings institution

“Savings institution” means a state or federally chartered building and loan association, savings and loan association, or savings bank.

18:7-1.23 Definition of Partnership

“Partnership” means an entity classified as a partnership for federal income tax purposes.

SUBCHAPTER 2. NATURE OF TAX

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

(a) –(b) (No change.)

(c) The rule contained in subsection (b) of this section shall be used to determine the applicability of the Business Tax Reform Act, P.L. 2002, c.40 to a taxpayer having a 52-53 week year beginning on or about January 1, 2002.

18:7-2.11 Component factors of tax base

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

18:7-2.12 Application of State franchise tax to corporations

The franchise tax is imposed for all or any part of each calendar or fiscal year during which the taxpayer possessed a New Jersey franchise or otherwise has a taxable status as set forth in N.J.A.C. 18:7-[1.16] 1.6 or other provision of these rules.

SUBCHAPTER 3. COMPUTATION OF TAX

18:7-3.4 Minimum tax

(a) The tax paid in the case of an investment company, a regulated investment company or real estate investment trust shall not be less than \$250.00 provided however, for calendar year 2002 and thereafter the minimum tax shall be \$500, unless the taxpayer is a member of an affiliated group or a controlled group pursuant to Sections 1504 or 1563 of the federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax shall be \$2,000. The minimum tax for other corporations is set forth in (b) through (g) below.

(b) For accounting or privilege periods beginning prior to calendar year 1994, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$25.00 and in the case of a foreign corporation shall not be less than \$50.00.

(c) For accounting or privilege periods beginning in calendar year 1994, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$50.00 and in the case of a foreign corporation shall not be less than \$100.00.

(d) For accounting or privilege periods beginning in calendar year 1995, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$100.00 and in the case of a foreign corporation shall not be less than \$200.00.

(e) For accounting or privilege periods beginning in calendar year 1996, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$150.00 and in the case of a foreign corporation shall not be less than \$200.00.

(f) For accounting or privilege periods beginning in calendar years 1997, 1998, 1999, 2000 the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$200.00 and in the case of a foreign corporation shall not be less than \$200.00.

(g) For accounting or privilege periods beginning in calendar year 2002, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$500.00 and in the case of a foreign corporation shall not be less than \$500.00; provided, however, for accounting or privilege periods beginning in calendar year 2002, for a taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the federal Internal Revenue Code of 1986, and whose group has total payroll of \$5,000,000 or more for the privilege period, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than \$2,000 and in the case of a foreign corporation shall not be less than \$2,000. If the related corporations do not have the same fiscal years, the overlapping portion shall be placed upon the equivalent fiscal basis to arrive at the threshold amount.

[(g)] (h) The Director shall adjust the minimum tax for accounting or privilege periods beginning in each fifth year following calendar year [1997] 2002 and each fifth year thereafter by multiplying the minimum tax for periods beginning in [1997] 2002 by

an amount equal to one plus 75 percent of the increase, if any, in the annual average United States producer price index for finished goods published by the Federal Department of Labor, Bureau of Labor Statistics, for the year preceding the determination year over such index for calendar year [1996] 2001.

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

18:7-3.6 Tax rates--corporations, S corporations and surtax

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

1. Except as may be provided in [(c)] (a) 3 and 4 below, for all fiscal periods beginning on or after January 1, 1980, the net income tax rate is nine percent, for a corporation that is not a New Jersey S corporation.

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

3. For privilege periods beginning on or after July 1, 1996, a taxpayer that is not a New Jersey S corporation that has entire net income of \$100,000 or less for a 12 month privilege period, the rate for that privilege period shall be 7 1/2 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed \$8,333 per month.

Example: A taxpayer having a five month accounting period qualifies for the 7 1/2 percent rate if its income for the period does not exceed \$41,666.

4. For privilege periods beginning on or after January 1, 2002 a taxpayer that is not a New Jersey S Corporation that has entire net income of \$50,000 or less for a 12 month privilege period, the rate for that privilege period shall be 6 1/2 percent. A corporation that is not a New Jersey S Corporation having an accounting period less

than 12 months may qualify for this reduced rate if its income when prorated does not exceed \$4,166 per month.

(b) Tax rates for New Jersey S corporations are as follows.

[(d)] 1. For a New Jersey S corporation with a fiscal year beginning after July 7, 1993 but before January 1, 1994 the tax rate for a New Jersey S corporation is two percent.

[(e)] 2. For a New Jersey S corporation whose [taxable year] privilege period begins on or after January 1, 1994 but before January 1, 1995 the tax rate for a New Jersey S corporation is 2.350 percent.

[(f)] 3. For a New Jersey S corporation whose [taxable year] privilege period begins on or after January 1, 1995 but before January 1, 1996 the tax rate for a New Jersey S corporation is 2.42 percent.

4. Periods beginning on or after January 1, 1996 and ending on or before June 30, 1998

[(g)] i. Except as may be provided in (ii) below, for a New Jersey S corporation whose [taxable year] privilege period begins on or after January 1, 1996 and ends on or before June 30, 1998 the tax rate, with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 2.63 percent. See also ([k]c) below.

[(h)] ii. For privilege periods beginning on or after July 1, 1996, and ending on or before June 30, 1998, a taxpayer that is a New Jersey S corporation that has entire net income of \$100,000 or less for a 12 month privilege period, the tax rate for that privilege period with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) shall be 1.13 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed \$8,333 per month. See also ([l]c) below.

5. Periods ending on or after July 1, 1998 and on or before June 30, 2001

[(i)] i. Except as provided in (ii) below, for a New Jersey S corporation whose [taxable year] privilege period ends on or after July 1, 1998, but on or before June 30, 2001 the tax with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is two percent. See also ([k]c) below.

[(j)] ii. For privilege periods ending on and after July 1, 1998, but on or before June 30, 2001 a taxpayer that is a New Jersey S corporation that has entire net income of \$100,000 or less for a 12 month privilege period, the tax rate for that privilege period with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 0.5 percent.

A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed \$8,333 per month. See also ([l]c) below.

6. Periods ending on or after July 1, 2001 and ending on or before June 30, 2006

i. Except as may be provided in (ii) below, for a New Jersey S corporation whose privilege period ending on or after July 1, 2001 and ends on or before June 30, 2006 the tax rate, with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 1.33 percent. See also (c) below.

ii. For privilege periods ending on or after July 1, 2001, a taxpayer that is a New Jersey S corporation that has entire net income of \$100,000 or less for a 12 month privilege period, the tax rate for that privilege period with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) shall be 0 percent. A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed \$8,333 per month. See also (c) below.

7. Periods ending on or after July 1, 2006 but on or before June 30, 2007

i. Except as provided in (ii) below, for a New Jersey S corporation whose taxable income is in excess of \$100,000 for the privilege period and whose taxable year ends on or after July 1, 2006, but on or before June 30, 2007 the tax with respect to its entire net income not subject to Federal income taxation (or such portion thereof as may be allocable to this State) is 0.67 percent. See also (c) below.

ii. For a taxpayer that is an New Jersey S corporation having entire net income less than \$100,000 for privilege periods ending on or after July 1, 2001 there is no tax.

8. Periods ending on or after July 1, 2007

i. For privilege periods ending on or after July 1, 2007 there shall be no tax imposed on New Jersey S corporations. See also

(c) New Jersey S Corporation taxed federally

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

[(l)] 2. For privilege periods beginning on or after July 1, 1996, a taxpayer that is a New Jersey S Corporation that has entire net income of \$100,000 or less for a 12 month privilege period, the tax rate is 7.5 percent multiplied by any of its entire net

income that is subject to Federal income taxation or such portion thereof as may be allocable to this State. (See, for example, I.R.C. 1374, or 1375). A corporation having an accounting period of less than 12 months may qualify for this reduced rate if its income when prorated does not exceed \$8,333 per month.

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

[(m)] (d) In addition, a surtax calculated pursuant to N.J.S.A. 54:10A-5.1 and 5.2 shall be computed and added to the applicable tax, provided that on and after January 1, 1994 there shall be no surtax imposed. The adjusted surtax rate for accounting periods ending between January 1 and June 30, 1994 is determined by multiplying the surtax rate for the period (.00375) by a quotient, the numerator of which is the number of complete calendar months in the taxpayer's accounting period ending before January 1, 1994, and the denominator of which is the total number of complete calendar months in the

accounting period. This calculation ensures that the surtax rate is reduced proportionally for those taxpayers with a tax year ending after January 1, 1994. The surtax is then completely eliminated for fiscal year 1995 and thereafter.

$$\frac{.00375 \times \text{Months ending before January 1, 1994}}{\text{Total months in accounting period}} = \text{Adjusted Surtax Rate}$$

Example 1. A taxpayer whose tax year covers a 12-month period ending on January 31, 1994 determines the adjusted surtax rate as follows: $.0035 \times 11/12 = .00344$.

Note: For ease of computation, the calculation is rounded to the fifth decimal place.

