TREASURY-TAXATION
DIVISION OF TAXATION

Corporation Business Tax Act- Combined Reporting


Authorized By: John J. Ficara, Acting Director, Division of Taxation.
Calendar Reference: See Summary below for explanation of exception to calendar requirement.
Proposal Number: PRN 2020- .

Submit written comments by XX, 2020, to:
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The agency proposal follows:
Summary

Pursuant to P.L. 2018, c. 48, and P.L. 2018, c. 131 the Division is proposing amendments and new rules to implement the statutory requirements of the law changes. The proposed rules provide new and amended rules for net operating loss deductions and filing combined returns. The proposed rules also make amendments to existing rules related to the federal tax reform applicable to January 1, 2017, for a reduced dividend exclusion, and provisions of the Internal Revenue Code from which New Jersey has decoupled.

P.L. 2018, c. 48, as amended, clarified, and supplemented by P.L. 2018, c. 131, revised the statutory law modifying the applicability of net operating losses and net operating loss carryovers to occur on a post-allocation basis (called post- apportionment net operating losses in other states) for privilege periods ending on and after July 31, 2019, (i.e., privilege periods beginning on and after August 1, 2018, for a full-year fiscal taxpayer). The law converts pre-allocation net operating loss carryovers from privilege periods ending before July 31, 2019.

P.L. 2018, c. 48, as amended, clarified, and supplemented by P.L. 2018, c. 131, changed the statutory law to require unitary businesses to file a mandatory combined return. The statues provide that the water’s-edge basis is the default filing method unless the managerial member of the combined group elects one of the other two combined return filing methods. P.L. 2018, c. 48 defined the meaning of a unitary business in the context of a combined group. The unitary business principle and combined reporting both predate the New Jersey Corporation Business Tax Act, however, New Jersey only recently enacted mandatory unitary combined reporting. Combined reporting has been
upheld by the Supreme Court of the United States as constitutional in *Barclays Bank PLC v. Franchise Tax Board of California*, 114 S.Ct. 2268 (1994); and *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159 (1983).

P.L. 2018, c. 48, as amended, clarified, and supplemented by P.L. 2018, c. 131, also permits a unitary business group to elect to include all of their worldwide combined group members. The second elective method, the affiliated group election, permits a combined group to include all of its domestic affiliates, rather than having to determine unity for the convenience of the taxpayers.

P.L. 2018, c. 48, decoupled from IRC § 199A for New Jersey purposes and required the deductions to be added back in computing entire net income if the deduction was applicable federally.

P.L. 2018, c. 48, decoupled from the deduction and exemption provisions of IRC § 965 disallowing the deductions for New Jersey purposes and requiring them to be added back when computing entire net income pursuant to N.J.S.A. 54:10A-6.5. Additionally, P.L. 2018, c. 48, and P.L. 2018, c. 131, amended N.J.S.A. 54:10A-4(k)(5) to include the 965(a) deemed repatriation dividends as an eligible component of the dividend received exclusion. N.J.S.A. 54:10A-4(k)(5) was also amended to reduce the dividend received exclusion from 100% to 95% for qualified subsidiaries; to provide for the application of a special allocation formula on the 5% reduction of dividend received exclusion for tax years beginning January 1, 2017, through tax years beginning before January 1, 2019; and to provide an additional tiered subsidiary exclusion. Pursuant to 26 C.F.R. 1.965-9(a) relevant to the alignment of privilege periods and combined reporting.
although rare, there may be some instances where the deemed repatriation dividends are eligible for the 100% intercompany dividend elimination.

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

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

New N.J.A.C. 18:7-1.25 is proposed to clarify nexus and P.L. 86-272 in the context of combined reporting and provides several examples.

N.J.A.C. 18:7-2.1 is amended to make clear that a combined group is immediately subject to tax if one of the members of the combined group has taxable status in New Jersey.

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

N.J.A.C. 18:7-3.23 is proposed for amendment to make it clear the rule applies for privilege periods beginning before January 1, 2018, for the New Jersey research and development credit. Furthermore, the proposed amendments make clear that the credit was never refundable.
New N.J.A.C. 18:7-3.23A is proposed to provide rules governing the New Jersey research and development credit for privilege periods beginning on and after January 1, 2018. Pursuant to P.L. 2018, c. 48, N.J.S.A. 54:10A-5.24 was amended to conform the New Jersey research and development credit to the current federal corporate income tax research and development credit. However, the law change did not conform the corporation business tax to the federal payroll credit for research and development. The proposed rule makes clear that the expenses used for the federal payroll credit are not permitted for the New Jersey credit. The proposed new rule provides examples for separate return filers and combined return filers.

New N.J.A.C. 18:7-3.26 is proposed to clarify the penalty relief provisions of section 24 of P.L. 2018, c. 48.

New N.J.A.C. 18:7-3.27 is proposed to clarify that for privilege periods ending on and after July 31, 2019, that tax rate applies to the current tax base.

N.J.A.C. 18:7-5.2 is proposed for amendment to incorporate the statutory changes pursuant to P.L. 2018, c. 48 and P.L. 2018, c. 131. Subsection (a)(1)i is amended to delete the word “specific” pursuant to the amendment to N.J.S.A. 54:10A-4(k)(2)(A) which deleted the word “specific” as part of P.L. 2018, c. 48. The result is that taxpayers now must include all income that is exempt for federal purposes under any provision of the federal Internal Revenue Code, unless there is an exemption or exclusion elsewhere in the Corporation Business Tax Act pertaining to an item of income. Subsection (a)(1)i is also amended to clarify the treatment of worldwide income pursuant to P.L. 2018, c. 131. Subsection (a)(1)viii is amended to clarify the change from pre-allocation net operating losses to post-allocation net operating losses and cross reference new N.J.A.C. 18:7-5.21,
which goes into further detail on the new net operating loss calculation. Subsection (a)(1)xx is amended to conform to the federal repeal of IRC § 199. Thus, in privilege periods beginning on or after January 1, 2018, there is no 199 deduction to add back or deduct. Subsection (a)(1) xxiii is new and codifies the disallowance of any deduction, exemption, or credit allowed under the Internal Revenue Code § 965 pursuant to section 2 of P.L. 2018, c. 48, retroactive to privilege periods beginning on and after January 1, 2017. Subsection (a)1xxiv is new and codifies the disallowance of the amounts taken as a deduction under § 199A of the Internal Revenue Code (26 U.S.C. §199A) pursuant to N.J.S.A. 54:10A-4(k)(2)(J)(ii). Subsection (a)1 xxv is new and codifies N.J.S.A. 54:10A-4(k)(2)(K) while providing a cross reference to a new subsection where the provisions of N.J.S.A. 54:10A-4(k)(2)(K) will be illustrated in further detail. Subsection (a)(2)i is amended to provide for the statutory changes to N.J.S.A. 54:10A-4(k)(5), which reduced the dividend exclusion to 95% for dividends received from 80% or more owned subsidiaries retroactively for privilege periods beginning on and after January 1, 2017, and for all subsequent privilege periods. Subsection (a)(2)i is additionally amended to codify the additional exclusion of dividends that a subsidiary received from a lower tier subsidiary pursuant to N.J.S.A. 54:10A-4(k)(5)(C), which allows for the exclusion of the dividends by a taxpayer where the subsidiary included those dividends in its allocated entire net income and paid tax to New Jersey on those dividends. Subsection (a)(2)vii is proposed to add a cross reference to the appropriate section in new subchapter 21 for combined groups that have an international banking facility. Subsection (a)(2)ix is new and proposed to clarify the deduction under N.J.S.A. 54:10A-4.15 and cross reference N.J.A.C. 18:7-5.19.
N.J.A.C. 18:7-5.11 is amended to clarify that the provisions of this rule apply to pre-combined reporting years and provides a cross reference to new subchapter 21, for the privilege periods covered by the combined reporting statutes.

N.J.A.C. 18:7-5.12, N.J.A.C. 18:7-5.13, and N.J.A.C. 18:7-5.15 are amended to reference the transition time from pre-allocation to post-allocation net operating loss application, privilege periods ending prior to July 31, 2019, and privilege periods ending on and after July 31, 2019, pursuant to P.L. 2018, c. 48 and P.L. 2018, c. 131, which made the change effective for privilege periods ending on and after July 31, 2019. Further, the amendments cross reference N.J.A.C. 18:7-5.21, which is the new subsection detailing the change to post-apportionment net operating losses.

New N.J.A.C. 18:7-5.21 is proposed to codify the statutory changes implementing the change from pre-allocation net operating losses (and carryovers) for privilege periods ending prior to July 31, 2019, to post-allocation net operating losses (and carryovers) for privilege periods ending on and after July 31, 2019, in conjunction with the changes to N.J.S.A. 54:10A-4(u) through (w) and N.J.S.A. 54:10A-5 that resulted from P.L. 2018, c. 48 and P.L. 2018, c. 131.

New N.J.A.C.18:7-5.22 is proposed to clarify the order of the application for the statutory reduction of New Jersey net operating losses by certain types of discharge of indebtedness income that was excluded from federal taxable income in post-allocation periods.

New N.J.A.C.18:7-5.23 is proposed to clarify the statutory amendments, which added N.J.S.A. 54:10A-4(k)(2)(K) dealing with the application of Internal Revenue Code § 163(j).
New N.J.A.C. 18:7-5.24 is proposed to clarify that New Jersey generally follows the federal stock ownership attribution rules.

N.J.A.C. 18:7-7.6 is proposed for amendment to reference new subchapter 21 where appropriate.

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

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

N.J.A.C. 18:7-8.8 is proposed for amendment so that the rule conforms to the law changes that were part of P.L. 2018, c. 48 and P.L. 2018, c. 131, amending N.J.S.A. 54:10A-6 to market-based sourcing.


N.J.A.C. 18:7-10.1 is proposed for amendment to provide rules in relation to combined groups filing New Jersey combined returns that are similar to the rules for separate return filers, and requires that the requests must be made by the managerial member.

N.J.A.C. 18:7-11.12 is proposed for amendment to make the extension periods for corporation business tax returns uniform and match the extension period permitted pursuant to 26 U.S.C. §6081 of the Federal Internal Revenue Code. The proposed amendments also delete provisions on the accrual of interest that were effective from December 9, 1987, until July 1, 1993, as these remote year provisions are no longer necessary.
N.J.A.C. 18:7-11.15 is proposed for amendment to make clear that consolidated returns are not permitted for privilege periods ending before July 31, 2019, except as otherwise provided for those periods. Additionally, the proposed amendments add a reference to new subchapter 21 for combined returns.

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

New N.J.A.C. 18:7-21.2 further explains the concept of unitary business, what factors the Divisions considers to create a unitary relationship between entities, which tests for unity the Division intends to use, and various other aspects of the unitary business principle. The proposed new rule also sets forth examples.

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

New N.J.A.C. 18:7-21.4 sets forth the filing requirements for mandatory combined returns.

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

New N.J.A.C. 18:7-21.6 sets forth the methods of payment, refunds, filing, and assessments for combined groups filing a combined return.
New N.J.A.C. 18:7-21.7 sets forth the determination of the entire net income of the combined group pursuant to N.J.S.A. 54:10A-4.6. Furthermore, the proposed new rule also includes appropriate cross references to other sections.

New N.J.A.C. 18:7-21.8 sets forth the reporting requirements for non-U.S. corporations that are members of a combined group where the non-U.S. corporation did not file a return for federal tax purposes.

New N.J.A.C. 18:7-21.9 sets forth other areas where the combined reporting affects other filing requirements.

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

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

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

Proposed new N.J.A.C. 18:7-21.14 codifies the statutory requirements of P.L. 2018, c. 48, converting the outstanding unexpired alternative minimum assessment tax credits of taxpayers that are in a combined group reporting on a New Jersey combined return.

Proposed new N.J.A.C. 18:7-21.15 sets forth which members are required to be included in the water’s-edge combined group default return for filing mandatory combined returns pursuant to N.J.S.A. 54:10A-4.11. Additionally, the proposed rule sets forth the references to more detailed sections for making the worldwide group election and affiliated group election.

Proposed new N.J.A.C. 18:7-21.16 sets forth the requirements for making a worldwide group combined return election.

Proposed new N.J.A.C. 18:7-21.17 sets forth the requirements for making an affiliated group combined return election.

Proposed new N.J.A.C. 18:7-21.18 codifies the statutory requirements of N.J.S.A. 54:10A-4(k)(16), which allows for a deduction by publicly traded companies for the offset of their net deferred tax liability changes due to conforming to the combined reporting requirements.

Proposed new N.J.A.C. 18:7-21.19 sets forth the minimum tax for each member of a combined group as well as providing that the aggregate sum of the minimum tax of all of the members of the combined group must be reported on the combined return pursuant to P.L. 2018, c. 131.

Proposed new N.J.A.C. 18:7-21.20 sets forth the requirements for the accounting and income reporting methods used when filing combined returns.
Proposed new N.J.A.C. 18:7-21.21 sets forth the manner in which a New Jersey S corporation may elect to be included in the combined group filing a New Jersey combined return. The proposed new rule also sets forth how a New Jersey S corporation that has elected to be included in a combined return can elect out of the combined return. For New Jersey corporation business tax purposes, a federal S corporation that has not elected to be a New Jersey S corporation is still a C corporation for New Jersey purposes and must be included in the combined return.

