

common pension fund. This limitation shall not apply to direct investments in common and preferred stock, exchange-traded funds, and convertible debt issues;

4. No more than 12 percent of the assets of the eligible fund may be invested in opportunistic funds, and no more than two percent of the assets of the eligible fund may be invested directly in any individual opportunistic fund. Calculation of this limitation shall be applied to the aggregate of investments made directly by the eligible fund and the eligible fund's proportionate interest in investments made through a common pension fund. This limitation shall not apply to direct investments in common and preferred stock, exchange-traded funds, and convertible debt issues;

5. No more than 15 percent of the assets of the eligible fund may be invested in multi-strategy funds, and no more than 2.5 percent of the assets of the eligible fund may be invested directly in any individual multi-strategy fund. Calculation of this limitation shall be applied to the aggregate of investments made directly by the eligible fund and the eligible fund's proportionate interest in investments made through a common pension fund. This limitation shall not apply to direct investments in common and preferred stock, exchange-traded funds, and convertible debt issues;

6. The total amount directly invested in the equity and fixed-income obligations of any one issuer and affiliated entities by the eligible fund, shall not exceed five percent of the assets of the eligible fund. Calculation of this limitation shall be applied to the aggregate of investments made directly by the eligible fund and the eligible fund's proportionate interest in investments made through a common pension fund;

7. The total amount of a particular class of stock purchased or acquired of any one issuer eligible for investment pursuant to N.J.A.C. 17:4A-24.2(a)2 and (b) shall not exceed 10 percent of that class of stock outstanding; and

8. The total amount of shares directly purchased or acquired of any one exchange-traded fund shall not exceed 10 percent of the total shares outstanding of such fund.

(b) If, subsequent to the time of initial presentation to the Board (or, for investments under \$50 million, the Investment Committee) in accordance with N.J.A.C. 17:4A-1.4(a) or purchase of publicly traded securities, the limitations at (a) above are exceeded, then the Board shall be notified at the next regularly scheduled meeting of the Board. The Chief Investment Officer or Investment Committee may authorize a six-month grace period to reduce the level of participation below the maximum levels, provided that:

1. The reduction shall be achieved solely by the reduction of investments made directly by the eligible fund and shall not be applied to the eligible fund's proportionate interest in investments made through a common pension fund; and

2. The grace period may be extended for additional four-month periods with the approval of the Board, provided the extension is in the financial best interest of the fund.

(c) For investments in funds-of-funds, the limitations at (a) above shall apply to the underlying investments and not to the funds-of-funds themselves.

## TREASURY—TAXATION

(a)

### DIVISION OF TAXATION

#### Gross Income Tax Act

#### New Jersey Health Insurance Market Preservation Act Rules

#### Proposed New Rules: N.J.A.C. 18:35-12

#### Proposed Amendment: N.J.A.C. 18:35-8.1

Authorized By: John J. Ficara, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54A:11-10.

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

Proposal Number: PRN 2021-001.

Submit written comments by March 5, 2021, to:

Elizabeth J. Lipari  
Administrative Practice Officer  
Division of Taxation  
50 Barrack Street  
PO Box 269  
Trenton, NJ 08695-0269  
Email: [Tax.RuleMakingComments@treas.nj.gov](mailto:Tax.RuleMakingComments@treas.nj.gov)

The agency proposal follows:

#### Summary

The Division of Taxation (Division) is proposing new rules to implement P.L. 2018, c. 31, the New Jersey Health Insurance Market Preservation Act (NJHIMPA), including the imposition of a State shared responsibility payment. In accordance with N.J.S.A. 54A:11-3, the State shared responsibility payment is equal to a taxpayer's Federal penalty in effect on December 15, 2017, under Section 5000A of the Internal Revenue Code of 1986. The proposed new rules include modifications necessary to reflect the differences between NJHIMPA, as codified at N.J.S.A. 54A:11-3, and 26 U.S.C. § 5000A, as well as other differences between NJHIMPA and the New Jersey Gross Income Tax Act and/or the Internal Revenue Code of 1986.

Proposed new N.J.A.C. 18:35-12.1 sets forth the applicability and scope of the rules regarding the NJHIMPA.

Proposed new N.J.A.C. 18:35-12.2 sets forth the definitions of terms used throughout the subchapter regarding the NJHIMPA.

Proposed new N.J.A.C. 18:35-12.3 establishes the imposition of a State shared responsibility payment.