Example 2. The adjusted surtax rates for taxpayer with accounting periods covering 12 months are listed below. Taxpayers with accounting periods covering less than 12 months must compute the appropriate rate using the formula indicated above.

Fiscal Year Ended	Adjusted Surtax Rate
1/31/94	0.00344
2/28/94	0.00313
3/31/94	0.00281
4/30/94	0.0025
5/31/94	0.00219
6/30/94	0.00188

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

(a) The tax [self-assessed and] payable by an investment company entitled and electing to report as such is a tax measured by [25] 40 percent of its entire net income at the rate provided by law.

(b) In no case shall the total tax be less than \$250.00[.] provided that for privilege periods beginning on and after January 1, 2002 the tax shall not be less than \$500.00, except that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the federal Internal Revenue Code of 1986 and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax shall be \$2,000 for the privilege period.

18:7-3.10 Regulated investment company; tax payable

(a) For the privilege periods beginning before January 1, 2002, [T]the tax payable by a regulated investment company, entitled and electing to report as such, is \$250.00.

(b) [This rule is applicable to regulated investment companies whose accounting periods end on or after December 31, 1982.] For privilege periods beginning on and after January 1, 2002 the tax applicable to a regulated investment company shall be \$500.00. Provided, however, that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the federal Internal Revenue Code of 1986 and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax shall be \$2,000 for the privilege period.

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

(d) A taxpayer that qualifies as both a Regulated Investment Company and an Investment Company shall pay the minimum tax applicable to all taxpayers of \$500 unless it is a member of a controlled or consolidated group having total payroll of \$5,000,000 or more, in which case the minimum tax would rise to the level of \$2,000.

(e) A regulated investment company that does not also qualify as an investment company is subject to the Alternative Minimum Assessment.

18:7-3.13 Estimated tax

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

1. Twenty-five percent on or before the 15th day of the fourth month; and
2. Twenty-five percent on or before the 15th day of the sixth month; and
3. Twenty-five percent on or before the 15th day of the ninth month; and
4. The balance on or before the 15th day of the 12th month of its current accounting period.

(b) For privilege periods beginning on or after January 1, 2003 each taxpayer with gross receipts of \$50,000,000 or more for the prior privilege period shall pay its estimated tax for its current privilege period in installments as follows:

1. Twenty-five percent on or before the fifteenth day of the fourth month of the period.
2. Fifty percent on or before the fifteenth day of the sixth month of the period; and
3. The balance on or before the fifteenth day of the twelfth month of its current privilege period.

[(b)] (c) When the tax liability for the preceding tax year is [less than] \$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. 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 taking into account any payment which may have been made on the 15th day of the first month of its current tax year.

[(c)] (d) For purposes of applying this rule, it is necessary that the preceding tax year be a full calendar or fiscal year, or where such return is for a short period of less than 12 months, the actual tax liability for such short period must be divided by the number of whole months covered by the return and multiplied by 12 to impute a tax for a full calendar or fiscal year. For the purpose of this computation a fraction of a month is to be disregarded.

[(d)] (e) A taxpayer shall be entitled to a credit in the amount of the estimated tax payments made and shall be entitled to the return of any amount so paid which is in excess of the total tax payable under N.J.S.A. 54:10A-15(c) and N.J.A.C. 18:7-3.

[(e)] (f) Any amount overpaid and appearing on the face of the return CBT-100 for the immediate preceding year may be applied in lieu of any payment of estimated tax otherwise due under this section where the taxpayer indicates on the face of such return

that it elects to have such overpayment so applied. Such amount will be considered to be a payment of the first installment of the estimated tax for the next succeeding year unless the taxpayer designates otherwise on the face of the return for the year in which the overpayment was made.

[(f)] (g) The term "taxpayer" as used in this section is defined at N.J.A.C. 18:7-1.3 and includes corporations as defined in N.J.S.A. 54:10A-4(c), investment companies, regulated investment companies, real estate investment trusts, financial business corporations, banking corporations and [limited partnership associations], savings institutions.

[(g)] (h) The due date for any payment of estimated tax cannot be extended.

18:7-3.14 [(Reserved)] Estimated Payment for Fourth Quarter 2002

Notwithstanding contrary provisions of law, for the privilege period of the taxpayer beginning in calendar year 2002, an underpayment of the installment payment due on or before the fifteenth day of the twelfth month of the period exists if the amount actually paid is less than the amount that would have been paid if the taxpayer had paid 25% of its actual liability for the current privilege period. The underpayment is the amount of this difference.

18:7-3.17 Coordination of tax credit

(a) The priority of credits for a taxpayer under the Corporation Business Tax Act shall be the priority of statutory credits set forth in this section. The tax imposed for a fiscal or calendar accounting year pursuant to section 5 of P.L. 1945, c.162, shall first be reduced by the amount of any credit allowed pursuant to Section 12 of P.L. 2000, c.12 (N.J.S.A. 17B:32B-12) then by the amount of any credit allowed pursuant to section 3 of P.L. 1993, c.170 (N.J.S.A. 54:10A-5.6), then by any [credit] amount allowed pursuant to section 19 of P.L. 1983, c.303 (N.J.S.A. 52:27H-78), then by any [credit] amount allowed pursuant to section 12 of P.L. 1985, c.227 (N.J.S.A. 55:19-13), then by any [credit] amount allowed pursuant to section 42 of P.L. 1987, c.102 (N.J.S.A. 54:10A-5.3), then by [a credit] any amount allowed under sections 3 or 4 of P.L. 1993, c.171 (N.J.S.A. 54:10A-5.18 or 54:10A-5.19), then by any [credit] amount allowed pursuant to section 1 of P.L. 1993, c.175 (N.J.S.A. 54:10A-5.24), then by any [credit] amount allowed pursuant to section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A-15), [the ride share tax credit.] then by any amount allowed pursuant to section 3 of P.L. 1997, c.349 (N.J.S.A. 54:10A-5.30) then by any amount allowed pursuant to section 1 of P.L. 1999, c.102 (N.J.S.A. 54:10A-5 Note), then by any amount allowed pursuant to Section 3 of P.L. 2001, c.415 (N.J.S.A. 52:27D-492), then by any amount allowed pursuant to Section 1 of P.L. 2001, c.321 (N.J.S.A. 54:10A-5.31), then by any amount allowed pursuant to Section 56 of P.L. 2002, c.43 (N.J.S.A. 52:27BBB-55). Section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A-15)

shall reduce the taxes listed in section 1 of P.L. 1993, c.150 (N.J.S.A. 27:26A-15).

(b) The total amount of the credits listed in this section that are allowed against the tax imposed pursuant to section 5 of P.L. 1945, c.162 for the tax year shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c.162.

(c) Any credit carryover should be taken in the manner set forth in the section granting the relevant credit and should be applied in the sequence that the credits are listed in (a) above. If the credit carryover section is silent about whether a carryover should be allowed, no carryover is allowed.

(d) Corporate tax credits may not be used to decrease the tax due calculated under the alternative minimum assessment, N.J.S.A. 54:10A-5a.

18:7-3.22 New Jobs investment tax credit

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

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

2. For privilege periods beginning on and after January 1, 2002, the eligibility standards for the New Jobs Investment Tax Credit Act have been expanded to include small or mid-size business taxpayers. For tax year 2002 such taxpayers shall have annual payroll of \$5,000,000 or less and annual gross receipts of not more than \$10,000,000.

Such amounts will be adjusted annually for inflation commencing January 1, 2003 by an annual inflation adjustment factor, which prescribed amount shall be rounded to the next lowest multiple of \$50. “Annual inflation adjustment factor” means the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the tax year begins, by that index for September of the calendar year two years prior to the calendar year in which the tax year begins.

In addition for privilege periods beginning on and after January 1, 2002 for eligible taxpayers the applicable new jobs factor for five new jobs is 0.01. For each five additional new jobs over the additional five, up to 100 total new jobs, the applicable new jobs factor of 0.01 shall be increased by adding to it 0.01, up to a maximum new jobs factor 0.20.

(b) – (f) (No change.)

SUBCHAPTER 4. ENTIRE NET WORTH

18:7-4.11 Subsidiary corporations; definition

(a) A subsidiary is defined as any corporation in which the taxpayer is the owner of either:

1. i. At least 80 percent of the total combined voting power of all classes of stock of the subsidiary entitled to vote; and

[2.] ii. At least 80 percent of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends.

[3.] iii. The investment shall be determined only with reference to investment in capital stock and shall exclude any loans or advances to any such subsidiaries[.] or

2.i. At least 50 percent but less than 80 percent of the total combined voting power of all classes of stock of the subsidiary entitled to vote; and

ii. At least 50 percent but less than 80 percent of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends.

iii. The investment shall be determined only with reference to investment in capital stock and shall exclude and loans or advances to any such subsidiaries.

(b) (No change.)