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

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

New N.J.A.C. 18:7-21.24 sets forth conditions upon which the Director may de-combine, i.e. remove, an entity from a combined group.

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

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

New N.J.A.C. 18:7-21.27 is proposed to clarify that the federal consolidated return rules apply to New Jersey combined returns to the extent that the rules are consistent with the Corporation Business Tax Act.
New N.J.A.C. 18:7-21.28 is proposed to clarify the rules pertaining to combined groups that have receipts derived from the transportation of freight by air or land. N.J.S.A. 54:10A-4.7(b) provides a specific sourcing rule for certain specific combined groups, which dictates the use of ton miles if 50 percent or more of the combined group’s entire net income is derived from transportation of freight by air or ground. The proposed new rule provides clarity for combined groups that meet the qualifications of N.J.S.A. 54:10A-4.7(b) and the combined groups that do not. The proposed new rule further details the interaction of N.J.S.A. 54:10A-4(k)(9) and N.J.S.A. 54:10A-4.7(b) for the purposes of determining whether N.J.S.A. 54:10A-4.7(b) applies. The proposed new rule additionally sets forth its applicability to combined returns filed on a water’s-edge group basis, worldwide group basis, and an affiliated group basis.

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

**Social Impact**

The proposed amendments and new rules will have a positive social impact by clearly setting forth the provisions P.L. 2018, c. 48 and P.L. 2018, c. 131.

Adoption of the proposed amendments and new rules will benefit the public by providing clarification as to the calculation of entire net income, the calculation of net operating losses, and filing combined returns. In particular, the proposed amendments and new rules will benefit the public by providing guidance on the taxpayers filing and reporting requirements.
Economic Impact

The enactment of P.L. 2018, c. 48 and P.L. 2018, c. 131, significantly changed the Corporation Business Tax Act making a positive impact on the business climate. The proposed amendments and new rules are designed to reflect the statutory changes and clarify the statutory law. The proposed amendments and new rules eliminate possible confusion for taxpayers and their advisors over their tax obligations and tax filing requirements with New Jersey. The proposed amendments and new rules are intended to offer objective but flexible standards for taxpayers’ tax and filing obligations. Less confusion and flexible standards generally reflect positively on State revenues.

Federal Standards Statement

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

Jobs Impact

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

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

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

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

**Smart Growth Impact**

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

**Housing Affordability Impact**

The proposed amendments and new rules would not result in a change in the average cost associated with housing. The proposed amendments and new rules would have no impact on any aspect of housing because the proposed amendments and new rules deal with the corporation business tax.
Smart Growth Development Impact

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

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

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

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT
18:7-1.17 Application of the tax to licensees under the Casino Control Act; casino business consolidated return

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

(b) (No change in text.)
(c) The principles of consolidation are determined by regarding each casino hotel as though it were a single corporation reporting in its own right under the Corporation Business Tax Act. The rules governing consolidation under the Internal Revenue Code do not apply. The business conducted by each casino hotel shall give rise to an obligation to file a separate consolidated corporation business tax return based on all the business activities conducted with respect to that casino hotel. All licensees and all other entities subject to common effective control, without respect to their form of organization or the form of license held, except for licenses issued to individuals in their capacity as employees, must join in filing the consolidated return. All transactions between or among them are to be eliminated in consolidation and shall not appear on the consolidated return. Accordingly, where the same licensee or entity subject to common effective control is a participant in the business conducted by more than one casino hotel, it must join in filing a consolidated return with each such business. A change in common effective control terminates the fiscal year for purposes of filing the consolidated return.

1. (No change in text.)

2. [Consistent with N.J.A.C. 18:7-11.15(a), the separate return due under the Corporation Business Tax Act may not be consolidated. See also (c)4 below.] For mandatory combined returns see Subchapter 21. Casino licensees shall file a combined return in order to satisfy the requirements of the Casino Control Act and shall be taxable members along with their unitary affiliates that are not casino licensees.
3. [Certain corporations that are members of affiliated or controlled groups may be required to file consolidated returns pursuant to N.J.S.A. 54:10A-10. See N.J.A.C. 18:7-5.11. See also (c)4 below.] Corporations that are not casino licensees, but are under common ownership together with casino licensees are required to be included as members of the mandatory combined return if the non-casino licensee corporations are unitary with the casino licensees. See N.J.A.C. 18:7-21.3.

4. (No change in text.)

(d) through (f) (No change in text.)

18:7-1.24 Certain Insurance Companies Subject to the Corporation Business Tax

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

b. Captive insurance companies that do not meet the definition of a combinable captive insurance company are exempt from the corporation business tax and are excluded from the combined group reported on the combined return. Such captive insurance companies are subject to the insurance premiums tax at N.J.S.A. 17:47B-12.
18:7-1.25 Nexus, Combined groups, and P.L. 86-272

a. A taxpayer that is a member of a combined group can either have nexus with New Jersey by deriving receipts from New Jersey from the unitary business, have nexus pursuant to the other factors giving rise to nexus with New Jersey pursuant to N.J.A.C. 18:7-1.6 through N.J.A.C. 18:7-1.14 as part of a combined group, or have nexus independent of a combined group.

b. If, as part of the unitary business of the combined group, one member of the combined group either exceeds the protections of P.L. 86-272 or otherwise does not have P.L. 86-272 protection, this one member of the combined group exceeds the protections of P.L. 86-272 on behalf of all of the other members of the combined group, and no member may claim P.L. 86-272 protection.

c. Examples:

Example 1: Unitary Combined Group Members with Activities Exceeding P.L. 86-272

Companies A and B are unitary combined group members for New Jersey corporation business tax purposes. Company A is physically present in New Jersey and derives service receipts from New Jersey customers as part of the unitary business of the combined group. Company B is not physically present in New Jersey, but derives receipts from the sale of tangible personal property to New Jersey customers as part of the unitary business of the combined group. Both companies have New Jersey nexus and are subject to the greater of either the tax on their income or the $2,000 minimum tax. Company A is not P.L. 86-
272 immune because it has physical presence in New Jersey and derives service
receipts from customers in New Jersey. Therefore, Company A has sufficient
nexus to be taxed based on income and Company B cannot claim P.L. 86-272.

Example 2: Combined Group Members Selling Goods on Behalf of the
Unitary Combined Group

Companies C and D are unitary combined group members for New Jersey
corporation business tax purposes. Company C is a New Jersey domestic
corporation domiciled in New Jersey. Company D is not physically present in
New Jersey but derives receipts from the sale of tangible property. Company D
sells merchandise to Company C for resale. The merchandise is delivered to
Company C and is stored in a warehouse in New Jersey. Company C sells the
merchandise as part of the unitary business of the combined group. Both
companies have New Jersey nexus, even though Company D’s receipts derived
from Company C are eliminated in combination. Accordingly, both companies
are subject to the greater of either the tax on their income or the $2,000
minimum tax. Company C is a domestic corporation domiciled in New Jersey,
therefore it will be taxed based on income. Furthermore, Company D cannot
claim P.L. 86-272 protection because the unitary business activities of Company
C exceed the protections of P.L. 86-272. Company D will also be subject to the
greater of either the tax on their income or the $2,000 minimum tax.

Example 3: Unitary Combined Group with Service and Other Business
Receipts that are not P.L. 86-272 Immune
Companies L, M, N, O, P, and Q are unitary combined group members for New Jersey corporation business tax purposes. As part of the unitary business all of the companies are involved in some aspect of the real estate business in New Jersey, except Company P. Company P is a foreign banking corporation that lends to New Jersey customers and the other companies in the unitary combined group for properties located both inside and outside New Jersey. Company P provides discounted mortgages and credit facilities to its unitary combined group members in order to take advantage of economies of scale in acquiring loans from large banks and the Federal Reserve. Company P also provides discounted mortgage rates to third-party customers who use the mortgages to buy a real estate unit from one of the other unitary combined group members. Company M owns malls in New Jersey. Company N charges fees to Company M for management services that it provides for their malls and charges fees for management services to unrelated third-party owned malls. Company L leases office buildings to commercial tenants, some of which are in New Jersey. Company O owns apartment buildings, condominiums, housing developments, and mixed-use properties, some of which are located in New Jersey. Company Q provides management services to Company L and Company O for a fee. All of the companies in this scenario are subject to the greater of either the tax on their income or the $2,000 minimum tax because all of the members have nexus with New Jersey and do not have P.L. 86-272 immune activities.
Example 4: Unitary Combined Group Technology Company with Various New Jersey Activities

Companies R, S, T, U, V, and X are unitary combined group members for New Jersey corporation business tax purposes. As part of the unitary business, all the companies are in the technology business. Company R is domiciled in Massachusetts and charges a fee for research and development it provides for other members of the unitary combined group and for third parties (some of which are located in New Jersey). Company S is domiciled in New Jersey and also performs research and development for the businesses in the unitary combined group. Company T is domiciled in California and derives service receipts from customers in New Jersey. Company T pays Company S and Company R fees for performing research and development. Company U has warehouses in New Jersey and other states, and handles the storage and shipping of tangible personal property that Company V sells to customers in New Jersey. Company V is domiciled in Connecticut. In addition to selling to New Jersey customers, Company V makes payments for research and development to Company S and Company R. Company X is domiciled in New Jersey and performs management functions for the unitary combined group. Company X also owns the servers for the entire unitary combined group that reside in buildings located in New Jersey. All of the companies in this scenario are subject to the greater of either the tax on their income or the $2,000 minimum tax because they have nexus with New Jersey as part of the unitary business of the combined group.
SUBCHAPTER 2. NATURE OF TAX

18:7-2.1 Nature of tax; in general

(a) The Act imposes a franchise tax on every domestic corporation not otherwise exempt, and upon every foreign corporation not otherwise exempt, falling within any of the taxable categories and as also enumerated in N.J.A.C. 18:7-1.6.

(b) All corporations incorporated in New Jersey and all foreign corporations acquiring a taxable status in New Jersey immediately become subject to the tax.

(c) A combined group shall immediately be subject to the tax if one member of the group is either incorporated in New Jersey or acquires taxable status in New Jersey.

SUBCHAPTER 3. COMPUTATION OF TAX

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

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

1. Except as may be provided in (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. through 4. (No change in text.)

5. For privilege periods ending on and after July 31, 2019, the tax rates in paragraphs 1 through 4 shall be applied to taxable net income as defined in N.J.S.A. 54:10A-4(w) and the nonoperational income that is specifically assigned to New Jersey.
(b) through (c) (No change in text.)

d. For privilege periods ending on and after July 31, 2019, for the members of a combined group filing a New Jersey combined return, a tax rate shall be applied to taxable net income as defined in N.J.S.A. 54:10A-4(w) and the nonoperational income that is specifically assigned to New Jersey. The rates shall be based on the taxable net income of the taxpayer according to the following schedule:

1) If the taxable net income is more than $100,000 in a twelve month period, the rate is nine percent (9%);

2) If the taxable net income is $100,000 or less in a twelve month period, the rate is seven and a half percent (7.5%); and

3) If the taxable net income is $50,000 or less in a twelve month period, the rate is six and a half percent (6.5%).

See Subchapter 21 for more information on combined groups and combined returns.

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

(a) [A] For privilege periods beginning before January 1, 2018, a taxpayer [shall] may be allowed a credit against its corporation business tax liability in an amount equal to 10 percent of the excess of the qualified research expenses for the fiscal or calendar accounting year over the base amount, and 10 percent of the basic research payments determined in accordance with I.R.C. § 41 [as] in effect on June 30, 1992, provided that I.R.C. § 41(h) relating to termination of the availability of the credit in 1995 [shall] must not apply.
(b) through (z) (No change in text.)

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

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

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

(a) A taxpayer may be allowed a credit against its corporation business tax liability in an amount equal to ten percent (10%) of the excess of the qualified research expenses for the privilege period over the base amount, and ten percent (10%) of the basic research payments for the privilege period determined in accordance with I.R.C. § 41. All of the terms, definitions, rules, methods for calculating the credit, and restrictions are the same as the terms, definitions, rules, methods for calculating the credit, and restrictions in I.R.C. § 41 and the applicable regulations promulgated by the U.S. Treasury Department, except as otherwise noted below. Section references are to the Internal Revenue Code (I.R.C.), unless otherwise noted. Amounts paid, incurred, or accrued by the taxpayer for energy research in New Jersey may also qualify as research payments for the New Jersey research credit if the payment qualifies for the Federal corporate income tax credit under I.R.C. § 41.
(b) Consistent treatment of expenses is required. Notwithstanding whether the period for filing a claim for credit or refund has expired for any tax year taken into account in determining the fixed-base percentage, the qualified research expenses taken into account in computing such percentage must be determined on a basis consistent with the determination of qualified research expenses for the credit year.

(c) The New Jersey research credit that is available on and after January 1, 2018 is not refundable.

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

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

(f) Any Act of Congress terminating I.R.C. § 41 will not terminate the research credit available for New Jersey corporation business tax purposes.

(g) The research credit is allowed for qualified research in New Jersey. The research expenditures must meet the qualifications of both I.R.C. §§ 174 and 41,

(See I.R.C. §§ 41 and 174, and regulations thereunder for other definitions and special rules.)