Proposed new N.J.A.C. 18:35-12.4 sets forth the method of calculating the State shared responsibility payment.

Proposed new N.J.A.C. 18:35-12.5 sets forth the exemptions available from the State shared responsibility payment.

Proposed new N.J.A.C. 18:35-12.6 sets forth the procedures to be used by the Division of Taxation in the administration of the NJHIMPA.

Proposed new N.J.A.C. 18:35-12.7 sets forth the NJHIMPA reporting requirement for applicable entities.

Proposed new N.J.A.C. 18:35-12.8 sets forth the procedures for NJHIMPA administrative protests and judicial appeals.

N.J.A.C. 18:35-8.1 is proposed for amendment to require Form NJ-W-3, Federal Form W-2s, and any Federal Forms 1094 or 1095 designations to be filed electronically.

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

#### Social Impact

The proposed new rules will have a positive social impact because the proposed new rules provide the public and their advisers with information and guidance regarding the administration of the NJHIMPA. The proposed new rules are intended to ensure that a taxpayer and, where relevant, a taxpayer and dependent(s), when required to maintain

minimum coverage pursuant to 26 U.S.C. § 5000A(d)(1), has minimum essential coverage for a given month.

The proposed amendments will also have a positive social impact because the proposed amendments require Form NJ-W-3, Federal Form W-2s, and any Federal Forms 1094 or 1095 designations to be filed electronically as part of New Jersey's paperless initiative, which is critical to the environmental welfare of the State.

#### Economic Impact

The proposed new rules will be revenue neutral for the State, since it is anticipated that the cost to implement the proposed new rules will be offset by increased tax revenues from the imposition of the State shared responsibility payment. The payment is necessary to protect the State interest of ensuring stable and well-functioning health insurance markets. Without the State shared responsibility payment, there is an increased risk of instability and higher prices in health insurance markets.

The proposed amendments will not economically impact most taxpayers because the proposed amendments require Form NJ-W-3, Federal Form W-2s, and any Federal Forms 1094 or 1095 designations to be filed electronically as part of New Jersey's paperless initiative, and the State shared responsibility payment is only due from non-exempt taxpayers who do not have the required insurance. The proposed new rules and amendments will constitute a liability for non-exempt taxpayers who do not have the required insurance, as such taxpayers will be liable to pay the State shared responsibility payment.

#### Federal Standards Statement

The proposed new rules and amendments do not contain any requirements that exceed Federal law, 26 CFR Subpart 1.5000A or 26 U.S.C. § 5000A.

#### Jobs Impact

The proposed new rules and amendments are not expected to result in the creation or loss of jobs in New Jersey.

#### Agriculture Industry Impact

The proposed new rules and amendments will not have an impact on the agriculture industry beyond the general impact imposed on all taxpayers in the State.

#### Regulatory Flexibility Analysis

The proposed new rules and amendments relate to a State shared responsibility payment pursuant to P.L. 2018, c. 31, as well as an electronic filing mandate. The mission of the Division 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. The Division, consistent with its mission, proposes new and amended rules with a view toward minimizing the impact of rulemaking on small businesses to the greatest extent possible.

The proposed new rules and amendments apply to small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-17, as well as to businesses employing more than 100 people full-time. The proposed new rules and amendments may require recordkeeping as well as the preparation of documents and forms. These proposed new rules and amendments must be applied on a uniform basis to large and small businesses alike. Because the tax rules must be applied uniformly and equitably, the Division is not able to develop and apply special rules for small businesses that would be different from the proposed new rules and amendments applied to other parties. In this respect, the Division shall maintain an objective to "level the playing field."

#### Housing Affordability Impact Analysis

The proposed new rules and amendments will not result in a change in the average cost associated with housing. The proposed new rules and amendments will have no impact on any aspect of housing because the proposed new rules and amendments relate to a State shared responsibility payment pursuant to P.L. 2018, c. 31, as well as an electronic filing mandate.

#### Smart Growth Development Impact Analysis

The proposed new rules and amendments 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. The basis for this finding is that the proposed new rules and amendments do not involve housing production, either within Planning Areas 1 or 2, or within designated centers, or anywhere else in the State of New Jersey. The proposed new rules and amendments relate to a State shared responsibility payment pursuant to P.L. 2018, c. 31, as well as an electronic filing mandate.

#### Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

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

#### SUBCHAPTER 8. INFORMATION RETURNS

18:35-8.1 Information furnished at source

(a) (No change.)

(b) [Such] **Unless otherwise noted, such** information returns must be filed on or before February 15 following the close of each calendar year[.]. **Information returns required pursuant to (a) above, must be filed** with the Division of Taxation, PO Box 248, Trenton, NJ 08646-0248, if the amount paid or credited is \$1,000 or more.

(c) The requirements [of] **at (b) above** shall be satisfied by providing the Director with any of the following, with preference in the order listed below:

1.-4. (No change.)

(d) 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 I.R.C. § 6045(e) is required to submit **copies** of 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. Information returns [attributable to] **reporting proceeds from** real estate transactions must be sent to: Division of Taxation, PO Box 445, Trenton, NJ 08695-0445, where the amount paid or credited is \$1,000 or more.

2. (No change.)

(e) (No change.)

**(f) For tax years beginning on or after January 1, 2019, any person required to file information returns must electronically file with the Division of Taxation, Form NJ-W-3 and copies of Form W-2s, on or before February 15 following the close of each prior calendar year, in accordance with the requirements for electronic filing provided in the NJ-EFW2 Booklet.**

**(g) For tax years beginning on or after January 1, 2019, all applicable entities, as defined at N.J.A.C. 18:35-12.7, may satisfy the return requirements of N.J.A.C. 18:35-12.7(b) by electronically filing with the Division of Taxation, on or before March 31st following the close of each prior calendar year, the same 1094 and 1095 healthcare coverage information they provided to the Internal Revenue Service. Upon notice from the Director, the taxpayer may be required to electronically submit additional supporting documents, including Form 1094 designations.**

**(h) Any taxpayer failing to file a return with the Director within the time prescribed in this section, or any taxpayer or tax preparer failing to use electronic methods to file a return as required in this section, will be subject to the penalties in accordance with N.J.S.A. 54:49-4.**

**SUBCHAPTER 12. NEW JERSEY HEALTH INSURANCE  
MARKET PRESERVATION ACT  
(NJHIMPA) RULES**

**18:35-12.1 Applicability and scope**

This subchapter is intended to implement P.L. 2018, c. 31, the New Jersey Health Insurance Market Preservation Act (NJHIMPA). NJHIMPA imposes a State shared responsibility payment, in accordance with N.J.S.A. 54A:11-3, equal to a taxpayer's Federal penalty that would apply for the taxable year 2017 under Section 5000A of the Internal Revenue Code of 1986, in effect on December 15, 2017 (26 U.S.C. § 5000A), with modifications necessary to reflect the differences between the NJHIMPA and 26 U.S.C. § 5000A, and other differences between the New Jersey Gross Income Tax Act and the Internal Revenue Code of 1986.

**18:35-12.2 Definitions**

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

"Applicable individual" has the same meaning as 26 U.S.C. § 5000A(d)(1), as in effect on December 31, 2017.

"Carrier" means any entity that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. These entities include, but are not limited to, a sickness and accident insurance company, a health maintenance organization, a hospital or health service corporation, a multiple employer welfare arrangement, an entity under contract with the State Health Benefits Program or the School Employees' Health Benefits Program to administer a health benefits plan, or any other entity providing a health benefits plan, as stated at N.J.S.A. 54A:11-2.

"Dependent" means a spouse or child, or a domestic partner as defined in section 3 of P.L. 2003, c. 246 (N.J.S.A. 26:8A-3), or any individual related to the taxpayer who is a dependent pursuant to the provisions of the Internal Revenue Code during a taxable year, as stated at N.J.S.A. 54A:1-2(e).

"Director" means the Director of the Division of Taxation.

"Employee" means an individual performing services for remuneration in accordance with N.J.S.A. 43:21-19(i).

"Exchange" has the same meaning as 45 CFR 155.20, as in effect on December 31, 2017.

"Exempt individual" means a taxpayer who is exempt from the requirement to maintain "minimum essential coverage," in accordance with N.J.A.C. 18:35-12.5, for a given month because on a day during that month a taxpayer was granted an exemption based on one or more of the following reasons: religious conscience belief; health care sharing membership; lack of affordable coverage; income below filing threshold; nonresident; incarceration; member of an Indian tribe; individual with certain short coverage gaps; or hardship.

