

**SENATE, No. 2876**

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**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

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INTRODUCED JUNE 20, 2022

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Co-Sponsored by:**

**Senator Diegnan**

**SYNOPSIS**

Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/31/2022)**

1 AN ACT concerning new federal partnership tax audit regime,  
2 ending COVID-related tax extensions, eliminating requirement  
3 to affirmatively elect New Jersey S Corporation status, and  
4 administering these changes under the gross income tax and the  
5 corporation business tax, supplementing Title 54A of the New  
6 Jersey Statutes and P.L.145, c.162, and amending various parts  
7 of the statutory law.

8  
9 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
10 *of New Jersey:*

11  
12 1. N.J.S.54A:2-2 is amended to read as follows:

13 54A:2-2. a. A partnership as such shall not be subject to the  
14 New Jersey Gross Income Tax. Individuals carrying on business as  
15 partners shall be liable for the New Jersey Gross Income Tax only  
16 in their separate or individual capacities, except as provided under  
17 section b. of this section.

18 b. A partnership shall report any federal partnership audit  
19 adjustments made by the Internal Revenue Service pursuant section  
20 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s.6225(a)(1)) to  
21 the Division of Taxation in the Department of the Treasury in  
22 accordance with section 2 and subsection d. of section 9 of  
23 P.L. ,c. (C. ) (pending before the Legislature as this bill). The  
24 partners of the reviewed year shall make payment of any New  
25 Jersey Gross Income Tax liability that results from the federal  
26 partnership audit adjustments reported on the Federal Adjustments  
27 Report, unless the partnership makes the election to pay tax on the  
28 partner's behalf.

29 Failure of the partnership, partner, tiered partner, indirect  
30 partner, or member to report or pay federal adjustments pursuant to  
31 section 6225(a) and section 6225(c) of the Internal Revenue Code  
32 shall not prevent the director from assessing the partnership,  
33 partner, tiered partner, indirect partner, or member for taxes they  
34 owe, using the best information available, in the event that the  
35 partnership, partner, tiered partner, indirect partner, or member fails  
36 to timely make any report or payment required by this section for  
37 any reason.

38 c. The director may adopt rules and regulations that the  
39 director deems necessary to effectuate the provisions of this section.

40 (cf: N.J.S.54A:2-2)

41  
42 2. (New section) a. A taxpayer, as defined in N.J.S. 54A:1-2 or  
43 subsection h. of section 4 of P.L.1945, c.162 (C.54:10A-4), whose  
44 tax return filed with the Internal Revenue Service, or whose net  
45 income reported, is changed or corrected by any official of the

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 United States government in any respect affecting a tax imposed by  
2 chapter 2 of Title 54A of the New Jersey Statutes, including a  
3 return or other similar report filed pursuant to section 6225(c)(2) of  
4 the Internal Revenue Code (26 U.S.C. s.6225(c)(2)), shall within 90  
5 days after the final federal adjustment and determination of the  
6 change or correction, submit to the director the Federal Adjustments  
7 Report.

8 b. Except for the distributive share of adjustments that have  
9 been reported as required under subsection a. of this section,  
10 partnerships and partners of the reviewed year shall, within 90 days  
11 after the final determination date of the final federal adjustments  
12 arising from a federal partnership level audit or an administrative  
13 adjustment request, file the Federal Adjustments Report and make  
14 payments as required under subsection b. of N.J.S.54A:5-4.

15 c. Upon the filing of a Federal Adjustments Report, the director  
16 shall examine a taxpayer's return, determine any additional tax or  
17 refund that may be due, and shall notify the taxpayer. Any  
18 additional tax shall be paid within 15 days after the Federal  
19 Adjustments Report is filed together with interest from the original  
20 due date of the return for the taxable year to the date of payment of  
21 the additional tax.

22  
23 3. N.J.S.54A:5-4 is amended to read as follows:

24 54A:5-4. **[A]** a. Except as provided in subsections b. and c. of  
25 this section, a partnership or association as such shall not be subject  
26 to the tax imposed by this act, but the income or gain of a partner or  
27 member of a partnership or association shall be subject to the tax  
28 and the tax shall be imposed on [his] the partner's or member's  
29 share, whether or not distributed, of the income or gain received by  
30 the partnership or association for its taxable year ending within or  
31 with the partner's or member's taxable year.

32 b. A partnership shall report and make payment of any New  
33 Jersey gross income tax liability that results from the federal  
34 partnership audit adjustments in accordance with section 2 of  
35 P.L. , c. (C. ) (pending before the Legislature as this bill)  
36 and subsection d. of section 9 of P.L. ,c. (C. ) (pending  
37 before the Legislature as this bill).

38 c. Failure of the partnership, partner, indirect partner, tiered  
39 partner, or member to report or pay federal adjustments that result  
40 from the federal partnership audit adjustments shall not prevent the  
41 director from assessing a partnership, partner, indirect partner,  
42 tiered partner, or member for taxes they owe, using the best  
43 information available, if the partnership, partner, indirect partner,  
44 tiered partner, or member fails to timely make any report or  
45 payment required by this section for any reason.

46 (cf: N.J.S.54A:5-4)

47  
48 4. N.J.S.54A:8-7 is amended to read as follows:

1       54A:8-7. a. Report of change in federal taxable income or  
2 credit. If the amount of a taxpayer's federal taxable income or  
3 earned income tax credit reported on the taxpayer's federal income  
4 tax return for any taxable year is changed or corrected by the United  
5 States Internal Revenue Service or other competent authority, or as  
6 the result of a renegotiation of a contract or subcontract with the  
7 United States, the taxpayer shall report such change or correction  
8 in federal taxable income or earned income tax credit within 90  
9 days after the final determination of such change, correction, or  
10 renegotiation, or as otherwise required by the director, and shall  
11 concede the accuracy of such determination or state wherein it is  
12 erroneous. Any taxpayer filing an amended federal income tax  
13 return, including a return or other information filed pursuant to  
14 section 6225(c) of the Internal Revenue Code (26 U.S.C. s.  
15 6225(c)), shall also file within 90 days thereafter an amended return  
16 under this act, and shall give such information as the director may  
17 require. The director may by regulation prescribe such exceptions  
18 to the requirements of this section as the director deems  
19 appropriate.

20       b. A partnership shall report the Final Federal Adjustments  
21 from a federal partnership audit or administrative adjustment  
22 request pursuant to section 6225(a)(1) of the Internal Revenue Code  
23 (26 U.S.C. s.6225(a)(1)) by filing the Federal Adjustments Report  
24 as prescribed by the director within 90 days after the Final  
25 Determination Date of the federal adjustments arising from a  
26 partnership level audit.

27       c. The director may assess the federally audited partnership,  
28 partners, or both, for taxes they owe, using the best information  
29 available, even if the partnership or tiered partner fails to timely  
30 make any report required by this section for any reason.

31       d. The director shall adopt rules and regulations the director  
32 may deem necessary to effectuate the provisions of this section.  
33 (cf: P.L.2000, c.80, s.6)

34  
35       5. N.J.S.54A:9-4 is amended to read as follows:

36       54A:9-4. (a) General. Except as otherwise provided in this  
37 section, any tax under this act shall be assessed within 3 years after  
38 the return was filed (whether or not such return was filed on or after  
39 the date prescribed).

40       (b) Time return deemed filed.

41       (1) Early return. for purposes of this section a return of income  
42 tax, except withholding tax, filed before the last day prescribed by  
43 law or by regulations promulgated pursuant to law for the filing  
44 thereof, shall be deemed to be filed on such last day.

45       (2) Return of withholding tax. For purposes of this section, if a  
46 return of withholding tax for any period ending with or within a  
47 calendar year is filed before April 15 of the succeeding calendar

1 year, such return shall be deemed to be filed on April 15 of such  
2 succeeding calendar year.

3 (c) Exceptions.

4 (1) Assessment at any time. The tax may be assessed at any time  
5 if--

6 (A) No return is filed,

7 (B) A false or fraudulent return is filed with intent to evade tax,  
8 or

9 (C) The taxpayer fails to comply with **【section】** N.J.S.54A:8-7,  
10 in not reporting a change or correction increasing **【his】** the  
11 taxpayer's Federal taxable income as reported on his Federal  
12 income tax return, or in not reporting a change or correction which  
13 is treated in the same manner as if it were a deficiency for Federal  
14 income tax purposes, **【or】** in not filing an amended return, or, for  
15 both partners and partnerships, in not reporting final federal  
16 adjustments resulting from a partnership audit pursuant to section  
17 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s. 6225(a)(1)).

18 (2) Extension by agreement. Where, before the expiration of the  
19 time prescribed in this section for the assessment of tax, both the  
20 director and the taxpayer have consented in writing to its  
21 assessment after such time, the tax may be assessed at any time  
22 prior to the expiration of the period agreed upon. The period so  
23 agreed upon may be extended by subsequent agreements in writing  
24 made before the expiration of the period previously agreed upon.