(h) In calculating the New Jersey credit, a taxpayer is bound by the method for calculating the credit that the taxpayer uses for Federal purposes as reported on their Federal return when taking the credit for Federal tax purposes. If a taxpayer files an amended Federal return changing the method used or to adjust the amount of credit claimed for Federal purposes, the taxpayer must file an amended New Jersey corporation business tax return reflecting such change in method for calculating the credit or the adjustment for the amount of the credit claimed. If the Internal Revenue Service makes adjustments to the amount of qualifying expenses, the taxpayer must also file an amended New Jersey corporation business tax return. Adjustments made for qualifying expenses for the Federal credit will not increase or decrease the New Jersey credit if the expenses are not for research conducted in New Jersey.

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

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

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

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

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

(m) The amount of the tax year credit allowable that cannot be applied for the tax year due to certain limitations may be carried over, if necessary, to the seven consecutive privilege periods following a credit's tax year, except as provided in N.J.S.A. 54:10A-5.24b.
(n) Credits allowable must be applied in the order of the tax years in which the credits were earned.

(o) No provision under the Internal Revenue Code making the Federal research and development credit refundable for any Federal tax shall apply for New Jersey corporation business tax purposes.

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

(q) All applicable Federal case law on both I.R.C. §§ 41 and 174 must apply to the extent such case law is consistent with the New Jersey Corporation Business Tax Act.

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

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

(t) A taxpayer making an election under I.R.C. § 41(h) to claim the separate Federal payroll tax credit in I.R.C. § 3111(f) is not allowed to use the expenses used to claim the separate Federal payroll tax credit when claiming the New Jersey
research credit, since the expenses used for computing the Federal payroll tax credit are not used for computing the Federal corporate income tax research credit under I.R.C. § 41(a) and applicable regulations.

(u) Examples:

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

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

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

18:7-3.26 Payments resulting from P.L. 2018, c. 48

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

   b. In the first privilege period that a mandatory combined return is due, no penalties or interest shall accrue due to underpayment that may result from the switch from separate returns to mandatory combined returns. Any overpayment by a member of the combined group from the prior privilege period will be credited as an overpayment of the tax owed by the combined group, credited toward future estimated payments by the combined group.
18:7-3.27 Tax Rate for Privilege Periods Ending On and After July 31, 2019

a. In computing the tax liability owed pursuant to N.J.S.A. 54:10A-5 for privilege periods ending on and after July 31, 2019, (beginning on and after August 1, 2018, if a full tax year) the tax rate shall be applied against the taxable net income as defined by N.J.S.A 54:10A-4(w) in addition to the non-operational income specifically assigned to New Jersey, and the rates shall be based on the taxable net income of the taxpayer according to the following schedule:

1) If the taxable net income is more than $100,000 in a twelve month period, the rate is nine percent (9%);

2) If the taxable net income is $100,000 or less in a twelve month period, the rate is seven and a half percent (7.5%); and

3) If the taxable net income is $50,000 or less in a twelve month period, the rate is six and a half percent (6.5%).

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

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

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

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

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

g. All members of a combined group filing either a mandatory or elective New Jersey combined return shall pay the rate imposed under N.J.S.A. 54:10A-5.c(1) and any New Jersey S corporation electing to be included as a member of the combined group shall be taxed at the same rate as the other members of the combined group.

h. All taxable members of a combined group filing either a mandatory or elective New Jersey combined return shall each owe a $2,000 minimum tax.

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

18:7-5.2 Entire net income; how computed

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

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

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

ii. All interest income from sources within the United States which has not been
included in computing Federal taxable income, including interest on State and Municipal
bonds and certain obligations of the United States and its instrumentalities, less interest
expense incurred to carry such investments, to the extent such interest expense has not
been deducted in computing Federal taxable income;

iii. All dividend income from sources within the United States which has not
been included in computing Federal taxable income;

iv. All Federal taxes on or measured by income or profits which were deducted in
computing Federal taxable income;

v. 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;

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

vii. 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;

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

ix. For accounting or privilege periods ending on or before January 10, 1996, the amount deducted, in computing Federal taxable income, for interest on indebtedness whether or not evidenced by a written statement. To be added back, such interest must be owed directly or indirectly either to an individual stockholder or members of his or her immediate family who, in the aggregate, own beneficially 10 percent or more of the taxpayer's outstanding shares of capital stock or to a corporate stockholder that owns 10
percent or more of the taxpayer's outstanding shares of capital stock. The amount deducted shall be reduced by 10 percent of the amount so deducted or $1,000, whichever is larger. Thus, if the amount of such interest is $1,000 or less, then none of said amount need be added back. However, there shall be allowed as a deduction:

(1) Any part of a deduction for interest on written evidence of indebtedness issued, with stock, pursuant to a bona fide plan of reorganization to persons who prior to such reorganization were bona fide creditors of the taxpayer or any predecessor corporation, but were not stockholders thereof; and

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

(3) Any deduction for interest that relates to debt of a "financial business corporation" owed to an affiliate corporation but only where the interest rate does not exceed two percentage points over a prime rate to be determined by the Commissioner of Banking. Interest paid or accrued to such an affiliate is an unrestricted deduction only when a corporation is a financial business corporation as determined at N.J.A.C. 18:7-1.16. A debt is owed to an "affiliate" corporation when it is [owing] owed directly or
indirectly to holders of ten percent or more of the aggregate outstanding shares of the
taxpayer's capital stock of all classes. The deduction may not be claimed on the
Corporation Business Tax Return, Form CBT-100. Any corporation that is a financial
business corporation must file the Corporation Business Tax Return for Banking and
Financial Corporations, Form BFC-1, and complete Schedule L apportioning the
financial business conducted in New Jersey consistent with N.J.S.A. 54:10A-38; and

(4) Any part of a deduction for interest that related to debt of a banking
corporation owing directly to a bank holding company as defined in 12 U.S.C. § 1841 of
which the banking corporation is a subsidiary. The allowable deduction for interest is
limited to interest paid or accrued directly by the subsidiary to its bank holding company
parent notwithstanding that related indebtedness may be excluded from net worth where
it is indirectly owing to such bank holding company.

x. Recoveries with respect to war losses, regardless of whether such war losses
were deducted in any return previously made for the purpose of computing the New
Jersey Corporation Business Tax;

xi. All income from sources outside the United States which has not been
included in computing Federal taxable income less all allowable deductions to the extent
that such allowable deductions were not taken into account in computing Federal taxable
income;

xii. In any year or short period which ends after 1981, with respect to property
placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar
accounting years beginning on or after July 7, 1993, any depreciation or cost recovery
(ACRS or MACRS) which was deducted in arriving at Federal taxable income and which
was determined in accordance with I.R.C. § 168 in effect after December 31, 1980. See (a)2iv below for depreciation allowable in computing entire net income.

xiii. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any interest, amortization or transactional costs, rent, or any other deduction which was claimed in arriving at Federal taxable income as a result of a "safe harbor leasing" election made under I.R.C. § 168(f)8; provided, however, that for a fiscal year or short period which begins in 1981 and ends in 1982, any such amount which relates to property placed in service during that part of the return year that occurs in 1981 shall be allowed as a deduction in arriving at entire income for that year only; and provided further that any such amount with respect to a qualified mass commuting vehicle pursuant to I.R.C. § 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be allowed in any event.

(1) Where the "user/lessee" of qualified lease property which is precluded from claiming a deduction for rent under this rule would have been entitled to cost recovery on property which is subject to such "safe harbor lease" election in the absence of that election, it may claim depreciation on that property under the provisions of (a)2iv and v below. See (a)2vi below for the treatment to be accorded related income on such "safe harbor lease" transactions.

xiv. All income, from whatever sources derived not included in computing Federal taxable income and not otherwise required to be added back under (a)1i through ix above, less all allowable deductions attributable thereto, to the extent that those allowable deductions were not taken into account in computing Federal taxable income.
xv. The amount deducted from Federal taxable income for any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for violation of a State or Federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this subsection shall not apply to a penalty or fine assessed or collected for a violation of a State or Federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

xvi. The amount deducted from Federal taxable income of treble damages paid to the Department of Environmental Protection and Energy (Department) pursuant to subsection a of section 7 of P.L.1976, c.141 (N.J.S.A. 58:10-23.11f) for costs incurred by the Department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the Department to remove, or arrange for the removal of, the discharge.

xvii. Any deduction for research and experimental expenditures to the extent that those research and experimental expenditures are qualified research expenses or basic research payments for which an amount of credit is claimed pursuant to N.J.S.A. 54:10A-
5.24 unless those research and experimental expenditures are also used to compute a Federal credit claimed pursuant to I.R.C. § 41;

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

xix. Interest expenses and costs and intangible expenses and costs directly or indirectly paid accrued or incurred in connection with a transaction with one or more related members, except as may be permitted pursuant to N.J.A.C. 18:7-5.18;

xx. For privilege periods beginning after December 31, 2004, but before January 1, 2018, amounts deducted for Federal tax purposes pursuant to I.R.C. § 199, except that this provision shall not apply to amounts deducted pursuant to that section that are exclusively based upon domestic production gross receipts of the taxpayer which are derived only from any lease, rental, license, sale, exchange, or other disposition of qualifying production property which the taxpayer demonstrates to the satisfaction of the Director was manufactured or produced by the taxpayer in whole or in significant part within the United States but not qualified production property that was grown or extracted by the taxpayer. "Manufactured or produced," as used in this paragraph, shall be limited to performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition, or character different from that in which they were acquired. The change in form, composition, or character shall be a substantial change, and result in a transformation of property into a different or substantially more usable product. For example, expenses to be added back include, but are not limited to, expenses that are applicable to or pertain to production property grown or extracted; from food processing (but not retail food sales); from software development;
from filmmaking and sound recordings; from the production of electricity, natural gas, and potable water; from construction activities; and from engineering or architectural services;

xxi. For property placed in service on or after January 1, 2004, the amounts claimed as cost expense pursuant to I.R.C. § 179 that are in excess of $25,000; [and]

xxii. For privilege periods beginning after December 31, 2008, and before January 1, 2011, the amount of discharge of indebtedness income excluded for Federal income tax purposes pursuant to I.R.C. § 108(i); [and]

xxiii. For privilege periods beginning on and after January 1, 2017, any deduction, exemption, or credit allowed under the Internal Revenue Code for income reported pursuant to § 965 of the Internal Revenue Code (26 U.S.C. §965); [and]

xxiv. For privilege periods beginning after December 31, 2017, the amounts taken as a deduction pursuant to § 199A of the Internal Revenue Code (26 U.S.C. §199A);

xxv. For privilege periods beginning after December 31, 2017, see N.J.A.C. 18:7-5.23 for more information on the interest deduction limitation in subsection (j) of § 163 of the Internal Revenue Code (26 U.S.C. §163); and

2. Deduct from Federal taxable income:

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

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under I.R.C. § 856, and N.J.S.A. 54:10A-4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2i above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

(2) For privilege periods beginning on or after January 1, 2017, dividends received from a subsidiary to the extent which the subsidiary had received the same dividends from other subsidiaries, the subsidiary included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and paid tax to New Jersey on those dividends. The taxpayer shall exclude from entire net income those dividends received from the subsidiary which the subsidiary paid tax on, to New Jersey, based on the subsidiary’s allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

ii. Fifty percent (50%) of all dividends or amounts deemed dividends for Federal purposes included in Federal taxable income or added to Federal taxable income in accordance with (a) above if received from 50 to less than 80 percent owned subsidiaries.
Dividends received from a regulated investment company that are treated as interest for purposes of the Internal Revenue Code and/or which are not considered qualifying dividends for Internal Revenue purposes are not eligible for deduction or exclusion from entire net income under this subsection.

(1) Dividends received from an entity qualified as a real estate investment trust (REIT) as defined under I.R.C. § 856, and N.J.S.A. 54:10-A4(1), are ineligible for inclusion in the dividends received deduction for corporations as provided in (a)2ii above. For those taxpayers that are subject to New Jersey corporation business tax, REIT distributions in conformity with Federal law are subject to taxation.

(2) For privilege periods beginning on or after January 1, 2017, dividends received from a subsidiary to the extent which the subsidiary had received the same dividends from other subsidiaries, the subsidiary included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and paid tax on those dividends. The taxpayer shall exclude from entire net income those dividends received from the subsidiary that the subsidiary paid tax on, to New Jersey, based on the subsidiary’s allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

iii. Depreciation on property placed in service after 1980 but prior to taxpayer fiscal or calendar accounting years beginning on and after July 7, 1993, on which ACRS or MACRS has been disallowed under (a)1xii above using any method, life and salvage value which would have been allowable under the Internal Revenue Code at December 31, 1980. A method, once adopted, must be used for all succeeding years for purposes of
computing depreciation on that particular recovery property, except only that a taxpayer may make a change in method which 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 Internal Revenue Code at the date the property is placed in service less whatever salvage value would have been required to be considered under the Internal Revenue Code at December 31, 1980;

iv. In any privilege period or taxable year beginning on or after January 1, 2002, with respect to property acquired on or after September 10, 2001, any depreciation that was deducted in arriving at Federal taxable income and that was determined in accordance with I.R.C. §§ 168(k) and 1400L. Assets acquired before September 10, 2001, 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 September 10, 2001, will continue to follow Federal depreciation even if the asset itself was acquired after September 10, 2001, 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 that is a calendar year corporation will be disallowed for the corporation when filing its Form CBT-100 for 2002.

v. Gain or loss on property sold or exchanged is to be determined with reference to the amount properly to be recognized in determination of Federal taxable income.
However, on the physical disposal of recovery property, whether or not a gain or loss is properly to be recognized under the Internal Revenue Code, the transferor of the property shall take as a deduction any excess or shall restore as an item of income any deficiency of depreciation disallowed under (a)1xii above over related depreciation claimed on that property under (a)2iv above. A statutory merger or consolidation shall not constitute a disposal of recovery property.

vi. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any item of income included in arriving at Federal taxable income solely as a result of a "safe harbor leasing" election made under I.R.C. § 168(f)(8); provided, however, that for the accounting period which begins in 1981 and ends in 1982, such income which relates to property placed in service during 1981 is not to be excluded; and provided, further, that any such income which relates to a qualified mass commuting vehicle pursuant to I.R.C. § 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be included in entire net income in any event.