"Family" means the individual(s) for whom the taxpayer properly claims a deduction for a personal exemption under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:3-1 through 9, for the taxable year.

"Group health insurance coverage" has the same meaning as 42 U.S.C. § 300gg-91(b)(4), as in effect on December 31, 2017.

"Group health plan" has the same meaning as 42 U.S.C. § 300gg-91(a)(1), as in effect on December 31, 2017.

"Health insurance coverage" has the same meaning as 42 U.S.C. § 300gg-91(b)(1), as in effect on December 31, 2017.

"Household income" means the sum of:

1. The taxpayer's New Jersey total income plus tax-exempt interest income; and
2. The aggregate New Jersey total income plus tax-exempt interest income of all other individuals who:
  - i. Are included in the taxpayer's family; and
  - ii. Are required to file a New Jersey income tax return for the taxable year.

"Minimum essential coverage" has the same meaning as defined at 26 U.S.C. § 5000A(f)(1), as in effect on December 31, 2017, except that health coverage provided under a multiple employer welfare arrangement, as defined at 29 U.S.C. § 1002(40), as in effect on December 31, 2017, shall not qualify as minimum essential coverage, unless the plan complies with the requirements of N.J.S.A. 54A:11-4(h), as applicable to a carrier and health benefits plans offered in the relevant individual, small employer, or large employer markets.

"Nonexempt individual" means an individual who files or is required to file an individual tax return as a resident or a part-year resident, either individually, separately, or jointly with a spouse/civil union partner and who is not an exempt individual.

"Nonresident taxpayer" means a taxpayer who is not a New Jersey resident in accordance with N.J.S.A. 54A:1-2(n).

**18:35-12.3 State shared responsibility payment**

(a) A nonexempt individual must have minimum essential coverage for each month during a taxable year or report the State shared responsibility payment on the individual's personal income tax return for the taxable year. The State shared responsibility payment must be paid with the personal income tax return for the taxable year.

(b) For purposes of this section, an individual is considered to have minimum essential coverage for each month in which the individual is enrolled in, and entitled to receive benefits under, a program or plan identified as minimum essential coverage, defined at 26 U.S.C. § 5000A(f)(1), for at least one day in the month.

(c) A taxpayer is liable for the State shared responsibility payment for a month in which:

1. A taxpayer is a nonexempt individual without minimum essential coverage; or

2. A nonexempt individual for whom the taxpayer is liable does not have minimum essential coverage, subject to the following:

i. For the month(s) of the taxable year when a nonexempt individual does not have minimum essential coverage, and if the nonexempt individual is a dependent of the taxpayer pursuant to N.J.S.A. 54A:1-2(e), then the taxpayer is liable for the shared responsibility payment that is due because the dependent lacks minimum essential coverage, regardless of whether the taxpayer claims the individual as a dependent on a New Jersey personal income tax return for the taxable year, subject to the following:

(1) If an individual may be claimed as a dependent by more than one taxpayer in the same calendar year, then the taxpayer who properly claims the individual as a dependent for the taxable year on his or her New Jersey personal income tax return is liable for the shared responsibility payment attributable to that dependent individual.

(2) If more than one taxpayer may claim an individual as a dependent in the same calendar year, but no one claims the individual as a dependent, then the taxpayer with priority to claim the individual as a dependent pursuant to 26 U.S.C. § 152 is liable for the shared responsibility payment for that dependent individual.

ii. If a taxpayer adopts a nonexempt dependent, or accepts a nonexempt dependent who is a foster child as defined at 26 U.S.C. § 152(f)(1)(C), the taxpayer is liable only for the State shared responsibility payment for the full months in the taxable year that follow the month in which the adoption or acceptance occurred; or

iii. If a taxpayer who is otherwise liable for a nonexempt dependent pursuant to this paragraph places, or by operation of law must place, the nonexempt dependent for adoption or in a resource or foster home during the taxable year, the taxpayer's shared State shared responsibility payment for the nonexempt dependent is limited to the amount due for the full months of the taxable year during which the taxpayer has custody or financial responsibility for the nonexempt dependent.

(d) Married individuals and civil union partners who file a joint return for a taxable year are jointly liable for all shared responsibility payments for a month included in that taxable year.

(e) Interest and late filing penalties on unpaid balances of the State shared responsibility payment shall accrue in the same manner as

accrued on unpaid gross income tax under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and shall commence with the due date of the original tax return. Any unpaid State shared responsibility payment shall continue to accrue interest without regard to any extensions requested or granted.