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

18:7-5.2 Entire net income; how computed

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

1. Add to Federal taxable income:

i. – iv. (No change.)

v. (1) All New Jersey franchise taxes paid or accrued under the Corporation Business Tax Act, whether measured by net worth, net income or otherwise, to the extent such taxes were deducted in computing Federal taxable income; and, with respect to accounting years beginning after July 7, 1993, taxes paid or accrued to a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity including, without limitation, the Michigan Single Business Tax and taxes measured in whole or in part by "net taxable capital" to the extent such taxes were deducted in computing Federal taxable income;

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

(3) Taxes paid or accrued with respect to subsidiary dividends should be added back to the extent dividends are excluded from entire net income and such taxes were deducted in computing federal taxable income; and

vi. – xiv. (No change.)

xv. any deduction for research and experimental expenditures to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to N.J.S.A. 54:10A-5.24 unless those research and experimental expenditures are also used to compute a federal credit claimed pursuant to IRC section 41.

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

xvii. 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.

2. Deduct from Federal taxable income:

i. 100 percent of all dividends or amounts deemed dividends for federal purposes included in Federal taxable income which were received from subsidiaries meeting the definition of a subsidiary under N.J.A.C. 18:7-4.11(a)1. [(Subsidiary corporations; definition)] of this Chapter and 100 percent of all dividends from those subsidiaries

which were added to Federal taxable income in accordance with (a)1 above;

ii. Fifty percent of all [other] dividends or amounts deemed dividends for federal purposes included in Federal taxable income or added to Federal taxable income in accordance with (a) above if received from 50 to <80% owned subsidiaries defined under N.J.A.C. 18:7-4.11(a)2. Dividends received from a regulated investment company which are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for Internal Revenue purposes are not eligible for deduction or exclusion from entire net income under this subsection.

iii. (No change.)

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

the year of disposal. Aggregate depreciation claimed under this paragraph for all years is limited to the basis for depreciation under the Federal Internal Revenue Code at the date the property is placed in service less whatever salvage value would have been required to be considered under the Federal Internal Revenue Code at December 31, 1980[.] and

In any privilege period or taxable year beginning on or after January 1, 2002, with respect to property acquired on or after January 1, 2002 and before September 11, 2004, any depreciation which was deducted in arriving at Federal taxable income and which was determined in accordance with Sections 168(k) and 1400L of the Federal Internal Revenue Code. Assets acquired before January 1, 2002 for which such depreciation was taken will continue for the entire life of the asset to follow federal depreciation. Assets acquired in periods beginning before January 1, 2002 will continue to follow federal depreciation even if the asset itself was acquired after January 1, 2002 but during such fiscal year. Upon early retirement a basis adjustment will be required to equalize federal and state basis.

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

v. – vii. (No change.)

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

[(a) Where the taxpayer claims deduction for a tax paid to a foreign country or possession of the United States on a dividend received from a source without the United States this tax is deductible only if:

1. The tax was paid by the taxpayer itself, except that in the case of foreign taxes included in income pursuant to Section 78 of the Internal Revenue Code, (b) below shall apply; and

2. Such tax was not deducted in computing Federal taxable income; and

3. 100 percent of the dividend received is not deductible under N.J.A.C. 18:7-5.2(a)2i; and

4. To the extent that the portion deducted shall not exceed 50 percent of the gross dividend.

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

1. However, if 100 percent of the foreign tax amount is not deductible from Federal taxable income as dividends received under N.J.A.C. 18:7-5.2(a)2i, then [50] the [percent of it] percentage which is taxed may be deducted from Federal taxable income[; and]. No other foreign taxes are deductible.

[2. In addition, 50 percent of the foreign tax amount may be deducted from federal taxable income, even though these foreign taxes were not paid by the taxpayer itself.]

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

(a) The entire net income of a taxpayer exercising its franchise in this State that is a member of an affiliated group or a controlled group pursuant to sections 1504 or 1563 of the federal Internal Revenue Code of 1986 shall be determined by eliminating all payments to, or charges by other members of the affiliated or controlled group in excess of fair compensation in all inter-group transactions of any kind.

(b) Notwithstanding the elimination of all inter-group transactions in excess of fair compensation, if the taxpayer cannot demonstrate by clear and convincing evidence that a report by a taxpayer discloses the true earnings of the taxpayer on its business carried on in this State, the director may, at the director's discretion, require the taxpayer

to file a consolidated return of the entire operations of the affiliated group or controlled group, including its own operations or income to the extent permitted under the Constitution and statutes of the United States. The director shall determine the true amount of entire net income earned by the taxpayer in this State.

(c) The consolidated entire net income of the taxpayer and of the other members of its affiliated group or controlled group shall be allocated to this State by use of the applicable allocation formula that the director requires pursuant to N.J.S.A. 54:10A-1 et seq. to be used by the taxpayer. The return shall include in the allocation formula the property, payrolls, and sales of all corporations for which the return is made. The director may require a consolidated return without regard to whether the other members of the affiliated or controlled group, other than the taxpayer, are or are not exercising their franchises in this State.

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

(e) The member of an affiliated group or controlled group shall incorporate in its return required under this rule information needed to determine its taxable entire net income, and shall furnish any additional information the director requires within 30 days

after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq.

(f) Each taxpayer that files a return and is a member of an affiliated or a consolidated group pursuant to sections 1504 or 1563 of the federal Internal Revenue Code of 1986, shall within 90 days of notice of a request of the director disclose in its return for the privilege period the amount of all inter-member costs or expenses, including but not limited to management fees, rents, and other services, for the privilege period.

(g) If the taxpayer acquires products or services from another member of its affiliated or controlled group, which it re-sells or otherwise uses to generate revenue or expense, the taxpayer shall within 90 days of a request from the director, disclose by computerized spread sheet or other form as specified by the director the amount of revenue or expense generated from those products or services including, but not limited, to management fees, rents, and other services. A failure to file such disclosure constitutes the filing an incomplete tax return, subject to the penalties of the State Uniform Tax Procedure Law, N.J.S.A.54:48-1 et seq., including without limitation, N.J.S.A. 54:49-4 and N.J.S.A. 54:52-8.

18:7-5.13 New Jersey net operating loss carryover

(a) (No change.)

(b) The net operating loss may only be carried over by the actual corporation that sustained the loss. The net operating loss may, however, be carried over by the corporation that sustained the loss and which is the surviving corporation of a statutory merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation or is a part of a statutory consolidation. Section 4(k) of the Act defines entire net income in terms of a specific corporate franchise. See N.J.S.A.

54:10A-4.5

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

18:7-5.17 Suspension of net operating loss carryover

Except as provided below, for privilege periods beginning during calendar year 2002 and calendar year 2003, no deduction for any net operating loss shall be allowed. If and only to the extent that any net operating loss carryover deduction is disallowed by reason of this subsection, the date on which the amount of the disallowed net operating loss carryover deduction would otherwise expire shall be extended by two years. This section shall not restrict the surrender or acquisition of corporation business tax benefit certificates pursuant to N.J.S.A.54:34:1B-7.42a. and shall not restrict the application of corporation business tax certificates pursuant to N.J.S.A.54:10A-4.2.

Example 1:

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

<u>Operating Income</u>	<u>\$100,000</u>
<u>Dividends from wholly owned subsidiary</u>	<u>\$50,000</u>
<u>Subtotal</u>	<u>\$150,000</u>

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

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

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

Example 2:

Striper, Inc. is a calendar year taxpayer. In 2001, it filed a NJ CBT return reporting a \$1,000,000 net operating loss. In 2002, Striper, Inc. reported the following items:

<u>Operating Loss</u>	<u>(\$100,000)</u>
<u>Dividends from wholly owned subsidiary</u>	<u>\$40,000</u>

In 2002, as it would have done before the law change, the taxpayer offsets \$40,000 of current year loss against the dividend received deduction. The taxpayer secures an additional NOL of \$60,000 that will be available in 2004.

Example 3:

In 2001, a taxpayer purchased tax benefits in the Tax Benefit Certificate Program but did not use them in 2001. They can be used in 2002.

Example 4:

In 2002, a taxpayer purchased tax benefits in the Tax Benefit Certificate Program. They can be used in 2002 notwithstanding the general suspension of NOL deductions in 2002 and 2003. Tax Benefit Certificates can be both acquired and applied during the NOL suspension period.

18:7-5.18 Related party transactions

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

1. to the extent that the taxpayer establishes that: (i) a principal purpose of the transaction giving rise to the payment of the interest was not to avoid taxes otherwise due, (ii) the interest is paid pursuant to arm's length contracts at an arm's length rate of interest, and (iii)(1) the related member was subject to a tax on its net income or receipts in this State or another state or possession of the United States or in a foreign nation, (2) a measure of the tax includes the interest received from the related member, and (3) the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State;

2. if the taxpayer establishes that the disallowance of a deduction is unreasonable by showing the extent the related party pays tax in New Jersey on the income stream, or the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment; or

3. to the extent that the taxpayer establishes that the interest is directly or indirectly paid, accrued or incurred to (i) a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States, provided however

that the taxpayer shall disclose on its return for the privilege period (1) the name of the related member, (2) the amount of the interest, (3) the relevant foreign nation, and (4) such other information as the director may prescribe; or to (ii) an independent lender through a related member as conduit, provided that the taxpayer legally guarantees the debt on which the interest is required.

