1. (No change.)
2. Demonstrate that its motor vehicle defensive driving course meets or exceeds the standards of the National Safety Council’s defensive driving course.
3. (No change in text.)
4. [Recodify existing 3. and 4. as 2. and 3. (No change in text.)]
5. 4. For defensive driving courses provided in a traditional classroom setting, demonstrate by written operating procedures and/or on-site visitation by the Chief Administrator or designee, that its instructors are qualified to conduct its motor vehicle defensive driving course; [and]
6. 5. For DVD/video or online, computer-assisted, courses, provide sufficient demonstration through written operating procedures and by providing a gratis test of a representative course in its entirety for review by the Chief Administrator or designee and shall further:
i. Provide a description of the technology to be used to present the course, technical specifications, a DVD/video, or an online course description document, and a verbatim transcript of the DVD/video or online course including all module completion quizzes, proficiency examinations, and answer keys to be presented;
ii. - iii. (No change.)
iv. Require as a condition of satisfactory course completion the licensee’s passage, with a minimum passing grade of 80 percent, of a course, content proficiency examination administered using approved security mechanisms. The course provider may permit the licensee, if they do not meet the minimum passing grade, to retake the proficiency examination up to two times after sufficient course review; [; and]
6. For DVD/video courses, the provider must include an explanation of the process that will be used for updating all DVD/video course curricula.
(b) (No change.)
(c) The Chief Administrator shall not approve an entity seeking to offer a DVD/video or an online, computer-assisted, motor vehicle defensive driving course as a sponsoring agency to conduct such a course, unless the entity can demonstrate to the satisfaction of the Chief Administrator that the security mechanisms, required by this section to be employed in administering such a course, adequately ensure that the identity of the student taking the course can be verified on a continual basis for the duration of the course, and that the security mechanisms eliminate to the extent practicable the potential for abuse or fraud.
(d) (No change.)
13:21-24.4 Instructor qualification; training
(a) (No change.)
(b) For DVD/video or online, computer assisted, courses, instructors providing curriculum support on the 24-hour hotline will be certified as instructors in the State of New Jersey and shall have met all the requirements of this section. No person shall be permitted by a sponsoring agency providing a DVD/video or an online course to act as instructor for curriculum assistance on an information hotline if such person has accumulated nine or more points by reason of conviction for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-40, 39:4-50, or 39:4-49.1, or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.
(c) (No change.)
13:21-24.5 Course curriculum; length; content; scope; class size
(a) - (b) (No change.)
(c) For an approved defensive driving course provided on DVD/video or online, by means of a computer-assisted virtual classroom, the sponsoring agency shall provide:
1. - 7. (No change.)
8. Technology assistance for DVD/video, online, or computer related problems; and
9. (No change.)
13:21-24.11 Affiliates
(a) A sponsoring agency shall list all affiliates that will be offering its course(s) in its initial application.
(b) A sponsoring agency that wants to add an affiliate shall notify the Motor Vehicle Commission at least 15 days before the affiliate is scheduled to offer its initial defensive driving course.
(c) A sponsoring agency shall notify the Motor Vehicle Commission when it ends its relationship with an affiliate or when one of its affiliates ceases to exist. Notification shall occur not more than 15 days after the affiliate offers its final defensive driving course.
(d) A sponsoring agency shall properly submit the class rosters of its affiliates. The sponsoring agency shall separately identify the rosters of its affiliates from the rosters of classes taught by the sponsoring agency.
(e) A sponsoring agency shall be responsible for ensuring that its affiliates adhere to the same regulations, guidelines, restrictions, and policies that the sponsoring agency is required to follow.
(f) Any deficiencies in the operations or administration of a sponsoring agency’s courses, regardless of who administered the course, may result in the denial of credit to students of the affected entities and/or result in the suspension or revocation of the authority of the sponsoring agency and its affiliates to offer and administer defensive driving courses.

