

[18:3-13.17 (Reserved)]

SUBCHAPTER 14. RULES AND REGULATIONS CONCERNING SPECIAL PERMITTEES TO SELL ALCOHOL

[18:3-14.1 Tax rates

18:3-14.2 When due

18:3-14.3 How paid

18:3-14.4 Penalties

18:3-14.5 Records required

18:3-14.6 Reports – when due

18:3-14.7 Preservation of reports

18:3-14.8 Report forms

18:3-14.9 Reporting, required in wine gallons

18:3-14.10 Manner of executing reports]

18:3-[14.11]**14.1** Losses by theft, breakage, or other disposition

(a) No deductions from taxes are permitted to be made, or credit refund claimed for taxes which have accrued or have been paid on the sale or delivery of any alcohol lost by reason of theft, breakage, or other disposition in this State, either on the licensed premises or in connection with a sale or delivery.

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

18:3-[14.12]**14.2** Number of reports required

(a) Permittees are to make an original and one copy of the control sheet and supporting schedules. The original report is to be filed with the Division of Taxation, **Alcoholic Beverage Tax Section**, [P.O.] **PO Box [241] 264**, Trenton, [New Jersey] **NJ 08646-0264**.

(b) (No change.)

Recodify existing 18:3-14.13 and 14.14 as **14.3 and 14.4** (No change in text.)

18:3-[14.15]**14.5** Schedule [“H”] – alcohol received during the reporting period

(a) Schedule [“H”] is an acquisition schedule on which every permittee is to enter all the purchases of alcohol actually received on the licensed premises or in the Federal-tax-paid section of New Jersey licensed public warehouses for his **or her** account.

(b) (No change.)

18:3-[14.16]**14.6** Schedule [“A-E”] – returns

Schedule [“A-E”] is a disposition schedule on which every permittee is to enter returns made to State licensees from whom the alcohol was originally purchased as evidenced by inventory credit memorandum. (See N.J.A.C. 18:3-2.20[, Inventory credit memoranda.]

[18:3-14.17 Inventories]

[APPENDIX “A” BEVERAGE TAX BUREAU REPORT FORMS PRESCRIBED BY THE DIRECTOR

- R-1 Manufacturer’s Control
- R-2 Wholesaler’s Control
- R-15 Transportation Control
- R-19 Discontinued
- R-23 Public Warehouse Control
- R-27 Plenary Retail Transit Report
- R-27 A Plenary Retail Transit Report “Tax-Paid”
- R-28 Warehouse Receipts Control
- R-37 Transportation Control Special Permittees
- R-38 Discontinued
- R-44 United States Army, Navy, and so forth
- R-48 Alcohol (SP) Control
- R-52 Discontinued
- R-5 Schedule “A”
- R-40 Schedule “B”
- R-57 Schedule “BW”

- R-41 Schedule “C”
- R-8 Schedule “D”
- R-9 Schedule “E”
- R-10 Schedule “F”
- R-12 Schedule “H”
- R-55 Schedule “J”
- R-17 Schedule “M”
- R-46 Schedule “M-N”
- R-18 Schedule “N”
- R-24A Schedule “R”
- R-24B Schedule “RR”
- R-25 Schedule “S”
- R-26 Schedule “T”
- R-29 Schedule “WR-1”
- R-30 Schedule “WR-2”
- R-31 Schedule “WR-3”
- R-32 Schedule “WR-4”
- R-45 Special Permittee’s Report
- R-3 Authorization of Agent
- M-17 Non-beverage Use]

(a)

DIVISION OF TAXATION

Gross Income Tax

Proposed Readoption with Amendments: N.J.A.C. 18:35

Proposed New Rule: N.J.A.C. 18:35-2.9

Authorized By: Dennis Shilling, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1, 54A:9-8.2, and 54A:9-17(a).

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

Proposal Number: PRN 2015-122.

Submit written comments by December 4, 2015, to:

Elizabeth J. Lipari
 Administrative Practice Officer
 Division of Taxation
 Director’s Office
 50 Barrack Street
 PO Box 240
 Trenton, NJ 08695-0240
 E-mail: Tax.RuleMakingComments@treas.nj.gov

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, the gross income tax rules at N.J.A.C. 18:35 will expire on August 21, 2015. As the Division of Taxation (Division) has filed this notice of readoption with the Office of Administrative Law prior to that date, the expiration date is extended 180 days to February 17, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division of Taxation has reviewed these rules and has determined that, as amended, as set forth and summarized herein, they are necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., was approved on July 8, 1976 as P.L. 1976, c. 46, and was applicable on July 1, 1976 (this act has been amended and supplemented over time). The gross income tax rules, N.J.A.C. 18:35, have been updated and revised periodically. Since the last readoption, the rules have been amended to implement P.L. 2011, c. 60, enacted as N.J.S.A. 54A:3-9. This legislation established the alternative business income calculation, which affords the ability to utilize and carry forward business losses and consolidate income and/or losses from four gross income tax categories.

The amendments proposed as part of this rulemaking will increase ease of use and consistency throughout the chapter. Certain language, phrasing, and formatting inconsistencies have been addressed throughout.

The following changes have been proposed throughout the chapter: references to specific years or dates that are more than three years old have been deleted; tax returns, forms, and references to a New Jersey tax have been changed to a lower case when appropriate; quotation marks have been removed; references to the Internal Revenue Code and Internal Revenue Service have been changed to a uniform designation; gender-specific pronouns have been amended to eliminate gender designations or to provide gender-neutral phrasing; grammatical changes have been made; incorrect punctuation has been corrected; extraneous words and punctuation have been eliminated; references to public laws have been deleted, and typographical errors were corrected.

This chapter was originally promulgated to clarify and interpret various provisions of the tax law and the Division now proposes to readopt this chapter with the addition of some updates in the form of amendments and a new rule. The purpose for the amendments and new rule is to reflect the Division's public policy and to explain the income tax statutes.

Subchapter 1 contains provisions concerning the following topics, categories, and calculation of gross income: income from the net profits from business; employee business expenses not deductible; income from partnerships and partners; income of clergymen; and S corporations and S corporation shareholders.

Subchapter 2 contains provisions about the excludability of the following types of income: the interest and gains from certain obligations; qualified investment fund distributions; employee accident or health insurance exclusion; one-time election to exclude up to \$500,000 of gain on sale of principal residence; pensions and annuities; qualified state tuition programs; Health Care Enterprise Zones; and alternative business calculations.

Subchapter 3 addresses estimated tax.

Subchapter 4 contains provisions about the credits against tax as follows: the computation of credit for taxes paid to other jurisdictions; credit for excess contributions; the Earned Income Tax Credit; and the film tax credit.

Subchapter 5 contains provisions regarding the New Jersey sourced income of certain nonresidents: the compensation received by professional athletes and the composite return for partners.

Subchapter 6 contains provisions dealing with issues connected with return filing. These include rules about the requirements for the extension of time to file returns: extension of time to file New Jersey gross income tax return; combat zone extensions of time to file and pay; signatures required on the gross income tax return; and electronic filing methods.

Subchapter 7 contains provisions pertaining to the withholding and reporting of tax, as follows: a definition of employee; requirement of withholding from employees; quarterly filing of withholding returns; weekly payments; summer payment plan; gambling winnings; withholding returns for professional athletic teams; commuter transportation benefits reporting by employer; information of employer withholding from new employees; the Business Employment Incentive Program Act; and domestic employees.

Subchapter 8 contains provisions regarding information returns (that is, Form 1099).

Subchapter 9 contains provisions about interest and penalties, including negligence and fraud penalties.

Subchapter 10 provides that if any taxpayer or homeowner is entitled to any refund of taxes for gross income tax purposes or a homestead rebate, and at the same time that taxpayer or homeowner is indebted to any State agency or institution of State government, or owes child support, the Department of the Treasury may apply the refund or rebate, or both, to satisfy the indebtedness. The setoff provisions became applicable on February 1, 1982. The subchapter also contains provisions under the setoff statute, including procedures for setoff, notice of setoff, and other agency procedures.

Subchapter 11 deals with filing fee payments for partnerships.

The Division proposes to amend N.J.A.C. 18:35 as follows:

N.J.A.C. 18:35-1.1(d) is proposed for amendment in order to clarify that criminal and civil damages for violations are not deductible from the net profits from business. N.J.A.C. 18:35-1.1(d)3 is proposed for amendment to state that meal and entertainment expenses are only partially deductible for Federal purposes. N.J.A.C. 18:35-1.1(e)4 is

proposed for amendment in order to update the address of the Individual Tax Audit Branch and to require the taxpayer to include in its request the reason(s) why there is no equitable allocation.

N.J.A.C. 18:35-1.3(d)4v is proposed for amendment in order to update the address of the Individual Tax Audit Branch and to require the taxpayer to include in its request the reason(s) why there is no equitable allocation. N.J.A.C. 18:35-1.3(d)5iii is proposed for amendment to delete the cross-reference to paragraph (c)4 and replace it with paragraph (d)4 as that is the correct cross-reference.

Proposed new N.J.A.C. 18:35-2.5(c)5 is proposed to codify the Division's longstanding position that an individual that continues to receive permanent disability pension payments after reaching age 65 is subject to tax on that income because that income is treated as ordinary pension income.

Proposed new N.J.A.C. 18:35-2.9 codifies the Division's longstanding position that New Jersey follows the Federal definition of deductible medical expenses.

N.J.A.C. 18:35-3.2(d) is proposed for amendment to note that estates and trusts are subject to interest on underpayment of estimated tax and may need to complete Form NJ-2210.

N.J.A.C. 18:35-4.1(a)3i is proposed for deletion because it contains the same language as N.J.A.C. 18:35-4.1(a)3. N.J.A.C. 18:35-4.1(a)5iii is proposed for amendment to clarify the Division's longstanding position that a readjustment of tax paid to another state or political subdivision requires a readjustment of the tax by the other state or political subdivision and a credit for taxes paid to another state or political subdivision that was claimed on the originally filed New Jersey tax return. N.J.A.C. 18:35-4.1(a)9 is proposed for amendment to note that the Texas Margin Tax is not an income tax and a credit is not permitted. N.J.A.C. 18:35-4.1(a)11i(3) is proposed for amendment to clarify that a W-2 is only sufficient for purposes of the credit for taxes paid to other jurisdictions when the other jurisdiction does not have a return, rather than does not require the filing of a tax return.

N.J.A.C. 18:35-4.2 is proposed for amendment to include a credit for excess family leave insurance contributions, to update the name of the New Jersey Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development.

N.J.A.C. 18:35-4.3(e) and (f) are proposed for amendment to update the applicable earned income tax credit rate.

N.J.A.C. 18:35-5.1(d) is proposed for deletion because that language is no longer necessary.

N.J.A.C. 18:35-5.2(l) is proposed for amendment to provide for electronic formatting of composite returns and subsection (o) is proposed for deletion because the language is unnecessary.

N.J.A.C. 18:35-6.3(b) is proposed for amendment to provide that the Division no longer has separate signature rules for electronically filed returns and to delete references to NJ TeleFile systems because NJ Telefile is no longer used for New Jersey gross income tax purposes.

N.J.A.C. 18:35-6.4(b) through (e) are proposed for deletion as the timeframe for their applicability has passed; recodified subsection (e) is proposed for amendment to require that Form NJ-1040-O must be enclosed when the return is filed and the tax preparer must indicate that it is enclosed by filling in the oval in the signature section.

N.J.A.C. 18:35-7.3(d) is proposed for deletion because that electronic funds transfer threshold no longer applies. Subsections (g) through (i) are proposed for deletion as the timeframe for their application has passed.

N.J.A.C. 18:35-7.8(b) is proposed for amendment to delete benefit limits that reference calendar years that are no longer within the statute of limitations and to update the benefit limits. N.J.A.C. 18:35-7.8(e) is proposed for amendment to delete an incorrect reference to employer's residence and replace that with employee's residence. N.J.A.C. 18:35-7.8(f) is proposed for deletion and that language is relocated to recodified N.J.A.C. 18:35-7.8(b)5.

N.J.A.C. 18:35-7.9(a) is amended to clarify a reference to the Director of the Division of Taxation. N.J.A.C. 18:35-7.9(b) is proposed for amendment to reference the Executive Director of the Economic Development Authority and the address of the Economic Development Authority because that is where Form NJ-9000 is sent and received. N.J.A.C. 18:35-7.9(d) and (f) are proposed for amendment to note that a business must be compliant with all applicable tax obligations in addition

to not having any tax delinquencies. N.J.A.C. 18:35-7.9(g) is proposed for amendment to correct the cross-reference of subsection (d) to subsection (e), which is the correct cross-reference.

N.J.A.C. 18:35-8.1(c) and (e) are proposed for amendment to provide for the electronic submission of 1099 forms.

N.J.A.C. 18:35-9.2(i) is proposed for deletion because the language is unnecessary.

N.J.A.C. 18:35-10.2 is proposed for amendment to delete a reference to a list of claimant agencies or institutions that would be published annually in an "Official Directory" by the Secretary of State because this is not required under the setoff statutes (N.J.S.A. 54A:9-8.1, 8.2, and 8.3). N.J.A.C. 18:35-10.2 is also amended to update the definition of "rebate" to include a property tax rebate or credit.

N.J.A.C. 18:35-10.4 is proposed for amendment to provide for the submission of electronic data files in addition to the two-part or three-part cards.

N.J.A.C. 18:35-10.11 is proposed for amendment to allow for debts to be paid for which no judgment is entered and to merge the priorities in order to conform to both levy priorities and the Setoff of Individual Liability (SOIL) Program.

N.J.A.C. 18:35-10.12(a) is proposed for amendment to delete a reference to the Division of Budget and Accounting because that agency is now known as the Office of Management and Budget. N.J.A.C. 18:35-10.12(b) is proposed for amendment to update the Division of Taxation setoff percentage from 10 percent to five percent.

N.J.A.C. 18:35-10.13(b) is proposed for amendment to provide that a claimant agency can receive a check or credit during collection. N.J.A.C. 18:35-10.13(c) is proposed for amendment to delete a reference to the Division of Budget and Accounting because that agency is now known as the Office of Management and Budget.

N.J.A.C. 18:35-11.2(c)3i is proposed for amendment to correct a reference to the corporate allocation factor due to the enactment of a single sales factor under N.J.S.A. 54:10A-6, which was completely phased in effective January 1, 2014. N.J.A.C. 18:35-11.2(c)3ii is proposed for deletion because the language is unnecessary based on the proposed amendments to N.J.A.C. 18:35-11.2(c)3i.

Proposed new N.J.A.C. 18:35-11.3(c)4iii states that interest is charged on late filing penalties in the same manner as interest is charged on late payment penalties.

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

Social Impact

The gross income tax rules affect individuals and estates and trusts and the re-adoption of these rules will continue to provide taxpayers with guidance in complying with the New Jersey Gross Income Tax Act. The rules proposed for re-adoption with amendments and a new rule will also continue the orderly administration and collection of the tax. The rules will provide taxpayers with an interpretation of specific provisions of the New Jersey Gross Income Tax Act.

The setoff rules affect all individuals who owe a debt to the State of New Jersey. The re-adoption of the setoff rules with amendments will continue to permit the orderly recovery of indebtedness owed to State agencies.

The rules proposed for re-adoption with amendments and a new rule accurately reflect the Division's current policy and provides guidance and clarification to taxpayers and their advisers.

Economic Impact

The rules proposed for re-adoption with amendments and a new rule will continue to provide for the accurate filing of tax returns and the proper payment of tax due on gross income.

The re-adoption of the setoff rules with amendments will ensure a procedure whereby the State continues to collect debts owed to it.

Jobs Impact

The rules proposed for re-adoption with amendments and a new rule are not expected to have an impact on the creation or loss of jobs in the State. The rules only affect the administration of the gross income tax, and no substantive changes for employers or employees have been proposed.

Federal Standards Statement

A Federal standards analysis is not required because the rulemaking authority is granted by the operative provisions of the Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and is not subject to any Federal requirements or standards.

Agricultural Industry Impact

The rules proposed for re-adoption with amendments and a new rule is not anticipated to have any impact upon the agricultural industry because the rules deal with the New Jersey gross income tax.

Regulatory Flexibility Statement

The New Jersey Gross Income Tax Act applies to the New Jersey gross income of every taxpaying individual or entity subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. The rules proposed for re-adoption with amendments and a new rule impose a tax only on individuals, and not on businesses, small or large. Therefore, a regulatory flexibility analysis pursuant to N.J.S.A. 52:14B-16 et seq. is not required.

Housing Affordability Impact Analysis

The rules proposed for re-adoption with amendments and a new rule will not result in a change in the average cost associated with housing. The rules proposed for re-adoption with amendments and a new rule would have no impact on any aspect of housing because the rules deals with the New Jersey gross income tax.

Smart Growth Development Impact Analysis

The rules proposed for re-adoption with amendments and a new rule will 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 rules proposed for re-adoption with amendments and a new rule have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposal deals with the New Jersey gross income tax.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:35.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GROSS INCOME—CATEGORIES AND CALCULATION

18:35-1.1 Net profits from business

(a) Each taxpayer is subject to gross income tax on the taxpayer's ["net profits from business["] within the meaning of N.J.S.A. 54A:5-1**1.b**, which shall be determined as provided in this subchapter.

(b) (No change.)

(c) A taxpayer's net profits from business shall be determined by taking into account all income [of] the taxpayer derived from the conduct of a business, profession, or any other activity intended to produce income, provided such activity qualifies [for] and reports as a trade or business for Federal income tax purposes. All income attributable to the taxpayer's conduct of a trade or business, reduced by costs and expenses as provided in (d) below, shall be taken into account in determining the taxpayer's net profits from business. All other income of the taxpayer subject to gross income tax that is not attributable to the conduct of a trade or business shall be included in one or more of the other categories of gross income specified in N.J.S.A. 54A:5-1 according to its character and shall not be includable in the category of income ["net profits from business.["] The determination of whether income is derived from the

conduct of a trade, business, or profession shall be based [upon] **on** an examination of facts and circumstances of the taxpayer's activities.

1. Income derived as remuneration for services rendered in the sole proprietorship's conduct of a trade or business shall be taken into account in determining a self-employed taxpayer's net profits from business. Income derived by a taxpayer in the taxpayer's capacity as an employee, as defined in N.J.A.C. 18:35-7.1, shall not be taken into account in determining the taxpayer's net profits from business, but rather shall be taxed under N.J.S.A. 54A:5-[1a]**1.a** (salaries, wages, etc.).

2. Interest and dividend income derived by a taxpayer in the conduct of a trade or business shall be taken into account in determining a taxpayer's net profits from business. The taxpayer shall annex to the taxpayer's return a statement demonstrating that the interest or dividends were realized in the conduct of the trade or business. Interest and dividends from investment activities or other income-producing activities which do not constitute the conduct of a trade or business shall be separately stated on the taxpayer's return and taxed either as interest described in N.J.S.A. 54A:5-[1e]**1.e** or dividends described in N.J.S.A. 54A:5-[1f]**1.f**.

3. Rental income derived by a taxpayer in the conduct of a trade or business shall be taken into account in determining a taxpayer's net profits from business. Rental income of a taxpayer [which] **that** is not received in the conduct of a trade or business shall be taken into account in determining the taxpayer's net gains or net income from rents, royalties, patents, and copyrights described in N.J.S.A. 54A:5-[1d]**1.d**.

4. Royalty, patent, or copyright income derived by a taxpayer in the conduct of a trade or business that licenses intangible property shall be taken into account in determining the taxpayer's net profits from business. Income derived from royalties, patents, or copyrights of a taxpayer [which] **that** is not derived from a trade or business shall be taken into account in determining the taxpayer's net gains or net income from, or in the form of, rents, royalties, patents, and copyrights described in N.J.S.A. 54A:5-[1d]**1.d**.

5. Gains from the sale, exchange, or other disposition of trade or business property shall be taken into account in determining a taxpayer's net profits from business. The taxpayer shall annex to the taxpayer's return a statement [which] **that** demonstrates that gains and losses from the sale, exchange, or other disposition of property were realized in the conduct of a trade or business. The sale, exchange, or other disposition of property [which] **that** is not directly related to or employed in the conduct of a trade or business must be reported as described in N.J.S.A. 54A:5-[1c]**1.c**, net gains or income from the disposition of property. Gain or loss from the sale or disposition of assets employed in a trade or business as a result of a complete liquidation of the business must be reported as described in N.J.S.A. 54A:5-[1c]**1.c**, net gains or income from the disposition of property.

i. (No change.)

6. A taxpayer's distributive share of income or loss from a partnership, S corporation, or estate or trust shall not be taken into account in determining a taxpayer's net profits from business, regardless of the character of the income or nature of the activities of the partnership, S corporation, or estate or trust. Reporting of such income or loss shall be as follows:

i. Income or loss from a partnership shall be taken into account in determining the taxpayer's distributive share of partnership income described in N.J.S.A. 54A:5-[1k]**1.k**. For rules governing the taxation of income derived by a taxpayer from a partnership[,] see N.J.A.C. 18:35-1.3.

ii. Income or loss from an S corporation shall be taken into account in determining the taxpayer's pro rata share of S corporation income described in N.J.S.A. 54A:5-[1p]**1.p**.

iii. Income from an estate or trust shall be taken into account in determining the taxpayer's net gains or income from estates or trusts described in N.J.S.A. 54A:5-[1h]**1.h**.

7. (No change.)

(d) A taxpayer's net profits from business shall be determined by taking into account all ordinary costs and expenses incurred in the conduct of that business. No deduction shall be allowed for taxes based on income[.]. **No deduction is permitted for any civil, civil administrative, or criminal penalty or fine. There is also no deduction**

for any civil, civil administrative, or criminal penalty or fine assessed and collected for a violation of a State or Federal environmental law, or any other assessment described in N.J.S.A. 54A:5-[1b(2)]**1.b(2)**; or any treble damages paid pursuant to N.J.S.A. 58:10-23.[11fa]**11f.a**. No deduction shall be allowed for any cost or expense, which is not incurred in the conduct of the trade or business. Only ordinary business costs and expenses are deductible.

1. (No change.)

2. The determination **as to** whether a business expense is ordinary shall be based [upon] **on** the facts and circumstances of the expense. A taxpayer has the burden [to demonstrate] **of demonstrating** to the satisfaction of the Director that the cost or expense is deductible.

i. Expenditures/contributions to Federally qualified [“not for profit[”] and [“political[”] organizations are not deductible as ordinary business expenses unless they meet all the criteria listed in (d)1 above.

3. Business costs or expenses[, which] **that** relate to business income **that is** exempt from tax under the Gross Income Tax Act, or which are partly or wholly nondeductible for Federal income tax purposes, may be deductible ordinary business costs or expenses under the Gross Income Tax Act. For example, meal and entertainment expenses [which] **that** constitute ordinary expenses incurred in the conduct of a trade or business are fully deductible in determining a taxpayer's net profits from business **even if they are only partially deductible for Federal purposes**.

(e) The allocation of sole proprietorship income derived from sources either within or outside of New Jersey shall be as follows:

1. [Where] **If** the business activity is carried on solely within New Jersey, all items of income, gain, expense, or loss of the business are deemed to have been derived from sources within New Jersey.

2. [Where] **If** the business activity is carried on solely outside [of] New Jersey, the taxpayer must complete either New Jersey Business Allocation Schedule (Form NJ-1040-NR-A) or a schedule reflecting an approved allocation method under (e)4 below. Failure to provide such schedule may result in allocation of all sole proprietorship income to New Jersey.

3. [Where] **If** the business activity is carried on both [within] **inside** and outside [of] New Jersey, the portion of the business's income, gains, expenses, or losses attributable to sources within New Jersey shall, except as provided in (e)4 below, be determined by use of the New Jersey Business Allocation Schedule (Form NJ-1040-NR-A). Failure to provide such schedule may result in allocation of all sole proprietorship income to New Jersey.

4. [Where] **If** the business activity is carried on solely outside [of] New Jersey or both [within] **inside** and outside [of] New Jersey, and the taxpayer believes that the [determination of business income, gains, expenses or losses attributable to sources within and outside of New Jersey by use of the] New Jersey Business Allocation Schedule does not provide an equitable allocation of [such items] **income, gains, expenses, or losses attributable to sources inside and outside the State, and that** the books and records of the business will disclose to the Director's satisfaction a more appropriate method of allocation of such items, the taxpayer may request from the Director an exception from the use of the New Jersey Business Allocation Schedule. Such request must be made in writing and set forth the basis of the request, **the reason(s) why the New Jersey Business Allocation Schedule does not provide an equitable allocation**, and the substitute method of allocation requested to be used. Such request shall be mailed to the [Chief of the Individual Tax Audit Branch,] New Jersey Division of Taxation, **Individual Income Tax Audit Branch**, PO Box 288, Trenton, NJ 08695-0288. **The taxpayer shall not use the substitute method of allocation [shall not be utilized prior to the written approval of] until such request is approved, in writing**, by the Director. [The business's exception request, once approved, shall not be changed] **Once the Director approves a substitute method of allocation, the taxpayer cannot change it** without [prior] written approval of the Director. [All exception requests must be renewed] **A taxpayer must renew the request for exception from the use of the New Jersey Business Allocation Schedule every three years.**

5. When a business [completely liquidates and] sells some or all of its assets[,] as a result of a liquidation, the gain or loss from the sale of real and tangible assets located in New Jersey is sourced to New Jersey. The

gain or loss from the sale of real and tangible assets located outside New Jersey is sourced to the other jurisdiction.

i. The gain or loss from the sale of motor vehicle equipment is sourced to the state where the vehicle is registered, unless **the vehicle was** used predominantly in [one] **another** state.

ii. The gain or loss from the sale of intangibles is allocated using the average of the [last three years] business allocations, as [defined] **set forth in (e)1[-4] through 4 above, for the last three years.**

(f) A taxpayer who is engaged in more than one trade or business as a sole proprietor must determine net profit or loss for each sole proprietorship separately. Once profit or loss from each sole proprietorship has been determined, the taxpayer must net such profits and losses and report the result in the category, [“net profits from business.”]

(g) Sole proprietor filing requirements are as follows:

1. Resident and nonresident [sole proprietorships] **taxpayers** subject to the [Gross Income Tax] **gross income tax** shall attach to their **New Jersey gross income tax return** the following for each sole proprietorship:

i. (No change.)

ii. A schedule detailing [changes] **adjustments** made to **the information reported on** each Schedule C or F [in arriving at] **to determine** New Jersey taxable income.

2. Resident taxpayers shall report all [of their] business income regardless of source. Tax is imposed on all income.

3. Nonresident taxpayers shall report all business income[,] regardless of source. Tax is imposed only on New Jersey source income.

(h) The provisions of this section are illustrated by the following examples:

Example 1 (No change.)

Example 2:

Taxpayers are a married/civil union couple living in New Jersey who file a joint gross income tax return. One spouse/civil union partner, who is an insurance agent, is an employee of a large insurance company. The other spouse/civil union partner is a self-employed trader of securities (stocks, bonds, futures). The couple has income from the following sources:

Disbursements made by the self-employed spouse/civil union partner as a trader in securities:

Disbursements made by the employee spouse/civil union partner as an insurance agent:

* Investment interest expense is deductible as an ordinary business expense if it is directly related to the production of business income by the business entity incurring the cost.

** The Keogh expenditure is not deductible as an ordinary business expense. Taxpayer is not an employee of the business.

*** The employee spouse/civil union partner cannot deduct any expenses incurred in the performance of [her or] his **or her** duties as an insurance agent, in that [she or] he **or she** is an employee of the insurance company and not an independent contractor. See N.J.A.C. 18:35-1.21 and 1.23 for more detail.

The self-employed spouse/civil union partner will calculate his or her net profits from business as follows:

Taxpayers will report their income on their New Jersey gross income tax return as follows:

Taxpayers cannot apply their loss on disposition of property against their income attributable to other categories of New Jersey gross income.

Example 3:

Taxpayers are a married/civil union couple living in New Jersey who file a joint gross income tax return. One of the spouses/civil union partners is employed by a large medical firm. The other spouse/civil union partner operates a rental real estate business at the Jersey shore which [she or he] **he or she** personally manages and reports on Schedule C of their Federal return. The taxpayers also own a cabin in Killington, Vermont as an

investment. They report the income from the cabin as rental income on their Federal return(s). The property in Vermont is managed by a realty company that handles all aspects of renting and maintaining the property. The couple has income from the following sources:

Disbursements made by the rental real estate business and by the taxpayers for the Vermont rental property:

Taxpayers will calculate their net profits from business and rental income as follows:

Taxpayers will report their income on their New Jersey gross income tax return as follows:

Example 4:

A New Jersey resident starts a sole proprietorship business, operating in New Jersey, with an original contribution of \$2,300. [On December 31, 2005] **Prior to the end of the calendar year**, [she] **taxpayer** sells the business including all assets (office equipment and a truck). The business had \$400.00 of current ordinary income, \$100.00 of interest, and \$10,000 of gain from sale of assets. The taxpayer reports income as follows:

<u>Income</u>	
Sales	\$20,000
Interest	<u>\$100</u>
Total receipts from business	<u>\$20,100</u>
<u>Ordinary Expenses</u>	
Salary	\$9,000
Cost of sales	\$8,000
Depreciation	\$2,600
Net profit from business	<u>(\$19,600)</u>
Net gain from disposition of property	<u>\$500</u>
Net gain from disposition of property	\$10,000

The taxpayer will report \$500.00 net profit from business and \$10,000 net gain from disposition of property.