25 (3) Report of changed or corrected Federal income. If the  
26 taxpayer shall, pursuant to **【section 54A:8-7】** subsection a. of  
27 N.J.S.54A:8-7, report a change or correction or file an amended  
28 return increasing **【his】** the taxpayer's Federal taxable income or  
29 report a change or correction which is treated in the same manner as  
30 if it were a deficiency for Federal income tax purposes, the  
31 assessment (if not deemed to have been made upon the filing of the  
32 report or amended return) may be made at any time within 2 years  
33 after such report or amended return was filed. The amount of such  
34 assessment of tax shall not exceed the amount of the increase in  
35 New Jersey tax attributable to such Federal change or correction.  
36 The provisions of this paragraph shall not affect the time within  
37 which or the amount for which an assessment may otherwise be  
38 made.

39 (4) Recovery of erroneous refund. An erroneous refund shall be  
40 considered an underpayment of tax on the date made, and an  
41 assessment of a deficiency arising out of an erroneous refund may  
42 be made at any time within 3 years from the making of the refund,  
43 except that the assessment may be made within 5 years from the  
44 making of the refund if it appears that any part of the refund was  
45 induced by fraud or misrepresentation of a material fact.

46 (5) Request for prompt assessment. If a return is required for a  
47 decedent or for **【his】** the decedent's estate during the period of  
48 administration, the tax shall be assessed within 18 months after

1 written request therefor (made after the return is filed) by the  
2 executor, administrator or other person representing the estate of  
3 such decedent, but not more than 3 years after the return was filed,  
4 except as otherwise provided in this subsection and subsection (d).

5 (6) Final federal adjustments resulting from a Federal  
6 Partnership Audit. Tax may be assessed against the partnership,  
7 direct or indirect partners, or both, within two years of the time that  
8 a partnership files a Federal Adjustments Report as required by  
9 N.J.S.54A:8-7 that includes Final Federal Adjustments from a  
10 federal partnership audit or administrative adjustments request that  
11 would result in additional New Jersey income tax for one or more  
12 direct or indirect partners.

13 (d) Omission of income on return. The tax may be assessed at  
14 any time within 6 years after the return was filed if--

15 (1) An individual omits from his New Jersey income an amount  
16 properly includible therein which is in excess of 25% of the amount  
17 of New Jersey income stated in the return; or

18 (2) An estate or trust omits income from its return in an amount  
19 in excess of 25% of its income determined as if it were an  
20 individual, computing his New Jersey income under this act.

21 For purposes of this subsection there shall not be taken into  
22 account any amount which is omitted in the return if such amount is  
23 disclosed in the return, or in a statement attached to the return, in a  
24 manner adequate to apprise the director of the nature and amount of  
25 such item.

26 (e) Suspension of running of period of limitation. The running  
27 of the period of limitations on assessment or collection of tax or  
28 other amount (or of a transferee's liability) shall, after the mailing of  
29 a notice of deficiency, be suspended for the period during which the  
30 director is prohibited under subsection (c) of section N.J.S.54A:9-2  
31 from making the assessment or from collecting by levy.

32 (cf: N.J.S.54A:9-4)

33  
34 6. N.J.S.54A:9-8 is amended to read as follows:

35 54A:9-8. (a) General. Claim for credit or refund of an  
36 overpayment of income tax shall be filed by the taxpayer within 3  
37 years from the time the return was filed or 2 years from the time the  
38 tax was paid, whichever of such periods expires the later, or if no  
39 return was filed, within 2 years from the time the tax was paid. If  
40 the claim is filed within the 3-year period, the amount of the credit  
41 or refund shall not exceed the portion of the tax paid within the 3  
42 years immediately preceding the filing of the claim plus the period  
43 of any extension of time for filing the return. If the claim is not  
44 filed within the 3-year period, but is filed within the 2-year period,  
45 the amount of the credit or refund shall not exceed the portion of  
46 the tax paid during the 2 years immediately preceding the filing of  
47 the claim. Except as otherwise provided in this section, if no claim  
48 is filed, the amount of a credit or refund shall not exceed the

1 amount which would be allowable if a claim had been filed on the  
2 date the credit or refund is allowed.

3 (b) Extension of time by agreement. If an agreement under the  
4 provisions of paragraph (2) of subsection (c) of **[section]**  
5 N.J.S.54A:9-4 (extending the period for assessment of income tax)  
6 is made within the period prescribed in subsection (a) for the filing  
7 of a claim for credit or refund, the period for filing a claim for  
8 credit or refund, or for making credit or refund if no claim is filed,  
9 shall not expire prior to 6 months after the expiration of the period  
10 within which an assessment may be made pursuant to the agreement  
11 or any extension thereof. The amount of such credit or refund shall  
12 not exceed the portion of the tax paid after the execution of the  
13 agreement and before the filing of the claim or the making of the  
14 credit or refund, as the case may be, plus the portion of the tax paid  
15 within the period which would be applicable under subsection (a) if  
16 a claim had been filed on the date the agreement was executed.

17 (c) Notice of change or correction of Federal income. If a  
18 taxpayer is required by **[section]** N.J.S.54A:8-7 to report a change  
19 or correction in Federal taxable income reported on **[his]** the  
20 taxpayer's Federal income tax return, or to report a change or  
21 correction which is treated in the same manner as if it were an  
22 overpayment for Federal income tax purposes, or to file an amended  
23 return with the director, claim for credit or refund of any resulting  
24 overpayment of tax shall be filed by the taxpayer within 2 years  
25 from the time the notice of such change or correction or such  
26 amended return was required to be filed with the director. The  
27 amount of such credit or refund shall not exceed the amount of the  
28 reduction in tax attributable to such Federal change, correction or  
29 items amended on the taxpayer's amended Federal income tax  
30 return. This subsection shall not affect the time within which or the  
31 amount for which a claim for credit or refund may be filed apart  
32 from this subsection.

33 (d) Failure to file claim within prescribed period. No credit or  
34 refund shall be allowed or made, except as provided in subsection  
35 (e) of this section or subsection (d) of **[section]** N.J.S.54A:9-10,  
36 after the expiration of the applicable period of limitation specified  
37 in this act, unless a claim for credit or refund is filed by the  
38 taxpayer within such period. Any later credit shall be void and any  
39 later refund erroneous. No period of limitations specified in any  
40 other law shall apply to the recovery by a taxpayer of moneys paid  
41 in respect of taxes under this act.

42 (e) Effect of petition to director. If a notice of deficiency for a  
43 taxable year has been mailed to the taxpayer under **[section]**  
44 N.J.S.54A:9-2 and if the taxpayer files a timely petition with the  
45 director under **[section]** N.J.S.54A:9-9, **[he]** the director may  
46 determine that the taxpayer has made an overpayment for such year  
47 (whether or not **[he]** the director also determines a deficiency for  
48 such year). No separate claim for credit or refund for such year

1 shall be filed, and no credit or refund for such year shall be allowed  
2 or made, except--

3 (1) As to overpayments determined by a decision of the director  
4 which has become final; and

5 (2) As to any amount collected in excess of an amount computed  
6 in accordance with the decision of the director which has become  
7 final; and

8 (3) As to any amount claimed as a result of a change or  
9 correction described in subsection (c).

10 (f) Limit on amount of credit or refund. The amount of  
11 overpayment determined under subsection (e) shall, when the  
12 decision of the director has become final, be credited or refunded in  
13 accordance with subsection (a) of section N.J.S. 54A:6-6 and shall  
14 not exceed the amount of tax which the director determines as part  
15 of ~~the~~ the director's decision was paid--

16 (1) After the mailing of the notice of deficiency; or

17 (2) Within the period which would be applicable under  
18 subsections (a), (b) or (c), if on the date of the mailing of the notice  
19 of a deficiency a claim had been filed (whether or not filed) stating  
20 the grounds upon which the director finds that there is an  
21 overpayment.

22 (g) Early return. For purposes of this section, any return filed  
23 before the last day prescribed for the filing thereof shall be  
24 considered as filed on such last day, determined without regard to  
25 any extension of time granted the taxpayer.

26 (h) Prepaid income tax. For purposes of this section, any tax paid  
27 by the taxpayer before the last day prescribed for its payment, any  
28 income tax withheld from the taxpayer during any calendar year,  
29 and any amount paid by the taxpayer as estimated income tax for a  
30 taxable year shall be deemed to have been paid by ~~him~~ the  
31 taxpayer on the fifteenth day of the fourth month following the  
32 close of ~~his~~ the taxpayer's taxable year with respect to which  
33 such amount constitutes a credit or payment.

34 (i) Return and payment of withholding tax. Notwithstanding  
35 subsection (h), for purposes of this section with respect to any  
36 withholding tax--

37 (1) If a return for any period ending with or within a calendar  
38 year is filed before April 15 of the succeeding calendar year, such  
39 return shall be considered filed on April 15 of such succeeding  
40 calendar year; and

41 (2) If a tax with respect to remuneration paid during any period  
42 ending with or within a calendar year is paid before April 15 of the  
43 succeeding calendar year, such tax shall be considered paid on April  
44 15 of such succeeding calendar year.