TREASURY — TAXATION

DIVISION OF TAXATION
Corporation Business Tax
Receipts from Services Performed in the State;
Allocation for Certain Special Industries
Proposed Amendments: N.J.A.C. 18:7-1.6 and 8.10
Proposed New Rule: N.J.A.C. 18:7-8.10A

Authorized By: Michael Bryan, Director, Division of Taxation.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.
Proposal Number: PRN 2013-060.

Submit written comments by June 14, 2013 to:
Mitchell C. Smith
Administrative Practice Officer
Division of Taxation
50 Barrack Street
P.O. Box 269
Trenton, NJ 08695

The agency proposal follows:

Summary
The Division is proposing new N.J.A.C. 18:7-8.10A, Receipts from services performed in the State; allocation for certain special industries. The proposed new rule provides a method for the allocation of receipts from certain service transactions for privilege periods beginning on and after January 1, 2014. Existing N.J.A.C. 18:7-8.10, Receipts compensation for services; allocation for certain special industries, is amended to provide that the rule applies to privilege periods beginning prior to January 1, 2014.

New N.J.A.C. 18:7-8.10A is proposed in order to provide sourcing rules for privilege periods beginning on or after January 1, 2014. Proposed paragraph (a)1 requires that the numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned if the service is performed within this State. This paragraph differs from N.J.A.C. 18:7-8.10 by no longer requiring that the numerator of the receipts fraction include receipts from services based upon the cost of performance or amount of time spent in the performance of such services or by some other reasonable method, if the service is performed both within and outside this State. Proposed new paragraph (a)2 requires that in determining whether services are

(CITE: 45 N.J.R. 886) NEW JERSEY REGISTER, MONDAY, APRIL 15, 2013
performed in the State, a taxpayer shall include in the numerator of the receipts fraction receipts derived from customers within this State. Proposed new paragraph (a)3 requires that in the event services are provided to a recipient engaged in a trade or business in this State and another state(s), a taxpayer shall include in the numerator of the receipts fraction those receipts attributable to the State’s marketplace. Examples are provided dealing with real estate surveying services, engineering services, computer software services, advertising services, prescription services, market analysis services, GPS services, legal information services, and payroll processing services. Proposed new paragraph (a)4 provides that all amounts received by the taxpayer in payment for such services are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons and regardless of whether the receipt is accounted for as an item of income or a reduction in expense. Proposed new paragraph (a)5 provides that it is immaterial where the amounts were payable or where they actually were received. Proposed new paragraph (a)6 provides a method for allocating certain lump sum payments and includes a method for allocating airline revenues. Paragraphs (a)7, 8, and 9 are identical to N.J.A.C. 18:7-8.10(a)4, 5, and 6, as proposed for recodification in this rulemaking.

New Jersey determines the portion of the total income of a corporation subject to the Corporation Business Tax by using formulas that measure specific activities of the corporation assigned to that State. The New Jersey Corporation Business Tax employs a three-factor formula that apportions a share of the corporation’s income to the State based on a weighted average of the following fractions: (1) a corporation’s property in this State over the corporation’s total property; (2) a corporation’s sales in this State over the corporation’s total sales; and (3) the corporation’s payroll in this State over the corporation’s total payroll. P.L. 2011, c. 59, enacted on April 28, 2011, replaced the aforementioned allocation formula used to determine a corporation’s taxable income under the Corporation Business Tax with a single sales fraction allocation formula. The enactment of P.L. 2011, c. 59, replacing the allocation formula used to determine a corporation’s taxable income under the Corporation Business Tax with a single sales fraction allocation formula, was intended to have a generally positive effect on the business climate in New Jersey. The proposed amendments and new rule may be said to clarify existing policy on how corporations should source receipts from services to New Jersey by reorganizing the placement of examples and adding new examples to the rule.

The enactment of P.L. 2011, c. 59, replacing the allocation formula used to determine a corporation’s taxable income under the Corporation Business Tax with a single sales fraction allocation formula, was intended to have a generally positive effect on the business climate. The proposed amendments and new rule are designed to reflect the statutory change and to have a similarly positive effect on business climate.

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

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

Agriculture Impact
The proposed amendments and new rule will not have an impact on the agriculture industry.