4. For purposes of this subsection:

i. “Foreign Nation” means as an established sovereign government that is recognized as such by the United States Department of State.

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

iii. “Foreign Corporation” means a business entity incorporated or organized under the laws of a foreign nation.

iv. “Domestic Subsidiary” means a business entity incorporated under the laws of any state or commonwealth of the United States.

v. “Related member” means a person that, with respect to the taxpayer during all or any portion of the privilege period, is (1) a related entity, (2) a component member as defined in subsection (b) of section 1563 of the federal Internal Revenue Code

of 1986, 26 U.S.C. s.1563, (3) is person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, or (4) is a person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (1) through (3) of this definition.

vi. “Related entity” means (1) a stockholder who is an individual, or a member of the stockholder’s family enumerated in section 318 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the stockholder and the members of the stockholder’s family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer’s outstanding stock; (2) a stockholder, or a stockholder’s partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder’s partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50% percent of the value of the taxpayer’s outstanding stock; or (3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. S.318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50% percent of the value of the corporation’s outstanding stock. The attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, shall apply for purposes of determining whether the ownership requirements of this definition have been met.

vii. The disclosure requirement for interest paid to a related member shall be deemed to be satisfied if the taxpayer provides a schedule of: (1) the name of the related member, (2) the country of domicile of the related member, (3) the amount paid to the related member, and (4) the nature of payment or, alternatively, by providing a copy of Federal form 5472 or its equivalent as an attachment to form NJ CBT-100.

viii. “rate of tax” means allocation factor times the tax rate percentage

5. Examples:

Example 1: Royal Palm, Ltd., a foreign parent corporation, owns directly or indirectly 100% of the outstanding shares of a U.S. domestic subsidiary, Red Oak, Inc. and 100% of the outstanding shares Little Palm, Ltd., a foreign subsidiary, a corporation. Royal Palm, Ltd. and Little Palm, Ltd. are domiciled in jurisdictions subject to a comprehensive income tax treaty with the United States of America. Red Oak, Inc. is in need of short term and/or long term funding. Little Palm, Ltd. is established by Royal Palm, Ltd. to represent the world wide affiliated group and issue commercial paper, or enter into financing arrangements with lending institutions, or borrow funds from unrelated parties on behalf of the affiliated group. The proceeds of these transactions are then used to fund the operating or capital investment activities of one or more of the members of the worldwide affiliated group. Interest expense attributable to amounts lent by Little Palm, Ltd. the foreign subsidiary to Red Oak, Inc. the U.S. domestic subsidiary, and any costs associated with the origination of the lending which

are assessed to Red Oak, Inc. as expense recovery of the lending originations would not be added back to Red Oak's Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 2: Same facts as Example 1, but Royal Palm, Ltd, the foreign parent, will borrow the funds and lend directly to the operating companies including Red Oak, Inc., the domestic subsidiary. Interest expense attributable to amounts borrowed by Red Oak, Inc., the domestic subsidiary, from Royal Palm, Ltd., the foreign parent, and any costs associated with the lending which are assessed to Red Oak, Inc. as an expense recovery of the lending originations would not be added back to Federal taxable income provided that the loans are at arm's length rates and properly documented.

Example 3: Same facts as Example 1, but Little Palm Ltd., the foreign subsidiary, or Royal Palm, Ltd., the foreign parent, establish a second domestic subsidiary, White Pine, Inc., to facilitate the borrowing and on-lending activities. White Pine, Inc. will be authorized to borrow from Little Palm, Ltd., the foreign subsidiary, or from 3rd party sources such as commercial paper markets or bond markets either inside the United States or outside the United States. White Pine, Inc. will lend the proceeds of the borrowings to Red Oak, Inc. Red Oak, Inc. will pay interest to White Pine, Inc. on the borrowings. All interest expense attributable to amounts borrowed by Red Oak, Inc. from White Pine, Inc. and any costs associated with the origination of the lending which are assessed to Red Oak, Inc. as expense recovery of the lending originations would not be added back to Federal taxable income provided that the loans are at arm's length rates and properly documented.

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

Example 5: A parent corporation has two operating subsidiaries, one solely in NJ and one solely in California both making \$100 of profit, each having equal apportionment factors. This enterprise files a combined return in California. On its NJ separate entity return it shows taxable income of \$100 from its separate NJ operations. In CA, the combined return shows \$200 in profit and apportions 50% to CA. \$100 is subject to tax, thus producing an equitable result.

However, if the CA corporation made a loan to the NJ corporation generating an interest deduction in NJ of \$100 and interest income to the CA affiliate of \$100, an inequity results if the interest is deductible. The NJ corporation would file a return showing no taxable income. However, the CA corporation would still only report 50% of the \$200 combined income (the combined income - NJ \$0 and CA \$200 - has not changed) or \$100 since it files a combined return.

While the interest income is, in fact, included as a tax determinate in CA, so is the interest deduction. The apportionment factors are not affected. As a result, NJ loses revenue, the CA result is neutral, and the taxpayer gets a windfall. The reform act was intended to address this type of situation. Thus, the interest expense must be taxed in a non-unitary state for one of the exceptions to apply.

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

1. if the interest expenses and costs and intangible expenses and costs are directly or indirectly paid, accrued or incurred to a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States. In claiming this exception, the taxpayer shall disclose on its return.

i. the name of the related member,

ii. the amount of the interest expenses and costs and intangible expenses and costs deducted,

iii. the relevant foreign nation, and,

iv. such other information as the director may prescribe;

2. if the interest expenses and costs and the intangible expenses and costs that the taxpayer establishes meet both of the following:

i. the related member during the same income year directly or indirectly paid, received, accrued or incurred the portion to or from a person that is not a related member and,

ii. the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the taxpayer and the related member did not have as a principal purpose the avoidance of any portion of the tax;

3. if the taxpayer establishes that the adjustments are unreasonable by showing the extent that the payee pays tax to New Jersey on the income stream; or

4. if the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment.

5. For purposes of this subsection:

i. “Foreign Nation” means an established sovereign government that is recognized as such by the United States Department of State.

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

iii. “Foreign Corporation” means a business entity incorporated or organized under the laws of a foreign nation.

iv. “Domestic Subsidiary” means a business entity incorporated under the laws of any state within the United States.

v. “Intangible property” to which intangible expenses and costs relate, means and includes but is not limited to patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, film, information technology, and similar types of intangible assets.

vi. “Intangible expenses and costs” means and includes (1) expenses, losses and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the federal Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses related to, or incurred in connection directly or indirectly with, factoring transactions or discounting transactions; (3) royalty, patent, technical and copyright fees; (4) licensing fees; and (5) other similar expenses and costs.

vii. “Interest expenses and costs” means amounts directly or indirectly allowed as deductions under section 163 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.163, for purposes of determining taxable income under the code to the extent such expenses and costs are directly or indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance, management, ownership, sale, exchange or disposition of intangible property.

viii. “Related member” means a person that, with respect to the taxpayer during all or any portion of the privilege period, is (1) a related entity, (2) a component member as defined in subsection (b) of section 1563 of the federal Internal Revenue Code

of 1986, 26 U.S.C. s.1563, (3) is person to or from whom there is attribution of stock ownership in accordance with subsection (e) of section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, or (4) is a person that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person described in (1) through (3) of this definition.

ix. “Related entity” means (1) a stockholder who is an individual, or a member of the stockholder’s family enumerated in section 318 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the stockholder and the members of the stockholder’s family own, directly, indirectly, beneficially or constructively, in the aggregate, at least 50% of the value of the taxpayer’s outstanding stock; (2) a stockholder, or a stockholder’s partnership, limited liability company, estate, trust or corporation, if the stockholder and the stockholder’s partnerships, limited liability companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50% per cent of the value of the taxpayer’s outstanding stock; or (3) a corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. S.318, if the taxpayer owns, directly, indirectly, beneficially or constructively, at least 50% percent of the value of the corporation’s outstanding stock. The attribution rules of the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, shall apply for purposes of determining whether the ownership requirements of this definition have been met.

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

- (1) the name of the related member,
- (2) the country of domicile of the related member,
- (3) the amount paid to the related member, and
- (4) the nature of payment or, alternatively, by providing a copy of Federal form 5472 or its equivalent as an attachment to form NJ CBT-100.

xi. Examples:

Example 1: Large Co A.G., a foreign corporation, domiciled in a jurisdiction that has entered into a comprehensive tax treaty with the United States of America, owns directly or indirectly 100% of the outstanding shares of 3 US domestic subsidiaries (Red Corp., White, Corp and Blue, Corp) and 100% of the outstanding shares of Funding, N.V., a foreign subsidiary. Red, Corp. and White, Corp. utilize certain technology developed by Large Co A.G. in their daily operations of manufacturing products for resale. Blue, Corp. was formed to hold and does hold the US rights to certain technologies developed by Large Co, A.G. Red, Corp. and White, Corp. pay a royalty to Blue, Corp. for the ability to use the technology developed by Large Co., A.G. in its daily operations. Blue, Corp. pays an annual royalty to Large Co., A.G. based on the amount of royalties it receives from Red, Corp. and White, Corp. Amounts paid to Blue, Corp. by Red, Corp. and White, Corp. would not be subject to disallowance. Also the amounts paid by Blue, Corp. to Large Co., A.G. would not be subject to disallowance.