45 (j) Final federal adjustments resulting from a partnership audit or  
46 administrative adjustments request. If a partnership files a Federal  
47 Adjustments Report with final federal adjustments resulting from a  
48 partnership audit or administrative adjustments request that do not



1 result in a federal imputed underpayment, and which are not taken  
2 into account by the partnership in the federal adjustment year  
3 partnership return, then the partners may claim a credit or refund of  
4 the related State tax by filing an amended return or other schedule  
5 as required by the director. The amount of such credit or refund  
6 shall not exceed the amount of the reduction in New Jersey tax  
7 attributable to such final federal adjustments. This subsection shall  
8 not affect the time within in which or the amount for which a claim  
9 for credit or refund may be filed apart from this subsection.

10 (cf: N.J.S.54A:9-8)

11  
12 7. (New section) As used in sections 7 through 13 of  
13 P.L. , c. (C. ) (pending before the Legislature as this bill):

14 “Administrative adjustment request” means an administrative  
15 adjustment request filed by a partnership under section 6227 of the  
16 federal Internal Revenue Code (26 U.S.C. s.6227).

17 “Allocation Factor” means the allocation factor as required on  
18 the New Jersey Gross Income Tax Business Allocation Schedule  
19 NJ-NR-A.

20 “Audited partnership” means a partnership subject to a  
21 partnership level audit resulting in a federal adjustment.

22 “Corporate partner” means a partner that is a corporation subject  
23 to tax pursuant to section 2 of P.L. 1945, c. 162 (C.54:10A-2) or is  
24 subject to the requirements of section 12 of P.L.2002, c.40  
25 (C.54:10A-15.11).

26 “Direct partner” means a partner that holds an interest directly in  
27 a partnership or pass-through entity.

28 “Exempt partner” means a partner that is exempt from taxation  
29 under section 3 of P.L.1945, c.162 (C.54:10A-3).

30 “Federal adjustment” means a change to an item or amount  
31 determined under the federal Internal Revenue Code that is used by  
32 a taxpayer to compute tax owed under the “New Jersey Gross  
33 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business  
34 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), whether that  
35 change results from action by the Internal Revenue Service,  
36 including a partnership level audit, or the filing of an amended  
37 federal return, federal refund claim, or an administrative adjustment  
38 request by the taxpayer. A federal adjustment is positive to the  
39 extent that it increases State taxable income as determined under  
40 N.J.S.54A:5-1 or subsection (k) of section 4 of P.L.1945, c.162  
41 (C.54:10A-4) and is negative to the extent that it decreases State  
42 taxable income as determined under N.J.S.54A:5-1 or subsection  
43 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

44 “Federal Adjustments Report” includes methods or forms  
45 required by N.J.S.54A:8-7 or section 13 of P.L.1945, c.162  
46 (C.54:10A-13) for use by a taxpayer to report final federal  
47 adjustments, including an amended New Jersey tax return,  
48 information return, or a uniform multistate report.

1 “Federal partnership representative” means the person the  
2 partnership designates for the taxable year as the partnership’s  
3 representative, or the person the Internal Revenue Service has  
4 appointed to act as the federal partnership representative, pursuant  
5 to section 6223(a) of the federal Internal Revenue Code (26 U.S.C.  
6 s.6223(a)).

7 “Final determination date” means the following:

8 a. Except as provided in b. and c. below, if the federal  
9 adjustment arises from an Internal Revenue Service audit or other  
10 action by the Internal Revenue Service, the final determination date  
11 is the first day on which no federal adjustments arising from that  
12 audit or other action remain to be finally determined, whether by  
13 Internal Revenue Service decision with respect to which all rights  
14 of appeal have been waived or exhausted, by agreement, or, if  
15 appealed or contested, by a final decision with respect to which all  
16 rights of appeal have been waived or exhausted. For agreements  
17 required to be signed by the Internal Revenue Service and the  
18 taxpayer, the final determination date is the date on which the last  
19 party signed the agreement.

20 b. For federal adjustments arising from an Internal Revenue  
21 Service audit or other action by the Internal Revenue Service, if the  
22 taxpayer filed as a member of a composite return Form NJ-1080(c)  
23 or as a member of a combined group filing a combined return for  
24 corporation business tax purposes, the final determination date  
25 means the first day on which no related federal adjustments arising  
26 from that audit remain to be finally determined, as described in a.  
27 above for the entire group.

28 c. If the federal adjustment results from filing an amended  
29 federal return, a federal refund claim, or an administrative  
30 adjustment request, or if it is a federal adjustment reported on an  
31 amended federal return or other similar report filed pursuant to  
32 6225(c) of the federal Internal Revenue Code (26 U.S.C. s.6225(c)),  
33 the final determination date means the day on which the amended  
34 return, refund claim, administrative adjustment request, or other  
35 similar report was filed.

36 “Final federal adjustment” means a federal adjustment after the  
37 final determination date for that federal adjustment has passed.

38 “Indirect partner” means a partner in a partnership or pass-  
39 through entity that itself holds an interest directly, or through  
40 another indirect partner, in a partnership, or pass-through entity.

41 “Nonresident partner” means an individual, trust, or estate  
42 partner that is not a resident partner.

43 “Partner” means a person that holds an interest directly or  
44 indirectly in a partnership or other pass-through entity.

45 “Partnership” means an entity subject to taxation under  
46 subchapter K of the federal Internal Revenue Code or is otherwise  
47 taxed as a partnership for federal income tax purposes.

1 “Partnership level audit” means an examination by the Internal  
2 Revenue Service at the partnership level pursuant to Subchapter C  
3 of Title 26, Subtitle F, Chapter 63 of the federal Internal Revenue  
4 Code, as enacted by the Bipartisan Budget Act of 2015, Pub.L.114-  
5 74, which results in federal adjustments.

6 “Pass-through entity” means an entity not taxed as a C  
7 corporation.

8 “Reallocation adjustment” means a federal adjustment resulting  
9 from a partnership level audit or an administrative adjustment  
10 request that changes the shares of one or more items of partnership  
11 income, gain, loss, expense, or credit allocated to direct partners. A  
12 positive reallocation adjustment means the portion of a reallocation  
13 adjustment that would increase federal income for one or more  
14 direct partners, and a negative reallocation adjustment means the  
15 portion of a reallocation adjustment that would decrease federal  
16 income for one or more direct partners pursuant to regulations  
17 promulgated under section 6225 of the federal Internal Revenue  
18 Code (26 U.S.C. s.6225)

19 “Resident partner” means an individual, trust, or estate partner  
20 that is a resident of New Jersey under subsections (m) and (o) of  
21 N.J.S.54A:1-2 for the relevant tax period.

22 “Reviewed year” means the taxable year of a partnership that is  
23 subject to a partnership level audit from which federal adjustments  
24 arise.

25 “Taxpayer” means the same as defined under subsection (l) of  
26 N.J.S.54A:1-2 or subsection (h) of section 4 of P.L.1945,  
27 c.162(C.54:10A-4) and, unless the context clearly indicates  
28 otherwise, includes a partnership subject to a partnership level audit  
29 or a partnership that has made an administrative adjustment request,  
30 as well as a tiered partner of that partnership.

31 “Tiered partner” means any partner that is a partnership or pass-  
32 through entity.

33 To the extent terms used in this section are not defined in this  
34 section or elsewhere in chapter 9 of Title 54A of the New Jersey  
35 Statutes, the definition of such terms shall conform as closely as  
36 possible to the terminology used in the amendments to the federal  
37 Internal Revenue Code pertaining to the comprehensive partnership  
38 audit regime as contained in the Bipartisan Budget Act of 2015,  
39 Pub. L.114-74, as amended, and this section shall be so interpreted.  
40

41 8. (New section) Reporting Adjustments to Federal Taxable  
42 Income – General Rule. Except in the case of final federal  
43 adjustments that are required to be reported by a partnership and its  
44 partners using the procedures in section 9 of P.L. , c. (C. )  
45 (pending before the Legislature as this bill), and final federal  
46 adjustments required to be reported for federal purposes in the  
47 partnership return for the adjustment year, a taxpayer shall report  
48 and pay any New Jersey Gross Income Tax or New Jersey

1 Corporation Business Tax due with respect to final federal  
2 adjustments arising from an audit or other action by the Internal  
3 Revenue Service or reported by the taxpayer on a timely filed  
4 amended federal income tax return, including a return or other  
5 similar report filed pursuant to section 6225(c)(2) of the federal  
6 Internal Revenue Code (26 U.S.C. s.6225(c)(2)), or federal claim  
7 for refund by filing a federal adjustments report with the Division  
8 of Taxation for the reviewed year and, if applicable, paying the  
9 additional New Jersey Gross Income Tax or New Jersey  
10 Corporation Business Tax owed by the taxpayer no later than 90  
11 days after the final determination date.

12

13 9. (New section) Reporting Federal Adjustments – Partnership  
14 Level Audit and Administrative Adjustment Request

15 a. Except for adjustments required to be reported for federal  
16 purposes in the partnership return for the adjustment year, and the  
17 distributive share of adjustments that have been reported as required  
18 under section 8 of P.L. , c. (C. ) (pending before the  
19 Legislature as this bill), partnerships, and partners shall report final  
20 federal adjustments arising from a partnership level audit or an  
21 administrative adjustment request and make payments as required  
22 under this section.

23 b. State Partnership Representative.