(1) Where income relating to such safe harbor leasing election would have been included in Federal taxable income whether or not the election is made, no exclusion is permitted.

Example: A corporation which finances the acquisition of machinery and equipment is not permitted to exclude interest income merely because it is one of the parties to a "safe harbor lease" whereby it agreed that all parties to the transaction characterize it as a lease for Federal income tax purposes.
(2) For treatment of deductions relating to such "safe harbor lease" transactions, see (a)1xi above.

vii. Any banking corporation which is operating an international banking facility (IBF) as part of its business may exclude the eligible net income of the IBF, as herein described, from its entire net income, as follows:

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

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

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

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

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

(C) Entering into foreign exchange or hedging transactions relating to any transactions under (a)2vii(3)(A) and (B) above or (D) below.
(D) Any other activities which an IBF may be, at any time, authorized to engage in by Federal or state law, the Board of Governors of the Federal Reserve, the Comptroller of the Currency, the New Jersey Banking Commission, or any other authority.

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

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

viii. For privilege periods beginning on or after January 1, 2014, and before January 1, 2019, the amount of discharge of indebtedness income included for Federal income tax purposes, pursuant to I.R.C. § 108(i)).

ix. For privilege periods beginning on and after January 1, 2018, a taxpayer is allowed as a deduction the amount of the full value of the deduction that the taxpayer was allowed for Federal income tax purposes and for which the taxpayer had taken for Federal income tax purposes pursuant to § 250 of the federal Internal Revenue Code (26 U.S.C. §250). See N.J.S.A. 54:10A-4.15 and N.J.A.C. 18:7-5.19 for more information.

18:7-5.11 Right of Director to require consolidated/combined filing, and certain disclosures

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

(b) 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 I.R.C. § 1504 or 1563, shall within 90 days of notice of a request of the Director disclose in its return for the privilege period the amount of all inter-member costs or expenses, including, but not limited to, management fees, rents, and other services, for the privilege period.

(g) If the taxpayer acquires products or services from another member of its affiliated or controlled group, which it resells 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 54:52-8.

(h) Subsections (a) through (g) shall not apply to members of a combined group reported on the same New Jersey combined return.

(i) For privilege periods ending on and after July 31, 2019, the subsections (a) through (g) shall apply to taxpayers that are not included together as members of a
combined group reported on the same New Jersey combined return; provided, however, instead of a consolidated return, the taxpayers shall file a combined return.

18:7-5.12 Net Operating loss deduction

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

18:7-5.13 New Jersey net operating loss carryover

(a) [A]For privilege periods ending before July 31, 2019, a New Jersey net operating loss as defined in N.J.A.C. 18:7-5.15 for any taxable year ending after June 30, 1984, becomes a net operating loss carryover. The net operating loss carryover is carried to each of the succeeding taxable years and is reduced in each such succeeding year by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven years following the year of the loss, taking into account the normal or extended due date for filing the return for the seventh year succeeding the year of the loss. The net operating loss carryover may not be carried back to any year preceding the year of the loss. For this purpose, taxable year shall mean the accounting period covered by the taxpayer's return. In no event may a net operating loss carryover be used for a net operating loss deduction on the eighth return succeeding
the loss year. Notwithstanding the foregoing, a net operating loss for any privilege period ending after June 30, 2009, shall be permitted as a net operating loss carryover to each of the 20-privilege periods following the privilege period of the loss.

(b) Through (d) (No change in text.)

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

18:7-5.15 Net operating loss

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

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

(c) There is no net operating loss for any year that a Corporation Business Tax Return (CBT-100) is not filed or if filed does not report entire net income as a negative amount.

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

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

(1) Terms used in calculating the prior net operating loss conversion carryover:

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

"Base year BAF" means the taxpayer's business allocation factor as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period ending prior to July 31, 2019.

i. This is the allocation factor reported on the taxpayer’s Schedule J of their CBT-100, BFC-1, or CBT-100S, respectively.

"UNOL" means the unabsorbed portion of net operating loss as calculated under N.J.S.A. 54:10A-4(k)(6) as was in effect for the last privilege period ending prior to July 31, 2019, that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year subject to the limitations for deduction under such subsection, including any net operating loss sustained by the taxpayer during the base year.

i. This is the amount reported on Form 500.

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

(A) The taxpayer shall first calculate the tax value of its UNOL for the base year and for each preceding privilege period for which there is a UNOL. The
value of the UNOL for each privilege period is equal to the product of (1) the amount of the taxpayer's UNOL for a privilege period, and (2) the taxpayer's base year BAF. This result shall equal the taxpayer's prior net operating loss conversion carryover.

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

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

(3) In calculating the prior net operating loss conversion carryovers, taxpayers must complete Worksheet 500-P. Taxpayers must retain a copy of Worksheet 500-P in their books and records for inspection.
(4) The limitations in N.J.S.A. 54:10A-4(k)(6)(D) and N.J.S.A. 54:10A-4(k)(6) (F) shall apply to the prior net operating loss conversion carryovers.

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

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

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

(2) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income, without regard to any net operating loss carryover,
and computed without the exclusions in paragraphs (4) and (5) of N.J.S.A. 54:10A-4(k), allocated to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

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

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

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

c. For application of net operating losses for members of a combined group see Subchapter 21.
18:7-5.22 Discharge of Indebtedness Income and New Jersey Net Operating Losses

a. In a period where the taxpayer has an amount excluded from Federal taxable income due to a discharge of indebtedness, the taxpayer shall reduce its net operating losses and net operating loss carryovers as follows:

1. If the taxpayer has an allocated entire net loss for the current period, the current period loss must be reduced by the allocated discharge of indebtedness income. In the event the allocated discharge of indebtedness exceeds the current period allocated entire net loss, the taxpayer must then reduce its prior net operating loss conversion carryovers by the balance of the allocated discharge of indebtedness income. If the remaining balance of the allocated discharge of indebtedness income also exceeds the prior net operating loss conversion carryovers or if the taxpayer did not have prior net operating loss conversion carryovers, the taxpayer must reduce its post-allocation net operating loss carryovers by the allocated discharge of indebtedness income.

2. If the taxpayer has allocated entire net income (i.e., income positive) for the current period, the taxpayer must then reduce its prior net operating loss conversion carryovers by the allocated discharge of indebtedness income. If the allocated discharge of indebtedness income exceeds the prior net operating loss conversion carryovers or if the taxpayer does not have prior net operating loss conversion carryovers, the taxpayer must reduce its post-allocation net operating loss carryovers by the balance of the allocated discharge of indebtedness income. If the taxpayer has allocated entire net income for the current period and the taxpayer has a post-allocation net operating loss carryover only, the taxpayer must reduce its
post-allocation net operating loss carryovers by the amount of the allocated discharge of indebtedness income.

b. For application to members of a combined group see Subchapter 21.

18:7-5.23 Application of Internal Revenue Code Section 163(j)

a. For privilege periods beginning after December 31, 2017, the interest deduction limitation in subsection (j) of §163 of the Internal Revenue Code (26 U.S.C. §163) shall apply on a pro-rata basis to interest paid to both related and unrelated parties, regardless of whether the related parties are subject to N.J.A.C. 18:7-5.18.

b. The limitation will be applied based on the Federal rules and guidance for 26 U.S.C. §163 (j).

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

d. Members of a Federal consolidated group that did not file one Federal consolidated return together, which also file separate New Jersey tax returns, must follow the Federal rules for 26 U.S.C. §163 (j), applying the limitation to those members as each separate taxpayers, and then apply the limitations of N.J.A.C. 18:7-5.18.

e. If members of a Federal consolidated group file a Federal consolidated return, the Federal rules treating the taxpayers as one entity for the purposes of applying the limitation in 26 U.S.C. §163 (j) shall apply when determining the limitation, even though the taxpayers file a separate New Jersey return. The Federal regulations, as amended for the changes to the Internal Revenue Code, governing the application of
the limitation in 26 U.S.C. §163 (j) to Federal consolidated returns shall apply. However, such members are still subject to the limitations set forth in N.J.A.C. 18:7-5.18, if otherwise applicable.

f. For members of a combined group filing a New Jersey combined return, the members included on the combined return shall be treated as one single taxpayer for the purposes of applying the limitation in 26 U.S.C. §163 (j) as though the members of a combined group were members of a Federal consolidated group that filed a consolidated return, regardless of whether such members had filed a Federal consolidated return.

g. If members of a combined group filing a New Jersey combined return are part of a Federal consolidated group with taxpayers that are not included on a New Jersey combined return and the Federal consolidated group files one Federal consolidated return, for the purposes of applying the limitation in 26 U.S.C. §163 (j), all of the members of the Federal consolidated group filing a single Federal consolidated return will be treated as one taxpayer, even though some of the taxpayers were not included in the New Jersey combined return and filed separate New Jersey returns.

18:7-5.24 Application of Federal stock ownership attribution rules

Except as otherwise noted either in this Chapter or for specific purposes in certain sections of the Corporation Business Tax Act, the Federal stock ownership attribution rules generally apply for New Jersey corporation business tax purposes. However, if a provision of the Federal I. R. C. regarding stock ownership
attribution rules or subsequent amendments to any provision of the Federal I. R. C. result in less favorable treatment of a non-U.S. business entity than a U.S. domestic business entity, such provision shall not apply, and the same rules that otherwise would apply to a U.S. domestic business entity shall apply to that non-U.S. business entity for New Jersey corporation business tax purposes.

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 Act to New Jersey. Such a corporation is also deemed to be employing, or owning capital or property in New Jersey, or maintaining an office in New Jersey, if the partnership does so.

(b) through (f) (No change in text.)

(g) For purposes of apportionment (allocation) of corporate income, where the subject corporation and the partnership are not part of a single unitary business, including a business carried on directly by the foreign corporate partner, separate accounting apportionment should be used to arrive at corporate income. If the New Jersey business of the partnership is part of a single unitary business including a business carried on
directly by the foreign corporate partner, flow through accounting apportionment should be used with respect to the incomes of the two entities.

1. Separate accounting apportionment, for purposes of this subsection only, means use of the following method: The corporation's distributive share of the partnership's business income would be apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A-6 apportionment factor for that business by only taking into account the corporate partner's share of the receipts, payroll, and property of the business that the partnership carries on directly. Second, the corporation's entire net income, excluding its distributive share of the partnership's income is apportioned to New Jersey by computing the applicable N.J.S.A. 54:10A-6 apportionment factor for that business by only taking into account the receipts (excluding receipts from the partnership namely, receipts from intercompany transactions), payroll, and property of the business that the corporation carries on directly. Third, these two amounts would be added together to arrive at the corporation's entire net income apportioned to New Jersey.

2. "Flow through accounting apportionment," for [purposes] the purpose of this section only, means use of the following method: Taxpayer shall separately compute the property, payroll, and receipts fractions attributable to the partnership activity. The taxpayer next computes the property, payroll, and receipts fractions attributable to the corporate activity. An allocation factor combining the factors of the corporation and the partnership is then applied to the corporation's entire net income including its distributive share of the partnership's income.
3. Facts that either singly or in combination may suggest that the corporation and partnership are part of a unitary business and hence that a flow through approach may be appropriate include, without limitation thereto:

   i. Substantial intercompany-partnership transactions;
   
   ii. The partnership interest is the only or the most substantial asset of the corporation;
   
   iii. The partnership interest produces all or most of the income of the corporation;
   
   iv. The corporation and the partnership are in the same line of business;
   
   v. There is substantial overlapping of employees and offices; and/or
   
   vi. There is sharing of operational facilities, technology, and/or know-how.

For further information about combined returns and unitary businesses, see Subchapter 21.

4. For purposes of determining the application of the small corporation tax rate, the entire net income of a general partner (actual or deemed) should include the partner's proportionate share of the unapportioned net income of the partnership and the entire net income of a limited partner should include the partner's proportionate share of the unapportioned net income of the partnership.

   (h) The accounting methods described in (g) above are also applied to domestic corporate partners. If a domestic corporation is a partner in a foreign partnership that does not conduct business in New Jersey, and the corporation's own business and that of the partnership are not unitary, then the corporation's income from the partnership shall not be included in the corporation's tax base, and the partnership's receipts, payroll, and property shall not be considered in determining the apportionment factor to apply to the
corporation's income from its own business. If, however, the two businesses are unitary, then the flow through method should be used in apportioning the corporation's income.