Example 5:

A nonresident operates a sole proprietorship business in New Jersey and Pennsylvania with 60 percent of the profits allocated to New Jersey and 40 percent allocated to Pennsylvania. The profit for the operation of the business was \$20,000 for the year. [On December 31, 2005 he] **Prior to the end of the calendar year, taxpayer** sells the business including all the assets in a complete liquidation. The assets include two parcels of real property. The parcel in New Jersey sold at a gain of \$10,000 and the parcel in Pennsylvania sold at a gain of \$7,000. Additionally, [he] **taxpayer** sold equipment, inventory, and other tangible assets at a gain of \$5,000 of which \$2,750 was sourced to New Jersey.

The taxpayer reports income as follows on his nonresident New Jersey [Gross Income Tax Return] **gross income tax return**.

18:35-1.2 Employee business expenses not deductible

(a) (No change.)

(b) If an individual is an employee as defined in N.J.A.C. 18:35-7.1, all earnings in connection with employment are deemed to be, and shall be reported by the taxpayer as, wages, salaries, commissions, bonuses, and other remuneration received for services rendered, pursuant to N.J.S.A. 54A:5-[1(a)]**1.a**. In no case shall an employee report his or her earnings as net profits from business as defined by N.J.S.A. 54A:5-[1(b)]**1.b**.

18:35-1.3 Partnerships and partners

(a) The following words and terms, when used in this section, shall have the following meanings:

1. “Partner” means any owner of a partnership interest and shall include any taxpayer subject to the [Gross Income Tax] **gross income tax** who is a member of a partnership or other unincorporated entity taxed as a partnership. A partner cannot be an employee of the partnership for purposes of determining distributive share of partnership income. For the purposes of this section, a [“]partner[”] refers to the definition in this

section, although a [“]partner[”] can at the same time also be a partner in a civil union, depending on the context.

2. “Partnership” means and shall include a syndicate, group, pools, joint venture, and any other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a corporation, trust, or estate within the meaning of the New Jersey Gross Income Tax Act. Only entities that qualify [for] and elect to be treated as partnerships for Federal tax purposes (for example, limited liability companies and limited liability partnerships) and are in business shall be treated as partnerships under the Gross Income Tax Act. For the purposes of this section, [“]partnership[”] refers to the definition in this section, although a [“]partnership[”] can at the same time also consist of partners in a civil union, depending on the context.

(b) Partners, not partnerships, are subject to tax. Taxpayer partners shall be subject to [Gross Income Tax] **gross income tax** on their distributive share of partnership income, whether or not distributed. Such income shall be reported as distributive share of partnership income, pursuant to N.J.S.A. 54A:5-[1(k)]**I.k**, regardless of the character or category of the income derived by the partnership.

1. Partners who are resident taxpayers of New Jersey are subject to [Gross Income Tax] **gross income tax** on their entire distributive shares of partnership income, regardless of the source of the income.

2. Partners who are nonresident taxpayers of New Jersey are subject to [Gross Income Tax] **gross income tax** on their distributive shares of partnership income, but only to the extent such income was derived by the partnership from sources within New Jersey. Refer to (d)4 below for rules governing sourcing or allocating income.

(c) Partnership income or loss[, to be] reported on [the] **Form NJ-1065**[,] shall be comprised of all income or loss[,] received, derived, or incurred by the partnership and all expenses allowable under N.J.A.C. 18:35-1.1(d) that are not prohibited or limited under the Gross Income Tax Act, in accordance with the partnership’s Federal method of accounting and reported in the same tax period as reported Federally.

(d) A partner’s distributive share of partnership income or loss shall be comprised of the following:

1. Any and all income or loss earned by the partnership and passed through to the partner by the partnership for a taxable period shall be reported in the category of income [“]distributive share of partnership income[”] pursuant to N.J.S.A. 54A:5-[1(k)]**I.k**.

i.-ii. (No change.)

iii. The income or loss referred to in (d)1 above, shall be reported by the partner pursuant to N.J.S.A. 54A:5-[1(k)]**I.k** after taking into account:

(1) (No change.)

(2) Interest expense **incurred by a partner** on capital contributions [incurred by a partner, as] required by the partnership for participation in the partnership, is deductible.

(3) (No change.)

2. A complete liquidation of a partnership is deemed to occur in the tax year when [it] **the following events have occurred: the partnership** and all its partners discontinue all partnership activities; all [its] **partnership** assets have been distributed to the partners; and the partners are required to recognize gain or loss on the disposition of their partnership interests for Federal income tax purposes.

i. The partnership’s gain or loss from the sale or disposition of its assets as a result of a complete liquidation are to be separately reported as [“]net gains or income from disposition of property[”] in accordance with N.J.S.A. 54A:5-[1(c)]**I.c** on the NJ-1065 and the partner’s [NJK1s] **NJK-1s**.

ii. A resident partner **must** report[s the distributive] **his or her** share of the partnership’s gain or loss from the sale or disposition of [its as] **the partnership’s** assets as a result of a complete liquidation as [“]net gain or income from the disposition of property[”] in accordance with N.J.S.A. 54A:5-[1(c)]**I.c**. The partner will make a separate calculation to determine [his or her] **taxpayer’s** gain or loss on the sale of the partnership interest [which] **that** is reported in accordance with N.J.S.A. 54A:5-[1(c)]**I.c**.

iii. A nonresident partner will report his or her distributive share of the partnership’s gain or loss from the sale or disposition of its assets as a result of a complete liquidation as [“]net gain or income from the

disposition of property[”] in accordance with N.J.S.A. 54A:5-[1(c)]**I.c**, and is included in both Columns A (Amount of Gross Income Everywhere) and B (Amount from New Jersey Sources) on Form NJ-1040NR. The partner makes a separate calculation to determine gain or loss on the sale of the partnership interest [which] **that** is reported in accordance with N.J.S.A. 54A:5-[1(c)]**I.c** and included in Column A (Amount of Gross Income Everywhere) only on Form NJ-1040NR.

3. Guaranteed payments shall be reported as distributive share of partnership income, except guaranteed payments received by a retired partner who is receiving such payments as a result of a period of service to the partnership pursuant to a retirement agreement or pension plan. Such guaranteed payments will be treated as pension income to retired partners and [should] **shall** be reported by the partner as pension income, described in N.J.S.A. 54A:5-[1j]**I.j**.

4. The allocation of partnership income derived from sources either [within] **inside** or outside [of] New Jersey, except for tiered partnerships and complete liquidations, shall be as follows:

i. [Where] **If** a partnership’s activity is carried on solely within New Jersey, all items of [the] income, gain, expense, or loss of the partnership are deemed to have been derived from sources within New Jersey. No allocation schedule is required.

ii. [Where] **If** a partnership’s activity is carried on solely outside [of] New Jersey, the partnership shall complete either New Jersey Business Allocation Schedule (Form NJ-1040-NR-A) or a schedule reflecting an approved allocation method under (d)4v below. Failure to provide such schedule results in allocation of all income to New Jersey.

iii. [Where] **If** a partnership’s activity is carried on both [within] **inside** and outside [of] New Jersey, the portion of the partnership’s income, gains, expenses, or losses attributable to sources within New Jersey shall, except as provided in (d)4iv and v below, be determined by [use of] the New Jersey Business Allocation Schedule (Form NJ-1040-NR-A), as prepared by the partnership. Failure to provide such schedule may result in allocation of all income to New Jersey.

iv. (No change.)

v. [Where] **If** a partnership’s activity is carried on solely outside [of] New Jersey or both [within] **inside** and outside [of] New Jersey, and the partnership believes that the [determination of partnership income, gains, expenses or losses attributable to sources within and outside of New Jersey by use of the] New Jersey Business Allocation Schedule does not provide an equitable allocation of [such items] **income, gains, expenses, or losses attributable to sources inside and outside the State**, and **that** the books and records of the partnership will disclose to the Director’s satisfaction a more appropriate method of allocation of such items, the partnership may request from the Director an exception from the use of the New Jersey Business Allocation Schedule. Such request shall be made in writing and set forth the basis of the request, **the reason(s) why the New Jersey Business Allocation Schedule does not provide an equitable allocation**, and the substitute method of allocation requested to be used. Such request shall be mailed to the [Chief of the Individual Tax Audit Branch,] New Jersey Division of Taxation, **Individual Income Tax Audit Branch**, PO Box 288, Trenton, NJ 08695-0288. **The taxpayer shall not use** the substitute method of allocation [shall not be utilized prior to the written approval of] **until** such request is **approved, in writing**, by the Director. [The partnership’s exception request, once approved, shall not be changed] **Once the Director approves a substitute method of allocation, the taxpayer cannot change it** without [prior] written approval of the Director. [All exception requests must be renewed] **A taxpayer must renew the request for exception from the use of the New Jersey Business Allocation Schedule every three years.**

5. The allocation of gain or loss from a complete liquidation is determined as follows:

i. (No change.)

ii. The gain or loss from the sale of motor vehicle equipment is sourced to the state where the vehicle is registered, unless **the vehicle was** used predominantly in [one] **another** state.

iii. The gain or loss from the sale of intangibles is allocated using the average of the **business allocation used for the last three years** [business allocation used], as defined in [(c)4] (d)4 above.

6.-7. (No change.)

(e) Partners who are taxpayers for [Gross Income Tax] **gross income tax** purposes shall report their partnership income according to the following:

1. Partners who own more than one partnership interest shall determine their distributive share for each partnership interest separately. Once distributive share from each partnership interest has been determined, taxpayers shall net all distributive shares and report the total in the category, [“]distributive share of partnership income[”] under N.J.S.A. 54A:5-[1k]1.k.

2. (No change.)

3. In reporting partnership income, a partner may deduct payments made to a qualified [Internal Revenue Code section] **I.R.C. § 401(k)** plan to the extent allowable for Federal income tax purposes, as provided in N.J.S.A. 54A:6-21.

4. A partner’s contributions to the partnership’s [qualified] Keogh plan **qualified** under the Internal Revenue Code are not deductible business expenses under the standard provided in N.J.A.C. 18:35-1.1(d), consistent with (d)1 above. Such contributions are included in the participating partner’s distributive share of partnership income reported for New Jersey gross income tax purposes. Previously taxed contributions to a Keogh Plan are not subject to tax when subsequently withdrawn by the partner[s].

5.-7. (No change.)

(f) Partnership filing requirements are as follows:

1. Partnerships having a New Jersey resident partner or having any income or loss derived from New Jersey sources shall file the following with the Division:

i.-iii. (No change.)

iv. Pages 1 through 4 of Federal Form 1065 and any Federal extension request forms filed; [and]

v.-vi. (No change.)

2. Information filings shall be made on or before the date of expiration of the permitted filing period for the partnership’s Federal Form 1065, including any extensions of such period allowed for Federal income tax purposes.

i.-iii. (No change.)

3. Partnerships with partners subject to the [Gross Income Tax] **gross income tax** shall make available and submit the following items at the Division’s request:

i.-ii. (No change.)

(g) Partner filing requirements are as follows:

1. Resident and nonresident partners subject to the [Gross Income Tax] **gross income tax** shall attach to their **New Jersey income tax return** the following for each partnership:

i.-ii. (No change.)

2. (No change.)

3. Nonresident partners [in a partnership having income or loss from New Jersey sources] shall[, for each partnership,] include **with their New Jersey nonresident tax return** a copy of the items specified in (g)1 above [with the partner’s New Jersey nonresident tax return] **for each partnership in which the taxpayer is a partner and that has income or loss from New Jersey sources.**

(h) The provisions of this [rule] **section** are illustrated by the following examples:

Example 1:

A partnership reported the following income on its Federal Schedule K (Form 1065):

Ordinary income	\$197,000
Interest income	\$1,000
Section 1231 gain	\$2,000

The partnership in completing its NJ-1065 will determine partnership income as follows:

Ordinary income	\$197,000
Interest income	\$1,000
Section 1231 gain	\$2,000
Partnership income:	<u>\$200,000</u>

The partnership has two full year resident partners who are not members of any other partnerships. Partner A has a 60[%] **percent** interest and

partner B has a 40[%] **percent** interest. They will report their distributive shares of partnership income on their NJ-1040s as follows:

	<u>Partner A</u>	<u>Partner B</u>
	(60%)	(40%)
Distributive share of partnership income:	\$120,000	\$80,000

Example 2:

A partnership reported the following income on its Federal Schedule K (Form 1065):

Ordinary income	\$75,000
Section 1231 gain	\$6,000

The partnership also incurred the following expenses as reported for Federal income tax purposes:

Section 179 expense	\$15,000
Meal and entertainment expenses	\$3,000

(50% disallowed for Federal **purposes**)

The partnership in completing its NJ-1065 will determine partnership income as follows:

Income		
Ordinary income:	\$75,000	
Section 1231 gain	\$6,000	\$81,000

Expenses

Section 179	(\$15,000)	
Meal and entertainment	<u>(\$3,000)</u>	<u>(\$18,000)</u>
Partnership income:		<u>\$63,000</u>

The partnership has two full year resident partners who are not members of any other partnerships. Partner A has a 2/3 interest and partner B has a 1/3 interest. Partner A also has the following unreimbursed business expenses: automobile \$800.00 and telephone \$200.00. These ordinary business expenses were incurred in the conduct of the partnership’s business and are deductible. The partners will report their distributive shares of partnership income on their NJ-1040s as follows:

	<u>Partner A</u>	<u>Partner B</u>
	(2/3)	(1/3)
Distributive share of partnership income:	\$42,000	\$21,000

Unreimbursed business expenses

Auto	(\$800)
Telephone	<u>(\$200)</u>
Distributive share of partnership income:	<u>\$41,000</u> <u>\$21,000</u>

Example 3:

A partnership reported the following income on its Federal Schedule K (Form 1065):

Ordinary income	\$200,000
Interest income	\$1,000
Guaranteed payments	\$30,000*

*Partner A received guaranteed payments of \$20,000 for special services rendered.

Partner B received no guaranteed payments.

Partner C is retired and received guaranteed payments of \$10,000 pursuant to the partnership’s pension plan.

The partnership in completing its NJ-1065 will determine partnership income as follows:

Ordinary income	\$200,000
Interest income	\$1,000
Guaranteed payments	\$20,000**
Partnership income:	<u>\$221,000</u>
Guaranteed payments classified as pension income:	<u>\$10,000</u>

**Guaranteed payments are allocated to partners according to the partnership agreement.

Partners A and B are full year residents who each have a 50[%] **percent** interest in the profit and loss of the partnership. Partners A and B will each report 50[%] **percent** of the partnership income (excluding guaranteed payments) on their NJ-1040s as follows:

	<u>Partner A</u>	<u>Partner B</u>	<u>Retired</u>
	(50%)	(50%)	(100%)

Distributive share of partnership income: (excluding guaranteed payments)

\$100,500	\$100,500	0
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Guaranteed payments: \$20,000
 Distributive share of partnership income: \$120,500 \$100,500 0
 Retired partner C has no distributive share of partnership income to report on his **or her** NJ-1040; however, he **or she** must report pension income in the amount of \$10,000.

Example 4a: (No change.)

Example 4b:

Partner X elects to contribute \$3,000 to **his or her** account in the qualified Keogh plan established by the partnership. Partner Y elects not to make a contribution to the plan. The partnership must include the \$3,000 contribution made by partner X in **his or her** distributive share of partnership income in the taxable year the contribution was made. Partner X may not deduct **his or her** \$3,000 contribution as an ordinary business expense. When subsequently withdrawn, partner X's previously taxed contribution will not be subject to tax.

Partners X and Y each elect to make a contribution of \$5,000 to the partnership's 401(k) plan. They may deduct their contributions to the extent allowed under the Internal Revenue Code in determining their distributive share of partnership income.

The partnership reported the following income on its Federal Schedule K (Form 1065):

Ordinary income \$98,000 *
 Interest income \$2,000

* The ordinary income is net of a \$15,000 contribution made by the partnership to a qualified pension plan on behalf of its employees.

The partnership in completing its NJ-1065 will determine partnership income as follows:

Ordinary income \$98,000
 Interest income \$2,000
 Partnership income: \$100,000

The partnership has two full year resident partners who are not members of any other partnerships. They each have an equal interest in the sharing of profit or loss. They will report their distributive shares of partnership income on their NJ-1040s as follows:

	Partner X	Partner Y
	(50%)	(50%)
Distributive share of partnership income:	\$50,000	\$50,000
401(k) contribution	<u>(\$5,000)</u>	<u>(\$5,000)</u>
Distributive share of partnership income:	<u>\$45,000</u>	<u>\$45,000</u>

401(k) contributions made by the partners are deductible to the extent allowed under the Internal Revenue Code. Keogh plan contributions made by the partners are not deductible.

Example 5a: (No change.)

Example 5b:

A law firm partnership earned \$600,000 of ordinary income during the calendar year. Partner A is financing 50[%] **percent** of **his or her** capital contribution to the partnership with a loan from the partnership. The interest on this loan is \$4,000. Partner B's capital contribution came entirely from **his or her** own funds. The partnership in completing its NJ-1065 will determine partnership income as follows:

Ordinary income \$600,000
 Interest income \$4,000
 Partnership income: \$604,000

Partner A can deduct the \$4,000 interest expense since the interest resulted from a loan used to buy equity in the partnership and will report \$298,000 as distributive share of partnership income. Partner B will report \$302,000 as distributive share of partnership income on the NJ-1040.

Example 5c:

A rental real estate partnership reported the following on its Federal Schedule K (Form 1065):

Rental income \$21,000
 Interest income \$3,000
 Investment interest expense (\$20,000)

The investment interest expense of \$20,000 resulted from the partnership financing a \$300,000 distribution to the partners with a bank loan that required the partnership to pledge one of its buildings as collateral.

The partnership in completing its NJ-1065 will determine partnership income as follows:

Rental income \$21,000
 Interest income \$3,000
 Investment interest expense \$0
 Partnership income: \$24,000

The investment interest expense cannot be deducted for New Jersey [Gross Income Tax] **gross income tax** purposes since the transaction does not meet the ordinary business expense standard. Investment interest expense that flows out of the partnership to a partner may never be deducted by the individual partner as an ordinary business expense for New Jersey [Gross Income Tax] **gross income tax** purposes.

The partnership has two full year resident partners. Partner A has a 2/3 interest and Partner B has a 1/3 interest. The partners will report their distributive shares of partnership income on their NJ-1040s as follows:

	Partner A	Partner B
	(2/3)	(1/3)
Distributive share of partnership income:	\$16,000	\$8,000

Example 6:

An individual taxpayer was a partner in three partnerships. [Her] **His or her** distributive share of partnership income or loss from each of the partnerships was as follows:

Partnership K \$20,000
 Partnership L (\$8,000)
 Partnership M \$4,000
 Total \$16,000

The taxpayer must net all **his or her** distributive shares of partnership income and report the total in the category distributive share of partnership income.

In addition to being a partner in these partnerships, the taxpayer was also a shareholder in an S corporation and a proprietor of a small business.

[Her] **His or her** other business activities resulted in the following:

Pro rata share of S corporation income \$3,000
 Net profits from business (\$2,000)

The taxpayer cannot combine **his or her** net pro rata share of S corporation income of \$3,000 with **his or her** gain from her total distributive share of partnership income of \$16,000 or **his or her** loss from her sole proprietorship of \$2,000. Each category of income must be reported separately.

The taxpayer will report the following income on **his or her** NJ-1040:

Distributive share of partnership income \$16,000
 Net pro rata share of S corporation income \$3,000
 Net profits from business \$0

The taxpayer must report a zero in category net profits from business on **his or her** NJ-1040. Under the Gross Income Tax Act, a taxpayer may not offset losses in one category of income against income or gain in another category.

Example 7:

Partnership DEF is a partner in Partnership XYZ. As a partner, Partnership DEF received a schedule NJK-1 from Partnership XYZ that reported the following income:

	Total	NJ Source
	<u>Distribution</u>	<u>Amounts</u>
Distributive share of partnership income:	\$12,000	\$6,000

In addition to its income from XYZ, Partnership DEF generated the following income during the calendar year:

Ordinary income \$46,000
 Interest income \$4,000

Partnership DEF completed the New Jersey Business Allocation Schedule (Form NJ-NR-A) and determined its percentage of partnership income allocated to New Jersey to be 10[%] **percent**. In determining its income allocation percentage, Partnership DEF includes neither the distributive share of partnership income nor the allocation factors of Partnership XYZ.

Partnership DEF will report its distributive share of partnership income as follows:

...
 Partnership DEF cannot reallocate the income it received from Partnership XYZ.

Partnership DEF has two partners who share equally in profits and losses. Partner L is a full year resident of New Jersey and Partner M is a full year resident of Pennsylvania. Partnership DEF will report the following distributive share of partnership income on each of its partner's schedules NJK-1:

	Total <u>Distribution</u>	NJ Source <u>Amounts</u>
Distributive share of partnership income:	\$31,000	\$5,500
The partners will report their distributive share of partnership income on their individual returns as follows:		
	Partner L <u>(50%)</u>	Partner M <u>(50%)</u>
NJ-1040	\$31,000	
NJ-1040NR	Everywhere	NJ Source \$31,000 \$5,500

As a resident, Partner L is subject to tax on **his or** her entire distributive share of partnership income, regardless of where it is sourced. Partner M, as a nonresident, is only subject to tax on **his or her** distributive share of partnership income that is sourced to New Jersey.

Example 8a:

A partner's taxable year ends on December 31[, 1998], while the partnership's fiscal year ends on June 30[, 1998]. The partner is to report the partner's distributive share of partnership income from the partnership's taxable year **that** ended June 30[, 1998] on the partner's [1998-]NJ-1040.

Example 8b:

A partner's taxable year ends on December 31[, 1998], while the partnership's fiscal year ended on August 31[, 1998]. The partnership changed to a calendar year partnership [in 1998] **during the year**. In addition to the partnership filing a fiscal year return covering the period from September 1[, 1997] **of the prior year** to August 31[, 1998] **of the current year**, the partnership must also file a short year return covering the period from September 1[, 1998] **of the current year** to December 31[, 1998] **of the current year**.

The partnership reported the following distributive share of partnership income on the partner's schedules NJK-1:

NJK-1 ([09/01/97-08/31/98] **September 1 of the prior year-August 31 of the current year**) \$100,000

NJK-1 ([09/01/98-12/31/98] **September 1 of the current year-December of the current year**) \$30,000

The partner, who is not a member of any other partnership and who is a full year resident of New Jersey, is to report \$130,000 as distributive share of partnership income on [his 1998] **taxpayer's** NJ-1040. The partner has to report the total from both NJK-1s on **his or her** [1998] NJ-1040 since [both] **the prior and current** taxable years of the partnership ended within the partner's taxable year.

Example 9:

Partnership ABC carried on business both within and outside of New Jersey. By completing the New Jersey Business Allocation Schedule (Form NJ-1040-NR-A), Partnership ABC determined that 60[%] **percent** of its partnership income is sourced to New Jersey.

Partnership ABC reported the following income on its Federal Schedule K (Form 1065):

Ordinary income	\$63,000
Dividend income	\$1,000
Net long-term capital loss	(\$4,000)
The partnership in completing its NJ-1065 will determine partnership income as follows:	
Ordinary income	\$63,000
Dividend income	\$1,000
Net long-term capital loss	(\$4,000)
Partnership income:	<u>\$60,000</u>

Partnership ABC has partnership income from all sources of \$60,000 and partnership income from New Jersey sources of \$36,000 (\$60,000 x 60%).

Partnership ABC has three partners who share equally in profits and losses. They are not members of any other partnerships. Partners A and B are each full year resident partners and Partner C is a full year resident of

New York. Partnership ABC will report the following distributive shares of partnership income on its partner's schedules NJK-1.

	Total <u>Distribution</u>	NJ Source <u>Amounts</u>	
Distributive share of partnership income:	\$20,000		\$12,000
The partners will report their distributive share of partnership income on their individual returns as follows:			
	Partner A <u>(1/3)</u>	Partner B <u>(1/3)</u>	Partner C <u>(1/3)</u>
NJ-1040	\$20,000		
NJ-1040		\$20,000	
NJ-1040NR			Everywhere \$20,000 NJ Source \$12,000

Partners A and B, as residents, are subject to tax on their entire distributive shares of partnership income, regardless of where it is sourced. Partner C, as a nonresident, is only subject to tax on **his or her** distributive share of partnership income that is sourced to New Jersey.

Example 10a:

Partnership ABC is a calendar year partnership that reported a distributive share of partnership income to Partner A of \$12,000. Partnership ABC's income is all sourced to New Jersey.

Partner A was a resident of New Jersey through September 30[, 1998] and became a nonresident of New Jersey on October 1[, 1998].

Partner A is required to file a part-year New Jersey resident return for the period from January 1[, 1998] through September 30[, 1998] and a part-year New Jersey nonresident return for the remaining three months of the calendar year.

Partner A will report a distributive share of ABC's partnership income in the amount of \$ 8,975 on **his or her** part-year New Jersey resident return.

$$\$12,000 \times \left(\frac{273}{365}\right) = \$8,975$$

Partner A will report a distributive share of ABC's partnership income in the amount of \$3,025 on **his or her** part-year New Jersey nonresident return.

$$\$12,000 \times \left(\frac{92}{365}\right) = \$3,025$$

Partner A must attach a schedule to both **his or her** part-year NJ-1040 and part-year NJ-1040-NR showing the calculations used to determine the amounts reported on each return.

Example 10b:

Partnership ABC is a fiscal year partnership that has a year end of November 30[, 1998]. Partnership ABC reported a distributive share of partnership income to Partner A of \$12,000. Partnership ABC's income is all sourced to New Jersey.

Partner A was a resident of New Jersey through September 30[, 1998] and became a nonresident of New Jersey on October 1[, 1998].

Partner A is required to file a part-year New Jersey resident return for the period from January 1[, 1998] through September 30[, 1998] and a part-year New Jersey nonresident return for the remaining three months of the calendar year.

Partner A will report a distributive share of ABC's partnership income in the amount of \$9,995 on **his or her** part-year New Jersey resident return.

Partner A must multiply **his or her** entire distributive share of partnership income by the percentage which the number of days of the partnership's fiscal year that Partner A was a New Jersey resident bears to 365. Partnership ABC's fiscal year began on December 1[, 1997] **of the prior year** and Partner A was a resident of New Jersey from December 1[, 1997] **of the prior year** through September 30[, 1998] **of the current year**.

$$\$12,000 \times \left(\frac{304}{365}\right) = \$9,995$$

Partner A will report a distributive share of ABC's partnership income in the amount of \$2,005 on **his or her** part-year New Jersey nonresident return. Partner A must multiply **his or her** entire distributive share of partnership income (all sourced to New Jersey) by the percentage which the number of days of the partnership's fiscal year that **he or she** was not

a New Jersey resident bears to 365. Partner A was not a resident of New Jersey as of October 1[, 1998] and Partnership's ABC fiscal year ended on November 30[, 1998].

$$\$12,000 \times \left(\frac{61}{365}\right) = \$9,995$$

Partner A must attach a schedule to both **his or** her part-year NJ-1040 and part-year NJ-1040-NR showing the calculations used to determine the amounts reported on each return.

Example 10c:

Partnership ABC is a fiscal year partnership that has a year end of November 30[, 1998]. Partnership ABC reported a distributive share of partnership income to Partner A of \$12,000. Partnership ABC determined that 20[%] **percent** of its income is sourced to New Jersey.

Partner A was a resident of New Jersey through September 30[, 1998] and became a nonresident on October 1[, 1998].

Partner A is required to file a part-year New Jersey resident return for the period from January 1[, 1998] through September 30[, 1998] and a part-year New Jersey nonresident return for the remaining three months of the calendar year.

Partner A will report a distributive share of ABC's partnership income in the amount of \$9,995 on **his or** her part-year New Jersey resident return. Partner A must multiply **his or** her entire distributive share of partnership income by the percentage which the number of days of the partnership's fiscal year that Partner A was a New Jersey resident bears to 365. Partnership ABC's fiscal year began on December 1[, 1997] **of the prior year** and Partner A was a resident of New Jersey from December 1[, 1997] **of the prior year** through September 30[, 1998] **of the current year**.

$$\$12,000 \times \left(\frac{304}{365}\right) = \$9,995$$

Partner A will report a distributive share of partnership income from [Everywhere] **everywhere** of \$2,005 and from New Jersey sources of \$401.00 on **his or** her part-year nonresident New Jersey return. Partner A must multiply **his or** her entire distributive share of partnership income by the percentage which the number of days of the partnership's fiscal year that partner A was a nonresident of New Jersey bears to 365.