24 (1) With respect to an action required or permitted to be taken by  
25 a partnership under this section and a proceeding under R.S.54:49-  
26 18 with respect to that action, the State partnership representative  
27 for the reviewed year shall have the sole authority to act on behalf  
28 of the partnership, and the partnership's direct partners and indirect  
29 partners shall be bound by those actions.

30 (2) The State partnership representative for the reviewed year is  
31 the partnership's federal partnership representative unless the  
32 partnership designates in writing another person as its State  
33 partnership representative.

34 (3) The division may establish reasonable qualifications for and  
35 procedures for designating a person, other than the federal  
36 partnership representative, to be the State partnership  
37 representative.

38 c. Reporting and Payment Requirements for Partnerships  
39 Subject to a Final Federal Adjustment and their Direct Partners.  
40 Final federal adjustments subject to the requirements of this section,  
41 except for those subject to a properly made election under  
42 subsection d. of this section shall be reported as follows:

43 (1) No later than 90 days after the final determination date, the  
44 partnership shall:

45 (a) file a completed federal adjustments report, including  
46 information as required by the director, with the division;

1 (b) notify each of its direct partners of their distributive share of  
2 the final federal adjustments including information as required by  
3 the director;

4 (c) file an amended New Jersey Form 1065 as required under  
5 N.J.S.54A:8-7 and pay the amount required under section 2  
6 of P.L. , c. (C. ) (pending before the Legislature as this  
7 bill); and

8 (d) file an amended composite return for direct partners and pay  
9 the additional amount under subsection c. of section 2 of  
10 P.L. , c. (C. ) (pending before the Legislature as this bill) that  
11 would have been due had the final federal adjustments been  
12 reported properly as required.

13 (2) No later than 90 days after the final determination date, each  
14 direct partner that is taxed under the “New Jersey Gross Income  
15 Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business Tax Act  
16 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), shall:

17 (a) file a Federal Adjustments Report reporting their distributive  
18 share of the adjustments reported to them under subparagraph (b) of  
19 paragraph (1) of subsection c. of this section as required under this  
20 section or N.J.S.54A:8-7; and

21 (b) Pay any additional amount of tax due as if final federal  
22 adjustments had been properly reported, plus any penalty and  
23 interest due under N.J.S.54A:9-5, N.J.S.54A:9-6, R.S.54:49-3, or  
24 R.S.54:49-4.

25 d. Election – Partnership Pays. Subject to the limitations in  
26 paragraph (3) of this subsection, an audited partnership making an  
27 election under this section shall:

28 (1) no later than 90 days after the final determination date, file a  
29 completed Federal Adjustments Report, including information as  
30 required by the director, and notify the division that it is making the  
31 election under this section;

32 (2) no later than 180 days after the final determination date, pay  
33 an amount, determined as follows, in lieu of taxes owed by its direct  
34 and indirect partners:

35 (a) exclude from final federal adjustments the distributive share  
36 of these adjustments reported to a direct exempt partner not subject  
37 to tax under section 3 of P.L.1945, c.162 (C.54:10A-3).

38 (b) for the total distributive shares of the remaining final federal  
39 adjustments reported to direct corporate partners subject to tax  
40 under section 2 of P.L.1945, c.162 (C.54:10A-2), apportion and  
41 allocate such adjustments as provided under sections 6 through 10  
42 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), section 19  
43 of P.L. 2018, c. 48 (C.54:10A-4.7) and subsection a of sections 3  
44 through 4 of P.L. 2001, c. 136 (C.54:10A-15.6. through C.54:10A-  
45 15.7) and multiply the resulting amount by the highest tax rate  
46 under section 5 of P.L.1945, c.162 (C.54:10A-5);

47 (c) for the total distributive shares of the remaining final federal  
48 adjustments reported to nonresident direct partners subject to tax

1 under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et  
2 seq., determine the amount of such adjustments which is New  
3 Jersey source income under paragraph (3) of subsection (a) of  
4 N.J.S.54A:5-8 and multiply the resulting amount by the highest tax  
5 rate under N.J.S.54A:2-1;

6 (d) For the total distributive shares of the remaining final federal  
7 adjustments reported to tiered partners:

8 (i) determine the amount of such adjustments which is of a type  
9 that it would be subject to sourcing to New Jersey under paragraph  
10 (3) of subsection (a) of N.J.S.54A:5-8 and then determine the  
11 portion of this amount that would be sourced to the state applying  
12 these rules;

13 (ii) determine the amount of such adjustments which is of a type  
14 that it would not be subject to sourcing to New Jersey by a  
15 nonresident partner under subsection (c) of N.J.S.54A:5-8;

16 (iii) determine the portion of the amount determined in  
17 subsubparagraph (ii) of this subparagraph that can be established,  
18 under regulation issued by the division, to be properly allocable to  
19 nonresident indirect partners or other partners not subject to tax on  
20 the adjustments; or that can be excluded under procedures for  
21 modified reporting and payment method allowed under  
22 subparagraph (f) of this paragraph;

23 (e) multiply the total of the amounts determined in  
24 subsubparagraphs (i) and (ii) of this subparagraph reduced by the  
25 amount determined in subsubparagraph (iii) of this subparagraph by  
26 the highest tax rate under N.J.S.54A:2-1;

27 (f) for the total distributive shares of the remaining final federal  
28 adjustments reported to resident direct partners subject to tax under  
29 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,  
30 multiply that amount by the highest tax rate under N.J.S.54A:2-1;

31 (g) add the amounts determined in subparagraphs (b), (c), (e),  
32 and (f) of this paragraph, along with penalty and interest as  
33 provided in N.J.S.54A:9-5, N.J.S.54A:9-6, R.S.54:49-3, or  
34 R.S.54:49-4.

35 (3) Final federal adjustments subject to this election exclude:

36 (a) the distributive share of final audit adjustments that are  
37 required to be included in the unitary business income of any direct  
38 or indirect corporate partner, provided that the audited partnership  
39 can reasonably determine this; and

40 (b) any final federal adjustments resulting from an administrative  
41 adjustment request.

42 (4) An audited partnership not otherwise subject to any reporting  
43 or payment obligation to New Jersey that makes an election under  
44 this subsection consents to be subject to New Jersey laws related to  
45 reporting, assessment, payment, and collection of New Jersey tax  
46 calculated under the election.

47 e. Tiered Partners. The direct and indirect partners of an audited  
48 partnership that are tiered partners, and all of the partners of those

1 tiered partners that are subject to tax under the “New Jersey Gross  
2 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business  
3 Tax Act (1945), P.L.1945,c.162 (C. 54:10A-1 et seq.), are subject to  
4 the reporting and payment requirements of subsection c. of this  
5 section and the tiered partners are entitled to make the elections  
6 provided in subsections d. and f. of this section. The tiered partners  
7 or their partners shall make required reports and payments no later  
8 than 90 days after the time for filing and furnishing statements to  
9 tiered partners and their partners as established under section 6226  
10 of the federal Internal Revenue Code (26 U.S.C. s.6226) and the  
11 regulations thereunder. The division may adopt regulations to  
12 establish procedures and interim time periods for the reports and  
13 payments required by tiered partners and their partners and for  
14 making the elections under this section.

15 f. Modified Reporting and Payment Method. Under procedures  
16 adopted by and subject to the approval of the division, an audited  
17 partnership or tiered partner may enter into an agreement with the  
18 division to utilize an alternative reporting and payment method,  
19 including applicable time requirements or any other provision of  
20 this section, if the audited partnership or tiered partner demonstrates  
21 that the requested method will reasonably provide for the reporting  
22 and payment of taxes, penalties, and interest due under the  
23 provisions of this section. Application for approval of an alternative  
24 reporting and payment method must be made by the audited  
25 partnership or tiered partner within the time for election as provided  
26 in subsection d. or e. of this section, as appropriate.

27 g. Effect of Election by Audited Partnership or Tiered Partner  
28 and Payment of Amount Due.

29 (1) The elections made pursuant to subsections d. and f. of this  
30 section are irrevocable, unless the division, in its discretion,  
31 determines otherwise.

32 (2) If properly reported and paid by the audited partnership or  
33 tiered partner, the amount determined in paragraph (2) of subsection  
34 d. of this section, or similarly under an optional election under  
35 subsection f. of this section will be treated as paid in lieu of taxes  
36 owed by its direct and indirect partners, to the extent applicable, on  
37 the same final federal adjustments. The direct partners or indirect  
38 partners may not take any deduction or credit for this amount or  
39 claim a refund of the amount in this State. Nothing in this  
40 subsection shall preclude a direct resident partner from claiming a  
41 credit against taxes paid to this State pursuant to N.J.S.54A:4-1, any  
42 amounts paid by the audited partnership or tiered partner on the  
43 resident partner’s behalf to another state or local tax jurisdiction in  
44 accordance with the provisions of N.J.S.54A:4-1.

45 h. Failure of Audited Partnership or Tiered Partner to Report or  
46 Pay. Nothing in this section prevents the division from assessing  
47 direct partners or indirect partners for taxes they owe, using the best  
48 information available, in the event that a partnership or tiered

1 partner fails to timely make any report or payment required by this  
2 section for any reason.