For further information about combined returns and unitary businesses, see Subchapter 21.

1. (No change in text.)

(i) through (k) (No change in text.)

SUBCHAPTER 8 BUSINESS ALLOCATION FACTOR

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

(a) If it appears that the business allocation factor computed on the basis of all or any of the property-receipts-payroll fractions does not properly reflect the activity, business, receipts, capital, entire net worth, or entire net income of the taxpayer in New Jersey, the Director may adjust or the taxpayer may request an adjustment of the business allocation factor.

(b) (No change in text.)

(c) For privilege periods ending on and after July 31, 2019, if it appears that the business allocation factor computed on the basis of the receipts fraction does not properly reflect the activity, business, receipts, capital, entire net worth, or entire net income of the combined group in New Jersey, the Director may adjust or the managerial member of a combined group filing a New Jersey combined return may request an adjustment, of the business allocation factor of either the managerial member or the other members of the combined group included on the same New

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

(a) The percentage of the taxpayer's receipts within New Jersey is determined by ascertaining the taxpayer's receipts allocable to New Jersey during the period covered by the return and dividing the sum of the receipts by the taxpayer's total receipts within and outside New Jersey during such period.

(b) (No change in text.)

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

1. All income which is included in entire net income enters into the numerator and denominator of the receipts fraction.

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

Example:

Dividends recognized as income for purposes of determining Federal income tax but which are excluded from entire net income under N.J.S.A. 54:10A-4(k)(1) must also be excluded in computing the receipts fraction.

(d) through (g) (No change in text.)

18:7-8.8 Scope of allocable receipts
(a) Unless otherwise noted herein, receipts from the following are allocable to New Jersey:

1. Sales of tangible personal property where shipments are made to points in New Jersey. Delivery of goods to a purchaser in this State is a shipment made to a point in New Jersey regardless of the F.O.B. point or the fact that the goods may subsequently be resold and trans-shipped to a point outside this State.

   i. The sale of goods shipped to a New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

      Example:

      Taxpayer, a manufacturer located outside of New Jersey, transports goods directly to a customer's location in New Jersey. Since possession of the goods is transferred in New Jersey, shipment is deemed to be in this State resulting in receipts allocable to this State.

   ii. The sale of goods shipped to a non-New Jersey customer where possession is transferred in New Jersey results in a receipt allocable to New Jersey.

      Example:

      Taxpayer, a manufacturer located outside of New Jersey, transports goods into New Jersey where such goods are picked up by a non-New Jersey customer or a customer's representative in New Jersey for further transportation outside of this State. Since possession of the goods passed between the taxpayer and its customer in New Jersey, the sale results in receipts allocable to New Jersey.
iii. The sale of goods shipped by a taxpayer from outside New Jersey to a New Jersey customer by a common carrier results in a receipt allocable to New Jersey. The common carrier is deemed an agent of the seller regardless of the F.O.B. point. Taxpayer, a manufacturer located outside New Jersey, transports goods by a common carrier to a New Jersey facility where the customer takes possession of the goods. Since the common carrier is deemed to be an agent of the taxpayer, the common carrier's transportation of the goods into the possession of the customer in New Jersey results in receipts allocable to New Jersey.

iv. The sale of goods shipped from outside New Jersey to a New Jersey location where the goods are picked up by a common carrier and transported to a customer outside New Jersey results in receipts that are not allocable to New Jersey.

Example:

Taxpayer, a non-New Jersey manufacturer, transports goods from outside New Jersey to a New Jersey location by either a common carrier or a private transporter. The goods are picked up in New Jersey by a common carrier and transported further to a customer outside New Jersey. Since the common carrier is deemed an agent of the seller regardless of the F.O.B. point, the shipment by the common carrier from a point in New Jersey to a point outside New Jersey results in receipts not allocable to New Jersey.

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

3. Rentals from property situated in New Jersey;

4. Royalties from the use in New Jersey of patents or copyrights; and

5. All other business receipts earned in New Jersey. See example in N.J.A.C. 18:7-8.7(c).
18:7-8.12 Other business receipts

(a) All other business receipts earned by the taxpayer within New Jersey are allocable to New Jersey. Other business receipts include all items of income entering into the determination of entire net income during the year for which the business allocation factor is being computed and is not otherwise provided for in these rules. Examples of such business receipts include, but are not limited to, interest income, dividends, governmental subsidies, or proceeds from sales of scrap.

(b) through (f) (No change in text.)

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

SUBCHAPTER 10 SECTION 8 ADJUSTMENTS

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

(a) Generally, the allocation formula described in this chapter will result in a fair apportionment of the taxpayer's net worth and net income within and outside New Jersey. However, experience in this and other states that impose similar franchise taxes has shown that due to the nature of certain businesses the formula may work hardships in some cases, and not do justice either to the taxpayer or the State. Accordingly, provision is made in such cases for the Director to use some other formula that will more accurately reflect the business activity within New Jersey.

(b) Section 8 of the Act provides that where it shall appear to the Director that the business allocation factor, determined pursuant to N.J.S.A. 54:10A-6, does not properly
reflect the activity, business, receipts, capital, entire net worth, or entire net income of a
taxpayer reasonably attributable to New Jersey, he or she may in his or her discretion
adjust the business allocation factor by:

1. Excluding one or more of the fractions therein;
2. Including one or more other elements, such as expenses, purchases, and
contract values (minus subcontract values);
3. Excluding one or more assets in computing entire net worth;
4. Excluding one or more assets in computing an allocation
factor; or
5. Applying any other similar or different method calculated to effect a fair and
proper allocation of the entire net income and the entire net worth reasonably attributable
to this State.

(c) Adjustment of the business allocation factor may be made by the Director
upon his or her own initiative or upon request of a taxpayer.

1. No taxpayer may vary the regular statutory formula without the prior consent
of the Director.
2. A taxpayer making application for an adjustment of its business allocation
factor must file its return and compute and pay its tax in accordance with the regular
statutory formula.
3. The taxpayer [must also attach a rider to the return with a Form A-3730 setting
forth in full the data on which its application is based, together with a computation of the
amount of tax which would be due under the proposed method.] must attach a rider and
documentation setting forth, in full, the data on which its application is based,
together with a computation of the amount of tax which would be due under the proposed method with the submission of Form A-3730 when making such request.

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

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

2. A combined group making an application for an adjustment of its business allocation factor must file the New Jersey combined return and compute and pay its tax in accordance with the allocation factor formula under N.J.S.A. 54:10A-4.7. The request must be made by the managerial member of the combined group.

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

SUBCHAPTER 11 RETURNS

18:7-11.12 Extension of time to file return; interest and penalty
(a) No extension will be granted unless request is made on Tentative Return Form CBT-200T and is actually received by the Division of Taxation or postmarked on or before the due date of the return. The Tentative Return must:

1. Show the information required, including the exact name, address, New Jersey serial number, the Federal employer identification number, if any, and the amount of the estimated tax liability;

2. Be accompanied by a remittance to cover the unpaid balance of the estimated tax due for the accounting year for which an extension of time to file the return is requested; and

3. Be accompanied by the payment on account of its tentative tax which is due on or before the original due date for filing of the return for which an extension is requested.

(b) Taxpayers using the New Jersey Corporation Business Tax Return Form CBT-100 may request an extension for a period not exceeding [six months] the period granted by the Internal Revenue Service for the filing of the taxpayer’s Federal corporate income tax return and will receive automatic approval, provided that the taxpayer has complied with the instructions set forth on the Tentative Return Form CBT-200T, and has paid any unpaid balance of its estimated tax.

1. In general, extension requests shall not be granted for any period exceeding [six months from the original due date] the extension period granted by the Internal Revenue Service.

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

3. If the final return is not submitted within the extended period, penalties for delinquent filing will be applied as if no extension has been granted.
(c) Banking and financial corporations may request an extension of time to file
return Form BFC-1 subject to the following conditions:

1. No extension will be granted unless request is actually received by the Division [of Taxation] or postmarked on or before the due date of the return;

2. The extension shall be made on a copy of page 1 of Form BFC-1, including the exact name, address, New Jersey Serial number, if applicable, the Federal employer identification number, if any, and the amount of tentative tax liability;

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

4. The request shall be accompanied by a completed copy of Schedule L from Form BFC-1, and a copy of the taxpayer's Federal extension request; and

5. The extension request may be for a period not exceeding the extension period granted by the Internal Revenue Service.

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

(e) Where the taxpayer has requested a Federal extension, the Division [of Taxation] shall grant the taxpayer an extension for a period not exceeding [five month] the same period. In cases where the taxpayer has failed to obtain a Federal extension, the taxpayer, upon request, may be granted a [two month] two-month extension for filing the return from the original due date of the return if sufficient cause is [submitted] established in writing. Sufficient cause should be interpreted so that it is impossible or
wholly impracticable to file a return within [two months] two-months from the original due date of the return.

(f) Extensions [may] will be confirmed in writing by the Division [of Taxation], if necessary.

(g) If the original return is not submitted within the extended period, penalty for delinquent filing will be applied as if no extension has been granted.

(h) Interest and penalty are chargeable as follows:

1. The total amount of the tax due must be paid on or before the original due date for filing the return.

2. Any unpaid portion of the tax on the final return that is in excess of the amount paid shall bear interest at the rate of one and one-half percent per month, or fraction thereof from the original due date of the return to the date of actual payment [or December 8, 1987]. [On and after December 9, 1987, the unpaid portion of the tax shall bear interest at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due or December 9, 1987, whichever is later, to the date of actual payment. On and after July 1, 1993, the] The unpaid portion of the tax shall bear interest at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

3. In addition, if the amounts paid up to and including the time for filing of the tentative return total less than the lesser of 90 percent of the amount of tax due, or for a taxpayer that had a preceding fiscal or calendar accounting year of 12 months and filed a return for that year showing a tax liability equal to the tax computed at the rates
applicable to the current accounting year applied to the facts shown on the return for and the law applicable to the preceding accounting year, the taxpayer shall be liable for a penalty of five percent per month, or fraction thereof, on the amount of underpayment. In this context, "filing of the return" means filing of the tentative return incident to a request for extension; "the time for filing" means the original due date for filing the return; and "amount of underpayment" means the difference between 100 percent of the tax shown on the final return and the total of all installments of estimated tax paid on or before the original due date for filing the return, as well as any amount paid with the tentative return.

(i) Where a taxpayer makes an election on Federal Form 8023, it will be granted an extension of time to file a corporation business tax return until the Federal election is filed, provided that a Form CBT-200T has been properly filed in accordance with these rules.

(j) [Warning:]

[1.] No request for extension will be considered unless taxpayer has complied with all the filing requirements for extensions set forth in this rule.

(k) The managerial member of a combined group filing CBT-100U for the group privilege period may request an extension of time to file on behalf of the combined group under subsection b of the section as though the combined group were one taxpayer.

18:7-11.15. Consolidated returns
(a) Corporations are not permitted to file consolidated returns for privilege periods ending before July 31, 2019. Provided, however for those privilege periods:

1. 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. § 40102 may elect to file a consolidated return pursuant to N.J.S.A. 54:10A-18.1; and

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) Except as provided in (a) above, where a taxpayer has filed a consolidated return with the Internal Revenue Service for Federal income tax purposes, it must complete its return under the act and must reflect its entire net income and entire net worth as if it had filed its Federal return on its own separate basis.

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

(d) For mandatory unitary combined returns and elective combined returns in privilege periods ending on and after July 31, 2019, see Subchapter 21.

SUBCHAPTER 21 COMBINED RETURNS

18:7-21.1 Definitions Relevant To Combined Returns

"Affiliated group" means an affiliated group as defined in § 1504 of the Federal Internal Revenue Code, 26 U.S.C. §1504, except such affiliated group shall include all
U.S. domestic corporations that are commonly owned, directly or indirectly, by any member of such affiliated group, without regard to whether the affiliated group includes:

a. corporations included in more than one Federal consolidated return;
b. corporations engaged in one or more unitary businesses; or
c. corporations that are not engaged in a unitary business with any other member of the affiliated group.

In cases where the common ownership standard is met, a New Jersey affiliated group shall include:

(1) each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States; and

(2) any member wherever incorporated or formed that is treated as a domestic corporation under the provisions of the Federal Internal Revenue Code.

"Commonly owned" shall mean more than 50 percent of the voting control of such member is directly or indirectly owned by a common owner or owners, either corporate or non-corporate.

“ Affiliated group election” or “Commonly owned group election”, means an election by a taxable member on behalf of itself and its affiliates to treat as its combined group all business entities that are members of its New Jersey affiliated group, on such terms and in keeping with such requirements as are further explained in N.J.A.C. 18:7-21.14.
"Combinable captive insurance company" means an entity that is treated as an association taxable as a corporation under the Federal I. R. C.:

(1) more than 50% of the voting stock of which is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the Federal I. R. C., and not exempt from Federal income tax;

(2) that is licensed as a captive insurance company under the laws of this State or another jurisdiction;

(3) whose business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent, members of its affiliated group, or both; and

(4) 50% or less of whose gross receipts for the privilege period consist of premiums from arrangements that constitute insurance for Federal income tax purposes.