Partner A was nonresident of New Jersey as of October 1[, 1998] and partnership ABC's fiscal year ended on November 30[, 1998]. Partner A must then multiply **his or** her distributive share of partnership income for the nonresident period, \$2,005, by the ABC's New Jersey allocation percentage, 20 percent, to determine the amount of income sourced to New Jersey for **his or** her period of nonresidency.

$$\$12,000 \times (61/365) = \$2,005 \text{ partnership income from everywhere, Column A}$$

$$\$2,005 \times 20\% = \$401.00 \text{ partnership income sourced to New Jersey, Column B}$$

Partner A must attach a schedule to both **his or** her part-year NJ-1040 and part-year NJ-1040-NR showing the calculations used to determine the amounts reported on each return.

Example 11:

A partnership has two partners, X and Y, that share profit and loss equally. Partner X is a resident partner and Partner Y is a nonresident partner. On December 31[, 2005], Partners X and Y completely liquidate the partnership. The partnership had current year ordinary income of \$3,800, interest income of \$160.00, dividend income of \$40.00, and a gain from the sale of partnership assets, as a result of the complete liquidation, of \$15,000.

The partnership in completing its NJ-1065 will determine its distributive share of partnership income as follows:

Ordinary income	\$3,800
Interest income	\$160
Dividend income	\$40
Partnership income	\$4,000

By completing the New Jersey Business Allocation Schedule (Form NJ-1040-NR-A), the partnership determined that 75 percent of its partnership income is sourced to New Jersey. Therefore, \$3,000 of partnership income is sourced to New Jersey.

The partnership, as a result of the complete liquidation, sold all of its assets, which included two parcels of real property. The parcel in New

Jersey sold at a gain of \$7,000 and the parcel in Pennsylvania sold at a gain of \$4,000. Additionally, the partnership sold equipment and other tangible assets at a gain of \$3,000 of which \$1,800 was sourced to New Jersey. Finally, the partnership sold its intangible assets at a gain of \$1,000. The average of the partnership's last three years business allocations is 80 percent[.]; therefore, \$800.00 of the gain from the sale of intangible assets is sourced to New Jersey.

The partnership in completing its NJ-1065 will determine its gain from a complete liquidation as follows:

...
The partnership will report on its NJ-1065 its distributive share of partnership income of \$4,000, of which \$3,000 is sourced to New Jersey, and a gain from its complete liquidation of \$15,000 of which \$9,600 is sourced to New Jersey. The partnership will pro-rate the income accordingly and report each partner's share on their respective Schedule NJK-1s as follows:

	Everywhere	New Jersey
Distributive share of partnership income	\$2,000	\$1,500
Gain/loss from complete liquidation	\$7,500	\$4,800

Additionally, Partner X had a gain of \$5,000 on the disposition of his **or her** partnership interest and Partner Y had a loss of \$2,000 on the disposition of his **or her** partnership interest.

The partners will report the following on their individual returns:

...
Since the partnership had a complete liquidation, Partner X will report \$2,000 in the distributive share of partnership income category and \$12,500 in the net gains from disposition of property category.

Partner Y will report \$2,000 in the distributive share of partnership income category and \$5,500 in the net gains from disposition of property category in the everywhere column and \$1,500 in the distributive share of partnership income category and \$4,800 in the net gains from disposition of property category in the New Jersey source column. The gain or loss from the sale of a partnership interest is from an intangible not employed in a trade or business, therefore, not subject to tax for a nonresident.

Example 12:

Partners A and B who are both residents of New Jersey share profit and loss equally. On August 31[, 2005], Partners A and B sold their rental building located in New Jersey at a gain of \$16,000. The partnership continued operating their other business activity, which generated ordinary income of \$20,000.

The partnership in completing its NJ-1065 will determine partnership income as follows:

Ordinary income	\$20,000
Gain from disposition	<u>\$16,000</u>
Partnership income	\$36,000

Since the partnership did not have a complete liquidation, the partnership will include the gain from the sale of its rental property in [with] partnership income.

The partners will report the following on their individual tax returns:

	Partner A	Partner B
	(1/2)	(1/2)
NJ-1040		
Partnership income	\$18,000	\$18,000

18:35-1.4 Clergy; self-employed

(a) Reporting. Duly ordained clergypersons are considered to be self-employed individuals for the purposes of the New Jersey Gross Income Tax Act. Accordingly, salaries, fees, honorariums, allowances, and other remuneration paid to clergypersons for services rendered are not subject to withholding. Clergypersons that report their income on the Federal Form 1040; Schedule C for Federal income tax purposes, shall report their income as ["net profits from business?"] for New Jersey income tax purposes in accordance with N.J.S.A. 54A:5-1(b)1.b.

(b) (No change.)

18:35-1.5 S corporations and S corporation shareholders

(a) The following words and terms, when used in this section, shall have the following meanings:

“Hybrid” means a Federal S corporation that has not made the New Jersey S corporation election, and the corporation conducts business both [within] **inside** and outside [of] New Jersey.

“Pro rata share” means the portion of any items attributable to an S corporation shareholder determined in accordance with I.R.C. [sections] §§ 1377 and 1362.

“S corporation” means a corporation that meets the Federal definition under I.R.C. [Section] § 1361, regardless of whether a New Jersey S corporation election was made.

“S corporation income” means the net of an S corporation’s items of income, loss, or deduction[, and] determined without exclusion of items of income properly taxable or deduction of expenses or losses prohibited for [Gross Income Tax] **gross income tax** purposes.

(b) Determining S corporation[s] income. S corporation income is properly determined by netting together all items of income, gain, loss, or expense reported on the S corporation’s Federal [form] **Form** 1120S, Schedule K, and making modifications required under the Gross Income Tax Act for expenses and losses [which] **that** were deducted for Federal purposes, but are not permitted to be deducted for State purposes[.]; Federally exempt income, which is taxable to New Jersey[.]; Federally taxable income, which was included for Federal purposes, but is exempt for New Jersey purposes[.]; and expenses not deducted Federally, which are allowable for New Jersey.

1. Additions are required for:

i. Taxes based on or measured by profits, income, business presence, or business activity, which were paid or accrued to the United States, any state, including New Jersey, a political subdivision of any state, or the District of Columbia. Such taxes include, but are not limited to, corporate franchise or income taxes, unincorporated business taxes, net worth taxes, gross receipts taxes, local and city income taxes, business occupancy taxes;

ii.-iv. (No change.)

v. Interest income derived from the obligations of states other than New Jersey, their municipalities, and political subdivisions.

2. Subtractions are required for:

i.-ii. (No change.)

iii. Expenses incurred to generate Federally excludable income, which is taxable to New Jersey; and

iv. Expenses which [Federally] flow to the shareholder as itemized deductions (for example, I.R.C. [section] § 179 expense, charitable contributions) **for Federal tax purposes** or which are limited for Federal tax purposes (for example, meals and entertainment) unless specifically restricted or prohibited under the Gross Income Tax Act.

(c) A shareholder’s pro rata share is determined by the following:

1. A New Jersey electing S corporation must determine S corporation income and provide each shareholder with a **Schedule** [NJ K-1] **NJ-K-1** reporting the shareholder’s pro rata share based on ownership percentage, the New Jersey allocation factor, or deemed allocation factor, and all other information required for the proper filing of a New Jersey [Gross Income Tax] **gross income tax** return.

2. (No change.)

3. A Federal S corporation’s income or loss is allocated inside or outside [of] New Jersey based on the percentages determined by the S corporation in accordance with N.J.S.A. 54A:5-10.

4. A Federal S corporation that does not have a New Jersey filing requirement and does not file a New Jersey corporate return is deemed to allocate 100 percent of its income outside [of] New Jersey.

5. Deemed allocation of income outside [of] New Jersey. If a Federal S corporation files a New Jersey corporation business tax return allocating 100 percent of its income to New Jersey and, in accordance with N.J.A.C. 18:7-8.3, has income that qualifies as duplicated on the corporate income tax returns filed in New Jersey and another jurisdiction, and if a credit for taxes paid to other jurisdictions is allowed on the New Jersey corporation business tax return, for New Jersey [Gross Income Tax] **gross income tax** purposes, the qualified duplicated income is deemed to be allocated outside [of] New Jersey, and the entity is deemed to have an allocation factor outside [of] New Jersey.

Example: On its New Jersey [corporate] **corporation** business tax (CBT) return, [a] **an** S corporation reports entire net income of \$15,000 and a New Jersey allocation factor of 100 percent. The S corporation is

required to pay a corporate income tax to another state on \$3,000 of income, which is also reported to and taxed by New Jersey. The duplicated income qualifies for inclusion in the S corporation’s New Jersey calculation of a credit for taxes paid to other jurisdictions. For [Gross Income Tax] **gross income tax** purposes, \$3,000 of income is deemed to be allocated outside [of] New Jersey, and the entity is deemed to have allocated 20 percent of its income outside [of] New Jersey.

6. Payment of a minimum tax to another state by an S [Corporation] **corporation** does not fulfill the criteria of (c)5 above. Therefore, income is not deemed to be S corporation income allocated outside [of] New Jersey for gross income tax purposes. If the taxpayer is required to file a personal income tax return in the other jurisdiction reporting S [Corporation] **corporation** income, the taxpayer would not be eligible for a credit for taxes paid to the other jurisdiction.

7. When an S [Corporation] **corporation** with a New Jersey [Corporation Business Tax] **corporation business tax (CBT)** allocation factor of 100 percent reports entire net income that is subject to Federal corporate income taxation on the New Jersey [Corporation Business Tax] **CBT** return and the corporate tax return of another state and the tax paid to the other state qualifies for a reduction on the New Jersey [Corporation Business Tax] **CBT** return, the amount of income taxed by both jurisdictions is deemed S corporation income allocated outside [of] New Jersey. If the taxpayer is required to file a personal income tax return in the other jurisdiction reporting the S Corporation income, the taxpayer would be eligible for credit for taxes paid to another jurisdiction, subject to limitations.

(d) Determining [a] **an** S corporation shareholder’s New Jersey [Gross Income Tax] **gross income tax** reporting requirement. A Federal S corporation shareholder’s New Jersey gross income tax reporting requirement is determined based on the shareholder’s New Jersey residency, whether or not the S corporation has made a valid New Jersey S corporation election, and the S corporation’s allocation factor or deemed allocation factor.

1. (No change.)

2. Nonresident shareholder.

i. (No change.)

ii. If a nonresident shareholder fails to sign and give consent, the S [Corporation] **corporation** is required to calculate the nonconsenting shareholder’s [Gross Income Tax] **gross income tax** liability by applying the maximum gross income tax rate in effect to the shareholder’s pro rata share allocated to New Jersey. The resulting gross income tax is reported and paid by the S corporation with its [corporate] **corporation** business tax return and is listed on the nonconsenting shareholder’s Schedule [NJ K-1] **NJ-K-1**. A nonconsenting shareholder is required to file a Nonresident Gross Income Tax Return, Form NJ-1040NR, and [will] report as an estimated payment, the amount listed on [their] **his or her** Schedule [NJ K-1] **NJ-K-1** as payments made on [their] **his or her** behalf by the S corporation.

iii. A nonresident shareholder must determine the [reporting requirement of the] pro rata share earned everywhere as if the shareholder was a New Jersey resident.

iv. A full-year nonresident shareholder must report as New Jersey source income or loss (subject to limitations) the pro rata share allocated to New Jersey from [a] **an** S corporation that has made the New Jersey S corporation election, regardless of the category in which the shareholder is required to report the income on the New Jersey Nonresident Gross Income Tax Return.

v. [Pro] **The pro** rata share from a Federal S corporation that has not made the New Jersey election is not reportable as New Jersey source income by a nonresident.

3. Part-year resident. A part-year resident must report on a resident return, the pro rata share for the period of New Jersey residency. This is determined by calculating a residency percentage, which is the number of days of the S corporation’s year (fiscal or calendar) that the shareholder was a New Jersey resident divided by 365 days (366 for a leap year). A separate residency percentage must be calculated for each S corporation.

Example: If an S corporation’s fiscal year is October 1 through September 30 and a shareholder was a New Jersey resident through April 15th, the shareholder was a New Jersey resident for 197 days of the S

corporation's fiscal year (October 1 – April 15) 197 days divided by 365 equals a residency percentage of 54 percent.

i. For S corporations that have made the New Jersey S election, the total amount of pro rata share of S corporation income from the **Schedule** [NJ K-1] **NJ-K-1** must be multiplied by the residency percentage. For S corporations not making the New Jersey S election, the pro rata share of income or loss not allocated to New Jersey must be multiplied by the residency percentage.

4. A part-year nonresident shareholder must determine the reporting requirement of income earned everywhere as if the shareholder was a New Jersey resident. A nonresidency percentage (100 percent less the calculated residency percentage) is applied to determine the amount of pro rata share reportable for the nonresidency period.

i. A part-year nonresident shareholder must determine the New Jersey source pro rata share by applying the nonresidency percentage to the pro rata share of income or loss allocated to New Jersey by [a] **an** S corporation, which has made the New Jersey S corporation election, regardless of the category in which the shareholder is required to report the income on the New Jersey part-year nonresident income tax return. Income or loss from a Federal S corporation which has not made the New Jersey S corporation election is not reportable as New Jersey source income by a nonresident.

5.-6. (No change.)

(e) Determining Shareholder's New Jersey Accumulated Adjustments Account ("NJ AAA" or "New Jersey AAA"). A New Jersey Accumulated Adjustments Account must be maintained for a resident shareholder of a New Jersey electing or a New Jersey nonelecting Federal S corporation. The shareholder's initial beginning balance is zero for the first tax year beginning after July 7, 1993.

1. (No change.)

2. A yearly adjustment is made for the shareholder's net pro rata share of S corporation income or (loss) including the income, gain, or loss from the S corporation's complete liquidation of its assets, which is reported by the shareholder in the category ["net gains or income from disposition of property."]

i.-ii. (No change.)

iii. Distributions. New Jersey AAA must be reduced by the amount of any distributions the shareholder received from the S corporation during the year, up to the New Jersey AAA balance. Distributions in excess of the New Jersey AAA balance are to be applied to the shareholder's New Jersey [earnings] **Earnings** and [profits account] **Profits Account** and after that against the shareholder's New Jersey adjusted basis.

3.-5. (No change.)

(f) The earnings and profits accumulated in a Federal S corporation prior to the New Jersey S [Corporation] **corporation** election becoming effective are classified as New Jersey Earnings and Profits (["NJ E and P"]) and are taxed to a resident shareholder as dividends when distributed.

1. Shareholder of an S corporation which has made the New Jersey S corporation election. A shareholder in a Federal S Corporation which has made the New Jersey S corporation election will use [a] **an** NJ E and P Account for New Jersey Resident Shareholders of an Electing New Jersey S Corporation Worksheet, to annually adjust and calculate NJ E and P. The initial beginning balance will be the retained earnings of the S corporation immediately prior to the New Jersey S corporation election. If the retained earnings are a negative amount, the initial beginning balance is zero.

2. Shareholder of an S corporation which has not made the New Jersey S corporation election. A shareholder in a Federal S corporation which has not made the New Jersey S corporation election will use [a] **an** NJ E and P Account For Shareholders of A Nonelecting Federal S Corporation or "Hybrid" Corporation Worksheet, to annually adjust and calculate NJ E and P. The initial beginning balance will be the total of the shareholder's beginning Federal Accumulated Adjustments Account and Federal Other Adjustments Account for the corporation's first tax year that begins on or after July 7, 1993, plus any remaining Federal accumulated earnings and profits at that time. If the total is a negative amount, the initial NJ E and P is zero.

3. (No change.)

4. Hybrid. For an S corporation which has not made the New Jersey S corporation election and which allocates income both inside and outside

[of] New Jersey, or which is deemed to have allocated income outside [of] New Jersey, the corporation's New Jersey allocation factor must be [applied] **used** to determine the income, other additions and adjustments, and dividends that are allocated to New Jersey.

5. Shareholder of an S corporation which was formed after July 7, 1993. A shareholder of a Federal S corporation which was newly incorporated after July 7, 1993, will have [a] **an** NJ E and P balance of zero, regardless of whether or not a New Jersey S election was made.

(g) Determining shareholder's initial New Jersey basis:

1.-2. (No change.)

3. For a nonresident shareholder the initial basis in the stock and indebtedness of [a] **an** S corporation is zero on whichever date is the latest of:

i.-iv. (No change.)

(h) (No change.)

(i) Shareholder reporting of pro rata share:

1. The items of income, gain, or loss earned by [a] **an** S corporation do not maintain their character when passed through to the shareholder. The shareholder's pro rata share of S corporation income is calculated on a limited flow through basis and must be reported, whether or not distributed, on the shareholder's [Gross Income Tax] **gross income tax** return in the category, ["Net Pro Rata Share of S Corporation Income."]. Exceptions may apply when there has been a complete liquidation of the S corporation.

2. Neither the corporation in preparing the New Jersey Schedules K and NJ K-1, nor a shareholder in reporting the pro rata share, is permitted to deduct or exclude items of income, gain, loss, or expense unless permissible under the New Jersey Gross Income Tax Act. For example, a shareholder may not deduct interest paid by the shareholder on indebtedness incurred to purchase S corporation stock, unreimbursed business expenses, personal expenses, or any expenses not permitted to be deducted for [Gross Income Tax] **gross income tax** purposes.

(j) Shareholder reporting of pro rata share of losses:

1. An allowable loss can offset the pro rata share of income from another S corporation provided that the income and loss [occur] **occurred** in the same tax year.

2. A loss from a prior year [can not] **cannot** be used to offset the current year's income. An unused loss from the current year [can not] **cannot** be used in a subsequent tax year.

3.-7. (No change.)

(k) A shareholder reports an S corporation liquidation as follows:

1. (No change.)

2. Complete Liquidation of an S Corporation. A complete liquidation of an S [Corporation] **corporation** is deemed to occur in the tax year when all of the S corporation's assets have been sold or deemed to have been sold, exchanged, disposed, or distributed and all of the S corporation's stock has been sold, exchanged, or disposed.

i. The income or loss from an S corporation's operations, activities, and transactions prior to the S corporation's complete sale, exchange, or other disposition of all of its assets must be reported by the shareholder in the category, ["net pro rata share of S corporation income."]

ii. The income or loss from an S corporation's sale or deemed sale, exchange, distribution, or other disposition of all of its assets when in conjunction with the sale, exchange, or disposition of all of the S corporation's stock must be reported by the shareholder in the category "net gains or income from the disposition of property."

3. Partial Liquidation of an S Corporation. A partial liquidation of an S corporation is deemed to occur when the S corporation disposes of some, but not all, of its assets and the S corporation continues operating, even if operating in a different capacity or business.

i. Examples of a partial liquidation of an S corporation are:

(1) An S corporation sells its assets under an installment type [of] agreement, the installment notes are held by and are payable to the S corporation, and the S corporation remains open and active to collect the notes.

(2) An S corporation operates a travel agency, which is located in a building it owns. The S corporation sells the travel agency, and the new owner rents the building from the S corporation.

ii. The net of all items of income, gain, or loss from an S corporation which was partially liquidated, whether from a sale or a deemed sale,

must be reported by the shareholder in the category ["Net Pro Rata Share"] **net pro rata share** of S [Corporation Income.] **corporation income**.

(l) Shareholder Reporting of [Non-Liquidating] **nonliquidating** Distributions. The taxability of a [non-liquidating] **nonliquidating** distribution from an S corporation is governed by the Federal priority system established under [IRC] **I.R.C.** sections 1368 and 1371. To determine the taxability, the [non-liquidating] **nonliquidating** distribution must first be applied against the shareholder's NJ AAA balance, then against the shareholder's NJ E and P balance, and finally against the shareholder's New Jersey adjusted basis.

1. A resident shareholder reports [non-liquidating] **nonliquidating** distributions from its NJ E and P Account as dividend income.

2. [The] **A resident shareholder reports the** amount of a [non-liquidating] **nonliquidating** distribution which exceeds the shareholder's NJ AAA, NJ E and P, and New Jersey adjusted basis [must be reported by the resident shareholder] as gains from disposition of property.

3. A [non-liquidating] **nonliquidating** distribution from a hybrid corporation must be allocated to both the income earned inside New Jersey and the income earned outside New Jersey by applying the corporation's allocation factors, or deemed allocation factors, inside and outside New Jersey. Distributions from the NJ E and P, which are applicable to the income earned inside New Jersey are taxable [non-liquidating] **nonliquidating** distributions from a C corporation and are reportable by a resident shareholder as dividend income. If a [non-liquidating] **nonliquidating** distribution is in excess of the hybrid corporation's NJ AAA balance, the excess must first be applied against the shareholder's NJ E and P balance, and finally against the shareholder's New Jersey adjusted basis.

4. A nonresident shareholder must calculate the taxable portion of a liquidating or [non-liquidating] **nonliquidating** distribution as if the shareholder was a resident. The taxable portion must be reported as a

dividend or gain from disposition [or] **of** property earned everywhere. A distribution, whether liquidating or [non-liquidating] **nonliquidating**, is not New Jersey source income for a nonresident shareholder.

(m) A shareholder reports the disposition of S corporation stock as follows:

1. A shareholder's disposition of S corporation stock must be reported in the category ["net gains or income from the disposition of property."] The shareholder calculates New Jersey net gain or loss from the disposition by subtracting the prior year's unused pro rata share of losses and the New Jersey adjusted basis in the stock, as defined under (h) above, from the liquidating distribution.

2. (No change.)

3. If a shareholder reports the stock sale as an installment sale for Federal income tax purposes, the shareholder must also report the New Jersey gain from the sale under the installment method. The New Jersey installment sale income must be determined under applicable Federal rules and procedures [and] using the New Jersey adjusted basis and prior year unused pro rata share of losses. If the stock sale results in a New Jersey loss, the full loss is reported in the year the transaction occurred.

4. A nonresident shareholder must follow the resident shareholder procedures to determine the ["net gains or income from the disposition of property["] everywhere. The gain or loss from a disposition of S corporation stock is not New Jersey source income for a nonresident.

(n) The following examples illustrate S corporation shareholder reporting requirements:

(**Agency Note:** The text of N.J.A.C. 18:35-1.5(n) examples 1 through 6 follow with additions indicated in italicized boldface **thus**; deletions indicated in brackets [thus]. Those portions of the examples appearing solely in boldface **thus** are intended to be so permanently.)

S CORPORATION SHAREHOLDER REPORTING REQUIREMENTS

Example #1 – Corporation made [a] an NJ S election; resident/nonresident shareholder owns 100% of S corporation's stock; pro rata share is \$1,000[;].

Corporate election	Corporation's	Corp's	Income allocation	Income reportable by shareholder
Federal NJ CBT	allocation factor	income		Resident
				Nonresident
				Everywhere NJ source

...

Example #2 – Corporation did not make [a] an NJ S election; resident/nonresident shareholder owns 100% of S corporation's stock; pro rata share is \$1,000[;].

Corporate election	Corporation's	Corp's	Income allocation	Income reportable by shareholder
Federal NJ CBT	allocation factor	income		Resident
				Nonresident
				Everywhere NJ source

...

Example #3 – Corporation made [a] an NJ S election; part year resident shareholder owns 100% of stock; pro rata share is \$1,000; corporation's fiscal year is 10/1-9/30; residency percentage is 54%.

Corporate election	Corporation's	Corp's	Residency	Income allocation	Part year
Federal NJ CBT	allocation factor	income	percentage		res income

...

Example #4 – Corporation did not make [a] an NJ S election; part year resident shareholder owns 100% of stock; pro rata share is \$1,000; corporation's fiscal year is 10/1-9/30; residency percentage is 54%.

Corporate election	Corporation's	Corp's	Residency	Income allocation	Part year
Federal NJ CBT	allocation factor	income	percentage		res income

...

Example #5 – Corporation made [a] an NJ S election; part year nonresident shareholder owns 100% of stock; pro rata share is \$1,000; corporation's fiscal year is 10/1-9/30; nonresidency percentage is 46%.

Corporate election	Corporation's	Corp's	Nonresidency	Income allocation	Part year income
Federal NJ CBT	allocation factor	income	percentage		reportable
					[everywhr]
					everywhere
					NJ source

...

Example #6 – Corporation did not make [a] an NJ S election; part year nonresident shareholder owns 100% of stock; pro rata share is \$1,000; corporation's fiscal year is 10/1-9/30; nonresidency percentage is 46%.

Corporate election	Corporation's	Corp's	Nonresidency	Income allocation	Part year income
Federal NJ CBT	allocation factor	income	percentage		reportable
					[everywhr]
					everywhere
					NJ source

...

(o) The following examples illustrate the provisions of [these rules] **this section** when there are sales of an S corporation’s assets; sales of shareholder’s stock; and liquidations.

Example 1. Complete liquidation of a New Jersey electing S corporation and the shareholder’s stock are sold at a gain.

Facts:

S corporation’s only transaction is the sale of its assets which resulted in a gain of \$10,000.

Sole shareholder’s [NJ] **Schedule NJ-K-1** reports \$10,000 pro rata share of S corporation’s gain from sale of its assets, all of which are allocated to New Jersey.

Shareholder’s opening New Jersey basis in the stock and capital total \$100.00.

Shareholder received a distribution of \$14,000.

Reporting of transactions – The shareholder’s pro rata share of the complete liquidation of the S corporation and the shareholder’s gain or loss on disposition of the stock are separately reported in the category [“]net gains or income from disposition of property.[”]

Resident shareholder:

Pro rata share of S corporation’s gain from disposition of corporation’s assets		\$10,000
Sale of stock:		
Liquidating distribution	\$14,000	
Less: Opening NJ basis in stock	\$100	
Pro rata share of S corp’s gain reported	<u>\$10,000</u>	
Ending NJ basis in stock	<u>(\$10,100)</u>	
Gain on disposition of S corporation stock		<u>\$3,900</u>
Net gains or income from disposition of property		\$13,900

Nonresident shareholder:

	[“]Everywhere[”] Income	New Jersey Income
Net gains or income from disposition of Property	\$13,900	\$10,000
Shareholder reports [“]Everywhere[”] income as if a New Jersey resident. The S corporation’s gain allocated to New Jersey is New Jersey source income; the shareholder’s gain from the sale of S corporation stock is not sourced to New Jersey by a nonresident.		

Example 2. Complete liquidation of a New Jersey electing S corporation; shareholder’s stock is sold at a loss.

Facts:

S corporation’s only transaction was the sale of its assets which resulted in a gain of \$10,000.

Sole shareholder’s [NJ] **Schedule NJ-K-1** reports \$10,000 pro rata share of S corporation’s gain from sale of its assets, all of which is allocated to New Jersey.

Shareholder’s opening New Jersey basis in the stock and capital total \$5,000.

Shareholder received a distribution of \$14,000.

Reporting of transactions – The shareholder’s pro rata share of the complete liquidation of the S corporation and the shareholder’s gain or loss on disposition of the stock are separately reported in the category [“]net gains or loss on disposition of the stock are separately reported in the category [“]net gains or income from disposition of property.[”]

Resident shareholder:

Pro rata share of S corporation’s gain from disposition of S corporation’s assets		\$10,000
Sale of stock:		
Liquidating distribution	\$14,000	
Less: Opening NJ basis in stock	\$5,000	
Pro rata share of S corporation’s gain reported	<u>\$10,000</u>	
Ending NJ basis in stock	<u>(\$15,000)</u>	
Loss on disposition of S corporation stock		<u>(\$1,000)</u>

Net gains or income from disposition of property	\$9,000
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Nonresident shareholder:

	[“]Everywhere[”] Income	New Jersey Income
Net gains from disposition of property	\$9,000	\$10,000
Shareholder reports [“]Everywhere[”] income as if a New Jersey resident. The S corporation’s gain allocated to New Jersey is New Jersey source income; the shareholder’s loss from the sale of S corporation stock is not sourced to New Jersey by a nonresident.		

Example 3 – Sole shareholder of a New Jersey electing S corporation sells all of the stock at the end of the S corporation’s tax year. The S corporation retains all of its assets and continues operation under new ownership.

Facts:

Shareholder’s [NJ] **Schedule NJ-K-1** reports net pro rata share of S corporation income of \$1,500, all of which is allocated to New Jersey.

Sole shareholder’s opening New Jersey basis in the stock is \$500.00

Shareholder sold the stock for \$1,800.

Shareholder has gains of \$900.00 from the sale of publicly traded shares of stock.

Reporting of transactions – Shareholder’s net pro rata share of S corporation income is reported in the category net pro rata share. The gain or loss on disposition of the shareholder’s shares of stock is reported in the category gains from disposition of property.