#### 18:35-12.4 Computation of the State shared responsibility payment

(a) The State shared responsibility payment imposed on a nonexempt taxpayer for each taxable year in accordance with N.J.A.C. 18:35-12.1 is equal to the lesser of:

1. The sum of the “monthly penalty amounts,” as defined at (b) below; or

2. The sum of the “monthly State average bronze plan premiums,” as defined at (e) below, for the taxpayer’s family.

(b) “Monthly penalty amount” for any month that a nonexempt individual is not covered under minimum essential coverage is equal to 1/12 of the greater of:

1. The “flat dollar amount,” as defined at (c) below; or

2. The “excess income amount,” as defined at (d) below.

(c) “Flat dollar amount” means the lesser of:

1. The sum of the “applicable dollar amounts,” as defined at (c)2i below, for all individuals included in the taxpayer’s shared responsibility family; or

2. Three hundred percent times the applicable dollar amount for the calendar year with or within which the taxable year ends.

i. “Applicable dollar amount” is equal to \$695.00, for purposes of (c)1 above, except as provided for at (c)2ii below.

ii. If an individual has not attained the age of 18 before the first day of a month, the applicable dollar amount for that individual is equal to one-half of the applicable dollar amount for the calendar year in which the month occurs. For the purposes of this subparagraph, an individual attains the age of 18 on the 18th anniversary of the date when the individual was born. For example, an individual born on October 1, 2002, attains the age of 18 on October 1, 2020.

(d) “Excess income amount” is the amount a taxpayer’s household income exceeds a taxpayer’s filing threshold, as established at N.J.S.A. 54A:8-3.1, multiplied by two and a half percent (excess income x 2.5 percent).

(e) “Monthly State average bronze plan premium” equals 1/12 of the annual “State average premium for qualified health plans,” as defined at (e)1 below, multiplied by the number of individuals in the taxpayer’s shared responsibility family, up to a maximum of five individuals, for a month in which a State shared responsibility payment is imposed.

1. For the purposes of this subsection, “State average for qualified health plans” is determined by the New Jersey Department of Banking and Insurance as qualified health plans that:

i. Have a bronze level of coverage;

ii. Would provide coverage for the taxpayer’s shared responsibility family members who do not have minimum essential coverage for the month; and

iii. Are offered through exchanges for plan years beginning in the calendar year with or within which the taxable year ends.

#### 18:35-12.5 Exempt individuals

(a) A taxpayer shall be exempt from the minimum essential coverage requirement and shall not be subject to the penalty assessed pursuant to N.J.A.C. 18:35-12.3 for any month that includes a day on which one or more of the exceptions in this section apply.

1. A religious conscience exemption may be granted if an individual has a sincerely held religious belief. A sincerely held religious belief is one that would cause the individual to object to substantially all forms of medical treatment covered by insurance, such that health insurance would provide no meaningful benefit, and the individual is a member of a religious group or division that:

i. Is recognized by the Social Security Administration as conscientiously opposed to accepting any insurance benefits, including Social Security and Medicare and has been in existence since December 31, 1950; or

ii. Relies solely on a religious method of healing and for whom the acceptance of medical health services would be inconsistent with the religious beliefs of the individual.

2. A member of a health care sharing ministry may be granted an exemption. “Health care sharing ministry” has the same meaning set forth at 26 CFR 1.5000A-3(b), as in effect on December 31, 2017, and it is an organization:

i. That is described at 26 U.S.C. § 501(c)(3) and is exempt from tax under 26 U.S.C. § 501(a);

ii. Members of the ministry share a common set of ethical or religious beliefs and share medical expenses among themselves in accordance with those beliefs and without regard to the state in which a member resides or is employed;

iii. Members of the ministry retain membership, even after they develop a medical condition;

iv. The ministry, or a predecessor of which, has been in existence at all times since December 31, 1999;

v. Members of the ministry have shared medical expenses continuously and without interruption since at least December 31, 1999; and

vi. The ministry conducts an annual audit performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and makes the annual audit report available to the public upon request.