For purposes of this definition:

"Affiliated group" shall have the same meaning as that term is given by § 1504 of the Federal I. R. C., 26 U.S.C. §1504, except that the term "common parent corporation" as used in § 1504 of the Federal I. R. C., 26 U.S.C. §1504, shall mean any person, as defined in § 7701 of the Federal I. R. C., 26 U.S.C. §7701, and references to "at least 80%" in § 1504 of the Federal I. R. C., 26 U.S.C. §1504, shall be read as "50% or more." Section 1504 of the Federal I. R. C., 26 U.S.C. §1504, shall be read without regard to the exclusions provided for in subsection (b) of that section.

The affiliated group is also otherwise known as the commonly owned group.
"Gross receipts" includes the amounts included in gross receipts for purposes of paragraph (15) of subsection (c) of § 501 of the Federal I. R. C., 26 U.S.C. §501, except that those amounts also include all premiums.

"Premiums" includes consideration for annuity contracts and excludes any part of the consideration for insurance, reinsurance, or annuity contracts that do not provide bona fide insurance, reinsurance, or annuity benefits.

A combinable captive insurance company shall not be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive insurance company that does not meet the definition of combinable captive insurance company will be excluded as provided in subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and is exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

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

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

(2) In the case of an affiliated group election, the term “combined group” refers to the group to which the election applies, which may constitute more than one Federal affiliated group.
(3) The combined group’s taxable entire net income or loss is the sum of the aggregate taxable entire net income or loss, subject to allocation and derived from a unitary business or the sum of the aggregate taxable entire net income or loss of a New Jersey affiliated group in the case of an affiliated group election, in either case as reported on a combined report of every taxable member and non-taxable member of the combined group.

"Common ownership" means that more than 50% of the voting control of each member of a combined group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. Whether voting control is indirectly owned shall be determined in accordance with §318 of the Federal I. R. C., 26 U.S.C. §318.

(1) Direct and indirect voting control, and tiered ownership. If the same person (and/or any related persons) holds directly or indirectly more than 50% of the voting control of a corporation (a “parent corporation”), that person shall be considered to hold indirectly any stock or other interest in ownership or control in a lower-tier corporation (a “subsidiary corporation”) that is directly or indirectly held by the parent corporation. Thus, by way of illustration, a parent corporation and any one or more corporations (whether or not in a direct chain) connected through direct or indirect stock ownership, where more than 50% of the voting control of each subsidiary corporation is directly or indirectly owned by a corporation (and/or any related persons), are treated as commonly owned or under common ownership, and subject to inclusion in a combined group.
Example 1. Corporation A, a widely-held publicly-traded corporation, owns 51% of the stock of Corporation B; B owns 51% of Corporation C; and C owns 60% of Corporation D. Corporations A, B, C, and D are all treated as commonly owned or under common ownership, and subject to inclusion in a combined group.

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

(2) Related Versus Unrelated Owners.

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

Example 1. Individual (W) owns 51% of Corporation A, 60% of Corporation B, and 100% of Corporation C. Corporations A, B, and C are all treated as commonly owned or under common ownership, and subject to inclusion in a combined group. The same conclusion would be reached if W owned 35% of B and W’s husband, a related person, owned 25% of B, so that together W and her husband owned 60% of B.
Example 2. Foreign corporation (F) owns 100% of the stock of Corporation A (organized in the U.S.) and of Corporation B (also organized in the U.S.). A and B each directly or indirectly own various corporate subsidiaries in separate chains leading up to A and B, where the voting control of each subsidiary is more than 50%-owned by a higher-tier corporation in the chain. A and B and all of their respective direct and indirect subsidiaries are treated as commonly owned or under common ownership, and subject to inclusion in a single combined group.

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

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

iii. In applying Internal Revenue Code § 318 for determining whether indirect ownership exists, the beneficial and constructive ownership rules of Internal Revenue Code § 318 shall apply for the purposes of determining common ownership.

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

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

(5) Related Parties; Constructive Ownership. In determining whether a
person is a related person or is considered to hold stock or other ownership or control
interests in an entity that is directly held by another person, the constructive
ownership rules described in Internal Revenue Code § 318 shall generally apply, to
the extent not inconsistent with the rules or requirements described in this definition
or elsewhere in Chapter N.J.A.C. 18:7 or in N.J.S.A. 54:10A-1 et seq., except that:

i. In applying Internal Revenue Code § 318(a)(2), if a partnership, estate,
trust or corporation owns, directly or indirectly, more than 50% of the voting control
of a corporation, it shall be considered to own all of the stock or other ownership or
control interests in such corporation, and

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

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

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

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

"Member" means a business entity that is a part of a combined group.

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

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

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

"Nontaxable member" means a member that is: (i) not subject to tax
pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et
seq.) and is not a corporation exempted from the tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3) except for a combinable captive insurance company; or (ii) a New Jersey S corporation which does not elect to be included in the combined group.

"Taxable member" means a member that is subject to tax pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.). A member shall be a taxable member even if such member only owes the minimum tax.

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

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

“Worldwide Election” means an election by a taxable member of a combined group on behalf of all of the members of such group engaged in a unitary business to treat as its combined group all members that are engaged in such unitary business, wherever located, on such terms and in keeping with such requirements and such forms or other notices as are issued by the Director of the Division of Taxation.

18:7-21.2 Unitary Business

a. The definition of unitary business for New Jersey corporation business tax purposes is defined in N.J.S.A. 54:10A-4(gg). New Jersey construes the term “unitary business” to the broadest extent permitted under the United States Constitution. Although a business entity may be “unitary” with other business entities, it is still necessary under the Due Process and Commerce Clause of the United States Constitution to identify the scope of the unitary business. To the extent compatible with New Jersey law and U.S. Supreme Court jurisprudence, any legal or factual determination relevant to the existence or nonexistence of a unitary business will favor consistency with legal and factual determinations of other mandatory unitary combined reporting states.

i. A determination as to whether an entity forms part of a unitary business with another entity is based on the facts and circumstances of each case. Such analysis is both quantitative and qualitative.
ii. A unitary business is characterized by significant flows of value evidenced by factors such as functional integration, centralization of management, and economies of scale, as described in Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980). These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence.

Thus, one or more related business organizations engaged in business activity – entirely within this State or both within and without this State – are unitary if there is interdependence in their functions. This test adopts the decisional law of the United States Supreme Court with respect to the constitutional prerequisites for requiring unitary combination. The Court has expressed the constitutional test in various ways in various cases, holding that a finding of unitary relationship requires “contribution or dependency” between businesses, “substantial mutual interdependency” or “flow of value,” functional integration, centralized management, or economy of scale.

iii. The participants in an economic enterprise under common ownership may also be considered a unitary business if there is unity of operation and use. See Butler Brothers v. McColgan. The unity of operation and use indicates the existence of interdependence of functions.

iv. An affiliated group/commonly controlled group may be engaged in one or more unitary businesses. Therefore, an affiliated group/commonly controlled group may contain more than one combined group and file more than one New Jersey combined return.
v. If the entities meet either the “Interdependence of Functions Test” or the “Unity of Operations and Use Test,” the entities are part of the unitary business.

b. Interdependence of Functions Test- Any of the following circumstances indicates that an interdependence of functions exists:

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

(2) Vertically Structured Business. The principal activities of the entities are different steps of a vertically structured business. Illustrations of such different steps are exploration, mining and drilling, production, refining, marketing, and transportation of natural resources.

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

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

(5) Existence of Benefits from Joint, Shared, or Common Activity. A discount, cost-saving, or other benefit can result from joint purchases, leaseholds, or other forms of joint, shared, or common activities between or among entities.

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

(7) Exercise of Control. The exercise of control by one entity over another entity is indicative of a unitary relationship.

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

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

(15) Common computer systems and support;

(16) Common or significant financing support;

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

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

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

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

(21) Required budgetary approval (e.g., the parent corporation’s board of directors requires that it approve the budget and expenditure plans of the subsidiary on a periodic basis);
(22) Required capital asset purchases approval (e.g., the parent corporation’s board of directors requires that it approve any capital expenditures by the subsidiary in excess of a minimum set amount).

d. Without limiting the scope of a unitary business, the presumptions and inferences concerning whether and when two or more corporations under common ownership will be deemed to be engaged in a unitary business subsections (1) through (8) below do not purport to set forth all of the indicia of a unitary business, as that determination is to be made pursuant to U.S. constitutional principles.

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

(2) When the common ownership standard is first met by reason of merger, acquisition, or business formation, it is presumed that a unitary business relationship exists. Unity is generally presumed for newly-acquired or newly-formed entities.
(3) Where a voting interest is directly or indirectly acquired by or in a corporation, or by or in a member of a corporation's combined group, that results in achieving the common ownership standard, there is presumption of unity where the combined group and the acquired corporation had been previously engaged in an otherwise unitary relationship, but did not meet the common ownership standard.

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

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

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

(7) One indicia of a unitary business conducted between corporations related by common ownership is sales, exchanges, or transfers of products, services and/or intangibles between such corporations. When such evidence exists, this evidence is not negated by the use of market-based or “arm’s length” pricing as to the transactions by the corporations in question.

(8) If a member of a combined group is completely spun-off from the group, that business entity and the combined group must show clear and convincing evidence to the Director of the Division of Taxation that the factors denoting a unitary business no longer exist. Former members of a combined group will no longer be presumed unitary if sold to an unrelated third party. However, the Director may impose such conditions necessary to prevent the evasion of tax.

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

1. In lieu of filing a separate return to report such income, such member of a combined group must complete Schedule X to report the separate portion of its business operations (and those operations are not part of another combined group). Schedule X will be used to calculate the New Jersey taxable net income of that separate activity income that must be reported on Part III of Schedule A of the CBT-100U.

N.J.A.C. 18:7-21.3 Entities included and excluded from a combined return

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

1. Corporations;
2. Combinable captive insurance companies;
3. Banking corporations and financial corporations;
4. Limited liability companies;
5. Foreign limited liability companies;
6. S corporations except as provided in subsection (c) of this section;
7. Casino Licensees;
8. Qualified Subchapter S Subsidiaries that have not made a New Jersey S corporation election;
9. New Jersey Qualified Subchapter S Subsidiaries that elected to be included in the combined group;

10. Business entities that are treated as corporations for Federal purposes;

11. Professional corporations; and

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

b. Public utility companies are not included in the combined group reporting on the combined return.

c. A New Jersey S corporation that does not elect to be included as part of the combined group reported on the combined return shall file a separate return.

d. Insurance companies that are not combinable captive insurance companies are excluded from the combined group reported on the combined return, except that dividends from the insurance companies may be included in the income reported by the combined group members pursuant to N.J.A.C. 18:7-21.

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

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

f. Although a business entity may otherwise be in a unitary business relationship with a combined group, it shall not be included in the combined group on the combined return if the business entity is otherwise exempt from the corporation business tax pursuant to N.J.S.A. 54:10A-3.

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

h. Former members of a combined group will no longer be presumed unitary if sold to an un-related third party. If a member of a combined group is completely spun-off from the group, that business entity and the combined group must show clear and convincing evidence to the Director of the Division of Taxation that the
factors denoting a unitary business no longer exist. However, the Director may impose such conditions necessary to prevent the evasion of tax.

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

j. Partnerships, limited partnerships, or limited liability companies treated as partnerships for Federal purposes are business entities that can be unitary with a combined group. However, these entities are not members of a combined group for New Jersey corporation business tax purposes. Their income flows through to the corporate partners that are members of the combined group. Partnerships, limited partnerships, and limited liability companies that are treated as partnerships for Federal purposes are not subject to the $2,000 minimum tax as a member of a combined group because they are not a member of the combined group. However, form NJ-CBT-1065 must still be filed.

18:7-21.4 Mandatory Combined Returns For Unitary Combined Groups.
(a) In general, a business entity is required to file a New Jersey combined return when it is subject to tax under N.J.S.A. 54:10A-2 and is engaged in a unitary business with one or more other business entities that meet the requirements for inclusion as part of a combined group. In such cases, if any member of the group has income from the activities of the group’s unitary business that is taxable in another state, the taxable member shall calculate its taxable net income derived from such unitary business as its allocated share of the income or loss of the combined group engaged in the unitary business, determined in accordance with such combined return. The managerial member shall file a combined return on behalf of the combined group. The combined return shall include the income and allocation information of all members of the combined group and such other information as required by the Director. The composition of the combined group and the computation of the taxable member’s income and its allocation formula are explained by N.J.A.C. 18:7-21.7 through N.J.A.C. 18:7-21.28. A combined return is also required in cases where a corporation is engaged in a unitary business with one or more corporations and no member of the combined group has income from the activities of the group’s unitary business that is taxable in another state. In some cases the managerial member may make an election to treat as its combined group all corporations that are members of its New Jersey affiliated group, on such terms and in keeping with such requirements of Subchapter 21. The requirement to file a combined return is not dependent upon an evidentiary showing that there is a distortion of income between corporations that are related by common ownership or that there is a lack of arm’s length pricing in transactions between such corporations.
1. The business entities that are included in a combined group generally retain their separate identities under N.J.S.A. 54:10A-1 et seq. The combined reporting requirements do not disregard the separate identity of an individual taxable member of a combined group. In determining the corporation business tax liability on such taxable income, the rules of N.J.S.A. 54:10A-1 et seq. generally apply to the computation of such income, the allocation formulas, tax attributes, and tax rate, as applicable, subject to modifications pursuant to N.J.S.A. 54:10A-1 et seq. or Subchapter 21 of the promulgated regulations. A taxable member may have tax attributes or tax consequences apart from those determined through the means of a combined return. For example, in any case where no affiliated group election is made, a taxable member of a combined group may have, in addition to its allocable share of the combined group’s unitary business income, allocable income from activities that were conducted by the taxable member that are not part of the combined group’s unitary business. In these cases, the taxable member shall be subject to tax on such other income under the general rules as set forth in the Corporation Business Tax Act (N.J.S.A. 54:10A-1 et seq.).