Resident shareholder:

Net pro rata share of S corporation income		\$1,500
Net gains from disposition of property:		
Sale of S corporation stock:		
Sale proceeds		\$1,800
Less: Opening NJ basis in stock	\$500.00	
Net pro rata share reported	<u>\$1,500</u>	
Ending NJ basis in stock	<u>(\$2,000)</u>	
Loss on sale of S corporation stock		(\$200.00)
Gains from sale of publicly traded stocks		<u>\$900.00</u>
Net gains from disposition of property		\$700.00

Nonresident shareholder:

	[“]Everywhere[”] Income	New Jersey Income
Net pro rata share of S corporation income	\$1,500	\$1,500
Net gains from disposition of property	\$700.00	\$0
Shareholder reports [“]Everywhere[”] income as if a New Jersey resident. The shareholder’s net pro rata share of income allocated to New Jersey is New Jersey source income; the shareholder’s loss from the sale of S corporation stock is not sourced to New Jersey by a nonresident.		

Example 4 – A Federal S corporation electing New Jersey election which allocates 100 percent to New Jersey is liquidated under an [IRC section] I.R.C. § 338(h)(10) election.

Facts:

Prior to the liquidation of the S corporation’s assets, the S corporation had a net loss from operations of \$850.00 and interest income of \$70.00.

The S corporation recognized a gain of \$10,000 from the deemed sale of the S corporation’s assets.

Sole shareholder’s [NJ] **Schedule NJ-K-1** reports a net pro rata share of S corporation loss in the amount of \$780.00 all of which is allocated to New Jersey; and a pro rata share of gain from the S corporation’s deemed sale of assets in the amount of \$10,000.

Shareholder’s opening NJ basis in their stock was \$2,100.

Shareholder received a liquidating distribution of \$15,000.

Reporting of transactions – Income and losses from corporate activity prior to the liquidation of the corporation’s assets are reported in the category [“Net Pro Rata Share] **net pro rata share** of S [Corporation Income.”] **corporation income**. The S corporation’s gain or loss on disposition of its assets is reported in the category, [“Net Gains From] **net gains from** the [Disposition] **disposition** of [Property] **property**. [”] The shareholder’s net gains or loss on disposition of the S corporation stock is reported in the category, [“Net Gains From] **net gains from** the [Disposition] **disposition** of [Property] **property**. [”]

Resident shareholder:

Net pro rata share of S corporation income – loss	(\$780.00)	\$0
Net gains from disposition of property:		
Pro rata share of S corporation’s gain on sale of assets		\$10,000
Sale of stock:		
Liquidating distribution	\$15,000	
Opening NJ basis in stock	\$2,100	
Add: pro rata share of S corporation’s gain on sale of assets	\$10,000	
Less: pro rata loss reported	(\$780.00)	
Add: Unused net Pro Rata loss	<u>\$780.00</u>	
NJ basis	<u>(\$12,100)</u>	
Gain from sale of S corporation stock		<u>\$2,900</u>
Net gains from disposition of property		\$12,900

Nonresident shareholder:

	Everywhere Income	New Jersey Income
Net pro rata share of S corporation income (loss)	[-]0[-]	0[-]
Net gains from disposition of property	\$12,900	\$10,000

Shareholder reports [“]Everywhere[”] income as if a New Jersey resident
The shareholder’s gain from the sale of S corporation stock is not sourced to New Jersey by a nonresident.

Example 5 – A Federal S corporation which did not make the New Jersey S election and allocates all of its income to New Jersey sells all of its assets and dissolves. The shareholder receives a liquidating distribution in payment for their stock.

Facts:

S corporation had a net loss from operations in the amount of \$3,750.
Sale of the S corporation’s assets resulted in a net gain of \$19,000.
Shareholder’s cost of the stock was \$3,000.
Shareholder received a liquidating distribution of \$15,000.
Reporting of transactions – For New Jersey tax purposes the shareholder owns stock in a C corporation. The shareholder does not have reportable net pro rata share of S corporation income from this corporation. The shareholder’s gain or loss from liquidation of the corporation’s stock is reported in the category net gains from disposition of property.

Resident shareholder:

Sale of stock:

Sale proceeds – liquidating distribution	\$15,000
Less: Cost of stock	<u>(\$3,000)</u>
Gain from disposition of property	\$12,000

Nonresident shareholder:

For a nonresident shareholder there is no New Jersey source income from this transaction. If the nonresident has a New Jersey filing requirement due to other New Jersey activity, this transaction would be included in [“]Everywhere[”] income as if a resident.

	Everywhere Income	New Jersey Income
Gain from disposition of property	\$12,000	\$0

Example 6 - A hybrid corporation[.] (a Federal S corporation that did not make the New Jersey S election and which allocates its income both

inside and outside [of] New Jersey), sells all of its assets and the shareholder’s stock is liquidated.

Facts:

[S corporation] **Corporation** had net income of \$3,750 from operations prior to liquidation of the assets.
Sale of corporation’s assets resulted in a net gain of \$19,000.
The corporation’s New Jersey allocation factor is 45 percent; the allocation factor outside of New Jersey is 55 percent.
Shareholder received a liquidating distribution of \$15,000.
Opening balance of NJ AAA of \$1,900.
Shareholder’s cost of the stock was \$3,000.

Reporting of transactions – For New Jersey tax purposes the shareholder owns stock in both a Federal S corporation and a New Jersey C corporation. The corporation’s allocation factor inside of New Jersey determines the shareholder’s New Jersey C corporation income and the costs and proceeds attributable to the sale of C corporation stock. The corporation’s allocation factor outside of New Jersey determines the shareholder’s Federal S corporation income allocated outside of New Jersey and the shareholder’s New Jersey stock basis and sale proceeds attributable to the sale of Federal S corporation stock.

			Federal S corporation income not Allocated to New Jersey
		New Jersey C corporation Income	55%
Net pro rata share of income	3,750	\$0	\$2,063

Net gains from disposition of property:				
Pro rata share of gain from disposition of corporation’s assets	\$19,000	\$0	\$10,450	\$10,450
Liquidation of stock:				
Sale proceeds	\$15,000	\$6,750	\$8,250	
Less:				
Cost of stock	\$3,000	(\$1,350)	(\$1,650)	
NJ AAA opening balance		n/a	(\$1,900)	
Net pro rata share of income reported		n/a	(\$2,063)	
Pro rata share of gain from asset sale reported		<u>n/a</u>	<u>(\$10,450)</u>	
Gain on sale of C corporation stock		\$5,400		\$5,400
Loss on sale of S corporation stock		(\$7,813)		<u>(\$7,813)</u>
Net gains from disposition of property				\$8,037

Resident shareholder:

A resident shareholder must report the Federal S corporation income from operations prior to liquidation of the assets allocated outside of New Jersey, \$2,063 as net pro rata share of S corporation income. The corporation’s income allocated inside of New Jersey is from a New Jersey C corporation and is not reportable.

The shareholder’s reports [in the] **as** net gains from disposition of property [category of income], the gain allocated outside of New Jersey and attributed to the corporation’s sale of assets, \$10,450; the gain attributed to disposition of New Jersey C corporation stock, \$5,400; and the loss attributed to disposition of Federal S corporation stock, (\$7,813).

Net pro rata share of S corporation income:		\$2,063
Net gains or income from disposition of property:		\$10,450
Gain on sale of S corporation assets allocated outside New Jersey		\$5,400
Gain on sale of New Jersey C corporation stock		(\$7,813)
Loss on sale of Federal S corporation stock		\$8,037

Nonresident shareholder:

For a nonresident shareholder there is no New Jersey source income from these transactions. If the nonresident has a New Jersey filing requirement due to other New Jersey activity, this transaction would be included on the nonresident return in the following manner:

	Everywhere Income	New Jersey Income
Net pro rata share of S corporation income	\$2,063	\$0
Gain from disposition of property	\$8,037	\$0

18:35-1.6 Civil unions

(a) For the purposes of this chapter:

1. "Civil union" means the legally recognized union of two eligible individuals of the same sex established pursuant to [P.L. 2006, c. 103] **N.J.S.A. 37:1-29**.

2. "Civil union couple" means two persons who have established a civil union pursuant to [P.L. 2006, c. 103] **N.J.S.A. 37:1-29**.

3. "Civil union partner" means a person who has established a civil union pursuant to [P.L. 2006, c. 103] **N.J.S.A. 37:1-29**.

(b) All State gross income tax benefits, protections, and responsibilities of spouses as set forth in this chapter, shall apply in like manner to civil union partners. Where reference to Federal income tax laws or procedures are required to [arrive at] **make** a State income tax determination, civil union partners shall be treated in all respects as spouses for that determination.

SUBCHAPTER 2. EXCLUSIONS AND DEDUCTIONS

18:35-2.1 Interest and gains from certain obligations; taxable status of State and Federal securities

(a) Gross income shall not include interest on obligations:

1. Issued by or on behalf of New Jersey or any county, municipality, school or other district, agency, authority, commission, instrumentality, public corporation (including one created or existing pursuant to agreement or compact with this or any other state), body corporate, and politic or political subdivision of New Jersey:

i. Specifically included within this subsection is interest received with respect to Certificates of Participation issued in connection with lease-purchase agreements, provided that the liability for payments of principal and interest is solely that of a New Jersey governmental entity;

2. Those obligations which are statutorily free from State or local taxation under any act of New Jersey or under the laws of the United States.

(b) Under the authority of N.J.S.A. 54A:9-17, which empowers the Division to require such facts and information to be reported as are deemed necessary to enforce the provisions of the Gross Income Tax Act, every person required to file a resident New Jersey [gross income tax return] **Gross Income Tax Return** (NJ-1040) for a taxable year shall report on such return the amount of interest received or accrued during the taxable year which is exempt from the gross income tax.

(c) The term ["net gains or income["] shall not include gains or income derived from obligations whose interest is exempt from tax under (c)1 below. Losses from sales of such exempt securities shall not be taken into account in the computation of gains from disposition of property. A list of various securities follows, together with an indication of whether the interest and the gains therefrom are taxable or exempt:

1. Federal securities:

Security

Interest

i.-iii. (No change)

iv. Export-Import Bank of the United States ("Eximbank["]):

(1) (No change.)

(2) Participation certificates (reversal of Counsel opinion dated 8/29/67)

T

v.-xxiii. (No change.)

xxiv. Panama Canal Zone Bonds specifically exempt from tax by 31 [U.S.C.] **U.S.C. §§ 744 and 745**

E

xxv.-xxxvii. (No change.)

(d) (No change.)

18:35-2.2 Qualified investment fund distributions

(a) Gross income shall not include the portion of any distribution from a qualified investment fund paid on or after January 1, 1987, which is attributable to interest or gain from the following:

1. Obligations [which] **that** are issued by, or on behalf of, New Jersey or any county, municipality, school or other district, agency, authority, commission, instrumentality, public corporation (including one created or existing pursuant to agreement or compact with this or any other state), body corporate, and politic or political subdivision of New Jersey; or

2. (No change.)

(b) (No change.)

(c) A "qualified investment fund" is any investment company registered with the Securities and Exchange Commission or any series of such investment company which, for the calendar year in which the distribution is paid:

1. (No change.)

2. At the close [or] **of** each quarter of the taxable year has not less than 80 percent of the aggregate principal amount of all its investments in obligations described in (a)1 and [(a)2] **2** above.

i. (No change.)

ii. For the purposes of determining aggregate principal amount, the investments of the fund shall be valued as follows:

(1) With respect to obligations for which market quotations are readily available, **fair** market value shall be used;

(2) (No change.)

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

(g) Pursuant to N.J.S.A. 54A:8-6, a qualified investment fund must [Advise] **advise** its shareholders on or before February 15 of each calendar year that its distributions qualify for exclusion from gross income pursuant to this section. **A qualified investment fund must complete** and retain Form IF-1, the Certification of Qualified Investment Fund, to be made available if requested by the Division of Taxation.

18:35-2.3 Employee accident or health insurance exclusion from taxable gross income

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

(f) [Effective June 1, 1982, withholding] **Withholding** of the gross income tax shall be required on all payments of wages and salaries made to an employee by an employer. The withholding of the tax is required even though such payments meet all the conditions for exclusion from taxable gross income as made through an accident or health insurance plan for personal injuries or sickness under this section. The only exceptions for the withholding of tax shall be for the following:

1.-3. (No change.)

(g) All taxpayers [will be] **are** required to file with their annual New Jersey [Gross Income Tax Return] **gross income tax return** a claim form furnished by the [director] **Director** for the exclusion of any amounts received by them as an employee through an accident or health insurance plan for personal injuries or sickness which meet all the conditions for exclusion from taxable gross income under (f)1, 2, and 3 above.

1. Examples:

i. An employee of Company X is allowed 12 vacation days and 15 sick days for the **calendar** year [1982]. The employee uses 12 vacation days and 10 sick days in [1982] **the calendar year** for which he **or she** receives his **or her** regular wage payment, regardless of the cause for his **or her** absence. The amounts received by the employee in [1982] **the calendar year** for the 12 vacation days and 10 sick days are subject to tax as wage and salary income to the employee and the employer must also withhold gross income tax on such payments.

ii. Company Y has a self-insured disability plan for its employees who are absent from work because of accident or sickness. The plan is fully funded by the employer company and the employees make no contribution to the plan. Payment for the full amount of wages is made to disabled employees absent from work[,] on the eighth calendar day. Payment for the initial seven days to the covered employee is discretionary with the company employer under the plan. The amount received by the absent employee because of his **or her** disability is excludable from taxable gross income as health or accident insurance after the initial seven days of absence but is subject to withholding tax. Any amount received by the employee as payment for the seven initial

days is subject to tax as wage and salary income to the employee and is also subject to withholding tax.

iii. Employee C receives a payment [in 1982] from the New Jersey Disability Benefit Fund during an absence from work because of temporary disability resulting from illness. Both the employee and employer have contributed to the disability benefit fund. The total amount received by the employee from the New Jersey Disability Benefit Fund is excludable from taxable gross income as a payment for health or accident insurance and is not subject to withholding tax.

iv. Employee D is absent from work [in 1982] because of illness and receives from the X Insurance Company the full amount of his **or her** wages during the period of his **or her** absence from work. The payment was made from a health or accident insurance policy to which only the employer has contributed. The amounts received by the employee are excludable from taxable gross income as health or accident insurance and are not subject to withholding tax.

18:35-2.4 Election to exclude up to \$500,000 of gain on sale of principal residence

(a) The rules concerning the election to exclude up to \$250,000 (\$500,000 on a joint return) of gain on the sale of a principal residence are as follows:

1. General rule: Capital gains exclusion; taxpayers selling their principal residence may exclude all or part of any gain on the sale of a principal residence from gross income, regardless of **taxpayers'** age, subject to [26 U.S.C. §121] **I.R.C. § 121**, which terms are mirrored in [State] the Gross Income Tax [law.] **Act in N.J.S.A. 54A:6-9.1**. Capital gain and the exclusion of all or part of the gain is computed in the same manner as for Federal income tax purposes, except that a civil union couple may use Federal income tax computations as necessary in calculating any gain as if they were married, for purposes of calculating the State income tax exclusion.

2. Requirements: Regardless of [their] age, **a taxpayer can claim** the exclusion [can be claimed] if, during the five-year period ending on the date of the sale, taxpayer[s] meets the following two tests:

i.-ii. (No change.)

3.-4. (No change.)

5. Amount of exclusion: Any amount [that is taxable on] **of** the gain from the sale of a principal residence **that is taxable** for Federal income tax purposes is taxable for New Jersey income tax purposes. Any amount that is excludable **from income** for Federal income tax purposes is excludable for New Jersey income tax purposes. [Determinations for a] **A** civil union couple [are to be made] **shall determine the State income tax exclusion** in the same manner as [for an opposite sex] **a married couple** [and the civil union couple may use Federal income tax computations as if they were married, for purposes of calculating the State income tax exclusion].

6. (No change.)

7. Taxpayers who meet the Federal qualifications for a reduced exclusion due to a change in health, place of employment, or unforeseen circumstances may also claim the same reduced exclusion amount for New Jersey income tax purposes.

18:35-2.5 Pensions and annuities

(a) An employee may defer the payment of tax on **both** employee and employer contributions to I.R.C. § 401(k) deferred compensation plans. [Contributions] **Employee contributions** to any other type of retirement plan including, but not limited to, plans under I.R.C. § 403(b), I.R.C. § 457, I.R.C. § 414(h), SEP, Federal Thrift Savings Funds, or Individual Retirement Accounts must be included in gross income. **Employer contributions to these plans receive tax-deferred treatment.**

(b) Both employee and employer contributions to SIMPLE IRAs, SEP, and SARSEP plans are included in taxable wages (neither receive tax-deferred treatment).

(c) Disability pensions: Pension amounts received as a result of a permanent and total disability are excludable from gross income.

1. (No change.)

2. A “substantial gainful activity” means the performance of significant duties over a reasonable period of time while working for pay or profit, or in work generally done for pay or profit.

3. To be considered [“permanent and total,”] a physician must certify that the condition is either expected to result in death or has lasted (or can be expected to last) continuously for at least 12 months.

4. (No change.)

5. If an individual retires before age 65 on a total and permanent disability pension and continues to receive pension payments after reaching age 65, then the disability pension is treated as ordinary pension income beginning the year the individual reaches age 65.

18:35-2.7 Health Care Enterprise Zones

(a) [Effective for taxable years of practices beginning on or after September 2, 2004, an] **An** eligible taxpayer may deduct a Health Enterprise Zone deduction from [his or her] **the taxpayer's** gross income. To be eligible for this tax benefit, a taxpayer must be engaged in providing primary care in either:

1.-2. (No change.)

(b) Definitions. The following words and terms, as used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Health Enterprise Zone” or “HEZ” means a municipality deemed a State-designated underserved area and designated as such by the Department of Health [and Senior Services]. The current list of Health Enterprise Zones is available [from the Office of Primary Health Care, Division of Family Health Services via the Internet] at: <http://www.state.nj.us/health/fhs/professional/workforce.shtml#psa>.

“Health Enterprise Zone [Deduction] **deduction**” is the amount calculated pursuant to the methodology set forth in (c) below and which is deducted from an eligible taxpayer's gross income.

...

(c) Calculation of the benefit. A practice that is an electing New Jersey S Corporation or is recognized for Federal purposes as a partnership, located in, or that has a practice location in a Health Enterprise Zone, or a qualified practice or practice location in New Jersey within five miles of a Health Enterprise Zone, shall determine the HEZ deduction percentage and the HEZ deduction allowable. The business shall report the HEZ deduction on the [NJ-K1] **NJ-K-1** provided to the partners, shareholders, or members of the practice annually.

1.-2. (No change.)

3. To calculate an HEZ deduction, a taxpayer shall multiply his or her net income from the practice location by the practice location's deduction percentage (the fraction made up of the practice location's qualified receipts divided by its gross receipts from services). A separate calculation must be made for each qualifying practice location, if an entity has more than one. The resulting amount or amounts are totaled and then deducted from [Gross Income] **gross income** on the taxpayer's New Jersey [Gross Income Tax Return] **gross income tax return**. If a taxpayer does not receive or report taxable income from a particular location, the location does not qualify for an HEZ deduction.

(d) Accounting. Regardless of the legal, organizational form of the entity, practices and qualified practices that are affected by N.J.S.A. 54A:3-8 whether, for example, partnerships, LLCs, or S corporations are required to keep records substantiating their gross receipts, qualified gross receipts, patients' addresses, and deduction percentage calculations by location for computation and audit verification purposes. Businesses and practices that have more than one location must maintain separate books and records for each location, so that the deduction percentage and net profits from the individual locations can be determined. These separate books and records must be available to the Division of Taxation for audit and verification of the HEZ deduction.

1. HEZ deductions that cannot be utilized on an eligible taxpayer's [Gross Income Tax] **gross income tax** return cannot be carried forward or back to another tax year nor are they transferable to another taxpayer.

(e) Examples.

Example 1

XY Medical Services, Inc., a New Jersey S [Corporation] **corporation**, is located in a Health Enterprise Zone. It is owned by Dr. Smith and Dr. Jones who are the sole shareholders. The practice also employs two other medical doctors and two physician assistants and, on occasion, brings in a doctor who is a medical specialist.

[In 2005] **During the calendar year**, the practice’s gross receipts were \$900,000, of which \$600,000 were qualified receipts from the New Jersey Medicaid program for providing services to qualified recipients. The S corporation’s net income for the year was \$240,000.

The S corporation, XY Medical Services, Inc., calculates its HEZ deduction percentage as follows:

$$\frac{\text{qualified receipts } \$600,000}{\text{gross receipts } \$900,000} = 66.67\%$$

XY Medical Services, Inc. then calculates the total HEZ deduction allowed for the practice, which is then allocated to its shareholders. XY Medical Services, Inc. calculates its HEZ deduction as follows:

HEZ deduction percentage,	x	New Jersey S Corp Net Income,	=	\$160,000
66.67%		\$240,000		

The two shareholders, Drs. Smith and Jones, each own 50 percent of the practice. Their [NJ-K1s] **NJ-K-1s**, provided by the practice, reflect net pro rata share of S corporation income of \$120,000 each and an HEZ deduction of \$80,000.

Drs. Smith and Jones each report on their respective New Jersey [Gross Income Tax Returns] **gross income tax returns** net pro rata share of S corporation income of \$120,000 and claim an HEZ deduction of \$80,000 as reflected on their respective [NJ-K1s] **NJ-K-1s**.

The physicians and physicians’ assistants employed by the practice are not eligible for a deduction because they receive wages and not net income from the qualified practice.

Unless the medical specialist that XY Medical Services, Inc. brings into its location on a case-by-case basis maintains a qualified practice of [his] **taxpayer’s** own, [he] **taxpayer** does not qualify for an HEZ deduction.

Example 2

Dr. Johnson has a medical practice, organized as a single member LLC with two locations. Location one is within five miles of an HEZ, and location two is neither in an HEZ nor within five miles of an HEZ.

[For 2005] **During the calendar year**, Dr. Johnson’s practice reports the following:

- Location one’s gross receipts are \$200,000. Its qualified receipts are \$125,000.
- Sixty percent of location one’s qualified receipts, \$75,000, are from patients living in an HEZ.
- Location one is a qualified practice because at least 50 percent of the gross receipts were qualified receipts and at least 50 percent of the qualified receipts were from patients living in an HEZ.
- Location one’s HEZ deduction percentage would be 62.5 percent calculated by dividing the location’s qualified receipts, \$125,000 by the location’s gross receipts, \$200,000.
- Location two’s gross receipts are \$300,000. Its qualified receipts are \$130,000.
- Twenty-five percent of location two’s qualified receipts, \$32,500, are from patients living in an HEZ.
- Location two is not a qualified practice because it is neither in an HEZ nor within five miles of an HEZ.
- Net profits from operations for the entire business are \$180,000. Location one’s net profits from operations are \$60,000 and location two’s net profits from operations are \$120,000.

[For tax year 2005] **During the calendar year**, Dr. Johnson, a New Jersey resident, reports \$180,000 as net profits from business on his **or her** NJ-1040 return. Dr. Johnson is entitled to an HEZ deduction for location one of \$37,500, calculated as follows:

HEZ deduction percentage	x	Net profits from the qualified location	=	deduction
62.5%		x \$60,000		= \$37,500

Dr. Johnson is not entitled to an HEZ deduction for location two because it is not a qualifying practice.

In accordance with N.J.A.C. 18:35-2.7(d), businesses and practices that have more than one location must maintain separate books and records for each location, so that the deduction percentage and net profits from the individual locations can be determined. These separate books

and records must be available to the Division of Taxation for audit and verification of the HEZ deduction.

Example 3

ABC Medical, Inc. has two locations, location one is in an HEZ and location two is neither in nor within five miles of an HEZ. Dr. L[.] is the sole shareholder of ABC Medical, Inc.

[For 2005] **During the calendar year**, ABC Medical, Inc. reported the following:

- Location one’s gross receipts were \$400,000. Its qualified receipts were \$325,000.
- Thirty percent of location one’s qualified receipts, \$97,500, were from patients living in an HEZ.
- Location one qualifies for an HEZ deduction even though 50 percent of its qualified receipts were not from patients living in an HEZ because location one is located in an HEZ.
- Location one’s net profits from operations were \$45,000.
- Location one’s HEZ deduction percentage is 81.25 percent calculated by dividing the location’s qualified receipts, \$325,000, by its gross receipts, \$400,000.
- Location one’s HEZ deduction is [\$35,563] **\$36,563**, calculated by multiplying location one’s net profits, \$45,000, times its HEZ deduction percentage, [82.25] **81.25** percent.
- Location two’s gross receipts were \$500,000. Its qualified receipts were \$175,000 and 25 percent of location two’s qualified receipts, \$43,750, were from patients living in an HEZ.
- Location two is not a qualified practice because it is neither in nor within five miles of an HEZ.
- Location two’s net profits from operations were \$180,000.
- ABC Medical, Inc., an S corporation, [for 2005] **during the calendar year**, reports an HEZ deduction of [\$35,563] **\$36,563** for location one. This amount is reflected on the CBT-100S K1 issued to Dr. L[.] for [2005] **the calendar year**.

* Net profits from operations for the entire corporation were \$225,500.

[For tax year 2005] **During the calendar year**, Dr. L[.], a nonresident, reports \$225,500 as net pro rata share of S corporation income on his **or her** NJ-1040NR return. Dr. L[.] will also claim an HEZ deduction of [\$35,563] **\$36,563**, as reflected on his [NJ-K1] **or her NJ-K-1** from ABC Medical, Inc.

In accordance with N.J.A.C. 18:35-2.7(d), businesses and practices that have more than one location must maintain separate books and records for each location, so that the deduction percentage and net profits from the individual locations can be determined. These separate books and records must be available to the Division of Taxation for audit and verification of the HEZ deduction.

Example 4

Dr. E is associated with three separate qualified dental practices. He **or she** is a member (partner) in HIJ Associates, LLC and KLM Associates, LLC. He **or she** is also a shareholder of NOP Orthodontics, Inc., a New Jersey S corporation.

[For tax year 2005] **During the calendar year**, Dr. E received the following information on his **or her** K-1s from the three dental practices:

HIJ Associates, LLC	Distributive Share of Partnership Income	\$225,000	
	HEZ Deduction	\$73,253	
KLM Associates, LLC	Distributive Share of Partnership Income/loss	(\$23,500)	
	HEZ Deduction	[00] \$0	
NOP Orthodontics, Inc.	Net Pro Rata Share of S Corporation Income	\$86,000	
	HEZ Deduction	\$22,747	

[For tax year 2005] **During the calendar year**, Dr. E, a New Jersey resident, reports the following items of income on his **or her** NJ-1040 return:

Distributive Share of Partnership Income	Supporting	
Partnership Income	<u>Detail</u>	<u>Total</u>
HIJ Associates	\$225,000	
KLM Associates	<u>(\$23,500)</u>	\$201,500
Net Pro Rata Share of S [Corporation] corporation Income		
NOP Orthodontics, Inc.	\$86,000	\$86,000

HEZ Deduction

HIJ Associates	\$73,253	
KLM Associates	\$0	
NOP Orthodontics, Inc.	\$22,747	\$96,000

Dr. E is not entitled to an HEZ deduction for KLM Associates because he **or she** had no net taxable income from the practice. He **or she** had a loss.

Example 5

Dr. J has a practice with two locations. Location one is located within an HEZ and location two is located within five miles of an HEZ. [For 2005] **During the calendar year**, Dr. J's practice reports the following:

- Location one's gross receipts were \$300,000. Its qualified receipts were \$110,000.
- Location one qualifies for an HEZ deduction because it is located within an HEZ.
- Location one's HEZ deduction percentage is 36.667 percent, calculated by dividing its qualified receipts, \$110,000, by its gross receipts, \$300,000.
- Location one's net profits from operations were \$85,000.
- Location one's HEZ deduction is \$31,167, calculated by multiplying location one's net profits, \$85,000, times its HEZ deduction percentage, 36.667 percent.
- Location two's gross receipts were \$400,000, its qualified receipts were \$300,000, and 60 percent of location two's qualified receipts, \$180,000, were from patients living in an HEZ.
- Location two also qualifies for an HEZ deduction because it meets all the criteria to be a qualified practice.
- Location two's HEZ deduction percentage is 75 percent calculated by dividing its qualified receipts, \$300,000, by its gross receipts, \$400,000.
- Location two's net profits from operations were \$110,000.
- Location two's HEZ deduction is \$82,500, calculated by multiplying location two's net profits, \$110,000, times its HEZ deduction percentage, 75 percent.
- Net profits from operations for Dr. J's entire practice were \$195,000.

[For tax year 2005] **During the calendar year**, Dr. J, a New Jersey resident, will report on his **or her** NJ-1040 \$195,000 as net profits from business, \$85,000 from location one and \$110,000 from location two. Dr. J can claim [an] a \$113,667 HEZ deduction, \$31,167 from location one and \$82,500 from location two. Dr. J must attach a schedule to his **or her** return showing how he **or she** arrived at his **or her** HEZ deduction.