3. An individual who files, or is required to file, under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and was granted an exemption under (a)1 or 2 above, for a taxable year, shall not be eligible for an exemption and shall, therefore, be subject to a penalty, assessed pursuant to N.J.A.C. 18:35-12.3, if:

i. An individual claimed an exemption pursuant to (a)1 above and received medical treatment covered by health insurance during a taxable year for which a return is filed, or is required to be filed; or

ii. An individual claimed an exemption pursuant to (a)2 above and receives medical health services outside of the health care sharing ministry during a taxable year for which a return is filed, or is required to be filed.

4. Individuals who cannot afford coverage. No State shared responsibility payment shall be imposed with respect to any applicable individual for any month during the calendar year an individual lacks affordable coverage. An individual lacks affordable coverage in a month if the individual’s required contribution, as defined at N.J.S.A. 54A:11-4.c(1), for minimum essential coverage for the month exceeds the required contribution percentage of the individual’s household income, as defined at 26 CFR 1.5000A-3(e)(2), as in effect on December 15, 2017.

5. Taxable income below filing threshold. No State shared responsibility payment shall be imposed with respect to any applicable individual for any month the taxpayer’s taxable income is below the minimum taxable income threshold established at N.J.S.A. 54A:2-4 and 54A:8-3.1.

6. Nonresident taxpayer. No State shared responsibility payment shall be imposed with respect to any applicable individual for any month during which the individual is a nonresident taxpayer.

7. Incarcerated individuals. No State shared responsibility payment shall be imposed with respect to any applicable individual for any month during which the individual is incarcerated as defined at 26 U.S.C. § 5000A(d)(4), as in effect on December 31, 2017.

8. Members of Indian tribes. No State shared responsibility payment shall be imposed with respect to any applicable individual for any month during which the individual is a member of an Indian tribe as defined at 26 U.S.C. § 45A(c)(6). The term “Indian tribe” means any Indian or Alaska Native tribe, Alaska Native Claims Settlement Act (ANCSA) Corporation (regional or village), band, nation, pueblo, village, rancheria, or community that the United States Department of the Interior acknowledges to exist as an Indian tribe.

9. Individuals with certain short coverage gaps. No State shared responsibility payment shall be imposed with respect to any applicable individual for a month, the last day of which is included in a “short coverage gap” as defined at (a)9i below.

i. “Short coverage gap” means a continuous period of less than three months in which the individual is not covered under minimum essential coverage. If the individual does not have minimum essential coverage for a continuous period of three or more months, none of the months included in the continuous period are treated as included in a short coverage gap.

ii. For purposes of this paragraph, an individual is treated as having minimum essential coverage for a month in which an individual is exempt pursuant to any exclusion at (a)1 through 8 above.

iii. If a calendar year includes more than one short coverage gap, the exemption provided in this paragraph shall only apply to the earliest short coverage gap.

iv. If an individual does not have minimum essential coverage for a continuous period that begins in one taxable year and ends in the next taxable year, for purposes of applying this paragraph to the first taxable year, the months in the second taxable year included in the continuous period are disregarded. For purposes of applying this paragraph to the second taxable year, the months in the first taxable year are included in the continuous period.

v. The following examples illustrate the provisions of this paragraph.

Example 1. Ms. Smith is an unmarried individual with no dependents. She does not have minimum essential coverage for November or December of 2019. She also does not have minimum essential coverage for January of 2020. Ms. Smith has minimum essential coverage for the remainder of 2020. Ms. Smith has no other potential exemptions from minimum essential coverage. Ms. Smith may disregard January of 2020 (the second taxable year), when computing her continuous period for the first taxable year. Because Ms. Smith’s continuous period without minimum essential coverage in 2019 is less than three months (November and December of 2019), she is not required to self-assess a shared responsibility payment for November and December of 2019 when filing her 2019 personal income tax return.

Example 2. Mr. Brown is an unmarried individual with no dependents. He does not have minimum essential coverage for November or December of 2019. He also does not have minimum essential coverage for January and February of 2020. However, he does have coverage for the remainder of 2020. Mr. Brown has no other potential exemptions from minimum essential coverage. Because Mr. Brown was not covered in January 2020 (the second taxable year); November and December of 2019 are included in his continuous period. Accordingly, Mr. Brown’s continuous period without minimum essential coverage is not less than three months and he is required to self-assess a shared responsibility payment for January when filing his 2020 personal income tax return.

10. **Hardships.** No State shared responsibility payment shall be imposed with respect to any applicable individual for any month during which the individual has suffered a hardship. Circumstances that may qualify as a hardship exemption include, but are not limited to: the death of a close family member (defined as a spouse, parent, child, or sibling), homelessness, domestic violence, evictions or foreclosures, bankruptcy, lack of coverage while waiting for a successful appeal, increased expenses caring for a family member, and sustained disasters, such as fires and floods.