Regulatory Flexibility Analysis
The proposed amendments and new rule apply to any company, including those which may be considered a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rule are not expected to impose any changes in reporting, recordkeeping, or other compliance requirements on small businesses. To the contrary, the proposed amendments and new rule may reduce recordkeeping and compliance requirements by allowing for reasonable approximations in determining where to allocate receipts from services. The proposed amendments and new rule are intended to provide clarification as to how and when to allocate receipts from certain sales to New Jersey and to provide a standard allocation method. Small businesses may wish to consult with accountants or legal professionals in order to review the proposed amendments and new rule to determine the potential applicability of the changes to their own tax situations.

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

Housing Affordability Impact Analysis
The proposed amendments and new rule would not result in a change in the average cost associated with housing. The proposed amendments and new rule would have no impact on any aspect of housing because the proposed amendments and new rule deal with the Corporation Business Tax.

Smart Growth Development Impact Analysis
The proposed amendments and new rule would not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. This is because the proposed amendments and new rule have nothing to do with housing production, either within Planning Areas 1 or...
Constitution and statutes of the United States sufficient to give this State jurisdiction to impose the tax under the taxation in this State if the taxpayer’s business activity in this State is following words and terms shall have the following meanings beneficiary or the shareholder's mailing address on the records of the SUBCHAPTER 8. BUSINESS ALLOCATION FACTOR New Jersey. Example 1: An entity regularly providing asset management services as defined in N.J.A.C. 18:7-1.6 Subjectivity to tax; how created N.J.S.A. 54A:1-2m in the case of an individual and under N.J.S.A. 18:7-10.6. (No change in text.) [CITE 45 N.J.R. 888] NEW JERSEY REGISTER, MONDAY, APRIL 15, 2013; deletions indicated in brackets [thus]):

SUBCHAPTER 1. CORPORATIONS SUBJECT TO TAX UNDER THE ACT

18:7-1.6 Subjectivity to tax; how created (a) (No change.) (b) A taxpayer’s exercise of its franchise in this State is subject to taxation in this State if the taxpayer’s business activity in this State is sufficient to give this State jurisdiction to impose the tax under the Constitution and statutes of the United States. Example 1: An entity regularly providing asset management services as defined in N.J.A.C. 18:7-8.10 (C) Subparagraph vii of paragraph (b) of this subparagraph is hereby deleted. (No change in text.) (1) Engaged in a trade or business and maintains a regular place of business in the State. (2) Not engaged in a trade or business whose billing address is in the State.

i. A regular place of business in the State is not limited to the principal place of business of the customer and includes any office, factory, warehouse, or other business location in the State where the customer conducts business in a regular and systematic manner or maintains property or employees. ii. A billing address is the location indicated in the pertinent customer order or records of the taxpayer as the address of record where notices, statements, or bills relating to the customer’s account or services provided to the customer are mailed.

iii. In determining the proportion to the extent the recipient receives the benefit of the service(s) in the State, a taxpayer may use the terms of the contract and the taxpayer’s books and records kept in the normal course of business, or the nature of the taxpayer’s or recipient’s business or the service(s) at issue, to determine how much of the benefit of the service(s) is received in the State.

iv. In determining the proportion to the extent the recipient receives the benefit of the service(s) in the State, a taxpayer may use a reasonable approximation if the terms of the contract and the taxpayer’s books and records kept in the normal course of business and the nature of the taxpayer’s or recipient’s business and the service(s) at issue do not provide the information necessary to determine how much of the benefit of the service(s) is received in the State.

1. The numerator of the receipts fraction developed in accordance with this section includes receipts from services not otherwise apportioned if the service is performed within this State. 2. In determining whether services are performed within the State, a taxpayer shall include in the numerator of the receipts fraction receipts derived from customers within this State as provided in this section.

i. For purposes of this paragraph, a customer within this State is either a recipient that is: (1) Engaged in a trade or business and maintains a regular place of business in the State; or (2) Not engaged in a trade or business whose billing address is in the State.
to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 3: A taxpayer based outside this State enters into an agreement with a corporation from another state to develop and provide customized computer software for the corporation’s business office that is located in New Jersey. The software will only be used by the business office in New Jersey. The software development occurs in another state. All of the receipts from the software services are attributable to New Jersey and are included in the numerator of the receipts fraction because the recipient of the service received all of the benefit of the service in New Jersey.