Example 2: Same facts as Example 1 except that Large Co, A.G. has entered into an agreement to securitize certain financial assets. Red, Corp. sells its receivables to White, Corp., a bankruptcy remote, special purpose company, at a discount. White, Corp. pledges the receivables to a lending institution that issues commercial paper backed by those receivables. Large Co. and Red, Corp. have guaranteed that 100% of any receivable pledged is collectable. The discount on the sale of the receivables by Red, Corp. to White, Corp. is not subject to disallowance.

Example 3: A limited partner receives guaranteed payments for its investment in a limited partnership. The payment is similar to a payment on preferred stock. The related member rules apply if the guaranteed payment is above market/arm's length values.

Example 4: Mr. Jones, a New Jersey resident, owns 100% of the shares of Zippy Corp., a corporation properly capitalized and organized and doing business in New Jersey. Zippy Corp. has not made a NJ S election. Mr. Jones loans Zippy Corp. money at an arm's length rate under an arm's length contract. Zippy Corp. may take an interest deduction, provided that one of the exceptions applies: For example, if Mr. Jones pays NJ Gross Income Tax at a rate within 3% of 9%, then Zippy Corp may take the deduction. If Zippy Corp. does not get a deduction, Mr. Jones may not exclude the interest income from his gross income tax taxable income.

Example 5: Mr. Smith, a New Jersey resident, owns 100% of the shares of Pin Corp., a corporation organized and doing business in New Jersey. Pin Corp. has not made a NJ S election. Mr. Smith lends Pin Corp. \$5,000 at an arm's length rate under an arm's

length contract. When Pin Corp. files its CBT-100, the Stockholder's Equity reflected on its Balance Sheet, Schedule B, is \$200. Mr. Smith paid Gross Income Tax on the payments received from Pin Corp. However, Pin Corp. may not claim an interest deduction for interest paid to Mr. Smith. The "loan" is actually a contribution to capital, since the corporation is undercapitalized.

SUBCHAPTER 7. ALLOCATION

18:7-7.6 Corporate partners and partnerships

(a) A foreign corporation that is a general partner in a general or limited partnership or is deemed to be a general partner in a limited partnership doing business in New Jersey satisfies the subjectivity requirements set forth in N.J.S.A. 54:10A-2. A foreign corporation that is a general partner of a general or limited partnership doing business in New Jersey is subject to filing a corporation business tax return in New Jersey and paying the applicable tax under the terms of the corporation business tax to New Jersey. Such a corporation is also deemed to be employing or owning capital or property in New Jersey, or maintaining an office in New Jersey, if the partnership does so. [The ownership of a membership interest in a limited liability company does not satisfy the subjectivity requirement of N.J.S.A. 54:10A-2 unless the foreign corporate member (that is, partner) is manager of a limited liability company, takes part in the control of a limited liability company business, the business of the limited liability company and the corporate member are part of a single unitary business, or the foreign corporate member meets the criteria of N.J.A.C. 18:7-1.9.]

(b) Subsection (a) above [shall not] may apply to foreign corporations, otherwise not subject to the New Jersey corporation business tax, whose only connection to this State is restricted to owning one or more limited partnership interests in one or more

limited partnerships doing business in New Jersey[, except as provided in (c) below.] ,
provided the taxpayer's connection with this state is sufficient to give this state
jurisdiction to impose the tax under the Constitution and statutes of the United States.
See N.J.A.C. 18:7-1.6.

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

1. The limited partner is also a general partner of the limited partnership;
2. The foreign corporation limited partner, in addition to the exercise of its rights and powers as a limited partner, takes an active part in the control of the partnership business; [or]
3. The foreign corporate limited partner meets the criteria set forth in N.J.A.C. 18:7-1.9[.] or 18:7-1.6; or
4. The business of the partnership is integrally related to the business of the foreign corporation.

(d) [The exercise of one or more enumerated limited partner rights or powers as set forth in N.J.S.A. 42:2A-27(b) shall not provide a basis for a finding of subjectivity.

However, a limited partner shall be considered to be taking part in the business only if that limited partner has liabilities to third parties, pursuant to N.J.S.A. 42:2A-27(b).]

Tax filing and payment responsibilities of partnerships are set forth in N.J.A.C. 18:7-17.1 et seq. For the partnership processing fee, see N.J.A.C. 18:35-11.1 et seq.

(e) (No change.)

(f) For purposes of this section, the term "partnership" has the same meaning as is set forth under I.R.C. § 7701(a)(2) and the regulations issued thereunder. Partnerships that are not treated for Federal tax purposes as pass-through entities are also not treated as pass-through entities under this section. The term "partnership" shall include limited liability companies treated as partnerships. [See (a) above regarding treatment of membership interests in limited liability companies.]

(g) – (k) (No change.)

(l) [These rules shall apply to corporation business tax returns filed for privilege periods beginning after July 31, 1997.]

Examples I – IV (No change.)

SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR

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

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

(d) The receipts assigned to a state, a possession or territory of the United States or the District of Columbia or to any foreign country in which the taxpayer is not subject to a tax and does not pay a tax on or measured by profits or income or business presence or business activity shall be excluded from the denominator of the sales fraction.

Example : ABC Inc., a New Jersey corporation, manufactures goods in New Jersey. It also maintains an office in Philadelphia. 80% of ABC's payroll and property are in NJ. It sells 30% of its goods to NJ customers; 30% to PA customers; and 40% to customers in other states. ABC Inc. files returns and pays tax to NJ and PA only. It is not subject to tax in other states due to the protection of P.L. 86-272. ABC Inc. has entire net income of \$1,000,000.

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

<u>Property</u>	<u>±</u>	<u>Payroll</u>	<u>±</u>	<u>Receipts</u>	<u>±</u>	<u>Allocation %</u>
$\frac{80}{100}$		$\frac{80}{100}$		$\frac{30}{100}$		$\frac{30 \div 4}{100} = 55\%$

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

<u>Property</u>	<u>±</u>	<u>Payroll</u>	<u>±</u>	<u>Receipts</u>	<u>±</u>	<u>Allocation %</u>
$\frac{80}{100}$		$\frac{80}{100}$		$\frac{30}{60}$		$\frac{30 \div 4}{60} = 65\%$

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

(f) The amount by which the exclusion of receipts from the denominator of the sales fraction increases the liability of all the members of an affiliated group or controlled group pursuant to sections 1505 or 1563 of the Internal Revenue Code of 1986 over the liability calculated without application of the exclusion shall not exceed \$5,000,000. If the exclusion increases the liability of all the members of an affiliated group or controlled group by more than \$5,000,000 for the privilege period, then the amount of liability in excess of \$5,000,000 due to the exclusion shall be abated, and the abated liability shall be allocated among the members of the affiliated group or the controlled group in proportion to each member's increase in liability due to the exclusion of such receipts. The director may allow a single corporation within the affiliated group or controlled group to act as the key corporation (clearing house) for the abatement. "Business presence" or "business activity" taxes include, but are not limited to, net worth taxes, gross receipts taxes, single business taxes. Property taxes, excise taxes (e.g. cigarette taxes), payroll taxes, and sales taxes are not considered "business presence" or "business activity" taxes.

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

18:7-8.10 Receipts; compensation for services

(a) – (d) (No change.)

(e) [Receipts arising from the sale of management, administration or distribution services to a regulated investment company shall be allocated to New Jersey to the extent that shareholders of the regulated investment company are domiciled in New Jersey in accordance with the procedure prescribed in this subsection.

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

2. For the purposes of this section:

i. "Administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for a regulated investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined herein, to such company.

ii. "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of a regulated investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the Federal Investment Company Act of 1940, as amended.

iii. "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-2m in the case of an individual and under N.J.S.A. 54A:1-20 in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the shareholder's mailing address on the records of the regulated investment company. In the case of a

nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

iv. "Management services" means the rendering of investment advice to a regulated investment company, making determinations as to when sales and purchases of securities are to be made on behalf of a regulated investment company, or the selling or purchasing of securities constituting assets of a regulated investment company, and related activities but only where such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to section 15(a) of the Federal Investment Company Act of 1940, as amended.

v. "Receipts" shall include amounts received directly from a regulated investment company as well as amounts received directly from the shareholders of such regulated investment company in their capacity as such.

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

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

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

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

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

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

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

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

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

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

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

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

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

vi. In addition to amounts received directly from a regulated investment company, “receipts” shall also include amounts received directly from the shareholders of such regulated investment company in their capacity as such.