In accordance with N.J.A.C. 18:35-2.7(d), businesses or practices that have more than one location must maintain separate books and records for each location, so that the deduction percentage and net profits from the individual locations can be determined. These separate books and records must be available to the Division of Taxation for audit and verification of the HEZ deduction.

18:35-2.8 Alternative business calculation

(a) For tax years beginning on or after January 1, 2012, N.J.S.A. 54A:3-9 establishes an alternative business calculation under the New Jersey Gross Income Tax Act (Act) with the intent of giving tax relief to gross income taxpayers with business losses. The Act provides an adjustment to taxable income, which uses a calculation that consolidates business income [and or/loss] **and/or loss** and allows taxpayers to carryforward unutilized business losses.

(b)-(j) (No change.)

(k) The alternative business calculation will have no effect on basis in determining income or loss arising from the disposition or sale of a business asset, interest, or stock in a business entity held by a gross income taxpayer.

1. As used in this subsection, "business asset" means the underlying property utilized in the business as described in N.J.S.A. 54A:5-[1b.]1.b and d.

2. As used in this subsection, "[Business] **business entity**" means any business or commercial venture that is organized as an S corporation or partnership or any business or commercial venture that is classified as a partnership for Federal income tax purposes.

(l) The provisions of this section are illustrated by the following examples:

(**Agency Note**: The text of N.J.A.C. 18:35-2.8(l) examples 1 through 6 follow with additions indicated in italicized boldface **thus**; deletions indicated in brackets [thus]. Those portions of the examples appearing solely in boldface **thus** are intended to be so permanently.)

Example 1: Determining the portion of the business increment used as an adjustment to taxable income and alternative business loss carryforward amount for a taxpayer with one business entity.

Jim is a full-year New Jersey resident. Jim's only source of business-related income/(loss) is from New Jersey Partnership ABC. His distributive share of partnership income is as follows:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Partnership ABC	(\$600)	\$1,000	(\$800)	(\$700)	\$900
Year 1	Reportable Regular Business Income		Alternative Business Income/(Loss)		
	<u>(RBI)</u>		<u>(ABI)</u>		
Partnership ABC	0		(600)		
Total	0		(600)		
Alternative Business Loss					
Carryforward to Year 2			(600)		
Business Increment (RBI-ABI)			0		

(Note: If ABI is negative, use zero)

Year 1 phase-in percentage	10%
Taxable Income Adjustment	0

The amount reportable as distributive share of partnership income on Jim's return is [-0-] **zero** since losses are not recognized on the New Jersey return. Jim's taxable income adjustment in this year is zero because the adjustment cannot reduce regular business income by more than 10 percent. Since Jim has an alternative business loss, this amount becomes the loss carryforward to be included in Year 2 calculation of alternative business income/(loss).

	<u>Year 2</u>	<u>Year 3</u>
Partnership ABC	\$1,000	\$1,000
Alternative Business		
Loss Carryforward		(\$600)
Total	\$1,000	\$400
Alternative Business		
Loss Carryforward to Year 3		0
Business Increment (RBI-ABI)		\$600
Year 2 phase-in percentage		<u>20%</u>
Taxable Income Adjustment		\$120

The amount reportable as distributive share of partnership income on Jim's return is \$1,000. Jim's taxable income adjustment in this year is \$120.00, which represents 20 percent of the savings from the carryforward of unused losses. Since Jim has alternative business income this year, there is no alternative business loss carryforward to Year 3.

	<u>Year 3</u>	<u>Year 4</u>
Partnership ABC	0	(\$800)
Alternative Business		
Loss Carryforward		0
Total	0	(\$800)
Alternative Business		
Loss Carryforward to Year 4		(\$800)
Business Increment (RBI-ABI)		0

(Note: If ABI is negative, use zero)

Year 3 phase-in percentage	<u>30%</u>
Taxable Income Adjustment	0

The amount reportable as distributive share of partnership income on Jim's return is [-0-] **zero** since losses are not recognized on the New Jersey return. Jim's taxable income adjustment in this year is zero because the adjustment cannot reduce regular business income by more than 30 percent. Since Jim has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 4 calculation of alternative business income/(loss).

Year 4	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	0	(\$700)
Alternative Business Loss Carryforward		(\$800)
Alternative Business Loss Carryforward to Year 5		(\$1,500)
Business Increment (RBI-ABI)		0
	(Note: If ABI is negative, use zero)	
Year 4 phase-in percentage		40%
Taxable Income Adjustment		0

The amount reportable as distributive share of partnership income on Jim's return is [-0-] **zero** since losses are not recognized on the New Jersey return. Jim's taxable income adjustment in this year is zero because the adjustment cannot reduce regular business income by more than 40 percent. Since Jim has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 5 calculation of alternative business income/(loss).

Year 5	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	\$900	\$900
Alternative Business Loss Carryforward		(\$1,500)
Total	\$900	(\$600)
Alternative Business Loss Carryforward to Year 6		\$600
Business Increment (RBI-ABI)		\$900
	(Note: If ABI is negative, use zero)	
Year 5 phase-in percentage		50%
Taxable Income Adjustment		\$450

The amount reportable as distributive share of partnership income on Jim's return is \$900.00. Jim's taxable income adjustment in this year is \$450.00, which represents 50 percent of the savings from the carryforward of unused losses. Since Jim has alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 6 calculation of alternative business income/(loss).

Example 2: Determining the portion of the business increment used as an adjustment to taxable income and alternative loss carryforward amount for a taxpayer with business income less than business losses in a five-year period.

Harry is a New Jersey resident. Harry is a partner in New Jersey Partnership ABC and has a New Jersey rental property. His distributive share of partnership income/(loss) and rental income/(loss) are as follows:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Partnership ABC	\$1,000	\$2,000	\$4,000	\$5,000	\$6,000
NJ Rental Activity	(\$5,000)	(\$4,000)	(\$4,000)	(\$3,000)	(\$2,000)
Year 1					
	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)			
Partnership ABC	\$1,000	\$1,000			
NJ Rental Activity		(\$5,000)			
Total	\$1,000	(\$4,000)			
Alternative Business					

Loss Carryforward to Year 2	(\$4,000)
Business Increment (RBI-ABI)	\$1,000

	(Note: If ABI is negative, use zero)	
Year 1 phase-in percentage		10%
Taxable Income Adjustment		\$100

The amount reportable as distributive share of partnership income on Harry's return is \$1,000. The amount of rental income reportable on Harry's return is [-0-] **zero** since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is \$100.00, which represents 10 percent of the savings from netting between the business income categories. Since Harry has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 2 calculation of alternative business income/(loss).

Year 2	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	\$2,000	\$2,000
NJ Rental Activity		(\$4,000)
Alternative Business Loss Carryforward		(\$4,000)
Total	\$2,000	(\$6,000)
Alternative Business Loss Carryforward to Year 3		(\$6,000)
Business Increment (RBI-ABI)		\$2,000

	(Note: If ABI is negative, use zero)	
Year 2 phase-in percentage		20%
Taxable Income Adjustment		\$400

The amount reportable as distributive share of partnership income on Harry's return is \$2,000. The amount of rental income reportable on Harry's return is [-0-] **zero** since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is \$400.00, which represents 20 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since Harry has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 3 calculation of alternative business income/(loss).

Year 3	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	\$4,000	\$4,000
NJ Rental Activity		(\$4,000)
Alternative Business Loss Carryforward		(\$6,000)
Total	\$4,000	(\$6,000)
Alternative Business Loss Carryforward to Year 4		(\$6,000)
Business Increment (RBI-ABI)		\$4,000

	(Note: If ABI is negative, use zero)	
Year 3 phase-in percentage		30%
Taxable Income Adjustment		\$1,200

The amount reportable as distributive share of partnership income on Harry's return is \$4,000. The amount of rental income reportable on Harry's return is [-0-] **zero** since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is \$1,200, which represents 30 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since Harry has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 4 calculation of alternative business income/(loss).

Year 4	Reportable Regular Business Income	Alternative Business Income/(Loss)
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	Business Income <u>(RBI)</u>	Income/(Loss) <u>(ABI)</u>
Partnership ABC	\$5,000	\$5,000
NJ Rental Activity		(\$3,000)
Alternative Business		
Loss Carryforward		(\$6,000)
Total	\$5,000	(\$4,000)
Alternative Business		
Loss Carryforward to Year 5		(\$4,000)
Business Increment		\$5,000
(RBI-ABI)		
	(Note: If ABI is negative, use zero)	
Year 4 phase-in percentage		<u>40%</u>
Taxable Income Adjustment		\$2,000

The amount reportable as distributive share of partnership income on Harry's return is \$5,000. The amount of rental income reportable on Harry's return is [-0-] **zero** since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is \$2,000, which represents 40 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since Harry has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 5 calculation of alternative business income/(loss).

Year 5	Reportable Regular Business Income <u>(RBI)</u>	Alternative Business Income/(Loss) <u>(ABI)</u>
Partnership ABC	\$6,000	\$6,000
NJ Rental Activity		(\$2,000)
Alternative Business		
Loss Carryforward		(\$4,000)
Total	\$6,000	0
Alternative Business		
Loss Carryforward to Year 6		0
Business Increment		\$6,000
(RBI-ABI)		
Year 5 phase-in percentage		<u>50%</u>
Taxable Income Adjustment		\$3,000

The amount reportable as distributive share of partnership income on Harry's return is \$6,000. The amount of rental income reportable on Harry's return is [-0-] **zero** since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is \$3,000, which represents 50 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since Harry has alternative business income of zero, there is no alternative business loss carryforward to Year 6.

Example 3: Determining the portion of the business increment used as an adjustment to taxable income and alternative business loss carryforward amount for a taxpayer with business income more than business losses in a five-year period.

John is a New Jersey resident. John is a partner in New Jersey Partnership DEF and has a New Jersey rental property. His distributive share of partnership income/(loss) and rental income/(loss) are as follows:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Partnership DEF	\$1,000	\$2,000	\$4,000	\$5,000	\$6,000
NJ Rental Activity	(\$5,000)	(\$3,000)	(\$2,000)	(\$1,000)	(\$1,000)
Year 1	Reportable Regular Business Income <u>(RBI)</u>		Alternative Business Income/(Loss) <u>(ABI)</u>		
Partnership DEF	\$1,000		\$1,000		
NJ Rental Activity			(\$5,000)		
Total	\$1,000		(\$4,000)		
Alternative Business					
Loss Carryforward to Year 2			(\$4,000)		
Business Increment			\$1,000		

(RBI-ABI)	(Note: If ABI is negative, use zero)
Year 1 phase-in percentage	<u>10%</u>
Taxable Income Adjustment	\$100

The amount reportable as distributive share of partnership income on John's return is \$1,000. The amount of rental income reportable on John's return is [-0-] **zero** since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is \$100.00, which represents 10 percent of the savings from netting between the business income categories. Since John has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 2 calculation of alternative business income/(loss).

Year 2	Reportable Regular Business Income <u>(RBI)</u>	Alternative Business Income/(Loss) <u>(ABI)</u>
Partnership DEF	\$2,000	\$2,000
NJ Rental Activity		(\$3,000)
Alternative Business		
Loss Carryforward		(\$4,000)
Total	\$2,000	(\$5,000)
Alternative Business		
Loss Carryforward to Year 3		(\$5,000)
Business Increment		\$2,000
(RBI-ABI)		

	(Note: If ABI is negative, use zero)
Year 2 phase-in percentage	<u>20%</u>
Taxable Income Adjustment	\$400

The amount reportable as distributive share of partnership income on John's return is \$2,000. The amount of rental income reportable on John's return is [-0-] **zero** since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is \$400.00, which represents 20 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since John has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 3 calculation of alternative business income/(loss).

Year 3	Reportable Regular Business Income <u>(RBI)</u>	Alternative Business Income/(Loss) <u>(ABI)</u>
Partnership DEF	\$4,000	\$4,000
NJ Rental Activity		(\$2,000)
Alternative Business		
Loss Carryforward		(\$5,000)
Total	\$4,000	(\$3,000)
Alternative Business		
Loss Carryforward to Year 4		(\$3,000)
Business Increment		\$4,000
(RBI-ABI)		

	(Note: If ABI is negative, use zero)
Year 3 phase-in percentage	<u>30%</u>
Taxable Income Adjustment	\$1,200

The amount reportable as distributive share of partnership income on John's return is \$4,000. The amount of rental income reportable on John's return is [-0-] **zero** since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is \$1,200, which represents 30 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since John has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 4 calculation of alternative business income/(loss).

Year 4	Reportable Regular Business Income <u>(RBI)</u>	Alternative Business Income/(Loss) <u>(ABI)</u>
Partnership DEF	\$5,000	\$5,000

NJ Rental Activity		(\$1,000)
Alternative Business		
Loss Carryforward		(\$3,000)
Total	\$5,000	\$1,000
Alternative Business		
Loss Carryforward to Year 5		0
Business Increment (RBI-ABI)		\$4,000
(Note: If ABI is negative, use zero)		
Year 4 phase-in percentage		<u>40%</u>
Taxable Income Adjustment		\$1,600

The amount reportable as distributive share of partnership income on John's return is \$5,000. The amount of rental income reportable on John's return is [-0-] **zero** since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is \$1,600, which represents 40 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since John has alternative business income this year, there is no alternative business loss carryforward to Year 5.

Year 5	Reportable Regular Business Income	Alternative Business Income/(Loss)
	(RBI)	(ABI)
Partnership DEF	\$6,000	\$6,000
NJ Rental Activity		(\$1,000)
Alternative Business		
Loss Carryforward		0
Total	\$6,000	\$5,000
Alternative Business		
Loss Carryforward to Year 6		0
Business Increment (RBI-ABI)		\$1,000
Year 5 phase-in percentage		<u>50%</u>
Taxable Income Adjustment		\$500

The amount reportable as distributive share of partnership income on John's return is \$6,000. The amount of rental income reportable on

Determining the Credit for Taxes Paid to Other Jurisdictions:

	Income Subject to Tax		
	<u>New Jersey</u>	<u>New York</u>	<u>Income Taxed by Both</u>
Partnership A	\$300,000	\$300,000	\$300,000
Partnership B	(\$100,000)		(\$100,000)
S Corporation Z	<u>0</u>		
Income Subject to Tax Before			
Exemptions and Deductions	\$200,000	\$300,000	\$200,000
Less Exemptions	<u>(\$1,000)</u>		
Taxable Income	\$199,000		
Less Taxable Income Adjustment	<u>(\$5,000)</u>		
New Jersey Taxable Income	\$194,000		
Tax	\$10,232	\$21,153	\$14,101
Numerator of the credit calculation			\$200,000
Credit Allowed			\$10,232

John's return is [-0-] **zero** since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is \$500.00, which represents 50 percent of the savings from netting between the business income categories. Since John has alternative business income this year, there is no alternative business loss carryforward to Year 6.

Example 4: Determining the portion of the business increment used as an adjustment to taxable income and alternative business loss carryforward amount and credit for taxes paid to other jurisdictions for a taxpayer with three business entities.

Tom is a full-year New Jersey resident with a filing status of single. Tom is a partner in Partnership A with income of \$300,000, Partnership B with a loss of (\$100,000) and a shareholder in S Corporation Z with a loss of (\$50,000). The income from Partnership A is also subject to tax by New York.

Determining the Taxable Income Adjustment:

	Reportable Regular Business Income	Alternative Business Income/(Loss)
	(RBI)	(ABI)
Partnership A	\$300,000	\$300,000
Partnership B	(\$100,000)	(\$100,000)
S Corporation Z	0	(\$50,000)
Total	\$200,000	\$150,000
Alternative Business		
Loss Carryforward		0
Business Increment (RBI-ABI)		\$50,000
Year 1 phase-in percentage		<u>10%</u>
Taxable Income Adjustment		\$5,000

The amount reportable as distributive share of partnership income on Tom's return is \$200,000. The amount reportable as net pro rata share of S corporation income on Tom's return is [-0-] **zero** since losses are not recognized on the New Jersey return. Tom's taxable income adjustment in this year is \$5,000, which represents 10 percent of the savings from netting between the business income categories. Since Tom has alternative business income, there is no alternative business loss carryforward to Year 2.

Since the total partnership income taxed by New Jersey is less than the amount taxed by New York, the numerator of the credit calculation is limited to \$200,000, which is the amount of income taxed by both jurisdictions. The credit allowed is limited to the \$10,232 of New Jersey tax paid on the \$200,000 of partnership income since this amount is less than the \$14,101 of New York taxes paid on the same income.

Example 5: Determining the portion of the business increment used as an adjustment to taxable income and the alternative business loss carryforward amount for a taxpayer with multiple interests in partnerships where there is also a disposition of one of the partnership interests.

Bob moved into New Jersey in 2016 and is a partner in three partnerships, Partnerships A, B, and C. His beginning New Jersey basis in each of the partnerships is his ending Federal basis prior to moving to New Jersey. His distributive share of partnership income/(loss) for tax years 2016 through 2020 is as follows:

	Year <u>2016</u>	Year <u>2017</u>	Year <u>2018</u>	Year <u>2019</u>	Year <u>2020</u>
Partnership A	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Partnership B	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000
Partnership C	(\$20,000)	(\$40,000)	(\$5,000)	(\$60,000)	

In tax year 2019, Bob sells his interest in Partnership C for \$150,000.

Year 2016	Reportable Regular	Alternative Business
	Business Income <u>(RBI)</u>	Income/(Loss) <u>(ABI)</u>
Partnership Income	0	0
Business Increment (RBI - ABI)	0	(Note: If ABI is negative, use zero)
Phase-in percentage	<u>[0.50] 50%</u>	
Taxable Income	0	
Adjustment		

Calculation of New Jersey Partnership Basis:

<u>Partnership A</u>	
Beginning Federal Basis	\$20,000
Current Year Income	<u>\$10,000</u>
Ending New Jersey Basis	\$30,000
<u>Partnership B</u>	
Beginning Federal Basis	\$20,000
Current year income	<u>\$10,000</u>
Ending New Jersey Basis	\$30,000
<u>Partnership C</u>	
Beginning Federal Basis	\$200,000
Current Year Usable Loss	<u>(\$20,000)</u>
Ending New Jersey Basis	\$180,000

Note: Only losses used by Partnership C in reporting Regular Business Income reduce New Jersey basis each year.

Year 2017	Reportable Regular	Alternative Business
	Business Income <u>(RBI)</u>	Income/(Loss) <u>(ABI)</u>
Partnership Income	0	(\$20,000)
Business Increment	0	(Note: If ABI is

(RBI - ABI)		negative, use zero)
Phase-in percentage	<u>[0.50] 50%</u>	
Taxable Income	0	
Adjustment		
Alternative Business		(\$20,000)
Loss Carryforward to 2018		

Calculation of New Jersey Partnership Basis:

<u>Partnership A</u>	
Beginning New Jersey Basis	\$30,000
Current Year Income	<u>\$10,000</u>
Ending New Jersey Basis	\$40,000
<u>Partnership B</u>	
Beginning New Jersey Basis	\$30,000
Current year income	<u>\$10,000</u>
Ending New Jersey Basis	\$40,000
<u>Partnership C</u>	
Beginning New Jersey Basis	\$180,000
Current Year Usable Loss	<u>(\$20,000)</u>
Ending New Jersey Basis	\$160,000

Note: Only losses used by Partnership C in reporting Regular Business Income reduce New Jersey basis each year.

Year 2018	Reportable Regular	Alternative Business
	Business Income <u>(RBI)</u>	Income/(Loss) <u>(ABI)</u>
Partnership Income	\$15,000	\$15,000
Alternative Business		(\$20,000)
Loss Carryforward		(\$5,000)
Business Increment (RBI - ABI)	\$15,000	(Note: If ABI is negative, use zero)
Phase-in percentage	<u>[0.50] 50%</u>	
Taxable Income	\$7,500	
Adjustment		
Alternative Business		(\$5,000)
Loss Carryforward to 2019		

Calculation of New Jersey Partnership Basis:

<u>Partnership A</u>	
Beginning New Jersey Basis	\$40,000
Current Year Income	<u>\$10,000</u>
Ending New Jersey Basis	\$50,000
<u>Partnership B</u>	
Beginning New Jersey Basis	\$40,000
Current year income	<u>\$10,000</u>
Ending New Jersey Basis	\$50,000
<u>Partnership C</u>	
Beginning New Jersey Basis	\$160,000

Current Year Usable Loss (\$5,000)
 Ending New Jersey Basis \$155,000
 Note: Only losses used by Partnership C in reporting Regular Business Income reduce New Jersey basis each year.

New Jersey Gain on Disposition \$15,000

The taxpayer's New Jersey basis is not affected by any previously reported taxable income adjustment or alternative business loss carryforward. The alternative business loss carryforward is not reduced when there is a disposition of an entity.

Year 2019	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	0	(\$40,000)
Alternative Business		(\$5,000)
Loss Carryforward		(\$45,000)
Business Increment (RBI - ABI)	0	(Note: If ABI is negative, use zero)
Phase-in percentage	[0.50] <u>50%</u>	
Taxable Income	0	
Adjustment		
Alternative Business		(\$45,000)
Loss Carryforward to 2020		

Year 2020	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	\$20,000	\$20,000
Alternative Business		(\$45,000)
Loss Carryforward		(\$25,000)
Business Increment (RBI - ABI)	\$20,000	(Note: If ABI is negative, use zero)
Phase-in percentage	[0.50] <u>50%</u>	
Taxable Income	\$10,000	
Adjustment		
Alternative Business		(\$25,000)
Loss Carryforward to 2021		

Calculation of New Jersey Partnership Basis:

Partnership A

Beginning New Jersey Basis \$50,000
 Current Year Income \$10,000
 Ending New Jersey Basis \$60,000

Partnership B

Beginning New Jersey Basis \$50,000
 Current year income \$10,000
 Ending New Jersey Basis \$60,000

Partnership C

Beginning New Jersey Basis \$155,000
 Current Year Usable Loss (\$20,000)
 Ending New Jersey Basis \$135,000
 Taxpayer is disposing of his interest in Partnership C for \$150,000.

Calculation of New Jersey Partnership Basis:

Partnership A

Beginning New Jersey Basis \$60,000
 Current Year Income \$10,000
 Ending New Jersey Basis \$70,000

Partnership B

Beginning New Jersey Basis \$60,000
 Current year income \$10,000
 Ending New Jersey Basis \$70,000

Example 6: Determining the portion of the business increment used as an adjustment to taxable income and alternative business loss carryforward amount for a nonresident taxpayer with businesses both inside and outside of New Jersey.

John is a single taxpayer that has always been a nonresident of New Jersey with business income and loss earned both inside and outside of New Jersey. His distributive share of partnership income and rental income/(loss) are as follows:

Calculation of Gain or Loss on Disposition:

Sales Price \$150,000
 New Jersey Basis \$135,000

	Year 1		Year 2		Year 3	
	Income		Income		Income	
	Everywhere	NJ Sources	Everywhere	NJ Sources	Everywhere	NJ Sources
Partnership A	\$40,000	\$40,000	\$25,000	\$25,000	\$45,000	\$45,000
Partnership B	\$30,000		\$15,000		\$15,000	
Non-NJ	(\$20,000)		(\$50,000)		(\$35,000)	
Rental Loss						
			Total		\$70,000	\$50,000

YEAR 1:

Determining the Taxable Income Adjustment:

	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	\$70,000	\$70,000
Rental Income	0	(\$20,000)

Alternative Business Loss Carryforward to Year 2	0
Business Increment (RBI-ABI)	\$20,000
	(Note: If ABI is negative, use zero)

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Year 1 phase-in percentage 10%
 Taxable Income Adjustment \$2,000

The amount reportable as distributive share of partnership income in the Income Everywhere column is \$70,000 and the amount reported in the NJ column is \$40,000. The amount reportable as net income from rents is zero since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is \$2,000, which represents 10 percent of the savings from the netting between the business income categories in the Income Everywhere column **only**. Since John has alternative business income, there is no alternative business loss carryforward to Year 2.

Determining the New Jersey Tax:

	Income Everywhere (Column A)	NJ Income (Column B)
Gross Income	\$70,000	\$40,000
Total Exemption Amount	(\$1,000)	
Taxable Income	<u>(\$2,000)</u>	
Adjustment		
Taxable Income	\$67,000	
Tax on Taxable Income	\$2,211	
Income percentage (Col. B Gross Income/ Col. A Gross Income)	57.14%	
New Jersey Tax (Tax on Taxable Income x Income percentage)	\$1,263	

YEAR 2:

Determining the Taxable Income Adjustment:

	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	\$40,000	\$40,000
Rental Income	0	<u>(\$50,000)</u>
Total	\$40,000	(\$10,000)
Alternative Business Loss Carryforward to Year 3		(\$10,000)
Business Increment (RBI-ABI)		\$40,000

(Note: If ABI is negative, use zero)

Year 2 phase-in percentage 20%
 Taxable Income Adjustment \$8,000

The amount reportable as distributive share of partnership income in the Income Everywhere column is \$40,000 and the amount reported in the NJ column is \$25,000. The amount reportable as net income from rents is zero since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is \$8,000, which represents 20 percent of the savings from the netting between the business income categories in the Income Everywhere column **only**. Since John has an

alternative business loss, this amount becomes the loss carryforward to be included in Year 2 calculation of alternative business income/(loss).

Determining the New Jersey Tax:

	Income Everywhere (Column A)	NJ Income (Column B)
Gross Income	\$40,000	\$25,000
Total Exemption Amount	(\$1,000)	
Taxable Income	<u>(\$8,000)</u>	
Adjustment		
Taxable Income	\$31,000	
Tax on Taxable Income	\$473	
Income percentage (Col. B Gross Income/ Col. A Gross Income)	62.50%	
New Jersey Tax (Tax on Taxable Income x Income percentage)	\$296	

YEAR 3:

Determining the Taxable Income Adjustment:

	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	\$60,000	\$60,000
Rental Income	0	(\$35,000)
Alternative Business Loss		<u>(\$10,000)</u>
Carryforward Total	\$60,000	\$15,000
Alternative Business Loss Carryforward to Year 3		0
Business Increment (RBI-ABI)		\$45,000

(Note: If ABI is negative, use zero)

Year 3 phase-in percentage 30%
 Taxable Income Adjustment \$13,500

The amount reportable as distributive share of partnership income in the Income Everywhere column is \$60,000 and the amount reported in the NJ column is \$45,000. The amount reportable as net income from rents is zero since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is \$13,500, which represents 30 percent of the savings from the netting between the business income categories in the Income Everywhere column **only**. Since John has alternative business income, there is no alternative business loss carryforward to Year 4.

Determining the New Jersey Tax:

	Income Everywhere (Column A)	NJ Income (Column B)
Gross Income	\$60,000	\$45,000
Total Exemption	(\$1,000)	

Amount	
Taxable Income	<u>(\$13,500)</u>
Adjustment	
Taxable Income	\$45,500
Tax on Taxable Income	\$1,021
Income percentage	
(Col. B Gross Income / Col. A Gross Income)	[75.00%] 75%
New Jersey Tax (Tax on Taxable Income x Income percentage)	\$766

18:35-2.9 Medical expenses deduction

(a) A taxpayer may deduct from gross income qualified medical expenses in excess of two percent of gross income.

1. Qualified medical expenses are medical expenses:
 - i. That are allowed for Federal income tax purposes;
 - ii. For the taxpayer, taxpayer’s spouse/civil union partner or domestic partner, or taxpayer’s dependents; and
 - iii. That have not been reimbursed by insurance or a similar provider.

2. Medical expenses that are disallowed for Federal income tax purposes are disallowed for New Jersey income tax purposes.

SUBCHAPTER 3. ESTIMATED TAX

18:35-3.1 Estimated tax

(a) Every resident and nonresident individual shall make a declaration of the individual’s estimated New Jersey personal income tax for each taxable year beginning after June 30, 1976, if the individual’s estimated New Jersey personal income tax can reasonably be expected to be more than \$400.00 in excess of any credits allowable against the individual’s tax, whether or not the individual is required to file a Federal declaration of estimated tax for such year. Estates and trusts are required to file declarations of estimated tax, other than estates and trusts that meet the [two year] **two-year** limitation and other criteria of Internal Revenue Code section 6654(l).

(b) (No change.)

(c) N.J.S.A. 54A:8-4(d) requires individuals, other than farmers, who can reasonably expect their New Jersey personal income tax to be more than \$400.00 in excess of any credits allowable against the individual’s tax, to file a declaration of estimated tax on or before April 15 of the taxable year. **Fiscal year taxpayers shall estimate their tax for the period covered by their fiscal year, and file a declaration of estimated tax on the 15th day of the fourth, sixth, or ninth month of their fiscal year or the first month after the end of their fiscal year.** N.J.S.A. 54A:8-4(d) also divides the remainder of the taxable year into three periods. If during the period the individual becomes subject to the [Gross Income Tax] **gross income tax**, for example as a part-year resident, or it becomes apparent that the individual’s (other than farmer’s) personal income tax for the taxable year can reasonably be expected to be more than \$400.00 in excess of any credits allowable against the individual’s tax, a declaration of estimated tax must be filed on or before the due date for the period. The periods and due dates are as follows:

1.-3. (No change.)