3

4 10. (New section) Assessments of Additional New Jersey Tax,  
5 Interest, and Penalties Arising from Adjustments to Federal Taxable  
6 Income – Statute of Limitations

7 a. The division shall assess additional tax, interest, and penalties  
8 arising from final federal adjustments arising from an audit by the  
9 Internal Revenue Service, including a partnership level audit, or  
10 reported by the taxpayer on an amended federal income tax return  
11 or as part of an administrative adjustment request by the following  
12 dates:

13 (1) Timely Reported Federal Adjustments. If a taxpayer files  
14 with the division a Federal Adjustments Report or an amended New  
15 Jersey Form 1065 or amended New Jersey Corporation Business  
16 Tax return as required within the period specified in section 8 or 9  
17 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
18 the division may assess any amounts, including in-lieu-of amounts,  
19 taxes, interest, and penalties arising from those federal adjustments  
20 if the division issues a notice of the assessment to the taxpayer no  
21 later than:

22 (a) The expiration of the limitations period specified in  
23 N.J.S.54A:9-4 and N.J.S.54:49-6; or

24 (b) The expiration of the one-year period following the date of  
25 filing with the division of the federal adjustments report.

26 b. Untimely Reported Federal Adjustments. If the taxpayer fails  
27 to file the Federal Adjustments Report within the period specified in  
28 section 8 or 9 of P.L. , c. (C. ) (pending before the  
29 Legislature as this bill), as appropriate, or the Federal Adjustments  
30 Report filed by the taxpayer omits final federal adjustments or  
31 understates the correct amount of tax owed, the division may assess  
32 amounts or additional amounts including in-lieu-of amounts, taxes,  
33 interest, and penalties arising from the final federal adjustments, if  
34 it mails a notice of the assessment to the taxpayer by a date which is  
35 the latest of the following:

36 (1) The expiration of the limitations period specified in  
37 N.J.S.54A:9-4 and N.J.S.54:49-6; or

38 (2) The expiration of the two-year period following the date the  
39 Federal Adjustments Report was filed with the division; or

40 (3) Absent fraud, the expiration of the six-year period following  
41 the final determination date.

42

43 11. (New section) Estimated New Jersey Tax Payments During  
44 the Course of a Federal Audit

45 A taxpayer may make estimated payments to the division,  
46 following the process prescribed by the division, of the New Jersey  
47 Gross Income Tax or Corporation Business Tax expected to result  
48 from a pending Internal Revenue Service audit, prior to the due date



1 of the Federal Adjustments Report, without having to file the report  
2 with the division. The estimated tax payments shall be credited  
3 against any tax liability ultimately found to be due to New Jersey  
4 (“Final New Jersey Tax Liability”) and will limit the accrual of  
5 further statutory interest on that amount. If the estimated tax  
6 payments exceed the final tax liability and statutory interest  
7 ultimately determined to be due, the taxpayer is entitled to a refund  
8 or credit for the excess, provided the taxpayer files a Federal  
9 Adjustments Report or claim for refund or credit of tax no later than  
10 one year following the final determination date.

11

12 12. (New section) Claims for Refund or Credits of Tax Arising  
13 from Final Federal Adjustments Made by the IRS

14 a. Except for final federal adjustments required to be reported  
15 for federal purposes in the partnership return for the adjustment  
16 year, a taxpayer may file a claim for refund or credit of tax arising  
17 from federal adjustments made by the Internal Revenue Service on  
18 or before the later of:

19 (1) The expiration of the last day for filing a claim for refund or  
20 credit of New Jersey tax, including any extensions; or

21 (2) One year from the date a Federal Adjustments Report  
22 prescribed in section 7 or 8 of P.L. , c. (C. ) (pending  
23 before the Legislature as this bill), as applicable, was due to the  
24 division, including any extensions pursuant to this section.

25 b. The Federal Adjustments Report shall serve as the means for  
26 the taxpayer to report additional tax due, report a claim for refund  
27 or credit of tax, and make other adjustments, including to its net  
28 operating losses, resulting from adjustments to the taxpayer’s  
29 federal taxable income.

30

31 13. (New section) Scope of Adjustments and Extensions of Time.

32 a. Unless otherwise agreed in writing by the taxpayer and the  
33 division, any adjustments by the division or by the taxpayer made  
34 after the expiration of the N.J.S.54A:9-4, N.J.S.54A:9-8, R.S.54:49-  
35 3, or R.S.54:49-14 are limited to changes to the taxpayer’s tax  
36 liability arising from federal adjustments.

37 b. The time periods provided for in this section may be  
38 extended:

39 (1) Automatically, upon written notice to the division, by 60  
40 days for an audited partnership or tiered partner which has 10,000  
41 or more direct partners; or

42 (2) By written agreement between the taxpayer and the division  
43 as set forth by the director.

44 c. Any extension granted for filing the Federal Adjustments  
45 Report extends the last day prescribed by law for assessing any  
46 additional tax arising from the adjustments to federal taxable  
47 income and the period for filing a claim for refund or credit of  
48 taxes.

1       14. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to  
2 read as follows:

3       12. a. (1) A partnership that is not a qualified investment  
4 partnership or an investment club and that is not listed on a United  
5 States national stock exchange shall, on or before the 15th day of  
6 the fourth month succeeding the close of each privilege period,  
7 remit a payment of tax. The amount of tax shall be equal to the sum  
8 of: all of the share of the entire net income of the partnership for  
9 that privilege period of all nonresident noncorporate partners,  
10 multiplied by an allocation factor determined, pursuant to section 6  
11 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions  
12 of the partnership for that privilege period, and multiplied by .0637  
13 plus all of the share of the entire net income of the partnership for  
14 that privilege period of all nonresident corporate partners,  
15 multiplied by an allocation factor determined, pursuant to section 6  
16 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions  
17 of the partnership for that privilege period, and multiplied by .09.  
18 Entire net income shall not include additional income that results  
19 from any federal partnership audit adjustments made by the Internal  
20 Revenue Service under section 6225(a)(1) of the federal Internal  
21 Revenue Code (26 U.S.C. s.6225(a)(1)).

22       (2) (a) A partnership that is subject to the tax payment  
23 requirements of paragraph (1) of this subsection shall make  
24 installment payments of 25% of that tax on or before the 15th day  
25 of each of the fourth month, sixth month and ninth month of the  
26 privilege period and on or before the 15th day of the first month  
27 succeeding the close of the privilege period.

28       (b) A partnership required to make an installment payment  
29 pursuant to subparagraph (a) of this paragraph shall be deemed to  
30 make an installment payment subject to the provisions of section 5  
31 of P.L.1981, c.184 (C.54:10A-15.4) and shall be liable for any  
32 additions to tax provided thereunder.

33       (3) A partnership shall not be required to remit a payment of tax  
34 pursuant to paragraph (1) of this subsection for any nonresident that  
35 reasonably expects to be refunded the payment on account of a tax  
36 credit pursuant to section 5 of P.L.2019, c.320 (C.54A:12-5).

37       b. An amount of tax paid by a partnership pursuant to  
38 paragraph (1) of subsection a. of this section and an installment  
39 payment paid pursuant to subparagraph (a) of paragraph (2) of  
40 subsection a. of this section shall be credited to the partnership  
41 accounts of its nonresident partners in proportion to each  
42 nonresident partner's share of allocated entire net income and the  
43 multiplier rate for that partner class under subsection a. of this  
44 section, and each amount of tax so credited shall be deemed to have  
45 been paid by the respective partner in respect of the privilege period  
46 or taxable year of the partner. Provided, however, that only a  
47 nonresident partner who files a New Jersey tax return and reports  
48 income that is subject to tax in this State may apply the tax paid by

1 the partnership and credited to the nonresident partner's partnership  
2 account against the partner's tax liability; and provided further that  
3 a partnership that pays tax pursuant to this section shall not be  
4 entitled to claim a refund of payments credited to any of its  
5 nonresident partners.

6 c. For the purposes of this section:

7 "Investment club" means an entity: that is classified as a  
8 partnership for federal income tax purposes; all of the owners of  
9 which are individuals; all of the assets of which are securities, cash,  
10 or cash equivalents; the market value of the total assets of which do  
11 not exceed, as measured on the last day of its privilege period, an  
12 amount equal to the lesser of \$250,000 or \$35,000 per owner of the  
13 entity; and which is not required to register itself or its membership  
14 interests with the federal Securities and Exchange Commission;  
15 provided that beginning with privilege periods commencing on or  
16 after January 1, 2003 the director shall prescribe the total asset  
17 value amounts which shall apply by increasing the \$250,000 total  
18 asset amount and the per owner \$35,000 amount hereinabove by an  
19 inflation adjustment factor, which amounts shall be rounded to the  
20 next highest multiple of \$100. The inflation adjustment factor shall  
21 be equal to the factor calculated by dividing the consumer price  
22 index for urban wage earners and clerical workers for the nation, as  
23 prepared by the United States Department of Labor for September  
24 of the calendar year prior to the calendar year in which the privilege  
25 period begins, by that index for September of 2001;

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

30 "Nonresident corporate partner" means a partner that is not an  
31 individual, an estate or a trust subject to taxation pursuant to the  
32 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is  
33 not a corporation exempt from tax pursuant to section 3 of  
34 P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular  
35 place of business in this State other than a statutory office; and

36 "Partner" means an owner of an interest in the partnership, in  
37 whatever manner that owner and ownership interest are designated.  
38 (cf: P.L.2021, c.419, s.5)

39  
40 15. Section 18 of P.L.2000, c.161 (C.42:1A-18) is amended to  
41 read as follows:

42 18. a. Except as otherwise provided in subsections b. and c. of  
43 this section, all partners are liable jointly and severally for all  
44 obligations of the partnership unless otherwise agreed by the  
45 claimant or provided by law. In addition, the entity is also liable for  
46 all obligations of the partnership as provided by P.L.2019, c.320  
47 (C.54A:12-1 et al.).