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

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

4. A copy of the combined return that was filed with the Division of Taxation by the managerial member shall be filed with a taxpayer’s separate part-year tax return, in a year the taxpayer departs the combined group.

(b) For privilege periods ending on and after July 31, 2019, business entities in a combined group shall be required to file a mandatory combined return. A combined group engaged in a unitary business in this State shall file a combined return that includes the income and allocation factors of all entities that are members of the unitary business, and such other information as required by the Director. The combined group shall be required to file a combined return if one member has sufficient contacts within this State to be subject to tax in this State pursuant to Section 2 of P.L. 1945, c. 162 (C. 54:10A-2). Once one member with nexus exceeds the protections of P.L. 86-272, no other member with nexus may claim P.L. 86-272 protection.

(c) A combined group filing a combined return shall also file all of the copies of the Affiliations Schedule Form 851, which is filed with Form 1120 for Federal income tax purposes. If the members of the combined group reported on the combined return are reported on more than one Affiliations Schedule Form 851, and more than one Form 1120, all of the copies that each member of the combined group were reported on must be included.
18:7-21.5 Determining the Managerial Member of the Combined Group and the Managerial Member’s Responsibilities

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

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

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

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

d. Each taxable member of a combined group shall be jointly and severally liable for the tax due from any taxable member pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), whether or not that tax has been self-assessed, and for any interest, penalties, or additions to tax due.

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

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

h. The members of a combined group shall notify the Director within 90 days of a change in the combined group where a member dissolves, a merger of any kind occurs, a member withdraws from the group, a member ceases doing business, a member of the group is acquired by a third party not in the group, or additional members enter the group which are required to be included. Such notification shall satisfy the requirements of N.J.A.C. 18:7-14.1 through N.J.A.C. 18:7-14.6.

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

j. For more information on situations where the Director of the Division of Taxation may appoint a managerial member, see N.J.A.C. 18:7-21.25.

k. For information on filing combined returns where a member is part of more than one unitary business group see N.J.A.C. 18:7-21.29.

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

Installment payments, estimated payments, overpayments, refunds and any other filing or payment matters related to combined groups filing combined returns shall be based on the same rules as apply generally in N.J.A.C. 18:7-11.1 through N.J.A.C. 18:7-13.13 except as follows:
1. Deficiency assessments for the combined group shall be assessed against either the managerial member or a taxable member of the combined group where applicable;

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

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

4. All combined returns shall be filed electronically;

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

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

7. A member with activities that are not part of the unitary business of the combined group, and for which the member independently conducts business in New Jersey, shall complete Schedule X, include that portion of the member’s taxable net income as part of the member’s total taxable net income on the CBT-100U, and shall not file a separate return to report said portion.

18:7-21.7 Determining the Entire Net Income of the Combined Group

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

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

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

(1) The income included by such a member shall include the worldwide income regardless of whether such income was included in entire net income for Federal income tax purposes. See N.J.A.C. 18:7-21.8 for more information

d. Income from a partnership where a member of the combined group is a partner is as follows:

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

(2) The distributive share of income received by a limited partner from a qualified investment partnership shall not be considered to be derived from a unitary business unless the general partner of such investment partnership and such limited partner have common ownership. To the extent that the limited partner is otherwise carrying on or doing business in New Jersey, it shall allocate its distributive share of income from a qualified investment partnership in accordance
with subsection a of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or subsection a of section 4 of (C.54:10A-15.7) as applicable. If the limited partner is not otherwise carrying on or doing business in New Jersey, its distributive share of income from an investment partnership is not subject to tax under this chapter.

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

  (1) Where a taxpayer is a member of a combined group and receives dividends from a subsidiary that is not included in the combined return, the dividends must be included in the entire net income of the taxpayer pursuant to N.J.S.A. 54:10A-4(k)(5).

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

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

f. Except as otherwise provided by N.J.A.C. 18:7-21.7, business income from an intercompany transaction among members of the same combined group shall be deferred in a manner similar to the deferral under 26 C.F.R. s.1.1502-13. If one of the events in either (1) and (2) of this subsection occurs, deferred income resulting from an intercompany transaction among members of a combined group shall be restored to the income of the seller and shall be included in the net income of the combined group as if the seller had earned the income immediately before the event:

(1) The object of a deferred intercompany transaction is: (a) resold by the buyer to an entity that is not a member of the combined group, (b) resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged, or (c) converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged; or

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

g. A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to § 170 of the Federal I. R. C., 26 U.S.C. §170, be subtracted first from the combined group's entire net income,
subject to the income limitations of that section applied to the entire business income of the group. A charitable deduction disallowed under §170 of the Federal I. R. C., 26 U.S.C. §170, but allowed as a carryover deduction in a subsequent privilege period, shall be treated as originally incurred in the subsequent year by the same member and the provisions of this section shall apply in the subsequent privilege period in determining the allowable deduction for that privilege period.

h. An expense of a member of the combined group that is directly or indirectly attributable to the income of any member of the combined group, which income this State is prohibited from taxing pursuant to the laws or Constitution of the United States, shall be disallowed as a deduction for purposes of determining the combined group's entire net income.

18:7-21.8 Reporting the income of certain members

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

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

2. If the other members of the combined group have a Form 5471 that was filed for Federal purposes reporting the income from that non-U.S. member, the combined group shall use the income information reported on Federal Form 5471 and attach a copy of the form that was filed with the Federal government.
b. If the Articles on Non-Discrimination contained within the applicable tax treaty are the only provisions of the treaty which apply to political subdivisions of the United States, then only the Articles on Non-Discrimination contained within the applicable treaty will be the only provisions of the treaty that applies.

18:7-21.9 Combined Groups, Combined Returns and the interrelation with other New Jersey Laws

(a) Transactions between members of a combined group filing a combined return in New Jersey will still be subject to the realty transfer fee (N.J.S.A. 46:15-5 et seq.) and the controlling interest transfer tax (N.J.S.A. 54:15C-1) on a separate entity basis. However, transactions between members of a combined group, may be exempt from either the realty transfer fee or the controlling interest transfer tax if a statutory exemption in the respective acts otherwise apply to the transactions.

(b) Transactions between members of a combined group filing a combined return are exempt from the bulk asset transfer notification requirements of N.J.S.A. 54:50-38 if the transactions occur as part of the unitary business of the combined group.

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

(d) The members of the combined group filing a combined return in New Jersey will be individually subject to the business registration requirements of N.J.S.A. 52:32-44 for public contracts.
18:7-21.10 Ordering of the Dividend Elimination, Subsidiary Dividend Received Exclusion, and Net Operating Losses in a Combined Group Context

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

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

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

d. If after allocating the entire net income and subtracting the unused unexpired converted prior net operating loss carryovers, the taxable members of the combined group still have combined group allocated entire net income greater than zero, then the taxable members may use their share of the combined group net operating loss carryovers or use the portion of the combined group net operating loss carryovers received from other taxable members.
e. Dividends from separate return subsidiaries. Only dividends from subsidiaries that are not part of the combined group included in the combined return are excluded pursuant to N.J.S.A. 54:10A-4(k)(5). For privilege periods ending on and after July 31, 2019, the dividend exclusion is an allocated dividend exclusion. The exclusion occurs only if after the application of N.J.A.C. 18:7-21.19.b and N.J.A.C. 18:7-21.19.d allocated entire net income is greater than zero.

1. When computing the allowable dividend exclusion for dividends received from excluded subsidiaries that are nonetheless unitary with the combined group, each member of the combined group shall calculate the dividend exclusion on a separate entity basis by multiplying the exclusion by their allocation factor determined pursuant to N.J.S.A. 54:10A-4.7.

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

18:7-21.11 Net Operating Losses of Members in a Combined Group

(a) Usage of prior net operating loss conversion carryovers in a combined group context. A prior net operating loss conversion carryover (PNOL) of a member of a
combined group shall be deducted from the entire net income allocated to this State pursuant to N.J.A.C. 18:7-21.11 as follows:

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

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

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

(4) Where a corporation is acquired by a combined group, the PNOLs will survive the merger only if instant unity exists upon the merger and acquisition if the combined group is in the same line of business as the historic business of the acquired corporation. However, the managerial member shall provide sufficient documentation to the Division of Taxation upon request.

(b) The calculation of the combined group net operating losses and the combined group members share of the net operating loss carryovers shall be deducted from entire net income allocated to this State pursuant to N.J.S.A. 54:10A-4.6(h) as follows:
(1) For privilege periods beginning on or after the first day of the initial privilege period on or after July 31, 2019, for which a combined return is required under N.J.A.C. 18:7-21.4, if the computation of a combined group's entire net income allocated to this State results in a net operating loss, a taxable member of such group may carry over the net operating loss allocated to this State, as calculated under this section, N.J.A.C. 18:7-21.6, N.J.A.C. 18:7-21.7 and N.J.A.C. 18:7-21.13, and shall be deductible from entire net income allocated to this State derived from the unitary business in a future privilege period to the extent that the carryover and deduction is otherwise consistent with N.J.A.C. 18:7-5.21.

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

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

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

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

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

(e) Where a taxable member leaves a combined group and has net operating loss carryovers from the privilege periods the taxable member was a member of the combined group, those net operating loss carryovers shall be the taxable member’s net operating loss carryovers and not the combined group’s net operating loss carryovers.

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

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

(h) The reduction by the amount of the allocated discharge of indebtedness income excluded from Federal tax purposes required under N.J.A.C. 18:7-5.22, N.J.S.A. 54:10A-4(k)(6), N.J.S.A. 54:10A-4(u), N.J.S.A. 54:10A-4(v), and N.J.S.A. 54:10A-4.6.h, shall be applied at the member level and not the group level. As such a member’s share of the combined group net operating losses may be reduced, but the allocated discharge of indebtedness of that member shall not reduce the other member’s share of combined group net operating losses. See N.J.A.C. 18:7-5.22 for more information.

(i) The Director may disallow the prior net operating loss carryovers or net operating loss carryovers in subsections (a) through (g) if the Director determines
that the merger or acquisition was for the principle purpose of harvesting the members tax attributes.

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

N.J.A.C. 18:7-21.12 Tax Credits Earned by a Member of a Combined Group

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

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

(2) If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning prior to the first day of the initial privilege period for which a combined return is required, then the taxable member may share the carryover credit with other taxable members of the combined group.
(3) If a taxable member of a combined group has a tax credit carryover derived from a privilege period during which the taxable member was not a member of such combined group, the credit carryover shall remain available to be utilized by such taxable member or other group members.

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

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

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

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

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

18:7-21.13 Allocation Factor Computation For Combined Groups
a. A taxable member of a combined group shall determine its allocation factor for determining its share of the entire net income of the combined group; provided however:

1. Each taxable member shall determine its allocation factor based on the otherwise applicable allocation provided in sections 6 through 10 of P.L. 1945 c. 162 (C.54:10A-6 through C. 54:10A-10). In computing its denominator, the taxable member shall use the combined group’s denominator. In computing the numerator of its receipts factor, each taxable member shall include in its numerator its receipts assignable to this State, as provided herein.

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

b. All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies if 50 percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground. See N.J.A.C. 18:7-21.29 for more information.
c. In determining the numerator and denominator of the allocation factors of taxable members, transactions between or among members of the combined group shall be eliminated. Intercompany transactions between a combined group member and a partnership whose income is included in the unitary business of the combined group are also disregarded where the transactions relate to the unitary business to the extent of the group member’s distributive share interest in partnership income.

1. A sale by a member of a combined group to a purchaser that is not a member of the combined group is attributed to the group member that books the sale, subject to the adjustments to be made to avoid distortion of applicable allocation formulas in the case of intra-group sales.

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

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

e. Receipts of the members of the combined group shall otherwise be determined based on the same methods as prescribed in N.J.A.C. 18:7-1 through N.J.A.C. 18:7-7.6 and N.J.A.C. 18:7-8.1 through N.J.A.C. 18:7-8.17 that are not inconsistent with subsection a through d above.


g. Where a taxable member of a combined group has activities that exceed the protections of P.L. 86-272 and those activities are being performed by the taxable member as part of the unitary business of the combined group, all of the members with nexus must include their respective New Jersey receipts in the numerator.

18:7-21.14 Conversion of the Outstanding Alternative Minimum Assessment Credits

a. For privilege periods beginning on and after January 1, 2019, a combined group filing a combined return that has any outstanding alternative minimum assessment credit or credits at the time of the effective date of the repeal of section 7 of P.L. 2002, c.40 (C.54:10A-5a) shall be allowed to use the credit to offset the combined group's net deferred tax liability resulting from the transition to a mandatory unitary combined return. For purposes of this section, "net deferred tax liability" shall mean the net increase, if any, in deferred tax liabilities minus the net increase, if any, in deferred tax assets of the combined group, as computed in
accordance with generally accepted accounting principles, that is the result of the transition from filing separate returns to filing a mandatory unitary combined return. The remaining balance of the credit carryovers of members of the combined group from prior to the effective date of the repeal of section 7 of P.L.2002, c.40 (C.54:10A-5a) shall not reduce the combined tax liability below 50% of the tax owed by the group. The remaining balance of the credit may be carried over until used by the combined group.

b. A combined group that is a public company may use either the converted alternative minimum assessment credit or the net deferred tax liability deduction. They may use both for the applicable privilege periods where both are allowed.