11. **Significant deprivation.** No State shared responsibility payment shall be imposed with respect to any applicable individual or the individual’s family if the expense of purchasing a qualified health plan would have caused the individual or the individual’s family to experience serious deprivation of food, shelter, clothing, or other necessities. Individuals whose annual household income is at or below 138 percent of the Federal Poverty Level shall be presumptively assumed to face significant deprivation if they are required to pay minimum essential coverage. The State Treasurer shall have the authority to adjust the household income threshold annually.

12. For the calendar or fiscal tax year commencing between January 1, 2019, and concluding on December 31, 2019, any taxpayer who has received a Federal exemption pursuant to 26 U.S.C. § 5000A,

as in effect on December 31, 2017, shall be exempt under this subsection.

(b) A taxpayer shall submit an application for an exemption electronically with the Division. If a taxpayer is eligible for an exemption, the electronic filing system will generate and display an exemption number, along with further instructions. The taxpayer shall enter the exemption number on the taxpayer’s New Jersey Gross Income Tax Return (Form NJ-1040) for the year in which the exemption is claimed. If the taxpayer does not qualify for an exemption, the Division will mail to the taxpayer, by certified or registered mail, a notice of finding to advise the taxpayer of the Division’s decision to deny the exemption application, with an explanation of administrative protest and judicial appeal rights, in accordance with N.J.A.C. 18:35-12.8.

#### 18:35-12.6 Administration and procedure

(a) If a taxpayer fails to pay the State shared responsibility payment imposed pursuant to N.J.A.C. 18:35-12.3:

1. The taxpayer shall not be subject to criminal prosecution for the failure; and

2. The Director will not file a notice of lien on any property of the taxpayer or levy on any property of the taxpayer for the unremitted payment.

(b) Late filing penalties and interest on unpaid State shared responsibility payment shall be payable in the same manner as under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and shall commence with the due date of the original tax return. Any unpaid interest shall continue to accrue without regard to any extensions.

(c) Nothing in this section prohibits the Director from offsetting any liability for the State shared responsibility payment against any verified gross income tax overpayment that is refundable to the taxpayer or any homestead rebate or credit the taxpayer is eligible to receive in accordance with N.J.S.A. 54A:9-8.1.

(d) Every individual who files, or is required to file, a New Jersey individual tax return as a resident or part-year resident, and either individually, separately, or jointly with a spouse/civil union partner, shall indicate on his or her tax return whether the taxpayer had minimum essential coverage or is exempt pursuant to N.J.A.C. 18:35-12.5. If the taxpayer does not confirm minimum essential coverage or exempt status on his or her return, the taxpayer and any dependent family member(s) shall be assessed the State shared responsibility payment. The State shared responsibility payment shall be assessed for each month the taxpayer did not have minimum essential coverage.

(e) If the taxpayer reports on his or her return that the taxpayer and/or any dependent family member(s) had minimum essential coverage and/or is exempt pursuant to N.J.A.C. 18:35-12.5, but the Director later determines, based on available information, that the taxpayer and/or dependent family member(s) did not have minimum essential coverage and/or was not exempt pursuant to N.J.A.C. 18:35-12.5, then the Director shall assess the State shared responsibility payment for each month the taxpayer and/or any dependent family member(s) did not have minimum essential coverage. The Director will first give notice to the taxpayer of the Director’s intent to assess the State shared responsibility payment along with the taxpayer’s opportunity to file an administrative protest with the Division or a judicial appeal in the Tax Court of New Jersey in accordance with N.J.S.A. 54:49-18, 54:51A-13 and 14, or 54A:9-10; and N.J.A.C. 18:35-12.8.

(f) If a taxpayer is subject to both the State shared responsibility payment and the Federal penalty pursuant to 26 U.S.C. § 5000A, as in effect on December 31, 2017, for a taxable year and the taxpayer has paid the Federal penalty, the taxpayer shall be allowed a credit against the State shared responsibility payment upon proof of payment of the Federal penalty in accordance with N.J.S.A. 54A:11-4.g. The amount of the credit allowed pursuant to this subsection against the State shared responsibility payment otherwise due under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits,

deductions, and adjustments allowed by law, shall not reduce the taxpayer's State shared responsibility payment liability of a taxpayer to an amount less than zero.