1       b. A person admitted as a partner into an existing partnership is  
2 not personally liable for any partnership obligation incurred before  
3 the person's admission as a partner.

4       c. An obligation of a partnership incurred while the partnership  
5 is a limited liability partnership, whether arising in contract, tort, or  
6 otherwise, is solely the obligation of the partnership. A partner is  
7 not personally liable, directly or indirectly, by way of contribution  
8 or otherwise, for such an obligation solely by reason of being or so  
9 acting as a partner. This subsection applies notwithstanding  
10 anything inconsistent in the partnership agreement that existed  
11 immediately before the vote required to become a limited liability  
12 partnership under subsection b. of section 47 of **【this act】** the  
13 “Uniform Partnership Act (1996),” P.L.2000, c.161 (C.42:1A-47).

14       d. In addition, the entity is also liable for all obligations of the  
15 partnership as provided by P.L. , c. (C. ) (pending before  
16 the Legislature as this bill).  
17 (cf: P.L.2019, c.320, s.10)

18  
19       16. Section 92 of P.L.2012, c.50 (C.42:2C-92) is amended to  
20 read as follows:

21       92. Tax Classification.

22       a. For all purposes of taxation under the laws of this State, a  
23 limited liability company formed under this act or qualified to do  
24 business in this State as a foreign limited liability company with  
25 two or more members shall be classified as a partnership unless  
26 classified otherwise for federal income tax purposes, in which case  
27 the limited liability company shall be classified in the same manner  
28 as it is classified for federal income tax purposes. For all purposes  
29 of taxation under the laws of this State, a member or a transferee of  
30 a member of a limited liability company formed under this act or  
31 qualified to do business in this State as a foreign limited liability  
32 company shall be treated as a partner in a partnership unless the  
33 limited liability company is classified otherwise for federal income  
34 tax purposes, in which case the member or transferee of a member  
35 shall have the same status as the member or transferee of a member  
36 has for federal income tax purposes.

37       b. For all purposes of taxation on income under the laws of this  
38 State and only for those purposes, a limited liability company  
39 formed under this act or qualified to do business in this State as a  
40 foreign limited liability company with one member is disregarded  
41 as an entity separate from its owner, unless classified otherwise for  
42 federal tax purposes, in which case the limited liability company  
43 will be classified in the same manner as it is classified for federal  
44 income tax purposes. For all purposes of taxation on income under  
45 the laws of this State and only for those purposes, the sole member  
46 or a transferee of all of the limited liability company interest of the  
47 sole member of a limited liability company formed under this act or  
48 qualified to do business in this State as a foreign limited liability

1 company is treated as the direct owner of the underlying assets of  
2 the limited liability company and of its operations, unless the  
3 limited liability company is classified otherwise for federal income  
4 tax purposes, in which case the member or transferee of a member  
5 will have the same status as the member or transferee of a member  
6 has for federal income tax purposes.

7 c. With respect to a limited liability company that is taxed as a  
8 partnership for federal income tax purposes, the entity is also liable  
9 for all obligations of the partnership as provided by  
10 P.L. , c. (C. ) (pending before the Legislature as this bill) in  
11 addition to its liabilities in section 30 of P.L.2012, c.50 (C.42:2C-  
12 30).

13 (cf: P.L.2012, c.50, s.92)

14  
15 17. Section 1 of P.L.2020, c.19 is amended to read as follows:

16 1. a. A taxpayer required to make and file an annual or  
17 quarterly return or report pursuant to the “New Jersey Gross Income  
18 Tax Act,” N.J.S.54A:1-1 et seq., or the “Corporation Business Tax  
19 Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), on an original  
20 due date of April 15, 2020, shall be granted by the Director of the  
21 Division of Taxation in the Department of the Treasury an  
22 automatic extension of time to file those returns or reports and to  
23 pay the tax due until July 15, 2020.

24 b. The provisions involving payment of interest upon any  
25 overpayment of tax pursuant to N.J.S.54A:9-7 and section 7 of  
26 P.L.1992, c.175 (C.54:49-15.1), are hereby extended for six months  
27 after the conclusion of the **【state of】** public health emergency  
28 declared by the Governor pursuant to Executive Order No. 103 of  
29 2020, or any extension thereof, or within six months after the return  
30 is filed, whichever is later.

31 c. A taxpayer granted an automatic extension pursuant to  
32 subsection a. of this section shall not be subject to penalties or  
33 interest if the return or report is filed and the tax due is paid on or  
34 before July 15, 2020, or by such other date that may be permitted by  
35 the director in accordance with regulations in effect on the effective  
36 date of P.L.2020, c.19.

37 d. Notwithstanding any provision of the “Administrative  
38 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
39 contrary, the director may adopt immediately upon filing with the  
40 Office of Administrative Law such rules and regulations as the  
41 director determines to be necessary and appropriate to effectuate the  
42 purposes of this section.

43 (cf: P.L.2020, c.19, s.1)

44  
45 18. Section 2 of P.L.2020, c.19 is amended to read as follows:

46 2. The statute of limitations to assess any tax pursuant to  
47 N.J.S.54A:9-4 and R.S.54:49-6 is hereby extended for 90 days after  
48 the conclusion of the **【state of】** public health emergency declared

1 by the Governor pursuant to Executive Order No. 103 of 2020, or  
2 any extension thereof.

3 (cf: P.L.2020, c.19, s.2)  
4

5 19. (New section) Any assessment of tax that was allowed as a  
6 result of the extension of the statute of limitations in section 2 of  
7 P.L.2020, c.19, but that was assessed after the 90th day following  
8 the conclusion of the public health emergency declared by the  
9 Governor pursuant to Executive Order No. 103 of 2020, shall be  
10 voided. The Director of the Division of Taxation in the Department  
11 of the Treasury shall return any amounts collected from a taxpayer  
12 as a result of such assessment.  
13

14 20. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to  
15 read as follows:

16 4. For the purposes of this act, unless the context requires a  
17 different meaning:

18 (a) "Commissioner" or "director" shall mean the Director of the  
19 Division of Taxation of the State Department of the Treasury.

20 (b) "Allocation factor" shall mean the proportionate part of a  
21 taxpayer's net worth or entire net income used to determine a  
22 measure of its tax under this act.

23 (c) "Corporation" shall mean any corporation, joint-stock  
24 company or association and any business conducted by a trustee or  
25 trustees wherein interest or ownership is evidenced by a certificate  
26 of interest or ownership or similar written instrument, any other  
27 entity classified as a corporation for federal income tax purposes,  
28 and any state or federally chartered building and loan association or  
29 savings and loan association.

30 (d) "Net worth" shall mean the aggregate of the values disclosed  
31 by the books of the corporation for (1) issued and outstanding  
32 capital stock, (2) paid-in or capital surplus, (3) earned surplus and  
33 undivided profits, and (4) surplus reserves which can reasonably be  
34 expected to accrue to holders or owners of equitable shares, not  
35 including reasonable valuation reserves, such as reserves for  
36 depreciation or obsolescence or depletion. Notwithstanding the  
37 foregoing, net worth shall not include any deduction for the amount  
38 of the excess depreciation described in paragraph (2) (F) of  
39 subsection (k) of this section. The foregoing aggregate of values  
40 shall be reduced by 50% of the amount disclosed by the books of  
41 the corporation for investment in the capital stock of one or more  
42 subsidiaries, which investment is defined as ownership (1) of at  
43 least 80% of the total combined voting power of all classes of stock  
44 of the subsidiary entitled to vote and (2) of at least 80% of the total  
45 number of shares of all other classes of stock except nonvoting  
46 stock which is limited and preferred as to dividends. In the case of  
47 investment in an entity organized under the laws of a foreign  
48 country, the foregoing requisite degree of ownership shall effect a

1 like reduction of such investment from the net worth of the  
2 taxpayer, if the foreign entity is considered a corporation for any  
3 purpose under the United States federal income tax laws, such as  
4 (but not by way of sole examples) for the purpose of supplying  
5 deemed paid foreign tax credits or for the purpose of status as a  
6 controlled foreign corporation. In calculating the net worth of a  
7 taxpayer entitled to reduction for investment in subsidiaries, the  
8 amount of liabilities of the taxpayer shall be reduced by such  
9 proportion of the liabilities as corresponds to the ratio which the  
10 excluded portion of the subsidiary values bears to the total assets of  
11 the taxpayer.