[Fiscal year taxpayers shall estimate their tax for the period covered by their fiscal year, and file a declaration of estimated tax on the 15th day of the fourth, sixth or ninth month of their fiscal year or the first month after the end of their fiscal year.]

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

(g) An individual may amend a declaration of estimated tax, if the individual experiences an unanticipated increase or decrease in income, credits, exemptions, or deductions. If an amendment of a declaration is filed, any remaining installments shall be ratably increased or decreased to reflect any increase or decrease in the estimated tax. If any amendment is made after September 15 of the taxable year, any increase in the estimated tax shall be paid at the time of making such amendment. To amend a declaration, the individual should indicate any necessary changes when filing the next quarterly return. Form 2210 must be filed with the [Gross Income Tax] **gross income tax** return showing that declarations and payments properly reflect the receipt of income.

Example 1: (No change.)

(h) If on or before February 15 of the succeeding taxable year an individual files his or her return for the taxable year for which the declaration is required, and pays the full amount of the tax shown to be due on the return:

1. (No change.)

2. Such return shall be considered as the amendment permitted by N.J.S.A. 54A:8-4(g) to be filed on or before January 15, if the tax shown on the return is greater than the estimated tax shown in a declaration previously made.

i. Any amount overpaid and appearing on the face of [the] **any gross income tax** return [NJ-1040] for the immediate preceding year may be applied in lieu of any payment of estimated tax otherwise due under this section where the taxpayer indicates on the face of such return that he or she elects to have such overpayment so applied. Such amount will be considered to be a payment of the first installment of the estimated tax for the next succeeding year unless the taxpayer designates otherwise on the face of the return for the year in which the overpayment was made. The taxpayer may apply the credit partially or fully to any installment. The taxpayer may divide the credit evenly so that the installment payments are also equal. When applying the credit, the taxpayer should subtract the amount of the credit being applied from the installment amount due for the period, then remit the balance. When completing the estimated tax voucher, Form NJ-1040ES, the taxpayer should indicate only the amount actually remitted.

18:35-3.2 Failure to file declaration or underpayment of estimated tax

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

(d) Individuals must complete Form NJ-2210 to determine underpayments of estimated tax, and to calculate the interest due on underpayments. **Estates and trusts are subject to interest on underpayment of estimated tax and may need to complete Form NJ-2210, except estates and trusts that meet the two-year limitation and other criteria of I.R.C. § 6654(l)(2).** If there has been an underpayment of estimated tax as of the installment date prescribed for its payment and the individual believes that one or more of the exceptions described in (e) below precludes the imposition of the addition to the tax, the individual must attach Form NJ-2210 to the declaration showing the applicability of any exception upon which the individual relied.

(e) (No change.)

SUBCHAPTER 4. CREDITS AGAINST TAX

18:35-4.1 Computation of credit for taxes paid to other jurisdictions

(a) The following provisions shall govern the computation of the tax credit by reason of any income or wage tax paid to another state or political subdivision of such state under the New Jersey Gross Income Tax Act (**Act**).

1. N.J.S.A. 54A:4-1 provides for a credit against the New Jersey gross income tax as follows: Resident credit for tax of another state.

i. A resident taxpayer shall be allowed [to] a credit against the tax otherwise due under this [act] **Act** for the amount of any income tax or wage tax imposed for the taxable year by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to income which is also subject to tax under this [act] **Act**, except as provided by (a)3 below.

ii. The credit provided under this section shall not exceed the proportion of the tax otherwise due under this [act] **Act** that the amount of the taxpayer’s income subject to tax by the other jurisdiction bears to his **or her** entire New Jersey income.

2. (No change.)

3. N.J.S.A. 54A:4-1(b), (c), and (d) provide for a limitation on the credit for tax paid to another state or political subdivision. The amount of the resident taxpayer credit for tax paid to another state or political subdivision shall not exceed the percentage derived by dividing income subject to tax in the other jurisdiction by the taxpayer's entire New Jersey income multiplied by the tax otherwise due under the New Jersey Gross Income Tax Act.

[i. The amount of the resident taxpayer credit for tax paid to another state or political subdivision shall not exceed the percentage of tax derived by dividing income subject to tax in the other jurisdiction by the taxpayer's entire New Jersey income multiplied by the tax otherwise due under the New Jersey Gross Income Tax Act.]

[ii.] **i.** No credit shall be allowed for any income tax or wage tax imposed on S [Corporation] **corporation** income allocated to this State as determined in accordance with N.J.S.A. 54A:5-10.

(1) When the New Jersey [Corporation Business Tax] **corporation business tax** allocation factor is 100 percent but the S [Corporation] **corporation** in fact pays tax to another state based on or measured by income, the amount of income taxed, which qualifies for a reduction on the New Jersey [Corporation Business Tax] **corporation business tax** return, is deemed S [Corporation] **corporation** income allocated outside of New Jersey. This S [Corporation] **corporation** income is subject to the [Gross Income Tax] **gross income tax**. In addition, if the taxpayer is required to file a personal income tax return in the other jurisdiction reporting the S [Corporation] **corporation** income, the taxpayer would be eligible for credit for taxes paid to another jurisdiction.

(2) Payment of a minimum tax to another state by an S [Corporation] **corporation** does not fulfill the criteria of [(a)3ii(1)] **(a)3i(1)** above. Therefore, income is not deemed to be S corporation income allocated outside of New Jersey for gross income tax purposes. If the taxpayer is required to file a personal income tax return in the other jurisdiction reporting S [Corporation] **corporation** income, the taxpayer is not eligible for a credit for taxes paid to the other jurisdiction.

(3) When an S [Corporation] **corporation** with a New Jersey [Corporation Business Tax] **corporation business tax** allocation factor of 100 percent reports entire net income that is subject to Federal corporate income taxation on the New Jersey [Corporation Business Tax] **corporation business tax** return and the corporate tax return of another state and the tax paid to the other state qualifies for a reduction on the New Jersey [Corporation Business Tax] **corporation business tax** return, the amount of income taxed by both jurisdictions is deemed S corporation income allocated outside of New Jersey. If the taxpayer is required to file a personal income tax return in the other jurisdiction reporting the S [Corporation] **corporation** income, the taxpayer is eligible for a credit for taxes paid to another jurisdiction, subject to statutory limitations, including those in N.J.S.A. 54A:4-1(b), (c), and (d).

[iii.] **ii.** (No change in text.)

4. (No change.)

5. If the tax of another state or political subdivision is readjusted for more or less of the tax of another state or political subdivision than [he or she] **taxpayer** is finally required to pay, the taxpayer shall send notice of the difference to the Director who shall redetermine the tax liability for any years affected, regardless of any otherwise applicable statute of limitations, provided that:

i.-ii. (No change.)

iii. The taxpayer [filed, with] **claimed a credit for taxes paid to that other jurisdiction** on the original New Jersey tax return [or by request submitted to the Division, a signed copy of the tax return filed with the other jurisdiction and/or political subdivision].

6. For purposes of determining the percentage, as provided in (a)3 above, for limitation of the tax credit:

i. Income subject to tax by the other jurisdiction means those items of income[, which] **that** are taxed by another jurisdiction before the allowance for personal exemptions and standard and/or other itemized deductions and which are also subject to tax under the New Jersey Gross Income Tax Act. "Subject to tax" is defined as income actually taxed.

ii. (No change.)

iii. Adjustment must be made in the numerator[,] for taxpayers who claim credit for income in the numerator which has been only partially taxed by the other jurisdiction.

iv.-v. (No change.)

7. As a result of the Reciprocal Personal Income Tax Agreement between the Commonwealth of Pennsylvania and the State of New Jersey, wages, salaries, and other compensation paid to New Jersey residents employed in Pennsylvania are not subject to Pennsylvania income tax. Thus, a New Jersey resident may not claim a credit for taxes paid to Pennsylvania on employee compensation.

8. Taxes paid on income by a resident taxpayer to any municipality of Pennsylvania are eligible for the resident tax credit. For example, taxes paid under the City of Philadelphia Wage Tax would be eligible.

i. A W-2 Form must be attached to the New Jersey Gross Income Tax Resident Return (Form [N.J. 1040] **NJ-1040**) to indicate the name of the municipality, the amount subject to the municipal Wage Tax, and the amount of tax withheld.

9. The New Jersey tax on gross income does not tax partnerships directly. See N.J.S.A. 54A:2-2. Income taxes [paid,] measured by profits or income, **and paid** by a partnership to another jurisdiction are deemed taxes paid by the individual partner and as such are eligible for the resident credit. For example, the New York City Unincorporated Business Tax, the Philadelphia Business Privilege Tax and Net Profits Tax are taxes paid by the partnership, which are eligible for the resident credit. **The Texas Margin Tax is not an income tax and, therefore, a credit is not allowed.**

i. The partner must retain adequate records, to be submitted upon request to the Division, to substantiate the credit claimed, such as a copy of the [Partnership's Tax Return] **partnership's tax return** indicating the amount of the profits or income subject to tax and the amount of tax paid; or

ii. (No change.)

10. [Do not include in the numerator in the credit fraction any] **Any** income[, which] **that** has been excluded or deducted from [the] taxable gross income of [other] **another** jurisdiction[(s)] or which has not been taxed by [other] **another** jurisdiction[(s).] **shall not be included in the numerator of the credit fraction.** Example: If a portion of long-term capital gains [are] **from the sale of property in State A** is excluded from [such] taxable income **in that state**, such excluded portion[s] may] **shall not be included in the numerator of the credit fraction.** In addition, [do not include in the numerator any] income that is not included in [Entire] **entire** New Jersey [Income] **income shall not be included in the numerator.**

i. (No change.)

11. [A New Jersey resident taxpayer in] **When** determining the resident credit allowed, as defined in this section, **a New Jersey resident taxpayer** shall not combine in the numerator (Schedule A, Line 1, [N.J. 1040] **NJ-1040**) the same income subject to tax by the jurisdiction and/or its political subdivision. The amount of income or wage tax during the tax year shown on Schedule A, Box B, [N.J. 1040] **NJ-1040** for the taxpayer paying both a tax to another state and to a political subdivision of such state would be the total amount of state income tax and income tax or wage tax paid to the other state and political subdivision of such state, where the same amount of income is subject to tax in both the other state and political subdivision of such state. If the income subject to tax in both the other state and political subdivision of such state is not equal, a separate calculation shall be made of the excess income to arrive at the limitation of the credit for the income tax or wage tax paid to the other state and political subdivision of such state.

i. When claiming a credit for the taxes paid to another jurisdiction and/or political subdivision, the taxpayer must retain a signed copy of the tax return filed with the other jurisdiction and/or political subdivision showing the amount of the tax paid and must make it available at the Division's request.

(1) (No change.)

(2) If the taxpayer [has] filed electronically in the other jurisdiction, a copy of the [Electronic Filing Income Tax Return(s)] **electronically filed income tax return(s)** alone is not sufficient. Electronic filers must also submit schedules, worksheets, etc., which document the income, by nature and source, being taxed by the other jurisdiction.

(3) A W-2 form or its equivalent which indicates the withholding of income tax in another jurisdiction and/or political subdivision is considered prima facie evidence of such amount of tax paid **only** if the taxing jurisdiction and/or political subdivision imposing an income tax or wage tax does not [require the filing of a] **have a tax** return [by the taxpayer claiming a credit].

(4) (No change.)

ii.-iii. (No change.)

12. The credit for tax paid to other jurisdictions must be determined in accordance with the following examples:

i. Example 1—Determining the denominator of the credit calculation fraction.

INCOME SUBJECT TO TAX BY NEW JERSEY

	Taxpayer A <u>Without Pension</u>	Taxpayer B With Pension Less <u>Exclusion(s)</u>
Wages	\$70,000	
Interest	\$250	\$4,000
Dividends	\$400	\$2,500
Gains		\$1,525
Pension/Annuity/IRA	0	\$30,000
Pension Exclusion	0	(\$15,000)
Taxable Pension		\$15,000
S Corporation Income	\$21,000	0
Income Subject to Tax Before Exemptions and Deductions	\$91,650	\$23,025

ii. Example 2—Determining the credit for income taxed both by another state and by a city within that state when the state and city are taxing the same amount of income.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Other State</u>	<u>Other City</u>
Wages	\$45,000	\$30,000	\$30,000
Income Subject to Tax Before Exemptions and Deductions	\$45,000	\$30,000	\$30,000
Less Exemptions	(\$2,000)		
New Jersey Taxable Income	\$43,000		
Tax	\$683	\$1,600	\$135
Numerator of the Credit Calculation			\$30,000

iii. Example 3—Determining the credit when income is taxed by two different states outside of New Jersey.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>New York</u>	<u>Delaware</u>
Wages	\$20,000	\$12,000	\$8,000
Interest	\$1,000		
Dividends	\$2,000		
New York Adjustments		(\$1,500)	

Income Subject to Tax	\$23,000	\$10,500	\$8,000
Before Exemptions and Deductions			
Less Exemptions	(\$2,000)		
New Jersey Taxable Income	\$21,000		
Tax	\$298	\$600	\$130
Numerator of the Credit Calculation	(\$10,500)	(\$8,000)	

iv. Example 4—Determining the numerator of the credit calculation fraction when the taxpayer allocates his income in the other jurisdiction.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Other Jurisdiction</u>	<u>Both</u>
Wages	\$125,000	\$100,000	\$100,000
Income Subject to Tax Before Exemptions and Deductions	\$125,000	\$100,000	\$100,000
Less Exemptions	(\$1,000)		
New Jersey Taxable Income	\$124,000		
Tax	\$5,773	\$4,800	
Numerator of the Credit Calculation			\$100,000

v. Example 5—Determining the numerator of the credit calculation fraction when part of New Jersey income is taxed by the other jurisdiction.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Other Jurisdiction</u>	<u>Both</u>
Wages	\$12,500	\$12,500	\$12,500
Interest	\$2,000		
Dividends	\$3,000		
Capital Gains	\$21,000		
Income Subject to Tax Before Exemptions and Deductions	\$38,500	\$12,500	\$12,500
Less Exemptions	(\$2,500)		
New Jersey Taxable Income	\$36,000		
Tax	\$560	\$400	
Numerator of the Credit Calculation			\$12,500

vi. Example 6—Determining the credit for wage income earned in another jurisdiction if wages were reduced by allowable deductions for New Jersey tax purposes. Determining the actual tax paid to the other jurisdiction on wages taxed by both New Jersey and the other jurisdiction.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>Philadelphia</u>	<u>Both</u>
Wages	\$500,000	\$500,000	
Less 401(k) Contributions	(\$30,000)	\$470,000	\$470,000
Interest	\$100,000		
Dividends	\$200,000		
Income Subject to Tax Before Exemptions and Deductions	\$770,000	\$500,000	\$470,000
Less Exemptions	(\$1,000)		
Medical Deduction	(\$5,000)		
New Jersey Taxable Income	\$764,000		
Tax	\$51,488	\$18,858	
Numerator of Credit Calculation			\$470,000

Calculation of tax paid to other jurisdiction on wages taxed by both New Jersey and other jurisdiction.

Wages taxed by both jurisdictions	\$470,000 = 94% of wages are allowable in numerator
Wages taxed by Philadelphia	\$500,000
Tax paid to Philadelphia [on 500,000]	\$18,858
Adjustment %	x 94%
Actual tax paid on wages allowable in numerator	\$17,727
Calculation of Maximum Credit Allowable	

\$470,000 X \$51,488 = \$31,428
maximum credit allowable
\$770,000

Actual tax paid on wages allowable in numerator \$17,727

Credit allowed is \$17,727, the lower of the maximum credit allowable or the actual tax paid to the other jurisdiction on income taxed by both New Jersey and the other jurisdiction.

vii. Example 7—Determining the credit when there is partnership income earned in two different jurisdictions outside New Jersey and a separate New Jersey partnership which has a loss.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>State 1</u>	<u>State 2</u>
Wages	\$100,000		
Interest	\$200		
Partnership Income			
Partnership ABC	\$10,000	\$10,000	
Partnership XYZ	\$5,000		\$5,000
Partnership KLM	\$7,000		
Partnership GSS (\$12,000)	\$10,000		
Income Subject to Tax Before Exemptions and Deductions	\$110,200	\$10,000	\$5,000
Less Exemptions	(\$1,000)		
New Jersey Taxable Income	\$109,200		
Tax	\$4,830	\$650	\$150
Effective Tax Rate		6.50%	3.00%
Numerator of Credit Calculation		\$10,000	0

viii. Example 8—Determining the credit for income taxed by New York State and New York City Unincorporated Business Tax (UBT).

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>New York</u>	<u>UBT</u>
Wages	\$25,000		
Interest	\$15,000		
Dividends	\$10,000		
Capital Gains	\$25,000		
Net Profits from Business	\$100,000	\$75,000	\$100,000
Income Subject to Tax Before	\$175,000	\$75,000	\$100,000

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Exemptions and Deductions			
Less Exemptions	(\$2,000)		
New Jersey Taxable Income	\$173,000		
Tax	\$6,978	\$6,600	\$4,000
Numerator of the Credit Calculation		\$75,000	\$25,000

(1) Example 8a—Determining the credit for income taxed by New York State and New York City Unincorporated Business Tax (UBT) when there is income taxed by New York City, which is not taxed by New Jersey.

	<u>New Jersey</u>	<u>New York</u>	<u>UBT</u>
Wages	\$50,000	\$25,000	
Interest	\$10,000		
Dividends	\$20,000		
Capital Gains	\$15,000		
Partnership Income	\$200,000*	\$100,000**	\$110,000***
Keogh deduction		(\$10,000)	
Income subject to tax Before Exemptions and Deductions	\$285,000	\$115,000	\$110,000
Exemptions and Deductions			
Exemptions	(\$2,000)		
New Jersey Taxable income	\$283,000		
Tax	\$16,980	\$7,475	\$4,400
Numerator of the Credit Calculation		\$115,000	\$10,000****

* Partnership Income per Federal K-1			
Ordinary Income			\$200,000
** 50% of partnership income allocated to New York State			\$100,000
*** UBT partnership Income			
50% of Ordinary Income			\$100,000
UBT adjustments not required for Federal or New Jersey purposes			\$10,000
Total UBT			\$110,000
**** UBT Credit Numerator			
Total Partnership Income			\$110,000
Amount used in determining New York State			

credit	(\$90,000)
Income not taxed by New Jersey	(\$10,000)
Allowable Numerator	\$10,000

ix. Example 9—Determining the credit when S corporation income is reported on the other jurisdiction’s return in separate categories.

	<u>INCOME SUBJECT TO TAX</u>		
	<u>New Jersey</u>	<u>Other Jurisdiction</u>	<u>Both</u>
Wages	\$100,000		
Interest			
Personal Interest	\$200		
S Corporation Interest		\$2,500	\$2,500
S Corporation Income			
Ordinary 35,000		\$35,000	\$35,000
Interest 2,500	\$37,500		
Income Subject to Tax Before Exemptions and Deductions	\$137,700	\$37,500	\$37,500
Less Exemptions	(\$1,000)		
New Jersey Taxable Income	\$136,700		
Tax	\$6,582	\$2,625	
Numerator of the Credit Calculation			\$37,500

x. Example 10—Schedule C adjustments to income which are also taxable to New Jersey are included in the numerator of the credit calculation fraction.

	<u>INCOME SUBJECT TO TAX</u>		
	<u>New Jersey</u>	<u>Other Jurisdiction</u>	<u>Both</u>
Wages	\$100,000	\$100,000	\$100,000
Interest	\$200		
Net Profits from 35,000		\$25,000	\$25,000
Business Taxes Based on 1,000	\$36,000	\$1,000	\$1,000
Income			
Income Subject to Tax Before Exemptions and	\$136,200	\$126,000	\$126,000

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Deductions			
Less Exemptions	(\$1,000)		
New Jersey Taxable Income	\$135,200		
Tax	\$6,486	\$8,820	
Numerator of the Credit Calculation			\$126,000

xi. Example 11—Determining the credit for Philadelphia partnerships subject to the Philadelphia Business Privilege Tax (BPT), Philadelphia Net Profits Tax (NPT), and the Pennsylvania Income Tax.

INCOME SUBJECT TO TAX

	<u>New Jersey</u>	<u>PA Income</u>	<u>Phila BPT</u>	<u>Phila NPT</u>
Wages	\$100,000			
Interest	\$200			
Partnership ABC	\$500,000	\$225,000	\$275,000	\$275,000
Income Subject to Tax Before Exemptions and Deductions	\$600,200	\$225,000	\$275,000	\$275,000
Less Exemptions	(\$1,000)			
New Jersey Taxable Income	\$599,200			
Tax Liability	\$36,043	\$6,300	\$17,875	\$10,909
Less BPT Credit (17,875 x 60%)				(\$10,725)
Tax	\$36,043	\$6,300	\$17,875	\$184
Effective Tax Rate		2.80%	6.50%	0.067%
Actual tax paid to other jurisdiction				
PA State Tax	\$6,300			
Phila BPT	\$17,875			
Phila NPT	\$184			
	\$24,359			
Numerator of Credit Calculation				\$275,000

xii. Example 12—Determining the credit when there is a loss useable in the other jurisdiction and there is business income allocated to New Jersey and another jurisdiction and New Jersey allows expenses/adjustments the other jurisdiction does not. Determining the

actual tax paid to the other jurisdiction on business income taxed by both New Jersey and the other jurisdiction.

	<u>New Jersey</u>	<u>New York</u>	<u>Both</u>
Wages	\$140,000	\$80,000	\$80,000
Interest	\$80,000		
Dividends	\$20,000		
Capital gains	\$10,000	(\$3,000)*	(\$3,000)
Partnership Income	\$340,000*	\$200,000	\$170,000**
Other Deductions		\$25,000***	(\$10,000)****
Less Exemptions	\$2,000		
Medical deduction	\$8,000		
Taxable Income	\$580,000	\$255,000	
Tax	\$34,983	\$15,300	
Numerator of Credit Calculation			\$237,000
Credit Allowed	\$14,052		

* Partnership Income per Federal K-1 Additional expenses/deductions allowed:
 401(k) deduction \$30,000
 Excess meals & entertainment \$10,000
 Club dues \$10,000
 Miscellaneous partner expenses \$10,000
 New Jersey partnership income \$340,000 - 50% allocated to New Jersey

** New York allocated share of partnership income \$340,000 X 50% = \$170,000

*** New York other deductions
 401(k) \$15,000
 Keogh \$10,000

**** Other deductions used in determining the numerator New York Keogh adjustment of \$10,000.
 The New York 401(k) deduction of \$15,000 was used in arriving at the New York partnership adjusted income of \$170,000

Maximum Credit Allowable:

$$\frac{[\$240,000 \times \$34,983]}{\$580,000} = \$14,476$$

$$(\$240,000 \times \$34,983) / \$580,000 = \$14,476$$
 Tax paid to New York on \$255,000 of income \$15,300

Tax paid to New York on \$240,000 of income same as taxed by

New Jersey \$14,400, calculated as follows:

$$\frac{[\$240,000 \times \$15,300]}{\$255,000} = \$14,400$$

$$(\$240,000 \times \$15,300) / \$255,000 = \$14,400$$

Credit allowed is the lower of the allocation formula or the tax paid to the other jurisdiction on the same income taxed by New Jersey, \$14,000.

18:35-4.2 Credit for excess contributions

(a) Credit for excess amounts deducted and withheld as worker contributions for unemployment **insurance**, disability insurance, **family leave insurance**, Workforce Development Partnership Fund, and Health Care Subsidy Fund shall be treated as follows:

1. Employers issuing a W-2 form to employees shall include on it:

i.-ii. (No change.)

iii. The amount of New Jersey family leave insurance contributions withheld;

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

(b) The latter two numbers referred to in (a) **iv** and **v** and **vi** above are assigned by the New Jersey Division of Unemployment and **Temporary** Disability Insurance in the Department of Labor and **Workforce Development**.

(c) An individual claiming a credit against gross income tax for overpayment of unemployment **insurance**, disability insurance, **family leave insurance**, Workforce Development Partnership Fund, or Health Care Subsidy Fund contributions shall claim such credit by including with his New Jersey 1040 or New Jersey 1040-NR a completed New Jersey Form 2450. A claim not received within two years after the end of the calendar year in which the contributions were deducted is void. [Such claims are not applicable to withholdings made during calendar years prior to 1983.]

Example 1: During [1983] **the calendar year**, A, who is divorced, worked for two employers in New Jersey. The first withheld the maximum of \$44.00 for unemployment insurance contributions and \$44.00 disability benefits fund contributions from A's salary, as required by law. The second employer withheld \$30.00 from A's wages as contributions to each fund for the total of \$60.00. A files his [1983 Gross Income Tax Return] **or her gross income tax return** and pays the tax on February 14[, 1984] **of the subsequent calendar year** but fails to make claim for the \$60.00 excess contributions withheld during [1983] **the previous calendar year** or qualifying alimony payments made in that year.

[During] **In December [1985] two years after the unemployment contributions and disability benefits fund contributions were made**, A files an amended [Gross Income Tax Return] **gross income tax return** containing New Jersey 2450 for [1983] **the calendar year two years prior** claiming a credit for excess contributions withheld and claiming the alimony deduction that [he] **the taxpayer** had originally omitted from the [1983] return **covering the calendar year two years prior**. The claim is timely filed with respect to both the contributions withheld and the alimony deduction.

Example 2: Same facts as above, except A files an amended return on January 5[, 1986] **more than two years after the end of the original calendar year when the unemployment contributions and disability benefits fund contributions were made**. The claim for contributions withheld is too late since it was filed after the expiration of the [two year] **two-year** period for refund. The claim for refund based upon alimony deductions, however, is timely because the claim was filed within three years from the time the return was filed or two years from the time the tax was paid, whichever was later.

(d) (No change.)

18:35-4.3 Earned income tax credit

(a) The following terms, as used in this section, shall have the following meanings:

...
 "Federal earned income tax credit" means the credit against Federal income tax provided under [section 32 of the Federal Internal Revenue Code, 26 U.S.C.] **I.R.C. § 32**.

...
 "Qualifying child" means qualifying child as meant under section 32 of the [Federal Internal Revenue Code, 26 U.S.C.] **I.R.C. § 32**.

...
 (b) [A resident individual who has a qualified child and gross income of \$20,000 or less for the taxable years before January 1, 2007, and who files as a head of household or surviving spouse for Federal and gross income tax purposes is eligible for a New Jersey earned income tax credit. The \$20,000 gross income limit does not apply for tax years after 2006. The] **A resident individual** claimant who is eligible for a credit under [section 32 of the Federal Internal Revenue Code of 1986, (26 U.S.C.) **I.R.C. § 32**] shall be allowed a credit for the taxable year equal to a percentage, as provided in (e) below, of the Federal earned income tax credit allowed to and claimed by the individual or by the married individuals filing a joint return under [section 32 of the Federal Internal Revenue Code of 1986 (26 U.S.C.) **I.R.C. § 32**] for the same taxable year for which a credit is claimed pursuant to this section, subject to the restrictions of this subsection and subsections (g) through (m) below.

(c) [Computations for a civil union couple filing jointly must be made in the same manner as for an opposite sex couple. Therefore, a] **A civil union couple [may use Federal income tax computations just] shall determine their State earned income tax credit in the same manner** as a married couple [can, in calculating any credit as if they were married filing jointly, for purposes of determining the State earned income tax credit].

(d) Married resident individuals [who have a qualified child and combined gross income of \$20,000 or less for the taxable years before January 1, 2007] who file a joint return for Federal and gross income tax purposes are eligible for a New Jersey earned income tax credit. [The \$20,000 gross income limit does not apply for tax years after 2006.] The New Jersey credit shall be calculated by multiplying the applicable percentage found in (e) below times the Federal earned income tax credit claimed by and allowed to the couple under [section 32 of the Federal Internal Revenue Code, 26 U.S.C.] **I.R.C. § 32**. Civil union partners filing jointly are also eligible for a New Jersey earned income tax credit. The New Jersey credit shall be calculated by multiplying the applicable percentage found in (f) below times the Federal earned income tax credit claimed by and allowed to the civil union couple as if they were married under [section 32 of the Federal Internal Revenue Code, 26 U.S.C.] **I.R.C. § 32**. Both civil union and married couple resident claimants must also satisfy the requirements found in (g) below.

(e) The New Jersey earned income tax credit is the following percentage of the Federal earned income tax credit for married couples filing jointly and individuals:

1.-4. (No change.)