Example 4: A taxpayer based outside this State enters into an agreement with a corporation from another state to develop and provide customized computer software for the corporation’s business offices that are located in New Jersey and several other states. The software development occurs in another state. The receipts from the software services are attributable to New Jersey and included in the numerator of the receipts fraction in proportion to the extent the software is used in New Jersey.

Example 5: A taxpayer derives advertising revenues in the course of broadcasting television or radio programs. It sets its advertising rates based upon the listening audience it has succeeded in reaching. The portion of its advertising revenues or receipts that are attributable to New Jersey and included in the numerator of the receipts fraction shall be in proportion to the extent of the taxpayer’s listening audience in New Jersey.

Example 6: A company performs prescription fulfillment service. They are based in State X and manage a prescription plan on behalf of a client with offices in 50 states that is headquartered in State Y. The client’s employees are located in all 50 states, including New Jersey, but frequently travel and may fill prescriptions from their home pharmacy or pharmacies on the road. For lump sum payments from the client to the fulfillment service, the sourcing may be based on the percentage of the client’s employees working in New Jersey. Alternatively, for pay as you go services where there is adequate documentation of where the prescription is filled, the percentage of prescriptions filled in New Jersey would be sufficient. If the company is unable to track the percentage of client’s employees working in New Jersey or the percentage of prescriptions filled in New Jersey, a reasonable approximation considering all sources of information, or a population based methodology would be acceptable.

Example 7: A company performs marketing analysis services in California and New York for a client that is headquartered in New Jersey. The project was requested from and directed by the client’s advertising division leader who is located in the client’s Florida office. The deliverable is a memo detailing the results of the marketing analysis, which will be sent to the division leader in Florida. The information contained in the deliverable will ultimately be incorporated into an advertising strategy used companywide, nationwide. The bill was sent to the client’s accounts payable function in Illinois. This service would not be sourced to New Jersey since it is not utilized in New Jersey, nor is the benefit of the service received in New Jersey.

Example 8: A person purchases an in-dashboard GPS system that includes a periodic update service when the person brings the car to the dealership for periodic car maintenance. The update service ends after one year with an option to renew the service directly with the GPS company, whereby payments to the company are paid by the car’s owner. In the first instance, where the service and GPS are bundled together the sale would be sourced to the location of the dealership. When the owner of the car renews the update service, the receipts from the service will be sourced to the customer’s billing address.

Example 9: A legal information company provides a periodic legal research materials service. The service consists of periodic shipments of the latest statutes/regulations and court cases based on the terms of the contract with each customer. The updates themselves consist of the latest statutes/regulations and court cases based on the terms of the research materials service. The service consists of periodic shipments of the updated materials to each customer. The updates themselves consist of the latest statutes/regulations and court cases based on the terms of the research materials service.

Example 10: A payroll processing corporation provides a payroll processing and remittance service to clients for a fee. The payroll processing corporation receives the data from clients and impounds funds from its clients for disbursing payroll checks and remitting tax monies to government agencies. The payroll processing corporation transmits the processed data back to its client that has offices and employees in New Jersey, Pennsylvania, South Carolina, California, and Ohio. The client hires the payroll processing corporation to process its payroll. The receipts from the payroll service will be sourced to New Jersey based on the number of the client’s employees located in New Jersey since the payroll tax monies are remitted to New Jersey.

4. All amounts received by the taxpayer in payment for such services are allocable, regardless of whether such services were performed by employees or agents of the taxpayer, by subcontractors, or by any other persons and regardless of whether the receipt is accounted for as an item of income or a reduction in expense.