12 In the case of banking corporations which have international  
13 banking facilities as defined in subsection (n), the foregoing  
14 aggregate of values shall also be reduced by retained earnings of the  
15 international banking facility. Retained earnings means the  
16 earnings accumulated over the life of such facility and shall not  
17 include the distributive share of dividends paid and federal income  
18 taxes paid or payable during the tax year.

19 If in the opinion of the director, the corporation's books do not  
20 disclose fair valuations the director may make a reasonable  
21 determination of the net worth which, in his opinion, would reflect  
22 the fair value of the assets, exclusive of subsidiary investments as  
23 defined aforesaid, carried on the books of the corporation, in  
24 accordance with sound accounting principles, and such  
25 determination shall be used as net worth for the purpose of this act.

26 (e) (Deleted by amendment, P.L.1998, c.114.)

27 (f) "Investment company" shall mean any corporation whose  
28 business during the period covered by its report consisted, to the  
29 extent of at least 90% thereof of holding, investing and reinvesting  
30 in stocks, bonds, notes, mortgages, debentures, patents, patent rights  
31 and other securities for its own account, but this shall not include  
32 any corporation which: (1) is a merchant or a dealer of stocks,  
33 bonds and other securities, regularly engaged in buying the same  
34 and selling the same to customers; or (2) had less than 90% of its  
35 average gross assets in New Jersey, at cost, invested in stocks,  
36 bonds, debentures, mortgages, notes, patents, patent rights or other  
37 securities or consisting of cash on deposit during the period covered  
38 by its report; or (3) is a banking corporation, a savings institution,  
39 or a financial business corporation as defined in the Corporation  
40 Business Tax Act.

41 (g) "Regulated investment company" shall mean any corporation  
42 which for a period covered by its report, is registered and regulated  
43 under the Investment Company Act of 1940 (54 Stat. 789), as  
44 amended.

45 (h) "Taxpayer" shall mean any corporation, any combined group  
46 filing a mandatory or elective New Jersey combined return, and any  
47 partnership required, or consenting, to report or to pay taxes,

1 interest or penalties under this act. "Taxpayer" shall not include a  
2 partnership that is listed on a United States national stock exchange.

3 (i) "Fiscal year" shall mean an accounting period ending on any  
4 day other than the last day of December on the basis of which the  
5 taxpayer is required to report for federal income tax purposes.

6 (j) Except as herein provided, "privilege period" shall mean the  
7 calendar or fiscal accounting period for which a tax is payable  
8 under this act.

9 (k) "Entire net income" shall mean total net income from all  
10 sources, whether within or without the United States, and shall  
11 include the gain derived from the employment of capital or labor, or  
12 from both combined, as well as profit gained through a sale or  
13 conversion of capital assets.

14 For the purpose of this act, the amount of a taxpayer's entire net  
15 income shall be deemed prima facie to be equal in amount to the  
16 taxable income, before net operating loss deduction and special  
17 deductions, which the taxpayer is required to report, or, if the  
18 taxpayer is classified as a partnership for federal tax purposes,  
19 would otherwise be required to report, to the United States Treasury  
20 Department for the purpose of computing its federal income tax,  
21 provided however, that in the determination of such entire net  
22 income,

23 (1) Entire net income shall exclude for the periods set forth in  
24 paragraph (2)(F)(i) of this subsection, any amount, except with  
25 respect to qualified mass commuting vehicles as described in  
26 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect  
27 immediately prior to January 1, 1984, which is included in a  
28 taxpayer's federal taxable income solely as a result of an election  
29 made pursuant to the provisions of paragraph (8) of that section.

30 (2) Entire net income shall be determined without the exclusion,  
31 deduction or credit of:

32 (A) The amount of any exemption or credit allowed in any law  
33 of the United States imposing any tax on or measured by the income  
34 of corporations.

35 (B) Any part of any income from dividends or interest on any  
36 kind of stock, securities or indebtedness, except as provided in  
37 paragraph (5) of subsection (k) of this section.

38 (C) Taxes paid or accrued to the United States, a possession or  
39 territory of the United States, a state, a political subdivision thereof,  
40 or the District of Columbia, or to any foreign country, state,  
41 province, territory or subdivision thereof, on or measured by profits  
42 or income, or business presence or business activity, or the tax  
43 imposed by this act, or any tax paid or accrued with respect to  
44 subsidiary dividends excluded from entire net income as provided  
45 in paragraph (5) of subsection (k) of this section.

46 (D) (Deleted by amendment, P.L.1985, c.143.)

47 (E) (Deleted by amendment, P.L.1995, c.418.)



1 (F) (i) The amount by which depreciation reported to the United  
2 States Treasury Department for property placed in service on and  
3 after January 1, 1981, but prior to taxpayer fiscal or calendar  
4 accounting years beginning on and after the effective date of  
5 P.L.1993, c.172, for purposes of computing federal taxable income  
6 in accordance with section 168 of the Internal Revenue Code in  
7 effect after December 31, 1980, exceeds the amount of depreciation  
8 determined in accordance with the Internal Revenue Code  
9 provisions in effect prior to January 1, 1981, but only with respect  
10 to a taxpayer's accounting period ending after December 31, 1981;  
11 provided, however, that where a taxpayer's accounting period  
12 begins in 1981 and ends in 1982, no modification shall be required  
13 with respect to this paragraph (F) for the report filed for such period  
14 with respect to property placed in service during that part of the  
15 accounting period which occurs in 1981. The provisions of this  
16 subparagraph shall not apply to assets placed in service prior to  
17 January 1, 1998 of a gas, gas and electric, and electric public utility  
18 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
19 seq.) prior to 1998.

20 (ii) For the periods set forth in subparagraph (F)(i) of paragraph  
21 (2) of this subsection, any amount, except with respect to qualified  
22 mass commuting vehicles as described in section 168(f)(8)(D)(v) of  
23 the Internal Revenue Code as in effect immediately prior to January  
24 1, 1984, which the taxpayer claimed as a deduction in computing  
25 federal income tax pursuant to a qualified lease agreement under  
26 paragraph (8) of that section.

27 The director shall promulgate rules and regulations necessary to  
28 carry out the provisions of this section, which rules shall provide,  
29 among others, the manner in which the remaining life of property  
30 shall be reported.

31 (G) (i) The amount of any civil, civil administrative, or criminal  
32 penalty or fine, including a penalty or fine under an administrative  
33 consent order, assessed and collected for a violation of a State or  
34 federal environmental law, an administrative consent order, or an  
35 environmental ordinance or resolution of a local governmental  
36 entity, and any interest earned on the penalty or fine, and any  
37 economic benefits having accrued to the violator as a result of a  
38 violation, which benefits are assessed and recovered in a civil, civil  
39 administrative, or criminal action, or pursuant to an administrative  
40 consent order. The provisions of this paragraph shall not apply to a  
41 penalty or fine assessed or collected for a violation of a State or  
42 federal environmental law, or local environmental ordinance or  
43 resolution, if the penalty or fine was for a violation that resulted  
44 from fire, riot, sabotage, flood, storm event, natural cause, or other  
45 act of God beyond the reasonable control of the violator, or caused  
46 by an act or omission of a person who was outside the reasonable  
47 control of the violator.

1 (ii) The amount of treble damages paid to the Department of  
2 Environmental Protection pursuant to subsection a. of section 7 of  
3 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
4 department in removing, or arranging for the removal of, an  
5 unauthorized discharge upon failure of the discharger to comply  
6 with a directive from the department to remove, or arrange for the  
7 removal of, the discharge.

8 (H) The amount of any sales and use tax paid by a utility vendor  
9 pursuant to section 71 of P.L.1997, c.162.

10 (I) Interest paid, accrued or incurred for the privilege period to  
11 a related member, as defined in section 5 of P.L.2002, c.40  
12 (C.54:10A-4.4), except that a deduction shall be permitted to the  
13 extent that the taxpayer establishes by clear and convincing  
14 evidence, as determined by the director, that: (i) a principal purpose  
15 of the transaction giving rise to the payment of the interest was not  
16 to avoid taxes otherwise due under Title 54 of the Revised Statutes  
17 or Title 54A of the New Jersey Statutes, (ii) the interest is paid  
18 pursuant to arm's length contracts at an arm's length rate of interest,  
19 and (iii)(aa) the related member was subject to a tax on its net  
20 income or receipts in this State or another state or possession of the  
21 United States or in a foreign nation, (bb) a measure of the tax  
22 includes the interest received from the related member, and (cc) the  
23 rate of tax applied to the interest received by the related member is  
24 equal to or greater than a rate three percentage points less than the  
25 rate of tax applied to taxable interest by this State pursuant to  
26 section 5 of P.L.1945, c.162 (C.54:10A-5).

27 A deduction shall also be permitted if the taxpayer establishes by  
28 clear and convincing evidence, as determined by the director, that  
29 the disallowance of a deduction is unreasonable, or the taxpayer and  
30 the director agree in writing to the application or use of an  
31 alternative method of apportionment under section 8 of P.L.1945,  
32 c.162 (C.54:10A-8); nothing in this subsection shall be construed to  
33 limit or negate the director's authority to otherwise enter into  
34 agreements and compromises otherwise allowed by law.