(g) The Director shall deposit any funds collected pursuant to this section in accordance with N.J.S.A. 54A:11-5(b).

#### 18:35-12.7 Reporting requirement for applicable entities

(a) As used in this section, "applicable entity" is defined in accordance with N.J.S.A. 54A:11-8.d and includes:

1. An employer or other sponsor of an employment-based health plan with respect to employment-based minimum essential coverage;

2. The Department of Human Services with respect to the NJ FamilyCare Program; and

3. Carriers licensed or otherwise authorized to offer health coverage with respect to coverage they provide that is not described in (a)1 or 2 above.

(b) Every applicable entity that provides minimum essential coverage to an individual during a calendar year shall submit a return to the Division that provides the name, address, and Social Security number or taxpayer identification number of the primary insured, and the name and Social Security number or taxpayer identification number of every other individual obtaining or receiving coverage under the provided policy. The information in this report is confidential pursuant to N.J.S.A. 54:50-8 and shall not constitute a public record for purposes of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. Every applicable entity shall also submit a copy of the return to the primary insured.

(c) Every applicable entity shall provide the months during which the primary insured and every other individual obtaining or receiving coverage under the provided policy was covered under minimum essential coverage during the calendar year.

(d) The return required at (b) above is satisfied with Form 1095-A (Health Insurance Marketplace Statement); Form 1094-B (Transmittal of Health Coverage Information Returns); Form 1095-B (Health Coverage); Form 1094-C (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns); or Form 1095-C (Employer-Provided Health Insurance Offer and Coverage).

(e) Applicable entities who are already required to use Forms 1094 or 1095 designations to report health coverage information Federally, may satisfy the return requirements at (b) above by electronically filing, with the Division of Taxation, on or before March 31, following the close of each prior calendar year, the same 1094 and 1095 healthcare coverage information they provided to the Internal Revenue Service. Upon notice from the Director, the taxpayer may be required to electronically submit additional supporting documents, including Form 1094 designations.

(f) An applicable entity that fails to submit a report in violation of the requirements of (b) above shall be assessed a penalty of \$50.00 per

individual to which the failure relates, not to exceed \$50,000 per year, per violator. The penalty shall be assessed as a tax and subject to the administrative protest and judicial appeal provisions at N.J.S.A. 54:49-18, 54:51A-13 and 14, and 54A:9-10; and N.J.A.C. 18:35-12.8.

#### 18:35-12.8 Protest and appeals

(a) The State shared responsibility payment is assessed and collected in the same manner as the tax imposed under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. The administrative protest and judicial appeal procedures that apply in regard to assessments imposed under the New Jersey Gross Income Tax Act apply where a taxpayer wishes to timely protest or appeal any notice of finding that determines the taxpayer is liable for a State shared responsibility payment.

(b) If any taxpayer contests a finding by the Director regarding the State shared responsibility payment, the taxpayer or the taxpayer's duly authorized agent may either:

1. Submit a written protest and request for an informal hearing with the Conference and Appeals Branch in the Division of Taxation within 90 days from the date of receipt of the notice of finding. The written protest must satisfy the requirements at N.J.A.C. 18:32-1.2; or

2. File a complaint with the Tax Court of New Jersey. The Tax Court must receive the complaint, along with the required fee, within 180 days from the date of the notice of finding in accordance with the provisions of N.J.S.A. 54A:9-10 and 54:51A-13 and 14.

(c) The taxpayer's protest filed pursuant to (b)1 above must be mailed to:

Chief  
Conference and Appeals Branch  
NJ Division of Taxation  
PO Box 198  
Trenton, NJ 08695-0198

(d) The taxpayer's complaint, to be filed with the Tax Court pursuant to N.J.S.A. 54:51A-13 and 14, and (b)2 above, must be mailed to:

Tax Court of New Jersey  
Tax Court Management Office  
PO Box 972  
Trenton, NJ 08625-0972

Tax Court complaints may be hand delivered to:  
Tax Court Management Office  
Richard J. Hughes Justice Complex  
25 Market Street, 7th Floor - North Wing  
Trenton, NJ 08625

(e) Interest continues to accrue on all outstanding liabilities until paid in full, even if the taxpayer submits additional information or a protest with the Division, or files a complaint with the Tax Court.