5. For taxable years beginning on or after January 1, 2008, but before January 1, 2009, 22.5 percent of the Federal earned income tax credit allowed and claimed for the same taxable year; [and]

6. For taxable years beginning on or after January 1, 2009, **but before January 1, 2010**, 25 percent of the Federal earned income tax credit allowed and claimed for the same taxable year[.];

7. **For taxable years beginning on or after January 1, 2010, but before January 1, 2015, 20 percent of the Federal earned income tax credit allowed and claimed for the same taxable year; and**

8. **For taxable years beginning on or after January 1, 2015, 30 percent of the Federal earned income tax credit allowed and claimed for the same taxable year.**

(f) A civil union couple who [has filed] **files** jointly may complete a pro forma Federal return to be used as the basis for the determination of the State earned income tax credit eligibility and amount. A true copy of any unfiled pro forma Federal income tax forms shall be retained by the couple and shall be filed as may be required with the Director of the Division of Taxation. Alternatively, the civil union couple may determine

what the Federal earned income tax credit would have been by following the [step by step] **step-by-step** procedures and directions set forth on the IRS website [by going directly to <http://apps.irs.gov/app/eite>, as if the couple was married filing jointly and following the directions therein, for determining eligibility and amount]. The resulting Federal earned income tax credit calculated from the IRS website times the applicable percentage as listed below should be transposed onto the State return line for [“]New Jersey earned income tax credit.[”] A civil union couple that [has] filed jointly that [uses] **used** the latter method shall retain a printout of all the completed pages from the IRS website used to arrive at the final Federal earned income tax credit amount [should they be required to be filed with the Director of the Division of Taxation]. The New Jersey earned income tax credit for an eligible civil union couple filing jointly [would be] is:

1. (No change.)
2. For taxable years beginning on or after January 1, 2008, but before January 1, 2009, 22.5 percent of the Federal earned income tax credit allowed and claimed for the same taxable year; [and]
3. For taxable years beginning on or after January 1, 2009, **but before January 1, 2010**, 25 percent of the Federal earned income tax credit allowed and claimed for the same taxable year[.];
4. **For taxable years beginning on or after January 1, 2010, but before January 1, 2015, 20 percent of the Federal earned income tax credit allowed and claimed for the same taxable year; and**
5. **For taxable years beginning on or after January 1, 2015, 30 percent of the Federal earned income tax credit allowed and claimed for the same taxable year.**

(g) In addition to the requirements in (d), (e), and (f) above, to qualify for the New Jersey earned income tax credit:

1. (No change.)
2. The individual or individuals shall file a New Jersey [Gross Income Tax] **gross income tax** return, complete the schedule for the earned income tax credit and provide such information, documentation, and copies of Federal income tax forms as required by the Director of the Division of Taxation; and
3. If the individual claiming the New Jersey earned income tax credit is married, except for an individual whose tax filing status is [“]head of household[“] or [“]surviving spouse[“] for Federal and gross income tax purposes, the individual and the individual’s spouse shall file a joint return to claim the New Jersey earned income tax credit.

(h)-(i) (No change.)

(j) If a claimant for the New Jersey earned income tax credit asks the Federal Internal Revenue Service (**IRS**) to calculate the Federal earned income tax credit, the claim for the New Jersey earned income tax credit shall be incomplete until the Division of Taxation receives information from the [Federal Internal Revenue Service] **IRS** concerning the amount, if any, of the Federal earned income tax credit.

(k) The New Jersey earned income tax credit of an individual, or of married individuals/civil union partners filing jointly, shall be reduced by the amount of any New Jersey State tax deficiency owed by the individual or individuals and by the amount of any indebtedness authorized for setoff under N.J.S.A. 54A:9-8.1 or under any other pertinent State or Federal law. (For set-off policies and procedures, see N.J.A.C. 18:2-5.4 and [N.J.A.C.] 18:35-10.) After all such reductions, any remaining New Jersey earned income tax credit amount shall be refunded to the individual or individuals as an overpayment of gross income tax, either separately or in combination with any other overpayment of gross income tax.

(l) If an individual or married/civil union couple claimed a New Jersey earned income tax credit for a taxable year for which the individual or couple’s Federal earned income tax credit was changed or disallowed by the [U.S. Internal Revenue Service] **IRS** or other competent authority, the individual or couple shall notify the Division of Taxation, as required by N.J.S.A. 54A:8-7, within 90 days of the final determination.

(m) (No change.)

(n) The provisions of this section are illustrated by the following examples:

Example 1: Terry has New Jersey gross income of \$29,500 for the taxable year, which is wage income. She has a [“]qualifying child[”] and she qualifies for and claims, on her Federal income tax return, a Federal

earned income tax credit that is based on having a qualifying child. She is eligible for a New Jersey earned income tax credit.

Example 2: Roger and Tom are a civil union couple. They have a qualifying child. Roger has [a] gross wage income for the taxable year of \$13,000. Tom has [a] New Jersey wage income of \$20,500. Before February 19, 2007, they could not file jointly for the State earned income tax credit. They would have had to file separately and only Roger would have been entitled to the State credit because his income falls under the \$20,000 limit before it was deleted by P.L. 2007, c. 109, effective June 28, 2007. However, under the Civil Union Act and P.L. 2007, c. 109, they can file their State return jointly with one qualifying child and [would, therefore, be] **are** eligible for the credit because their joint income does not exceed the current joint Federal income limit for a married couple with one qualifying child. They would calculate the amount of the State credit by completing a [“]pro forma[”] Federal return [or by using the IRS online calculations at <http://apps.irs.gov/eite> to determine the Federal credit amount they would have been entitled to receive if they were considered married filing jointly under Federal law even though they cannot actually file for a Federal earned income tax credit claim jointly].

18:35-4.4 Film tax credit

(a) See N.J.A.C. 18:7-3B for rules that apply to the film production tax credit and transfer program [instituted] pursuant to [P.L. 2005, c. 345, § 1. and 2. (N.J.S.A. [54:10A-5.39 and] 54A:4-12.)]

(b) (No change.)

SUBCHAPTER 5. NEW JERSEY SOURCE INCOME OF NONRESIDENTS

18:35-5.1 Compensation received by nonresident professional athletes

(a) (No change.)

(b) For purposes of this section:

1. “Professional athletic team” includes, but is not limited to, any professional baseball, basketball, football, soccer, or hockey team.

2. “Member of a professional athletic team” includes those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes, but is not limited to, coaches, managers, and trainers.

3. “Duty days” means, except as provided in (b)3iii and iv below, all days [including] **occurring during** the taxable year from the beginning of the professional athletic team’s official preseason training period through the last game in which the team competes or is scheduled to compete.

i. Duty days shall also include days on which a member of a professional athletic team renders a service to a team on a date which does not fall within the period described in this paragraph (for example, participation in instructional leagues, the [“]Pro Bowl[”] or promotional caravans). “Rendering a service” includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

ii-v. (No change.)

vi. Travel days [which] **that** involve a game, required practice, meeting, or other service in this State shall be considered duty days spent in New Jersey. Travel days that do not involve [either] a game, practice, team meeting, promotional caravan, or other similar team event in this State shall not be considered duty days spent in New Jersey. However, such travel days shall be included in total duty days spent [within] **inside** and [without] **outside** New Jersey.

vii. The provisions of this paragraph [can be] **are** illustrated by the following examples:

Example 1: (No change.)

Example 2: Player B, a member of a professional athletic team, is a nonresident of New Jersey. During the season, B is injured and is unable to render services for B’s team. While B is undergoing medical treatment at a clinic in New Jersey, B’s team travels to New Jersey for a game. The number of days B’s team spends in New Jersey for practice, games, and meetings while B is present at such clinic in New Jersey shall not be considered duty days spent in New Jersey for Player B for that tax year, but such days are considered to be included within total duty days spent within and without New Jersey.

Examples 3 - 5 (No change.)

Example 6: A nonresident member of a New Jersey professional athletic team has a season beginning with training camp on July 1[, 1995]. The season ends with the last regular season game on December 24[, 1995]. If the season is extended by playoff games after December 31[, 1995], the additional duty days during **the next** calendar year [1996] will be duty days [within] **inside** and [without] **outside** New Jersey for the [1996] **subsequent** tax year.

4. "Total compensation for services rendered as a member of a professional athletic team" means:

- i. (No change.)
 - ii. Total compensation shall include, but is not limited to, salaries, wages, bonuses (as described in (b)4iv below), and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.
 - iii. (No change.)
 - iv. For purposes of (b)4ii above, ["bonuses["] to be included in ["total compensation for services rendered as a member of a professional athletic team["] subject to the apportionment described in (a) above are:
 - (1) Bonuses earned as a result of play (that is, performance bonuses) during the season, including bonuses paid for championship, playoff or ["bowl["] games played by a team, or for selection to all-star league or other honorary positions; and
 - (2) (No change.)
 - (c) (No change.)
- [(d) This section shall take effect immediately upon adoption and shall apply to all tax years beginning on or after January 1, 1995.]

18:35-5.2 Composite returns for nonresident partners

(a) A general partnership, a limited partnership, a limited liability partnership (LLP), a limited liability company (LLC), a New Jersey electing S corporation, an estate, a trust, or a professional athletic team (as defined in N.J.A.C. 18:35-5.1) doing business or conducting activities in New Jersey, or having income derived from or connected with sources within New Jersey may file a composite New Jersey Nonresident [gross income tax return] **Gross Income Tax Return** (Form NJ-1080-C) on behalf of its qualified nonresident individual partners, members, shareholders, or beneficiaries, as the case may be, who elect to file such return.

1. Any entity which files a composite return on behalf of its qualified nonresident individual members shall be referred to as the ["filing entity.["]

(b) A "qualified nonresident individual" is one who elects to participate in the composite return and satisfies all of the following conditions:

- 1.-4. (No change.)
5. The individual waives the right to claim any New Jersey personal exemption, credit, or deduction and agrees to have the tax calculated directly on such income at the highest tax rate in effect for single taxpayers for the tax year; and
6. The individual elects to be included in a composite return by completing and delivering to the filing entity a Form NJ-1080-E (Election to [be included] **Participate** in a Composite Return), or a form substantially similar thereto, prior to the filing of the composite return by the filing entity, in accordance with the following:
 - i. (No change.)
 - ii. Such election shall be binding on the participant's heirs, representatives, assigns, successors, executors, and administrators;
 - iii. (No change.)
 - iv. A qualified electing nonresident participant shall not revoke an election to be included in the composite return or make an election to be included in the composite return after April 15 following the close of the taxable year **for which the election was made**.

(c)-(f) (No change.)

(g) If the filing entity [has] **previously** filed a composite return [previously] and the amount which the filing entity estimates to be the total income tax liability for the composite return for the current tax year exceeds \$100.00, the filing entity shall file a declaration of estimated tax and shall make quarterly estimated tax payments in accordance with N.J.S.A. 54A:8-4 and 54A:8-5, using Form **NJ-1040-ES**. Credit shall not be given on the composite return for individual estimated tax payments

made by, or on behalf of, any of the qualified electing nonresident participants.

(h) The tax due shall be calculated using the highest gross income tax rate in effect for single taxpayers for the tax year for which the composite return is being filed, without benefit of personal exemptions, deductions, or credits.

(i) [The filing of a] A composite return shall be considered to be a group of separate returns [meeting] **that meet** the individual filing requirements for each qualified electing nonresident participant as imposed by the Gross Income Tax Act. N.J.S.A. 54A:1-1 et seq.

1.-4. (No change.)

(j) Each composite return shall include the following[,] for each qualified electing nonresident participant:

1.-4. (No change.)

5. A copy of the following:

i. Schedule [NJ-K-1] **NJK-1**, Form NJ-1065, if the filing entity is a partnership, limited liability company, or limited liability partnership;

ii.-iv. (No change.)

(k) (No change.)

(l) Any composite return which is filed on behalf of 25 or more participants shall be filed on [diskette] **compact disc** or by using [magnetic media] **an electronic format**.

(m) The [composite] New Jersey Nonresident [gross income tax return] **Composite Return** (Form NJ-1080-C) shall be signed by:

1.-6. (No change.)

(n) If, after the final composite return has been filed, a qualified, electing, nonresident participant discovers income derived from or connected with New Jersey sources other than from the filing entity, such participant shall file a Nonresident New Jersey Gross Income Tax Return (Form NJ-1040NR), which includes all income derived from New Jersey sources (including the share of income reported on the composite return).

1. The participant's Form NJ-1040NR shall include a schedule indicating the name of the filing entity(s) for which the participant was included in a composite return, [and showing] the amount of income included on the participant's behalf for each composite return, and the tax paid thereon.

2. (No change.)

(o) For members of general and limited partnerships and professional athletic teams this rule shall apply to all tax years beginning on or after January 1, 1995. For members of New Jersey electing S corporations, limited liability partnerships, limited liability companies, and estates and trusts this rule shall apply to all tax years beginning on or after January 1, 1996.]

SUBCHAPTER 6. EXTENSION OF TIME TO FILE; RETURN REQUIREMENTS

18:35-6.1 Extension of time to file New Jersey gross income tax return

(a) A taxpayer may obtain an extension of time to file the New Jersey [Gross Income Tax Return] **gross income tax return** Form NJ-1040 or Form NJ-1040NR for a period of six months and Form NJ-1041 for a period of five months beyond the original due date, providing that the requirements of (b) below are satisfied. Extensions beyond the previously stated five or six months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist.

1. Exceptional circumstances can be demonstrated by establishing one of the following:

i. Medical evidence, such as a doctor's certification that the taxpayer is unable to file the return before the expiration of the [six month] extension period because of sickness or hospitalization;

ii. Proof that the taxpayer relied entirely on the advice and expertise of a tax preparer who failed to complete the return within the [six month] extension period; or

iii. (No change.)

2. This [rule] **section** provides [the authority] for an extension of time to file and is in no way to be considered an extension of time to pay the tax due. A taxpayer's tax liability is due, in full, by the original due date of the return. The taxpayer will be subject to interest and late filing

penalty as described in (f) below if the full amount is not paid by the original due date of the return.

(b) The extension of time to file a New Jersey [Gross Income Tax Return] **gross income tax return** will be granted only if, by the original due date of the return, the taxpayer has paid in, either through withholdings, estimated payments, or a payment made with the Application for Extension of Time to File, at least 80 percent of the tax liability computed on the New Jersey [Gross Income Tax Return] **gross income tax return** when filed, and:

1. The taxpayer obtains a valid [six-month] extension for Federal income tax purposes and attaches a copy of the application for automatic Federal extension to the final New Jersey [Gross Income Tax Return] **gross income tax return** when filed; or

2. (No change.)

(c) (No change.)

(d) Failure to satisfy either the 80 percent payment requirement of (b) above by the original due date of the return, or to file the gross income tax return by the extended due date, will result in the retroactive denial of the extension as of the original due date of the return. In those cases, the taxpayer will be subject to interest, late filing penalties, and late payment penalties from the original due date of the return, as described in (e) and (f) below.

(e) (No change.)

(f) The extension [authorized by] **set forth under** N.J.S.A. 54A:8-1[b] **1.b** and **regulated in** this section is an extension of time to file a gross income tax return. It is not an extension of time to pay any tax that may be due. Consequently, a taxpayer who makes a payment of tax after the original due date of the return, with or without an extension of time to file, will be subject to the following late payment penalty and interest [payments]:

1. (No change.)

2. Interest on the unpaid tax calculated [at the following rates:

i. For periods ending on and after July 1, 1993,] at three percentage points above the prime rate. Interest is imposed for each month (or a fraction thereof) on the unpaid balance of tax. At the end of each calendar year all tax, penalties, and interest remaining due will become part of the unpaid balance on which interest will be charged.

18:35-6.2 Combat zone; extension of time to file and pay

(a) Members of the Armed Forces of the United States and civilians providing support to the Armed Forces who are serving in a designated combat zone or were hospitalized outside the United States as a result of an injury received while serving in a combat zone are granted an extension of time for filing individual income tax returns and paying tax for the period of combat service or hospitalization, plus 180 days. This extension is also granted to such a taxpayer's spouse/civil union partner who files jointly. No penalty, interest, or addition to tax will be assessed for late filing or late payment of the tax pursuant to this subsection [(a)].

(b) (No change.)

18:35-6.3 Signatures required on gross income tax return

(a) (No change.)

(b) A taxpayer or tax return preparer who [electronically] transmits an income tax return[,] or other information required or permitted to be filed with the Division for purposes of the New Jersey Gross Income Tax Act, [via the NJ TeleFile or WebFile systems shall be presented with the following statement: "New Jersey law requires that all income tax returns be signed before they are submitted." This statement will be followed with instructions prompting the taxpayer or tax return preparer as to the manner in which the taxpayer or tax preparer may satisfy this requirement via telephone or web-based medium.

(c) A taxpayer who wishes to transmit the return] through electronic filing [using the Federal/State e-file For Tax Professionals] must satisfy the signature requirement in the manner prescribed by the Director.

18:35-6.4 Electronic filing methods

(a) A taxpayer or tax return preparer may transmit electronically any income tax return or other information required or permitted to be filed with the Division for the purposes of the Gross Income Tax Act. Electronic transmissions may, subject to the provisions of [(e)] (b) below, be made using applications provided by the Division, including the

Division's web-based application, NJWebFile, the Federally-approved electronic filing application known as Federal/State e-file For Tax Professionals, or through any other electronic method made available by the Division or approved by the Division.

[(b) Beginning with the 2004 taxable year, tax preparers that prepared or filed 200 or more individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in (i) below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(c) For the 2006 taxable year, preparers that have prepared or filed 100 or more individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in subsection (i) below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(d) For the 2007 taxable year, preparers that have prepared or filed 50 or more individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in (g) and (i) below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

(e) For the 2008 taxable year, preparers that have prepared or filed 25 or more individual gross income tax resident returns for the prior taxable year must use electronic methods for filing individual gross income tax resident returns and may pay the tax on behalf of the taxpayer in accordance with instructions published by the Director for all the returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in (g) and (i) below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.]

[(f)] (b) For the 2011 taxable year and later, preparers that reasonably expect to prepare 11 or more individual gross income tax resident returns (including those filed for trusts and estates) during the tax year must use electronic methods for filing such returns and may pay the tax on behalf of the taxpayers in accordance with instructions published by the Director for all the individual gross income tax resident returns prepared or filed by the preparer, subject to such exceptions as the Director determines are reasonable or as otherwise set forth in [(g) and (i)] (c) and (e) below. As a result of changes in technology, the Director shall determine which electronic methods of filing returns and paying tax satisfy the requirements imposed in this section.

[(g)] (c) A civil union couple may file joint State gross income tax returns [for tax year 2007 and thereafter]. Federal law, however, [does] **may** not allow for a joint filing of Federal gross income tax returns by a civil union couple. [Where] **If** joint State/Federal electronic [joint] filing is not possible, a civil union couple's tax preparer may file a civil union couple's joint State gross income tax paper return without penalty [where] **when** electronic joint filing [under] **of** the Federal return would be prohibited. Civil union couple joint filings shall count toward the thresholds established in (b)[, (c), (d), (e) and (f)] above. Nothing in this subsection shall prevent a civil union couple from filing a joint return as indicated in N.J.A.C. 18:35-4.3.

[(h)] (d) As used in this section, "tax preparer" means any person who prepares, for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund under Title 54 or Title 54A of the New Jersey Statutes.

[(i) (e) If [(b), (c), (d), (e) and/or (f) above are applicable to a tax preparer, and if a taxpayer chooses not to have his or her return electronically filed by his or her tax preparer or for the reasons set forth in (g) above, is unable to file State and Federal joint returns electronically] **a taxpayer hires a tax preparer to whom (b) above applies, and either that taxpayer chooses not to have his or her return filed electronically or that taxpayer's return cannot be filed electronically for the reasons stated in (c) above**, both the taxpayer and the preparer must complete an E-File Opt Out Request Form (NJ-1040-O). The tax preparer is required to keep the completed and signed [E-File Opt Out Request] Form [in his or her files] **NJ-1040-O** and **make it available [for inspection by a representative of the New Jersey Division of Taxation] at the Division's request. Form NJ-1040-O must be enclosed when the return is filed and the tax preparer must indicate that it is enclosed by filling in the oval in the signature section.** No tax preparer who is required to e-file returns **under (b) above** shall be penalized under N.J.S.A. 54A:8-6.1(e) for **filing a paper return[s] filed to], if the taxpayer [opting-out] opted out of e-filing or if the tax preparer prepared the return pro bono.**

SUBCHAPTER 7. WITHHOLDING AND REPORTING OF TAX

18:35-7.1 Employee defined

(a) For the purposes of N.J.A.C. 18:35-7.2, the term "employee" means every individual performing services if the relationship between [him] **the individual** and the person for whom he **or she** performs such services is the legal relationship of employer and employee. The term also includes officers and employees, whether elected or appointed, of the United States, a state, territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) When determining whether an individual is in an employer-employee relationship, relevant factors shall be considered, including the following:

1. (No change.)

2. The extent of control exercisable by the person receiving the benefit of the services over the manner and method of performance. It is not necessary that the employer actually direct or control the manner of performance, but it is sufficient if he **or she** has the right to do so;

3.-14. (No change.)

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

(e) All classes or grades of employees shall be included within the relationship of employer and employee, including Superintendents, managers, and other supervisory personnel:

1. (No change.)

2. A director of a corporation in his **or her** capacity as such shall not be considered an employee of the corporation.

18:35-7.3 Quarterly filing of withholding returns; [accelerated] **weekly** payments; exceptions

(a) All employers who are required to deduct and withhold any amount of gross income tax are required to file a quarterly return with the Division of Taxation and pay the tax due therewith [on or before October 31, 1996, and quarterly thereafter] on or before the [last] **30th** day of the month following the quarter covered by the return. In calculating the amount of tax to be remitted to the Division for the quarterly period, the employer shall be entitled to a credit in the amount of tax remitted during the quarter covered by the quarterly return.

1. (No change.)

(b) [Effective July 1, 1996, except] **Except** as provided in (c) below, for any calendar month in which the amount of gross income tax that an employer is required to deduct and withhold is \$500.00 or more, such employer is required to remit such taxes to the Division of Taxation on or before the 15th day of the month following the close of such month. Any payment due with respect to the calendar months ending on March 31, June 30, September 30, or December 31 shall be paid with the quarterly return filed for the quarter in which such month falls.

1.-3. (No change.)

(c) [Effective July 1, 1996, where] **If** the aggregate amount of gross income tax required to be deducted and withheld by any employer in the prior tax year is [\$20,000] **\$10,000** or more, the employer shall be [an

accelerated] **a weekly** payor and shall remit payment of withheld taxes using electronic funds transfer (EFT) in accordance with the provisions of N.J.S.A. 54:48-4.1 and N.J.A.C. 18:2-3.5, on or before the Wednesday of the week following the week containing the payday on which the taxes were withheld.

1. (No change.)

2. Example: [Effective July 1, 1996,] Company A, which had withholdings of \$35,000 during [1995] **the year**, pays its employees on Tuesday of Week 1. Company A must remit the tax withheld from its Week 1 payroll by electronic funds transfer on or before Wednesday of Week 2.

[(d) Effective July 1, 1996, an employer who is required to make all tax payments using electronic funds transfer (EFT) in accordance with the provisions of N.J.S.A. 54:48-4.1 and N.J.A.C. 18:2-3 because of a prior tax year liability of \$20,000 or more for a tax other than the gross income tax, shall remit gross income taxes deducted and withheld on either a quarterly or monthly basis as provided in (a) and (b) above.]

[(e) (d) [Effective June 29, 2004, where] **If** the aggregate amount of gross income tax required to be deducted and withheld by any employer in the prior tax year is \$10,000 or more, the employer shall be [an accelerated] **a weekly** payor and shall remit payment of withheld taxes using electronic funds transfer (EFT) in accordance with the provisions of N.J.S.A. 54:48-4.1 and N.J.A.C. 18:2-[3]3.5, on or before the Wednesday of the week following the week containing the payday on which the taxes were withheld.

[(f) (e) [Effective June 29, 2004, an] **An** employer who is required to make all tax payments using electronic funds transfer (EFT) in accordance with the provisions of N.J.S.A. 54:48-4.1 and N.J.A.C. 18:2-3.5 because of a prior tax year liability of \$10,000 or more for a tax other than the gross income tax, shall remit gross income taxes deducted and withheld on either a quarterly or monthly basis as provided in (a) and (b) above.

[(g) Effective for the semiannual period beginning on January 1, 1979, through the semiannual period ending on June 30, 1996, where the aggregate amount required to be deducted and withheld by any employer is less than \$25.00 in a calendar month and the aggregate for the semiannual period ending on June 30 or December 31 can reasonably be expected to be less than \$150.00, the employer return and payment of withheld taxes for such period may be made on or before July 31 for the semiannual period ending on June 30 and on or before January 31 for the semiannual period ending on December 31.

(h) Effective for the calendar quarter beginning on January 1, 1979, through the calendar quarter ending on June 30, 1996, where the aggregate amount required to be deducted and withheld by any employer is \$200.00 or less in each month of the calendar quarter and the aggregate for the quarterly period ending on March 31, June 30, September 30, or December 31 can reasonably be expected to be less than \$600.00, the employer return and payment of withheld taxes for such period may be made on a quarterly basis on or before the 15th day of the month following the close of the calendar quarter period ending on March 31, June 30 or September 30. Any return due with respect to the calendar quarter ending on December 31 shall be filed and taxes paid on or before January 31 following the close of said calendar quarter.

(i) Effective January 1, 1979, through June 30, 1996, where the aggregate amount required to be deducted and withheld by any employer exceeds \$200.00 in a calendar month, the employer return and payment of withheld taxes for such monthly period and for prior months in a calendar quarter must be made on or before the 15th day of the month following the close of such month or months during the calendar quarter period. In the event an employer monthly return and payment of withheld taxes is not required, an employer return and payment of withheld taxes for the quarterly period ending on March 31, June 30, or September 30, may be made on or before the 15th day of the month following the close of such quarter. Any return due with respect to the calendar quarter ending on December 31 shall be filed and taxes paid on or before January 31 following the close of said calendar quarter.

(j) For the period beginning on January 1, 1979, and ending on June 30, 1996, (e), (f) and (g) above shall not apply to an employer engaged in a business operating seasonally. Consecutive returns for each calendar month accounting for all tax withheld must be filed by a seasonal

employer who is required to report monthly. Where the amount required to be deducted can reasonably be expected to be \$18,000 or more for a semiannual period, a seasonal employer shall file semimonthly employer returns with payment of the taxes withheld as provided under this section. If no tax was withheld during a particular month, a return is still required to be filed for such month with the reason for nonwithholding stated on the back, the date of the last payment of wages, and the date when the employer expects to resume paying taxes.]

18:35-7.4 Payment of contributions; wage and contribution reporting

(a) (No change.)

(b) Pursuant to N.J.A.C. 12:16-13.7(e)7, the New Jersey Department of Labor and Workforce Development requires that for all calendar quarters [subsequent to the quarter ending December 31, 2008,] all employers and all [third party] **third-party payroll** processors shall file Form WR-30, ["Employer Report of Wages Paid,"] and any amendments to the ["Employer Report of Wages Paid,"] via electronic transmission in a form and manner prescribed by the Division of Revenue, within the Department of **the** Treasury, regardless of the number of employees reported.

(c) Pursuant to N.J.A.C. 12:16-13.11(e)1, the New Jersey Department of Labor and Workforce Development requires that for all calendar quarters [subsequent to the quarter ending December 31, 2008], all [third party] **third-party** payroll processors and all employers other than employers of domestic service workers shall file Form NJ-927, ["Employer's Quarterly Report,"] and any amendments to the ["Employer's Quarterly Report,"] via electronic transmission in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury.

(d) Pursuant to N.J.A.C. 12:16-13.11(e)2, the New Jersey Department of Labor and Workforce Development requires that for all calendar quarters [subsequent to the quarter ending December 31, 2008], all employers of domestic service workers shall file Form NJ-927H, ["Domestic Employer's Annual Report,"] and any amendments to the ["Domestic Employer's Annual Report,"] via electronic transmission in a form and manner prescribed by the Division of Revenue, within the Department of the Treasury.

(e) Pursuant to N.J.A.C. 12:16-13.11(e)3, all inquiries pertaining to a waiver of the electronic reporting requirements in (c) and (d) above, shall be directed to the Commissioner of the New Jersey Department of Labor and Workforce Development or his **or her** designee.

18:35-7.5 Summer payment plan

(a) Certain deferred payments, authorized under a so-called ["summer payment plan"] under N.J.S.A. 18A:29-3, whereby an amount equal to 10 percent of the employee's salary is withheld and paid to the participant in the plan at a later date are subject to [tax under the New Jersey Gross Income Tax Law, P.L. 1976, c. 47 (**gross income tax under** N.J.S.A. 54A:1-1 et seq.)], at the time withheld and not at the time paid, provided that a similar treatment is given under the Internal Revenue Code and regulations thereunder for Federal income tax purposes, subject to the following exception: if such similar treatment under Federal law [were] **is** disallowed due to the civil union status of the employee, the employee shall nevertheless be allowed to receive the same State tax treatment as if [he or she] **the taxpayer** were married.