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

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

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

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

1. For purposes of this subsection:

“Securities” has the meaning provided by paragraph (2) of subsection (c) of section 475 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.475.

“Commodities” has the meaning provided by paragraph (2) of subsection (e) of section 475 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.475; and

“Registered securities or commodities broker or dealer” means a broker or dealer registered as such by the federal Securities and Exchange Commission or the federal Commodities Futures Trading Commission.

18:7-8.17 Non-operational income

Non-operational income of taxpayers [other than those that have their principal place from which the trade or business of the taxpayer is directed or managed in this State] is not subject to allocation but shall be specifically assigned. 100% of non-operational income from taxpayers having their principal place from which the trade or business of the taxpayer is directed or managed in this State shall be specifically assigned to this State, unless another state has nexus to all of the income.

SUBCHAPTER 11. RETURNS

18:7-11.15 Consolidated returns

(a) Corporations are not permitted to file consolidated returns. Provided, however,

1. [a]Any business conducted by an individual, partnership, or corporation or any other entity, or any combination thereof holding a license pursuant to the Casino Control Act shall file a consolidated corporation business tax return as described at N.J.A.C. 18:7-1.17[.] ;

2. An air carrier, within the meaning of the term pursuant to 49 U.S.C. section 40102 may elect to file a consolidated return pursuant to N.J.S.A. 54:10A-18.1;

3. The director may require consolidated filing pursuant to N.J.S.A. 54:10A-10 and N.J.A.C. 18:7-5.11;

(b) – (c) (No change.)

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

(a) – (c) (No change.)

(d) Certain corporations that are member affiliated or controlled groups may be required to file consolidated returns pursuant to N.J.S.A. 54:10A-10. See N.J.A.C. 18:7-5.11.

SUBCHAPTER 13. ASSESSMENT, PAYMENTS, REFUNDS, LIEN

18:7-13.3 Appeal

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

(b) The filing of a complaint by a taxpayer in the Tax Court shall suspend the running of the statute of limitations for the contested issue or issues for all subsequent privilege periods.

SUBCHAPTER 15. URBAN ENTERPRIZE ZONES ACT

18:7-15.2 Definitions

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

A "qualified business" means either:

1. An entity authorized to do business in New Jersey which, at the time of designation as an enterprise zone, is engaged in the active conduct of a trade or business in that zone; or

2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees employed at a business location in the zone, who meet at least one of the following criteria:

i. Resident within the zone, within another zone, or within a qualifying municipality;

ii. Either unemployed, while residing in New Jersey, for at least six months prior to being hired, or recipients of New Jersey public assistance programs, for at least six months prior to being hired;

iii. Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, P.L. 97-300 (29 United States Code 1501, et seq.). Section 1503(8) of that Act defines the term as follows:

"The term 'economically disadvantaged' means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, state or local welfare program; (B) has, or is a member of a family which has received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; (D) is a foster child on behalf of whom state or local government payments are made; or (E) in cases permitted by regulations of the Secretary (U.S. Secretary of Labor), is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements."

For purposes of the corporation business tax credits, the "qualified business" must be a corporation. [The credits shall not be passed through a partnership doing business in a zone to an unqualified corporation which is a partner in the partnership.]

"Enterprise zone" or "zone" means an urban enterprise zone designated by the Urban Enterprise Zone Authority under N.J.S.A. 52:27H-60, et seq.

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which the municipality makes application for enterprise zone designation, an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the state average annual unemployment rate; except that any municipality which qualifies for state aid pursuant to P.L. 1978, c.14 (C.52:27D-178, et seq.) shall qualify if its municipal average unemployment rate for that year exceeded the state average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor. For purposes of P.L. 1983, c.303 (N.J.S.A. 52:27H-60 et seq.), the seven municipalities in which the six enterprise zones are to be designated pursuant to criteria according priority consideration for designation of these zones pursuant to section 7 of P.L. 1983, c.303 (N.J.S.A. 52:27H-66) shall be deemed qualifying municipalities.

SUBCHAPTER 17 PARTNERSHIPS

18:7-17.1 Definitions

“Nonresident noncorporate partner” means an individual, an estate, or a trust subject to taxation pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. that is not a resident taxpayer or a resident estate or trust under that act.

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

Nonresident corporate partners include:

- (1) entities that are classified as partnerships for federal income tax purposes;
- (2) entities that are classified as corporations for federal income tax purposes

that:

- (a) are not corporations exempt from tax pursuant to N.J.S.A. 54:10A-3;

or

- (b) do not maintain a regular place of business, as defined in N.J.A.C.

18:7-7.2, in New Jersey.

“Partner” means an owner of an interest in the partnership, in whatever manner that owner and ownership interest are designated.

18:7-17.2 Subjectivity

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

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

In those situations in which partnerships do not meet the definition of qualified investment partnerships in N.J.S.A. 54:10A-3(r) (which would automatically exempt them from partnership payments under N.J.S.A. 54:10A-15.11a), if all of the income derived from the hedge fund partnership by the partners is not subject to New Jersey gross income tax, the partnership is not required to remit a payment of tax on behalf of its nonresident, noncorporate partners, since the income to the nonresidents is not considered subject to tax in New Jersey.

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

18:7-17.3 Due date for return

The return and payment of tax shall be due on or before the 15th day of the fourth month succeeding the close of the privilege period.

18:7-17.4 Extension of time to file returns

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

18:7-17.5 Calculation of tax

(a) The tax shall be the total of:

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

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

Example: If a partnership is the owner of a partnership interest, then tax payment is required at the rate of 9% for that interest because a partnership is defined as a “nonresident corporate partner.”

3. As used in this subsection, the term “entire net income” as applied to partnerships means “entire net income” computed under the rules of the gross income tax, N.J.S.A. 54A:1-1 et seq.

(b) A partnership shall not claim credit or take into account estimated tax payments made by nonresident partners in determining how much tax to pay on behalf of any corporate partner.

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

18:7-17.6 Credit or refund

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

(b) Each payment amount credited will be deemed to have been paid by the respective partner for the privilege period of the partner.

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

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

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

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

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

18:7-17.7 Estimated return

Partnerships are not required to make estimated payments or installment payments of corporation business tax. They are, however, required to make an installment of the per partner partnership filing fee imposed pursuant to N.J.S.A. 54A:8-6(b)(2).

18:7-17.8 Corporations not subject to withholding; Exemption Form

(a) In order for a nonresident corporate partner to establish that the partnership is not required to pay tax on its behalf, the partner must file annually with the partnership a statement making its claim for exemption. The claim shall be on a form specified by the Director. It must be filed annually and must be received by the partnership on or before the 15th day of the fourth month succeeding the close of the privilege period, or on or before the filing date of the return, if that occurs earlier.

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

(c) If a New Jersey S corporation, that does not have a place of business in New Jersey is a partner in a partnership, a tax payment is made on its behalf at the 9% rate, since it does not have a regular place of business in New Jersey.

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

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

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

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

18:7-17.10 Electronic Filing

A partnership subject to the provisions of the corporation business tax shall file its return and make payment of its liability by electronic means, if it has 10 or more partners.

SUBCHAPTER 18: ALTERNATIVE MINIMUM ASSESSMENT

18:7-18.1 Definitions

For the purposes of this section:

“Affiliated group” means a group of corporations defined as an affiliated group by section 1504 of the federal Internal Revenue Code of 1986, 26 U.S.C.s. 1504, or any successor federal law, that files a consolidated federal income tax return for the privilege period pursuant to sections 1501 through 1504 of the federal Internal Revenue Code of 1986.

“Cost of goods sold” means the cost of goods sold calculated pursuant to the same method used by the taxpayer for the purpose of computing its federal income tax (including for example, and without limitation IRC Section 263A) multiplied at the taxpayer’s election by either the allocation factor computed pursuant to N.J.S.A. 54:10A-6 or the receipts fraction of the allocation factor (c.f. N.J.A.C. 18:7-10.1 regarding discretionary adjustments of the allocation factor by the Director.) In a particular case the director may use another input or expenditure that is necessary to measure equally the business activity of the taxpayer.

“Key corporation” means a single member within an affiliated group designated by the group to act as a “clearinghouse” for adjustments to members of the group.

“Member of an affiliated group” means a taxpayer that is part of an affiliated group.

“New Jersey gross profits” means New Jersey gross receipts reduced by returns and allowances attributable to New Jersey gross receipts, less the cost of goods sold.

“New Jersey gross receipts” means the receipts of the taxpayer for the privilege period, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes arising during the privilege period from:

1. sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,

2. sales of tangible personal property located without the State at the time of the receipt of or appropriation to the order where shipment is made to points within the State,

3. services performed within the State,

4. rentals from property situated, and royalties from the use of patents or copyrights, within the State,

5. all other business receipts earned within the State.

18:7-18.2 Alternative minimum assessment

(a) For privilege period beginning on or after January 1, 2002, all New Jersey taxpayers except those enumerated in N.J.A.C. 18:7-18.3 are required to pay a New Jersey Corporation Business Tax computed under N.J.S.A. 54:10A-5 or the alternative minimum assessment, computed under N.J.S.A. 54:10A-5a. whichever is greater. There are two methods of determining the alternative minimum assessment. One is based on New Jersey Gross Receipts, and the other is based upon New Jersey Gross Profits.