18:7-21.15 The Water’s-Edge Combined Group Default Return Method

a. Unitary combined returns are mandatory. The water’s-edge group basis filing method is the default if no election is made. The managerial member of a combined group may elect to have the combined group determined on a world-wide basis or an affiliated group basis. If no such election is made, the combined group shall be determined on a water's-edge basis and will take into account the incomes and allocation factors of only the following members of the combined group:

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

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

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

(4) each member that has income as defined under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and has sufficient nexus in New Jersey pursuant to section 2 of P.L.1945, c.162 (C.54:10A-2);

b. A worldwide election or an affiliated group election is effective only if made on a timely filed original return for a privilege period by the managerial member of the combined group. Only one election can be made for the applicable period. The worldwide election and affiliated group election cannot be made simultaneously for the same period. See N.J.S.A. 54:10A-4.11; N.J.A.C. 18:7-21.16; and N.J.A.C. 18:7-21.17 for more information on elective combined return filing methods.

c. The managerial member shall notify the Director within 90 days of any change in the membership of the group. See N.J.S.A. 54:10A-4.10(h).

d. For the purposes of a(1) and a(2) property and payroll are determined in accordance to the rules of N.J.A.C. 18:7-8.1 through N.J.A.C. 18:7-8.17.
18:7-21.16 Worldwide Election.

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

b. A worldwide election shall be binding for and applicable to the group privilege period for which it is made and for the next five group privilege periods. Any corporation entering the unitary combined group after the year of the election shall be deemed to have consented to the application of the election and to have waived any objection thereto. Reverse acquisition rules based on the Federal rules set forth in U.S. Treas. Reg. 1.1502-75(d)(3) shall be applied in determining whether a corporation is bound by a worldwide election.

c. The renewal of an election shall be made on an original, timely filed return by the combined group’s managerial member. A renewal shall be effective
for the first privilege period after the completion of the six privilege periods for
which the prior election was in place. If a prior worldwide election is neither
affirmatively renewed after six privilege periods, the election shall terminate for the
subsequent privilege period, but a new worldwide election may be made thereafter
by election.

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

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

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

g. The managerial member shall notify the Director within 90 days of any
change in the membership of the elective group. See N.J.S.A. 54:10A-4.10(h).

18:7-21.17 Affiliated group election

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

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

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

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

b. Upon making the election, the New Jersey affiliated group shall calculate the combined group’s taxable income and the respective taxable income of the taxable members of the group in accordance with N.J.A.C. 18:7-21.7 through 21.28, provided that, if any group member is taxable on its income from business activity in another state in a particular privilege period during the period of the election, all income of all group members for such year shall be treated as allocable income, irrespective as to whether such income would be allocable to a particular state in the absence of the election. An affiliated group election can only be made if the New Jersey affiliated group to which the election is to apply in the first year of application includes one or more Federal affiliated groups filing a consolidated Federal income tax return.
c. An affiliated group election determines the allocated entire net income of a taxable member of a combined group derived from the activities of the group on a water’s-edge basis. An affiliated group election and a worldwide election cannot be made together. An affiliated group election cannot be made for any period in which a worldwide election is in effect.

d. The affiliated group election shall include any corporation participating in the filing of a Federal consolidated return, but the New Jersey affiliated group is broader. The membership of a combined group as determined pursuant to an affiliated group election is not limited to those corporations that are members of one or more affiliated groups under Internal Revenue Code § 1504 that are filing a Federal consolidated return.

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

   (i) each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States; and

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

2. With respect to (i) through (ii), only the members that are treated as domestic corporations under the Federal I. R. C. and Federal S corporations that have not made a validly approved New Jersey S corporation election will be included, unless a New Jersey S corporation also elects to be included in the
combined return; in such instance the New Jersey S corporation will also be included.

3. The New Jersey affiliated group shall be determined by including all corporations that are related by common ownership applying the common ownership test described herein (i.e., direct or indirect ownership of more than 50% of voting control), rather than applying the standard applicable for Federal consolidated return purposes that looks to 80% control of certain stock by vote and value. Further, control of members of the New Jersey affiliated group may be direct or indirect, and a common owner or owners may be corporate or non-corporate. For example, two or more Federal consolidated groups would be combined in one New Jersey affiliated group filing if both consolidated groups were commonly owned by a non-US corporation.

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

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

g. When an election is made it may be renewed after six privilege periods for another six privilege periods. The renewal of an election shall be made on an original, timely filed return by the principal reporting corporation of the New Jersey affiliated group or as otherwise required in writing by the Director. A renewal shall be effective for the first privilege period after the completion of the six
privilege periods for which the prior election was in place. To be valid, the renewal must indicate that every corporation that is a member of the New Jersey affiliated group has agreed to be bound by such renewal.

h. If either the unitary business standard or the New Jersey affiliated group standard was used to account for the combined group members’ income and allocation data in the preceding privilege period and the other standard is to be used for the combined group’s combined report for the current privilege period, adjustments to the income and allocation data of the group members shall be made to prevent income and allocation data from being omitted or duplicated, etc.

i. An affiliated group election shall constitute consent to the production of documents or other information that the Director reasonably requires to support the return was properly filed. Examples include verification of the inclusion of the appropriate members of the group, that the requirements of the affiliated group election have been met, that the tax computations and tax reporting are proper, and to determine the revenue implications of the affiliated group election.

j. The managerial member shall notify the Director within 90 days of any change in the membership of the elective group. See N.J.S.A. 54:10A-4.10(h).

18:7-21.18 Net Deferred Tax Liability Deduction

(a) There shall be allowed as a deduction an amount computed in accordance with N.J.S.A. 54:10A-4(k)(16) for publicly traded companies, including affiliated corporations participating in the filing of a publicly traded company's financial
statements prepared in accordance with generally accepted accounting principles, shall be eligible for this deduction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18:7-21.19 Application of the minimum tax

a. A member of a combined group that is subject to the minimum tax must separately calculate that measure under N.J.A.C. 18:7-3. The payment of the minimum tax is required even when a corporation is not subject to tax on its income either through the means of a combined return or otherwise. For example, a corporation that would otherwise be subject to the income measure but for the application of Public Law 86-272 is nonetheless required to pay the minimum tax. Once one member with nexus exceeds the protections of P.L. 86-272, no other member with nexus may claim P.L. 86-272 protection.

b. For privilege periods ending on or after July 31, 2019, the minimum tax shall be $2,000 for each member of the combined group filing a New Jersey combined return if the member has nexus with New Jersey.
c. A business entity that is a disregarded entity for Federal purposes is not considered a member of the combined group itself, and therefore does not have to pay the minimum tax. However, the income and attributes of the disregarded entity flow-through to the owner and will be included in the income and attributes of the combined group if a member owns the disregarded entity.

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

18:7-21.20 Combined Group Tax Return Accounting Methods

(a) Tax returns filed by taxable members of a combined group and by members of a combined group that are subject to the minimum tax shall be filed consistent with the provisions set forth in N.J.A.C. 18:7-21.16.

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

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

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

3. Where a corporation files Federal income tax returns on the basis of an annual period which varies from 52 to 53 weeks, its privilege period shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of such privilege period or ending with the last day of the calendar month ending nearest to the last day of such period.
(c) If the privilege period of one or more members of a combined group does not begin or end on the same dates as the group privilege period of the combined group, those members’ accounting periods must be adjusted in order for the appropriate share of the combined group’s unitary business income or affiliated group income, as the case may be, to be properly attributed to those members’ privilege period.

(d) In general, any member that has a privilege period different from that of the combined group should determine its income and allocation data for the group privilege period of the combined group by using the interim closing method. This method requires an interim closing of the books for members whose privilege period differs from that of the combined group. However, a pro rata method of converting income to the combined group’s privilege period will be accepted in certain instances, provided that the pro rata method does not produce a material misstatement of income allocated to New Jersey. Further, the Director reserves the right to require use of the interim closing method in certain instances. Unless otherwise permitted or required by the Director, the treatment of both the income and the allocation data of any particular member must be determined based on the same method. If one method was used to account for a member's income and allocation data in the preceding privilege period and another method will be used in the combined return for the current group privilege period, adjustments to income and allocation data of the member shall be made to prevent income and allocation data from being omitted or duplicated.
(e) Under the interim closing method, the unitary business or affiliated group income or loss attributable to a member of a combined group is determined by first calculating the income or loss from the books and records of the member for the two periods that together encompass the combined group’s single group privilege period. The allocation data shall also be determined by reference to the member's books and records for the appropriate partial privilege period. Interim income and allocation data from the respective partial privilege periods is then combined with the income and allocation data of the group privilege period of the combined group, along with the income and allocation data of other members of the combined group for the same period, and the members’ share of the combined group’s taxable income for the combined group’s privilege period is computed.

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

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

ii. For the purpose of determining whether a re-determination of income
made with respect to the pro rata method results in a material misstatement of income
allocated to New Jersey by the combined group, it is presumed that there is such
material misstatement where the aggregate tax liability of the combined group
members that filed returns based on a pro rata estimate is found to have understated
the aggregate amounts based on N.J.A.C. 18:7-13 and N.J.A.C. 18:7-3.15(e) or, a
change in the allocated group income for any one taxable member of the group
increases or decreases.

(g) After determining the combined group's taxable income allocated to New
Jersey of a taxable member that is not filing its return with respect to that same
privilege period, that income is then proportionately assigned to the applicable
portion of that member's privilege period based on the number of months falling
within the common group privilege period of the combined group.

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

18:7-21.21 Subchapter S corporations and Combined Returns

a. A New Jersey S corporation may elect to be included in a combined group reported on a combined return pursuant to Subchapter 21. Subsequent to electing to be included in the combined group on the combined return, the New Jersey S corporation shall be taxed in the same manner and rate as the other members of the combined group.

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

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

18:7-21.22 Application of other rules unaffected

All other rules under Chapter 7 shall be otherwise unaffected. Provided
however, any statute under the Corporation Business Tax Act or Chapter 7 that is
inconsistent with Subchapter 21 as applied to taxpayers that are members of a
combined group reporting on a combined return, shall not apply to New Jersey
combined returns only, but shall not affect the taxpayers reported on a combined
return if and when the taxpayer has to also file a separate return pursuant to N.J.A.C.
18:7-21.18.

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

a. The Director may require that a combined return include the income and
associated allocation factor or factors of any taxpayer who is not otherwise included
in a combined group on the combined return, but who is a member of a unitary
business, in order to reflect proper allocation of income of the entire unitary business.

b. The Director may require that a combined return include the income and
associated allocation factor or factors of taxpayers that are not corporations such as
disregarded entities, limited liability companies (that are not corporations for tax purposes), and partnerships.

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

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

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

f. Any determination by the Director is presumed correct and the person challenging the determination has the burden of proving by clear and convincing evidence that the determination is incorrect.

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

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

18:7-21.25 Banking Corporations and Combined Groups

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

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

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

d. Banking corporation combined group members that have an international banking facility may still make an election under N.J.S.A. 54:10A-4(k)(4) if the banking corporation otherwise meets the requirements to make such an election.
Such amounts will be excluded/deducted from the combined group entire net income while also taking into account the provisions of N.J.S.A. 54:10A-4.6. The managerial member may make the election on behalf of the banking corporation that is included as a member of the same combined return.

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

18:7-21.26 Conditions Warranting the Designation of a Managerial Member by the Director

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

   (1) The parent corporation that is a member of the combined group does not have nexus with New Jersey and the combined group refuses to select a new managerial member of the combined group;
(2) The managerial member dissolves or otherwise leaves the combined group because the managerial member is purchased by an unrelated third party or is no longer unitary with the combined group, and the combined group does not elect a new managerial member of the combined group;

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

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

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

b. The items in subsection a. above shall not represent an all-inclusive list and there may be other circumstances that arise in the future where the Director exercises the right to designate the managerial member of the combined group.

18:7-21.27 Principles of Federal Consolidated Returns Applicable
When computing the combined group entire net income, the principles set forth in the Treasury regulations promulgated under § 1502 of the Internal Revenue Code shall generally apply to the extent consistent with the New Jersey Corporation Business Tax Act and the unitary business principle to a combined group filing a New Jersey combined return as though the combined group filed a Federal consolidated return.

18:7-21.28 Combined Groups Engaged in Transportation of Freight By Air or Ground

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

b. If (50%) fifty percent or more of the combined group's entire net income is derived from the transportation of freight by air or ground, as described in subsection a of this section, then subsection a of this section applies and N.J.A.C. 18:7-8.10A(a)(6) (dealing with the sourcing of receipts for certain services) does not apply.
c. If less than (50%) fifty percent of the combined group's entire net income is derived from the transportation of freight by air or ground, then N.J.A.C. 18:7-8.10A(a)(6) (dealing with the sourcing of receipts for certain services) applies.

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

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