(b) [Section] **N.J.S.A. 54A:8-3** [of the New Jersey Gross Income Tax Act, P.L. 1976, c.47 (N.J.S.A. 54A:8-3),] provides that a taxpayer's accounting method [under this Act] **for gross income tax purposes** shall be the same as his **or her** accounting method for Federal income tax purposes. Therefore, if for Federal income tax purposes, an employee who participates in [such a deferral] **a summer payment** plan is deemed to have received the salary at the time that the salary was withheld and placed into a deferred salary escrow fund, such income will also be deemed to have been received and subject to tax for New Jersey gross income tax purposes at that time. Such salary would not then be subject to New Jersey gross income tax when the employee receives a payment from the deferred salary escrow fund.

18:35-7.6 Gambling winnings subject to withholding

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

(c) Any person receiving a payment of New Jersey gambling winnings subject to withholding must furnish the payor a statement made under the penalties of perjury containing[**:] the information in (c)1 or 2 below. The requirements set forth in (c)1 and 2 below may be satisfied by providing the payor with a copy of Federal Form W-2G or 5754, whichever is applicable.**

1.-2. (No change.)

[3. The requirement set forth in (c)1 and 2 above may be satisfied by providing the payor with a copy of Federal Form W-2G or 5754, whichever is applicable.]

(d) (No change.)

(e) "Proceeds from a wager" is the amount paid with respect to a wager, less the amount of the wager. Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purpose of calculating the amount of proceeds from a wager.

1.-2. (No change.)

(f) (No change.)

18:35-7.7 Filing of withholding returns by professional athletic teams

Any ["professional athletic team"] (as defined by N.J.A.C. 18:35-5.1(b)1) which pays compensation to a resident or nonresident individual for services rendered to the team within New Jersey shall be deemed to be an ["employer"] and shall be required to withhold New Jersey gross income tax [return] from that portion of the compensation attributable to ["duty days"] spent in New Jersey, as defined in N.J.A.C. 18:35-5.1(b)3.

18:35-7.8 Commuter transportation benefits reporting by employer

(a) (No change.)

(b) Employer-provided commuter transportation benefits for using an alternate form of commuting (such as public transportation, carpools, etc.) are excluded from New Jersey gross income up to and including the limit per taxable year per employee. The limit per taxable year is as follows:

1. \$720.00 for the taxable years beginning on and after January 1, 1993 but before January 1, 1994;
2. \$735.00 for the taxable years beginning on and after January 1, 1994 but before January 1, 1995;
3. \$735.00 for the taxable years beginning on and after January 1, 1995 but before January 1, 1996;
4. \$755.00 for the taxable years beginning on and after January 1, 1996 but before January 1, 1997;
5. \$1,000 for the taxable years beginning on and after January 1, 1997 but before January 1, 1998;
6. \$1,105 for the taxable years beginning on and after January 1, 1998 but before January 1, 1999;
7. \$1,120 for the taxable years beginning on and after January 1, 1999 but before January 1, 2000;
8. \$1,145 for the taxable years beginning on and after January 1, 2000 but before January 1, 2001;
9. \$1,175 for the taxable years beginning on and after January 1, 2001 but before January 1, 2002;
10. \$1,200 for the taxable years beginning on and after January 1, 2002 but before January 1, 2003;
11. \$1,240 for the taxable years beginning on and after January 1, 2003 but before January 1, 2004;
12. \$1,265 for the taxable years beginning on and after January 1, 2004 but before January 1, 2005;
13. \$1,310 for the taxable years beginning on and after January 1, 2005 but before January 1, 2006;
14. \$1,360 for the taxable years beginning on and after January 1, 2006 but before January 1, 2007;
15. \$1,410 for the taxable years beginning on and after January 1, 2007 but before January 1, 2008;]
- 1. \$2,760 for the taxable year beginning on and after January 1, 2010, but before January 1, 2011;**
- 2. \$2,760 for the taxable year beginning on and after January 1, 2011, but before January 1, 2012;**
- 3. \$2,880 for the taxable year beginning on and after January 1, 2012, but before January 1, 2013;**

4. \$2,940 for the taxable year beginning on and after January 1, 2013, but before January 1, 2014;

5. \$3,000 for the taxable year beginning on and after January 1, 2014, but before January 1, 2015;

6. \$3,000 for the taxable year beginning on and after January 1, 2015, but before January 1, 2016; and

[16] 7. [In the case of any taxable year beginning in a calendar year after 2007, the] **The** Director shall adjust the limit for inflation in parallel with the adjustment pursuant to [paragraph (6) of subsection (f) of section 132 of the Federal Internal Revenue Code of 1986, 26 U.S.C.] **I.R.C. § 132(f)(6)**, so that the taxable year limit pursuant to this paragraph is equal to 12 times the adjusted Federal monthly limit pursuant to [subparagraph (A) of paragraph (2) of subsection (f) of section 132 of the Federal Internal Revenue Code of 1986] **I.R.C. § 132(f)(2)(A)**. **Notice of the adjusted limit shall be published in the New Jersey Register.**

(c) (No change.)

(d) State and local government employers may offer qualified transportation fringe benefits to their own employees as an employee set-aside program. The State and local employees shall choose to have the benefit deducted from their salary, receive any combination of benefits, or continue to receive the amount as salary. The amount of any reduction will continue to be treated as regular compensation [including] **for purposes of** the calculation of pension contributions and the amount of any retirement allowance, but, to the extent permitted under the Federal Internal Revenue Code as extended under the Federal Transportation Equity Act for the 21st Century [(Title IX of Pub.L. 105-178)], will not be included in the computation of Federal taxes withheld from the employee's salary.

(e) [Qualified] **The value of qualified parking**, as provided under I.R.C. [Section] § 132, at or near the employer's business premises or a location from which the employee commutes to work by mass transit or hired commuter vehicle is excludible for New Jersey gross income tax purposes. Commuter transportation benefits also include[s] the cost of parking by employees at park-and-ride lots. Any parking on or near the [employer's] **employee's** residence is not qualified parking.

1. (No change.)

[(f) Notice of the adjusted limit shall be published in the New Jersey Register.]

[(g)] **(f)** The written statement required to be provided by the employer to the employee as set forth in (a) above may be set forth on [a] **Form W-2** [form] or other written information statement showing the amount of such benefits.

18:35-7.9 Information of employer withholding from new employees

(a) The New Jersey Economic Development Authority shall submit data to the Director of the **Division of Taxation** no later than April 1 of each year, for the preceding grant year, setting forth information regarding businesses applying for a grant under either the Business Employment Incentive Program Act [(P.L. 1996, c.26)] or the Business Relocation Assistance Act [(P.L. 1996, c.25)] (both referred to as "Act"). This information shall set forth the following relative to said business.

1.-8. (No change.)

(b) The **Executive Director of the Economic Development Authority**, upon receipt of the information referred to in (a) above, shall send to each business awarded a grant under the Act, a Declaration of Annual Withholding Information for Purposes of the Business Employment Incentive Program, Form NJ-9000, to be completed and returned not later than May 7 to [New Jersey Division of Taxation c/o EDA] **Economic Development Authority**, PO Box 990, Trenton, NJ 08625-0990.

(c) Form NJ-9000 shall consist of a certification setting forth:

1. The number of new employees, as referred to in (a)2 above, together with their city/state residence, base salary, overtime and bonuses paid to them, withholding tax paid for each new employee during the preceding grant year, and date hired or transferred. Each business shall also submit a copy of each Federal **Form W-2** [form] for all said new employees;

2. - 3. (No change.)

(d) Each business shall annually submit to the Division of Taxation a Release Authorization authorizing the Division of Taxation to review the

businesses tax history to determine if [there are any tax delinquencies] **the business is compliant with all applicable tax obligations.**

(e) (No change.)

(f) The Director shall also verify to the New Jersey Economic Development Authority on an annual basis any outstanding tax [delinquencies] **liabilities and or obligations** for each business awarded a grant under the Act.

(g) The issuance of the certifications by the Division as set forth in [(d)] **(e)** above is conditional upon the receipt by the Director of proper information as set forth on Form NJ-9000.

18:35-7.11 Domestic employees

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

(c) [Effective January 1, 2001 employers] **Employers** of domestic workers must file the ["Employer Report of Wages Paid"] (Form WR-30) on an annual basis. For the calendar year ending December 31, the report [would be] **is** due January 31 following the closing of the calendar year.

(d) The following concern taxpayer identification numbers:

1. Employers having both domestic employees and business employees shall have two separate taxpayer identification numbers—one for domestic employees and the other for business employees. Such employers file [using] Form NJ-927H for their domestic employees and Form NJ-927 for their business employees.

2. If the employer is a sole proprietor and files under one taxpayer identification number, the employer is permitted to combine both the domestic employees and the business employees on Form NJ-927 and file it quarterly.

SUBCHAPTER 8. INFORMATION RETURNS

18:35-8.1 Information furnished at source[; 1977 and subsequent returns]

(a) Under N.J.S.A. 54A:1-1 et seq., information returns which shall include the amounts paid to or credited to the accounts of all recipients for any calendar year [beginning with January 1, 1977,] are required to be provided to the Director, New Jersey Division of Taxation, by:

1. (No change.)

2. All payers including those who are required to file Federal [Internal Revenue Service form] **Form 1099** or any of the form 1099 designations, which shall include lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this State, or of any municipal corporation or political subdivision of this State, having the control, receipt, custody, disposal, or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, or income, except interest coupons payable to bearer.

(b) Such information returns must be filed on or before February 15 following the close of each calendar year, with the Division of Taxation, PO Box 248, Trenton, [New Jersey] **NJ 08646-0248**, [where] **if** the amount paid or credited is \$1,000 or more.

(c) The requirements of (b) above shall be satisfied by providing the Director with any of the following, with preference in the order listed below:

1. A copy of the [magnetic tape] **electronically filed records** provided to the Internal Revenue Service (with the same specifications) in lieu of [forms] 1099 **forms** for the full calendar year, edited to delete all listings of recipients of less than \$1,000; [or]

2. A copy of the [tape] **electronically filed records** provided to the Internal Revenue Service (as **in (c)1** above) without deleting recipients of less than \$1,000; [or]

3. Copies of all [forms] 1099 **forms** submitted to the Internal Revenue Service for the full calendar year [on] **for** amounts of \$1,000 or more (either an additional carbon or photocopy of the [form] 1099 **form**); or

4. Copies of all [forms] 1099 **forms** submitted to the Internal Revenue Service for the full calendar year.

(d) [Beginning with real estate transactions occurring after December 31, 1995, each] **Each** person required to report the proceeds from real estate transactions to the Internal Revenue Service on Federal Form 1099-S (or any other form, which the Internal Revenue Service may designate) pursuant to [Section] **I.R.C. § 6045(e)** [of the Federal Internal

Revenue Code] is required to submit all such reports to the Division of Taxation when the real estate being sold or exchanged is partially or entirely located in New Jersey.

1. All information returns required by this subsection must be filed on or before February 15 following the close of each calendar year[, beginning with February 15, 1997]. Information returns attributable to real estate transactions must be sent to: Division of Taxation, PO Box 445, Trenton, [New Jersey] NJ 08695-0445, where the amount paid or credited is \$1,000 or more.

2. (No change.)

(e) The requirements of (d) above shall be satisfied by providing the Director with any of the following, with preference in the order listed below:

1. A copy of the [magnetic tape] **electronically filed records** provided to the Internal Revenue Service (with the same specifications) in lieu of [forms] 1099-S **forms** for the full calendar year, edited to delete all listings of real estate transactions with gross proceeds of less than \$1,000;

2. A copy of the [tape] **electronically filed records** provided to the Internal Revenue Service (as in (e)1 above) without deleting real estate transactions with gross proceeds of less than \$1,000;

3. Copies of all [forms] 1099-S **forms** submitted to the Internal Revenue Service for the full calendar year for real estate transactions with gross proceeds of \$1,000 or more ([either] an additional [carbon or] photocopy of the [form] **Form 1099-S**); or

4. Copies of all [forms] 1099-S **forms** submitted to the Internal Revenue Service for the full calendar year.

SUBCHAPTER 9. INTEREST AND PENALTIES

18:35-9.1 Negligence and fraud penalties

(a) If any part of a deficiency is due to the taxpayer's negligence or an intentional disregard of any provision of the Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or the rules applicable thereto, there shall be added to the tax, penalties and interest as provided for in **the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq.**, plus an amount equal to 10 percent of the deficiency, [provided however that] **if** there was no intent to defraud.

(b) (No change.)

18:35-9.2 Interest on overpayments

(a) [Interest will be paid] **The Division will pay interest** on an overpayment of gross income tax which has not been refunded six months and one day after the later of:

1.-2. (No change.)

[(b) Interest paid pursuant to (a) above on refunds which are claimed prior to July 1, 1993, and paid by the Division of Taxation prior to July 1, 1993, shall be calculated at the rate of six percent per annum.

(c) Interest paid pursuant to (a) above on refunds which are claimed prior to July 1, 1993, and paid by the Division of Taxation after June 30, 1993, shall be calculated at the rate of six percent per annum up until June 30, 1993. Any interest accruing to the taxpayer after that date will be calculated on the total amount due on June 30, 1993, at the rate determined by the Director to be equal to the prime rate pursuant to N.J.S.A. 54:48-2.]

[(d)] **(b)** Interest paid pursuant to (a) above [on refunds which are claimed after June 30, 1993] shall be calculated at the rate determined by the Director to be equal to the prime rate pursuant to N.J.S.A. 54:48-2.

Recodify existing (e)-(h) as **(e)-(f)** (No change in text.)

[(i) This section shall take effect immediately and apply to all tax years beginning after December 31, 1990, as well as any other return filed (within the applicable statute of limitations) after April 15, 1992 which results in an overpayment.]

SUBCHAPTER 10. SETOFF OF INDIVIDUAL LIABILITY

18:35-10.1 Purpose

The purpose of this subchapter is to establish a policy and to provide a system whereby any claimant agency or institution of the State of New Jersey in conjunction with the Division of Taxation shall cooperate in identifying debtors who owe money to the State through its various agencies or institutions and who shall be entitled to any refund of [Gross

Income Taxes] **gross income taxes** or to a [Homestead Rebate] **homestead rebate** from the Division of Taxation. It is also the intent of this subchapter to establish procedures for setting off against any such refund or rebate, the sum of any debt owed to the State. The procedures contained in this subchapter are designed to comply with N.J.S.A. 54:50-8 and [N.J.S.A.] 54:50-9, the confidentiality provisions of the State Tax Uniform Procedure Law. They also afford the taxpayer opportunity to assert any other legal rights he **or she** may have prior to final setoff.

18:35-10.2 Definitions

"Claimant agency or institution" means and includes any agency or institution of the State Government. [Although not necessarily limited thereto, a convenient organizational summary may be found in the current State of New Jersey, Official Directory, published annually by the New Jersey Secretary of State's Office and available, therefrom.]

"Consolidated [Debtor File] **debtor file**" means the consolidated listing of all debts owed the State as derived from the debtor files of each participating State agency.

...
 "Debtor file" means a list of liquidated accounts for which the claimant agency has exhausted its collection methods. A minimum of \$25.00 for total debts per individual per claimant agency or institution will be established. This threshold amount is subject to change in future years by the Division of Taxation based upon experience. Accounts involving more than one debtor must be broken down individually, and the debt allocated to each individual by a claimant agency. The list must be supplied [on magnetic tape, punched cards,] **by secure electronic transfer file** or other input media as approved by the Division of Taxation and contain such information as the Division may require in order to setoff with the beginning of the refund cycle in February. One update of this file will be permitted per agency prior to the homestead rebate cycle in June.

...
 "Rebate" means a homestead property tax rebate **or credit** pursuant to [P.L. 1990, c.61 (N.J.S.A. 54:4-8.57 et seq.).]

"Refund" means a refund of an overpayment of taxes paid pursuant to the ["New Jersey Gross Income Tax Act,"] (N.J.S.A. 54A:1-1 et seq.).

18:35-10.4 Matching

(a) Upon timely receipt of notifications and debtor files from participating claimant agencies, the Division will make continual comparisons of the consolidated debtor file with the [Refund] **refund** file and with the [Rebate] **rebate** file. A complete match will result from a matching of two sets of identification information. A complete match affects the [Gross Income Tax] **gross income tax** and [Homestead Rebate] **homestead rebate** systems by placing a hold code in the taxpayer's account, which prevents a refund or rebate [check] from being sent out until initial certification.

(b) (No change.)

(c) When a taxpayer requests a refund or rebate and that taxpayer has been identified through a complete match as an alleged debtor to a claimant agency, the Division does not have liquidated debt information on the debtor file, a three-part card **or electronic data file** will be sent to the claimant agency. Return of the proper card(s) to the [division] **Division** would certify the accuracy of the liquidated debt, advise whether the amount had been subsequently paid, and/or advise whether or not the [doctor] **debtor** has requested a hearing or appeal in the matter.

(d) When a taxpayer requests a refund or rebate and that taxpayer has been identified through a complete match as an alleged debtor to a claimant agency, and the Division has liquidated debt information on the debtor file, the Division will generate a notice to the taxpayer in accordance with N.J.A.C. 18:35-10.5 and will also generate a two-part card **or electronic data file** to the agency. Return of the proper card(s) to the Division would advise whether the amount has been subsequently paid, and/or advise whether or not the debtor has requested a hearing or appeal in the matter.

18:35-10.6 Administrative resolution; claimant agency proceedings

(a) No later than 45 days from the date of the Division's notice to the alleged debtor[,] of the proposed setoff, the claimant agency shall notify the Division of any request by the alleged debtor for administrative

resolution or for a hearing or of the satisfaction of the alleged debt. Such information shall allow the Division to:

1.-3. (No change.)

(b) Upon written request of the claimant agency, the Division shall extend the hold status of an affected [check] **refund or rebate** until a final decision by the claimant agency in order to accommodate the hearing process, [where] if:

1. (No change.)

2. [Where a 30 day] A **30-day** administrative resolution period provided pursuant to N.J.A.C. 1:1-5.4(b) has failed to result in a final agreement. The period for administrative resolution [shall commence upon receipt by] **begins when** the claimant agency [of] **receives** a timely request for administrative resolution or [for] a hearing.

(c) [After five] **Five** days [of] **after** the close of the period for administrative resolution, the Division shall automatically release the affected refund or rebate [check], unless notified in writing by the claimant agency that:

1.-2. (No change.)

18:35-10.7 Agency procedure; hearing

(a) When an alleged debtor makes a timely request for administrative resolution for a hearing, the claimant agency shall initiate appropriate agency procedures pursuant to the [“]New Jersey Uniform Administrative Procedure Rules[, 1980”], N.J.A.C. 1:1[-1.1 et seq]. The issues in an administrative resolution effort or a hearing shall include whether the claimed sum asserted as due and owing is correct and any other relevant matters. A nondebtor who claims to be a joint recipient of a refund or rebate [check] shall have standing to establish that fact and to contest the proposed setoff. If the claimant agency finds that an apportionment should be made in a particular case with respect to a joint entitlement, the matter shall be referred to the Division of Taxation and it will be presumed that each party is entitled to one half of the joint entitlement.

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

18:35-10.8 Referral to Office of Administrative Law; hearing

(a) After completing administrative resolution efforts in a contested case, the matter shall be filed [forthwith] with the [clerk] **Clerk** of the Office of Administrative Law, pursuant to the requirements of the [“]Administrative Procedure Act[”], [P.L. 1968, c.419 (C) **N.J.S.A.** 52:14B-1 et seq.] and [P.L. 1978, c.67 (C) 52:14F-1 et seq.], as amended and supplemented and the [“]New Jersey Uniform Administrative Procedure Rules, [1980”], N.J.A.C. 1:1[-1.1 et seq].

(b) An appeal to be taken from a final determination of the [division] **Division** of Taxation involving a tax matter shall be taken to the Tax Court. The Office of Administrative Law shall not hear tax matters.

18:35-10.9 Finalization of setoff by claimant agency; finalization by setoff

(a) Upon either final determination of the debt due and owing the claimant agency and exhaustion of time in which an appeal may be filed or upon the debtor’s and/or joint recipient’s default for failure to timely request review of the asserted setoff, the claimant agency shall [forthwith] certify the finalized debt to the Division and in default thereof, the Division shall no longer be obligated to hold the refund for setoff.

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

18:35-10.11 Priorities in claims to setoff

(a) (No change.)

(b) Notwithstanding the general rule for priority set forth in (a) above, the priorities for setoff are as follows:

1. With respect to homestead **credits or** rebates:

i. (No change.)

ii. [Any unpaid] **Unpaid** child support;

iii. (No change.)

[iv. Other agencies, including the Internal Revenue Service, by date of claim.]

iv. IRS or State agencies, by date of levy;

v. Judgment lien holders (State agencies and IRS) in order of recording; and

vi. Any State agency’s outstanding claims that are not a judgment, by date of claim.

2. With respect to gross income tax refunds:

i. [Any unpaid] **Unpaid** child support;

ii. (No change.)

[iii. Other agencies, including the Internal Revenue Service, by date of claim.]

iii. IRS or State agencies, by date of levy;

iv. Judgment lien holders (State agencies and IRS) in order of recording; and

v. Any State agency’s outstanding claims that are not a judgment, by date of claim.

18:35-10.12 Disposition of proceeds collected; collection assistance fees

(a) Upon effecting final setoffs, the Division shall periodically either write checks or effect credits through other methods, approved by the [Division of Budget and Accounting] **Office of Management and Budget** to the respective claimant agencies for the net proceeds collected on their behalf.

(b) From the gross proceeds collected by the Division through setoff, the Division shall retain [10] **five** percent. [On and after January 1, 1985 the Division shall retain five percent of such proceeds.] The amount shall be charged to the respective claimant agency as a collection assistance fee and may be subject to adjustment based upon experience.

18:35-10.13 Accounting to the claimant agency; credit to debtor’s obligation

(a) (No change.)

(b) Upon receipt by a claimant agency of a check **or credit** representing net proceeds collected on a claimant agency’s behalf by the Division and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor’s obligation with the gross proceeds collected.

(c) Under special circumstances and subject to the approval of the Director of the [Division of Budget and Accounting] **Office of Management and Budget**, the Division may employ such alternative method of payment and billing as may be agreed upon with a claimant agency.

SUBCHAPTER 11. FILING FEE PAYMENTS BY PARTNERSHIPS

18:35-11.1 Definitions

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

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

...

“Partner” means, and includes without necessarily being limited thereto, each entity that receives a K-1 or NJ-K1 from a partnership. For the purposes of this section, a [“]partner[“] refers to the definition in this section, although a [“]partner[“] can at the same time also be a partner in a civil union.

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

...

18:35-11.2 Apportionment of the partnership fee

(a) [For privilege periods beginning on or after January 1, 2002 each] **Every** partnership, regardless of any [Internal Revenue Code] **I.R.C. § 761(a)** election, having income derived from New Jersey sources [that has] **and having** more than two owners shall make a payment of a filing fee of \$150.00 for each owner of an interest in the entity, provided that the payment shall not exceed \$250,000.

(b) (No change.)

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

1.-2. (No change.)

3. The number of nonresident partners without physical nexus to New Jersey multiplied by \$150.00 and the resulting product multiplied by the corporate allocation factor of the partnership.

i. The corporate allocation factor [includes property, payroll and double weighted] **consists of a single** receipts fraction[s].

[ii. For purposes of this section only, if one or both of the fractions are missing in the allocation factor, or if a partnership is unable to allocate because it lacks an office outside the State, the partnership may allocate its nonresident partners without nexus using the receipts fraction only.]

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

(a) (No change.)

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

(c) A partnership may obtain an extension of time to file the New Jersey Partnership Return (Form NJ-1065) for a period of five months beyond the original due date, providing that the requirements of (c)1 below are satisfied. Extensions beyond five months from the original due date of the return will be granted only in cases where the Director determines that exceptional circumstances exist. This subsection provides the authority for an extension of time to file and is not to be considered an extension of time to pay the filing fee and/or tax due. A partnership’s liability is due, in full, by the original due date of the return. The partnership is subject to interest and late filing penalty as described in (c)5 below if the full amount is not paid by the original due date of the return.

1. A five-month extension of time to file a New Jersey Partnership Return will be granted only if, by the original due date of the return, the partnership has paid in, either through tiered partnership payments, installment payment, estimated payments, or a payment made with the Partnership Tentative Return and Application for Extension of Time to File, at least 80 percent of the filing fee and/or tax due computed on the New Jersey Form PART-100, [“]Partnership Return Voucher[“] when filed[,] and:

i. The partnership obtains a valid five-month extension for Federal [Income Tax] **income tax** purposes and attaches a copy of the application for automatic Federal extension (Federal Form 7004) to the final New Jersey Partnership Return when filed; or

ii. (No change.)

2.-3. (No change.)

4. A partnership that has not satisfied the 80 percent payment requirement of (c)1 above, or fails to file the Partnership Return by the extended due date, will be subject to the following late filing penalties, which shall be imposed on the first day following the original due date of the return and on the same calendar day of each succeeding month thereafter:

i. \$100.00 per month or any fraction of a month that the return is delinquent; [and]

ii. Five percent per month or any fraction of a month that the return is delinquent, up to a maximum of 25 percent of the balance of any filing fee and/or tax due with the return[.]; **and**

iii. Interest on the unpaid filing fee and/or tax calculated at three percentage points above the prime rate. Interest is imposed for each month (or a fraction thereof) on the unpaid balance of filing fee and/or tax due. At the end of each calendar year, all filing fee and/or tax, penalties, and interest remaining due become part of the unpaid balance on which interest will be charged.

5. (No change.)

(d) A partnership seeking an extension of time to file Form NJ-1065 may file a copy of its application for a Federal extension with its New Jersey return. The box at the top of Form NJ-1065 labeled “Application for Federal Extension is attached” shall be checked. If a Federal extension has not been obtained, a request for a State extension must be

made by filing Federal Form 7004 with the Division of Revenue **and Enterprise Services** on or before the original due date of the State return. In addition, any partnership that has a filing fee and/or tax due must file Form PART-200-T, [“]Partnership Tentative Return and Application for Extension of Time to File.[“] The applicable payment must accompany this Form. Form PART-200-T must be postmarked on or before the original due date of the return. An extension of time to file Form NJ-1065 does not extend the time to pay the filing fee and/or tax due. It also does not extend the time for filing the tax return or returns of the partners.

18:35-11.4 Installment payment

(a) (No change.)

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

1. For example, if a partnership [having a taxable year beginning on or after January 1, 2002] dissolves during the calendar year [2002], the 50 percent prepayment of the \$150.00 per partner filing fee for the [2003] **subsequent calendar** year is not required, provided the partnership properly [marks its 2002] **checks the box at the top of** Form NJ-1065 signifying **that** it is a final return.

18:35-11.6 Partnership examples of the imposition of the filing fee

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

Example 1: (No change.)

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

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

The fee is calculated as follows:

The number of New Jersey resident partners is multiplied by \$150.00.
 $10 \times \$150.00 = \$1,500$

The number of nonresident partners with physical nexus with New Jersey multiplied by \$150.00.

$6 \times \$150.00 = \900.00

The number of nonresident partners without physical nexus to New Jersey is multiplied by \$150.00 and the result is multiplied by the allocation factor.

$4 \times \$150.00 = \600.00

$\$600.00 \times 0.4 = \240.00

The total fee for [2002] **the current calendar year** is:

$\$1,500 + \$900.00 + \$240.00 = \$2,640$

The prepayment for [2003] **the subsequent calendar year** is:

$\$2,640 \times 50 \text{ percent} = \$1,320$

Example 3: A limited partnership, East, L.P., is organized and has an office in New Jersey. It has 10 limited partners and two general partners. One of the limited partners is a California limited partnership, West, L.P., having 15 partners all of whom are based in an office in Los Angeles. Certain property belonging to West, L.P., is stored at East, L.P.’s office in New Jersey. The Los Angeles limited partnership received a \$1,000,000 distribution in [2002] **the current calendar year** from the New Jersey partnership. West, L.P.’s apportionment formula is 10 percent or 0.1.

First, in [2002] **the current calendar year** the New Jersey partnership pays a fee of $(12 \times \$150.00) \$1,800$ for [2002] **that year** since all its partners had a presence in New Jersey plus a prepayment of \$900.00 $(50 \text{ percent} \times \$1,800)$ for [2003] **the subsequent calendar year**.

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

0 Resident partners = \$0

0 Non-resident partners with physical nexus = \$0

15 Non-resident partners without physical nexus to New Jersey

$15 \times \$150.00 = \$2,250$

$\$2,250 \times 0.1 = \225.00 which is the fee for the California partnership.

Example 4: (No change.)