(b) For privilege periods beginning on and after July 1, 2006, the alternative minimum assessment shall be \$0.0 except for corporations exempt from the corporation business tax on net income by virtue of the application of 15 U.S.C. sec. 381 et seq. (P.L. 86-272). For such taxpayers the alternative minimum assessment shall continue to be computed.

(c) For privilege periods beginning on and after January 1, 2007 a taxpayer exempt from the corporation business tax on net income by virtue of the application of 15 U.S.C. sec. 381 et seq. (P.L. 86-272) that files a consent to jurisdiction of the State to impose and pay the tax pursuant to N.J.S.A. 54:10A-5 shall have an alternative minimum assessment of \$0.0.

18:7-18.3 Taxpayers not subject to the alternative minimum assessment

(a) Corporations that are subject to tax under N.J.S.A. 54:10A-5 but that are not subject to the alternative minimum assessment are:

1. New Jersey S corporations;
2. Investment companies;
3. Professional corporations organized pursuant to N.J.S.A. 14A:17-1 et seq. or a similar corporation for profit organized to render professional services under the laws of another state; or
4. A person operating as a cooperative under 26 U.S.C. section 1381 et seq.

18:7-18.4 Calculation of the Alternative Minimum Assessment

(a) The computation of the alternative minimum assessment (“AMA”) based upon New Jersey Gross Profits is calculated as follows:

If New Jersey Gross Profits are:

1. \$1,000,000 or less, the AMA based on Gross Profits is zero;
2. greater than \$1,000,000, but not over \$10,000,000, the AMA is .0025 times the gross profits in excess \$1,000,000, multiplied by the AMA exclusion rate of 1.11111;

3. greater than \$10,000,000, but not over \$15,000,000, the AMA is the gross profits multiplied by .0035;

4. greater than \$15,000,000, but not over \$25,000,000, the AMA is the gross profits multiplied by .006;

5. greater than \$25,000,000, but not over \$37,500,000, the AMA is the gross profits multiplied by .007;

6. greater than \$37,500,000, the AMA is the gross profits multiplied by .008.

(b) The computation of the AMA based upon gross receipts is calculated as follows:

If New Jersey gross receipts are:

1. \$2,000,000 or less, the AMA based on Gross Receipts is zero;

2. greater than \$2,000,000, but not over \$20,000,000, the AMA is .00125 times the gross receipts in excess \$2,000,000, multiplied by the AMA exclusion rate of 1.11111;

3. greater than \$20,000,000, but not over \$30,000,000, the AMA is the gross receipts multiplied by .00175;

4. greater than \$30,000,000, but not over \$50,000,000, the AMA is the gross receipts multiplied by .003;

5. greater than \$50,000,000, but not over \$75,000,000, the AMA is the gross receipts multiplied by .0035;

6. greater than \$75,000,000, the AMA is the gross receipts multiplied by .004.

(c) For the first privilege period that the taxpayer pays the alternative minimum assessment the taxpayer may select a computation method for the alternative minimum assessment, based either on Gross Profits or Gross Receipts. Once selected, that method must be employed for that privilege period, and for the next succeeding four privilege periods.

(d) The maximum alternative minimum assessment for an individual corporation for a privilege period is \$5,000,000. For an affiliated group of corporations the maximum alternative assessment is \$20,000,000. If the \$20,000,000 threshold is claimed by an affiliated group, the group must name a key corporation to act as clearinghouse for adjustments to members of the group.

(e) If a taxpayer has a short period return, the thresholds and caps are prorated. For example, a taxpayer whose privilege period is six months shall become subject to tax

under the gross profits method when gross profits are \$500,000 or greater and under the gross receipts method when gross receipts are \$1,000,000 or more. Similarly for an individual corporation having a six month privilege period, the maximum alternative minimum tax shall be \$2,500,00 or for an affiliated group of corporations \$10,000,000.

18:7-18.5 Alternative Minimum Assessment Credits

(a) If the alternative minimum assessment (“AMA”) for a taxpayer exceeds the amount of tax computed under N.J.S.A. 54:10A-5 for a privilege period, that excess amount shall be permitted to the taxpayer as a credit unless such taxpayer is also entitled to a credit pursuant to N.J.S.A. 54:10A-5b (for certain air carriers pursuant to 49 U.S.C.s. 40102).

(b) The credit may be carried forward to subsequent privilege periods, including periods when the alternative minimum assessment is no longer applicable, during which the tax pursuant to N.J.S.A. 54:10A-5 exceeds the alternative minimum assessment provided that (i) the credit applied shall not reduce the amount of tax otherwise due to an amount less than the alternative minimum assessment for that period; and (ii) the credit applied shall not reduce the amount of tax otherwise due by more than 50%; and (iii) the credit applied shall not reduce the amount of tax otherwise due below the statutory minimum set forth in N.J.S.A. 54:10A-5(e).

(c) If a corporation having AMA carryforward credits is liquidated or merged into another corporation, the carryforward credits are lost to the corporation that does not survive such reorganization.

18:7-18.6 Gross receipts calculation; agency businesses

(a) Under the applicable accounting principles for several industries cash flow relating to the underlying product is not considered a receipt of the taxpayer. Using this approach a taxpayer in such a business may report as its gross receipts for federal purposes fees it receives from its customers. This methodology enables certain high volume, low margin industries to achieve an accurate reflection of their tax liability when calculating the AMA.

(b) For example, a professional employer organization (“PEO”), which serves as a co-employer with its customers, may use this “agency approach” in calculating its New Jersey gross receipts. Using that approach the PEO may report as its gross receipts for federal purposes the administrative fees it receives from its customers. The customers’ payments of the fixed obligations and costs relating to the employees, such as wages, taxes and benefits, are then reported as reimbursed expenses, namely, direct expenses without profit or indirect cost reimbursement.

This approach is also applicable to other entities such as real estate and insurance agencies, where cash flow relating to the underlying product is not considered a receipt of the taxpayer.

SUBCHAPTER 19 FILING FEE PAYMENTS BY PROFESSIONAL
CORPORATIONS

18:7-19.1 Definitions

“Licensed professional” means and is limited to persons rendering professional services in the following professional capacities: certified public accountants, architects, optometrists, professional engineers, land surveyors, land planners, chiropractors, physical therapists, registered professional nurses, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiroprodists, veterinarians and, subject to the Rules of the Supreme Court, attorneys-at-law.

“Professional corporation” means a corporation which is organized under “The Professional Service Corporation Act,” N.J.S.A. 14A:17-1 et seq., or a similar act of another state for the purpose of rendering the same or closely allied professional service as its shareholders, each of whom must be licensed or otherwise legally authorized within the State to render such professional service.

18:7-19.2 Payment of filing fee

(a) For privilege periods beginning on or after January 1, 2002 each professional corporation filing a corporation business tax return that has more than two licensed professionals shall make a payment of a filing fee of \$150 for each licensed professional of the corporation, provided that the payment shall not exceed \$250,000.

(b) If a professional corporation includes non-resident professionals, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the professional corporation filing fee may be used, provided that the professional corporation has an office outside New Jersey.

(c) The total apportioned professional corporation fee is equal to the sum of

1. the number of resident professionals multiplied by \$150; plus
2. the number of nonresident professionals with physical nexus to New Jersey multiplied by \$150; plus
3. the number of non-resident professionals without physical nexus to New Jersey multiplied by \$150 and the resulting product multiplied by the corporate allocation factor of the professional corporation.

(c) A professional corporation has an office in Washington, D.C. It has 100 professionals in that office. Three of the attorneys travel from Washington to Newark, N.J. for a trial. As the result of their legal work in New Jersey, the firm receives a \$1,000,000 legal fee. The professional corporation's New Jersey allocation factor for 2002 is 0 property, 0 payroll, \$1,000,000 New Jersey receipts over \$10,000,000 receipts everywhere which equals

$$\frac{0 + 0 + 1 + 1}{10 + 10} = 0.05.$$

The professional corporation fee is calculated as follows:

$$0 \text{ Resident Professionals} = 0$$

3 Nonresident professionals with physical nexus to New Jersey

$$\underline{3 \times \$150 = \$450}$$

97 nonresident professional without physical nexus

$$\underline{97 \times \$150 = \$14,500}$$

$$\underline{14,500 \times 0.05 = \$727.50}$$

total of 0 + \$450 + \$727.5 = \$1,177.50 total professional fee of the corporation for 2002.

(e) In calculating the number of licensed professionals of the corporation, a quarterly average is used. All professionals of the corporation are counted, regardless of the nature of their relationship to the corporation. They are included whether they are shareholders, employees, or owners and regardless of the nature of the licensed profession that they practice.