5. It is immaterial where the amounts were payable or where they were actually received.

6. Certain lump sum payments for services performed both inside and outside of New Jersey must be apportioned in the following manner in order to result in a fair and reasonable receipts fraction.

i. Transportation revenues of an airline are from services performed in New Jersey based on the ratio of an airline’s revenue miles in New Jersey divided by an airline’s total revenue miles. Where an airline is engaged in the transportation of passengers, the transportation of freight, or the rental of aircraft, the ratio shall be determined by an average of a passenger revenue mile fraction, a freight revenue mile fraction, and rental revenue mile fraction weighted to reflect the taxpayer’s relative gross receipts from passenger transportation, freight transportation, and rentals.

(1) Revenue miles mean passenger revenue miles for passenger transportation, freight revenue miles for freight, or transportation rental revenue miles for aircraft rentals.

(2) The passenger revenue mile fraction is determined by multiplying the number of revenue-paying passengers aboard the aircraft by the distance traveled in New Jersey divided by the number of revenue paying passengers aboard the aircraft multiplied by the distance traveled everywhere.

(3) The freight revenue mile fraction is determined by dividing the freight ton revenue miles in New Jersey by the freight revenue miles everywhere. A freight revenue ton mile is equal to one ton carried one mile.

(4) The rental revenue mile fraction is determined by dividing the number of rental miles flown in New Jersey by total rental miles flown.

ii. Trucking companies deriving revenues from transporting freight will calculate their receipts fraction using mileage as follows: The taxpayer’s receipts are multiplied by a fraction, the numerator of which is the number of miles in New Jersey and the denominator of which is the mileage in all jurisdictions. For convenience, taxpayers required to maintain mileage records in compliance with the International Fuel Tax Agreement pursuant to N.J.S.A. 54:39A-24 and N.J.A.C. 13:18-3.12 shall make calculations using such records.

(1) With regard to the property fraction, movable property, such as tractors and trailers, shall be allocated to this State using the same mileage fraction set forth in this subparagraph. Such allocated movable property shall be added to the fraction formed by non-movable property in New Jersey over non-movable property everywhere to arrive at the property fraction.

(2) With regard to the payroll fraction, wages of mobile employees such as drivers shall be allocated to New Jersey based upon mileage as set forth in this subparagraph. Such allocated payroll shall be added to the fraction formed by non-mobile employee wages in New Jersey.
investment advice, making determinations as to when sales and purchases are to be made, or the selling or purchasing of assets and related activities. As used in this sub-subparagraph, “related activities” means administration services, distribution services, management services, and other related services.
(2) “Administration services” means and includes clerical, accounting, bookkeeping, data processing, internal auditing, legal, and tax services, but does not include trust services.
(3) “Distribution services” means the services of advertising, servicing investor accounts (including redemptions), marketing shares, or selling shares of a regulated investment company.
(4) “Management services” means the rendering of investment advice, making determinations as to when sales and purchases of securities are to be made, or the selling or purchasing of securities and related activities.

(5) “Domicile” shall have the meaning ascribed to it under N.J.S.A. 54A:1-2.m in the case of an individual and under N.J.S.A. 54A:1-2.o in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, “domicile” shall be presumed to be the mailing address of the beneficiary of the plan, account, or other similar pool of assets based upon the sponsor’s records with respect to any such beneficiary or the shareholder’s mailing address on the records of the regulated investment company. For purposes of (a)8iii above, in the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

(6) In addition to amounts received directly from a regulated investment company, “receipts” shall also include amounts received directly from the shareholders of such regulated investment company in their capacity as such.
(7) “Regulated investment company” means a regulated investment company as defined in N.J.S.A. 54:10A-4(g) and meets the requirements of Section 851 of the Federal Internal Revenue Code.
(8) “Sponsor” means the party that has contracted directly with the beneficiaries of the plan, account, or similar pools of assets.

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

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

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

(1) “Securities” has the meaning provided by paragraph (2) of subsection (c) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475.
(2) “Commodities” has the meaning provided by paragraph (2) of subsection (e) of section 475 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 475.
(3) “Registered securities or commodities broker or dealer” means a broker or dealer registered as such by the Federal Securities and Exchange Commission or the Federal Commodities Futures Trading Commission.

(CITE 45 N.J.R. 890) NEW JERSEY REGISTER, MONDAY, APRIL 15, 2013