Example 1: A law firm has eight partners and 16 associates. It also employs one registered nurse and two certified public accountants. Since the firm has 27 licensed professionals, its professional fee payment is \$4,050 (27x \$150) plus an installment payment of \$2,025 (50% of \$4,050) creditable against the succeeding year's payment.

Example 2: A nursing home which is a professional corporation has ten physicians and ten licensed registered nurses, half of which are nonresidents which have no physical nexus in New Jersey. The professional corporation has a New Jersey

business allocation factor of 50%. The professional fee payment is \$2,250 (5 + 5 x \$150 plus 5 + 5 x \$150 x 50%) plus an installment payment of \$1125 (50% of \$2250).

(f) In the event of a period shorter than a year, the fee and fee cap may be prorated by months. A fraction of a month is deemed to be a month.

18:7-19.3 Installment payment

(a) Each professional corporation required to make a payment of the professional corporation filing fee, shall on or before the 15th day of the fourth month of its fiscal year, make an installment payment of its filing fee for the succeeding return period. The amount of the installment payment is 50% of the amount required to be paid for the present fiscal year.

(b) The amount of the installment payment shall be credited against the amount of the filing fee due for the succeeding return period. If the amount exceeds the fee due for the succeeding return period, the excess shall be credited against the amount for succeeding return periods.

(c) If a professional corporation dissolves, the corporation is not required to make a prepayment of the fee for the succeeding taxable period.

18:7-19.4 Penalty and Interest

For purposes of tax administration, the filing fee and installment payments are subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq. Collection of the filing fee and installment payments shall be enforced pursuant to the terms of that act, including, without limitation thereto, penalty and interest and cost of collection provisions.

SUBCHAPTER 11 FILING FEE PAYMENTS BY PARTNERSHIPS

18:35-11.1 Definitions

For purposes of this subchapter, the following terms have the following meanings:

“Common trust fund” means a fund maintained by a bank, which fund is subject to Internal Revenue Code Section 584 and which is free from New Jersey taxation pursuant to N.J.S.A. 17:9A-44.

“Income” means income, loss, gain, or expense.

“Partner” means and includes without necessarily being limited thereto, each entity that receives a K—1 or NJ-K1 from a partnership.

“Partnership” means any entity classified as a partnership for federal income tax purposes. The term includes, but is not limited to, a general partnership, a limited liability partnership, a limited partnership, a family limited partnership, and a limited liability company. The term includes partnerships whose members receive nontaxable income pursuant to N.J.S.A. 54A:5-8(c), commonly referred to as hedge funds and qualified investment partnerships as defined in N.J.S.A. 54:10A-4(r). However, the term does not include investment clubs or common trust funds.

“Investment club” means an entity that is classified as a partnership for federal income tax purposes and, all of whose owners are individuals. All of the entity’s assets must be securities, cash, or cash equivalents, and its assets, must be valued on a consistent basis at the lower of cost or fair market value. In calculating assets for a privilege period, a quarterly average must be used, and the total value must be less than \$60,000. See also N.J.A.C. 18:35-1.3.

18:35-11.2 Apportionment of the partnership fee

(a) For privilege periods beginning on or after January 1, 2002 each partnership, regardless of an any Internal Revenue Code 761(a) election, having income derived from New Jersey sources that has more than two owners shall make a payment of a filing fee of \$150 for each owner of an interest in the entity, provided that the payment shall not exceed \$250,000.

(b) If a partnership includes non-resident partners, some of whom have physical nexus with New Jersey and some of whom do not, then an apportionment methodology for the partnership filing fee may be used, provided that the partnership has an office outside New Jersey.

(c) The total apportioned partnership fee is equal to the sum of

4. the number of resident partners multiplied by \$150; plus
5. the number of nonresident partners with physical nexus to New Jersey multiplied by \$150; plus
6. the number of non-resident partners without physical nexus to New Jersey multiplied by \$150 and the resulting product multiplied by the corporate allocation factor of the partnership.

(The corporate allocation factor includes property, payroll and double weighted receipts fractions.)

18:35-11.3 Annual return; payment of tax or fee due; extensions of time to file

tentative return; estimated payment

(a) A partnership having a resident New Jersey owner of an interest in the entity or having any income derived from New Jersey sources is required to file a partnership return Form NJ-1065 on or before the 15th day of the fourth month after the end of the tax year. See N.J.A.C. 18:35-1.3.

(b) Any partnership having a liability for a filing fee payment pursuant to N.J.S.A. 54A:8-6 or having tax due pursuant to N.J.S.A. 54:10A-15.11 must file Form PART-100, “Partnership Return Voucher” and form NJ-1065. The applicable payment must accompany form PART-100. Form PART-100 must be postmarked on or before the original due date for the return.

(c) A partnership seeking an extension of time to file NJ-1065 may file a copy of its application for a federal extension with its New Jersey return. The box at the top of Form NJ-1065 labeled “Application for Federal Extension is attached” shall be checked. If a federal extension has not be obtained, a request for a state extension may be made by filing Federal Form 8736 or 8800 with the Division of Revenue on or before the due date of the state return. In addition, Form Part 200-T “Partnership Tentative Return and Application for Extension of Time to File” must be postmarked on or before the original due date of the return. An extension of time to file Form NJ-1065 does not extend the time to pay the filing fee or tax due. It also does not extend the time for filing the tax return or returns of the partners.

18:35-11.4 Installment payment

(a) Each entity required to make a payment of the partnership filing fee, shall on or before the 15th day of the fourth month of its fiscal year, make an installment payment of its filing fee for the succeeding return period. The amount of the installment payment is 50% of the amount required to be paid for the current fiscal year.

(b) In the year a partnership dissolves a 50% repayment of the filing fee liability for the succeeding year is not required.

For example, if a partnership having a taxable year beginning on or after January 1, 2002 dissolves during the calendar year 2002, the 50% prepayment of the \$150 per partner filing fee for the 2003 year is not required, provided the partnership properly marks its 2002 Form NJ-1065 signifying it is a final return.

18:35-11.5 Penalty and Interest

For purposes of tax administration, tax and filing fees are payments subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq. Collection of the tax and filing fee shall be enforced pursuant to the terms of that act, including, without limitation thereto, penalty and interest and cost of collection provisions.

18:35-11.6 Partnership Examples of the Imposition of the Filing Fee

(a) The following are examples of the application of the filing fee to a variety of situations.

Example 1: A limited partnership operates a profitable shopping center in Middlesex County, New Jersey. It has 20 partners. All reside in New Jersey. The partnership is liable for a partnership filing fee of \$3,000 (20 x \$150) plus an installment payment of 50% of the current year's fee (\$1,500) for the succeeding year.

Example 2: A Connecticut partnership with an office in New Haven sells small tables. Ten partners reside in New Jersey and ten reside in Connecticut. The New Jersey customers of the business purchase \$200,000 worth of tables per year. Four Connecticut partners remain outside New Jersey, but six Connecticut resident partners work in the partnership's New Jersey office.

Since the partnership includes nonresident partners, the apportionment methodology for the partnership filing fee may be used. The partnership's allocation factor is assumed to be 0.4.

The fee is calculated as follows:

The number of New Jersey resident partners is multiplied by \$150.

$$\underline{10 \times \$150 = \$1,500}$$

The number of nonresident partners with physical nexus with New Jersey multiplied by \$150.

$$\underline{6 \times \$150 = \$900}$$

The number of nonresident partners without physical nexus to New Jersey is multiplied by \$150 and the result is multiplied by the allocation factor.

$$\underline{4 \times \$150 = \$600}$$

$$\underline{\$600 \times 0.4 = \$240}$$

The total fee for 2002 is:

$$\underline{\$1,500 + \$900 + \$240 = \$2,640}$$

The prepayment for 2003 is

$$\underline{\$2,640 \times 50\% = \$1,320}$$

Example 3: A limited partnership, East, L.P., is organized and has an office in New Jersey. It has 10 limited partners and two general partners. One of the limited partners is a California limited partnership, West, L.P., having 15 partners all of whom are based in an office in Los Angeles. The Los Angeles limited partnership received a \$1,000,000.00 distribution in 2002 from the New Jersey partnership. West, L.P.'s apportionment formula is 10% or 0.1.

First, in 2002 the New Jersey partnership pays a fee of (12 x \$150) \$1,800 for 2002 since all its partners had a presence in New Jersey plus a prepayment of \$900 (50% x \$1800) for 2003.

Second, since the California partnership derives income from New Jersey, it is also responsible for the partnership fee. Its fee is calculated as follows.

0 Resident Partners = \$0

0 Non-Resident Partners with physical nexus = \$0

15 Non-Resident partners without physical nexus to New Jersey

15 x \$150 = \$2,250

\$2,250 x 0.1 = \$225 which is the fee for the California partnership.

Example 4: A family limited partnership is organized so that two general partners receive K-1's and two limited partners that receive no income from the partnership do not receive K-1's.

The partnership fee is 4 x \$150. There are four owners of the partnership and the partnership directory discloses them as such. The fact that two partners do not receive K-1's, is not material, and they are still counted toward the fee total since they are also owners of the partnership.