35 A deduction shall also be permitted to the extent that the  
36 taxpayer establishes by a preponderance of the evidence, as  
37 determined by the director, that the interest is directly or indirectly  
38 paid, accrued or incurred to (i) a related member in a foreign nation  
39 which has in force a comprehensive income tax treaty with the  
40 United States and the related member (aa) was subject to tax in the  
41 foreign nation on a tax base that included the payment paid,  
42 accrued, or incurred; and (bb) under which the related member's  
43 income received from the transaction was taxed at an effective tax  
44 rate equal to or greater than a rate of three percentage points less  
45 than the rate of tax applied to taxable interest by the State of New  
46 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),  
47 provided however that the taxpayer shall disclose on its return for  
48 the privilege period the name of the related member, the amount of

1 the interest, the relevant foreign nation, and such other information  
2 as the director may prescribe or (ii) to an independent lender and  
3 the taxpayer guarantees the debt on which the interest is  
4 required. The adjustments required by this subparagraph shall not  
5 apply to transactions between related members included in a  
6 combined group reported on a New Jersey combined return.

7 (J) (i) Amounts deducted for federal tax purposes pursuant to  
8 section 199 of the federal Internal Revenue Code of 1986, 26  
9 U.S.C. s.199, except that this exclusion shall not apply to amounts  
10 deducted pursuant to that section that are exclusively based upon  
11 domestic production gross receipts of the taxpayer which are  
12 derived only from any lease, rental, license, sale, exchange, or other  
13 disposition of qualifying production property which the taxpayer  
14 demonstrates to the satisfaction of the director was manufactured or  
15 produced by the taxpayer in whole or in significant part within the  
16 United States but not qualified production property that was grown  
17 or extracted by the taxpayer. "Manufactured or produced" as used  
18 in this paragraph shall be limited to performance of an operation or  
19 series of operations the object of which is to place items of tangible  
20 personal property in a form, composition, or character different  
21 from that in which they were acquired. The change in form,  
22 composition, or character shall be a substantial change, and result in  
23 a transformation of property into a different or substantially more  
24 usable product.

25 (ii) For privilege periods beginning after December 31, 2017,  
26 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-1 et  
27 seq.) or any other law to the contrary, for the purposes of  
28 determining the amount of income pursuant to P.L.1945, c.162  
29 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be  
30 taken as a deduction pursuant to section 199A of the Internal  
31 Revenue Code (26 U.S.C. s.199A).

32 (K) For privilege periods beginning after December 31, 2017,  
33 the interest deduction limitation in subsection (j) of section 163 of  
34 the Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-  
35 rata basis to interest paid to both related and unrelated parties,  
36 regardless of whether the related parties are subject to the add-back  
37 provision of either subparagraph (I) of paragraph (2) of this  
38 subsection or in section 5 of P.L.2002, c.40 (C.54:10A-4.4).

39 (3) The director may, whenever necessary to properly reflect the  
40 entire net income of any taxpayer, determine the year or period in  
41 which any item of income or deduction shall be included, without  
42 being limited to the method of accounting employed by the  
43 taxpayer.

44 (4) There shall be allowed as a deduction from entire net income  
45 of a banking corporation, to the extent not deductible in  
46 determining federal taxable income, the eligible net income of an  
47 international banking facility determined as follows:

1 (A) The eligible net income of an international banking facility  
2 shall be the amount remaining after subtracting from the eligible  
3 gross income the applicable expenses;

4 (B) Eligible gross income shall be the gross income derived by  
5 an international banking facility, which shall include, but not be  
6 limited to, gross income derived from:

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

15 (ii) Making or placing deposits with foreign persons which are  
16 banks or foreign branches of banks (including foreign subsidiaries)  
17 or foreign branches of the taxpayers or with other international  
18 banking facilities;

19 (iii) Entering into foreign exchange trading or hedging  
20 transactions related to any of the transactions described in this  
21 paragraph; or

22 (iv) Such other activities as an international banking facility  
23 may, from time to time, be authorized to engage in;

24 (C) Applicable expenses shall be any expense or other  
25 deductions attributable, directly or indirectly, to the eligible gross  
26 income described in subparagraph (B) of this paragraph.

27 (5) (A) (i) Entire net income shall exclude 100% of dividends  
28 which were included in computing such taxable income for federal  
29 income tax purposes, paid to the taxpayer by one or more  
30 subsidiaries owned by the taxpayer to the extent of the 80% or more  
31 ownership of investment described in subsection (d) of this section  
32 for privilege periods beginning on or before December 31, 2016.

33 (ii) For privilege periods beginning after December 31, 2016  
34 and before January 1, 2019, entire net income shall exclude 95% of  
35 dividends which were included in computing such taxable income  
36 for federal income tax purposes, paid or deemed paid, to the  
37 taxpayer by one or more subsidiaries owned by the taxpayer to the  
38 extent of the 80% or more ownership of investment described in  
39 subsection (d) of this section. For the purposes of calculating the  
40 tax liability owed for the paid or deemed paid dividends included in  
41 entire net income by this subsubparagraph (ii), the taxpayer shall  
42 use either their three-year average allocation factor for the  
43 taxpayer's 2014 through 2016 tax years reported on the taxpayer's  
44 tax returns or 3.5 percent, whichever is lower.

45 (iii) For privilege periods beginning on and after January 1,  
46 2019, entire net income shall exclude 95% of dividends which were  
47 included in computing such taxable income for federal income tax  
48 purposes, paid or deemed paid to the taxpayer by one or more

1 subsidiaries owned by the taxpayer to the extent of the 80% or more  
2 ownership of investment described in subsection (d) of this section.

3 (B) Entire net income shall exclude 50% of dividends which  
4 were included in computing such taxable income for federal income  
5 tax purposes, paid or deemed paid to the taxpayer by one or more  
6 subsidiaries owned by the taxpayer to the extent of 50% or more  
7 ownership of investment, such ownership of investment calculated  
8 in the same manner as the 80% or more of ownership of investment  
9 is calculated as described in subsection (d) of this section.

10 (C) To the extent a subsidiary received dividends from other  
11 subsidiaries and included those dividends in its entire net income  
12 for the purposes of determining its tax liability pursuant to section 5  
13 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,  
14 the taxpayer receiving those same dividends from the subsidiary  
15 shall exclude those dividends from its entire net income based on  
16 the subsidiary's allocation factor used by the subsidiary in  
17 determining its tax liability pursuant to section 5 of P.L.1945, c.162  
18 (C.54:10A-5). This subparagraph (C) shall not apply to privilege  
19 periods ending on and after July 31, 2019.

20 (D) For privilege periods ending on and after July 31, 2019 but  
21 before July 31, 2020, to the extent a subsidiary received dividends  
22 from other subsidiaries and included those dividends in its entire net  
23 income for the purposes of determining its tax liability pursuant to  
24 section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those  
25 dividends, the taxpayer receiving those same dividends from the  
26 subsidiary shall exclude those dividends from its entire net income.

27 (E) For privilege periods ending on and after July 31, 2020, for  
28 purposes of this paragraph (5), the members of a combined group  
29 filing a New Jersey combined return shall be treated as one taxpayer  
30 with regard to dividends and deemed dividends that were received  
31 as part of the unitary business of the combined group.

32 (6) (A) Net operating loss deduction. For privilege periods  
33 ending before July 31, 2019, there shall be allowed as a deduction  
34 for the privilege period the net operating loss carryover to that  
35 period.

36 (B) Net operating loss carryover. A net operating loss for any  
37 privilege period ending after June 30, 1984 shall be a net operating  
38 loss carryover to each of the seven privilege periods following the  
39 period of the loss and a net operating loss for any privilege period  
40 ending after June 30, 2009 shall be a net operating loss carryover to  
41 each of the twenty privilege periods following the period of the  
42 loss. The entire amount of the net operating loss for any privilege  
43 period (the "loss period") shall be carried to the earliest of the  
44 privilege periods to which the loss may be carried. The portion of  
45 the loss which shall be carried to each of the other privilege periods  
46 shall be the excess, if any, of the amount of the loss over the sum of  
47 the entire net income, computed without the exclusions permitted in  
48 paragraphs (4) and (5) of this subsection or the net operating loss

1 deduction provided by subparagraph (A) of this paragraph, for each  
2 of the prior privilege periods to which the loss may be carried.

3 (C) Net operating loss. For purposes of this paragraph the term  
4 "net operating loss" means the excess of the deductions over the  
5 gross income used in computing entire net income without the net  
6 operating loss deduction provided for in subparagraph (A) of this  
7 paragraph and the exclusions in paragraphs (4) and (5) of this  
8 subsection.

9 (D) Change in ownership. Where there is a change in 50% or  
10 more of the ownership of a corporation because of redemption or  
11 sale of stock and the corporation changes the trade or business  
12 giving rise to the loss, no net operating loss sustained before the  
13 changes may be carried over to be deducted from income earned  
14 after such changes. In addition where the facts support the premise  
15 that the corporation was acquired under any circumstances for the  
16 primary purpose of the use of its net operating loss carryover, the  
17 director may disallow the carryover.

18 (E) Notwithstanding the provisions of this paragraph (6) of  
19 subsection (k) of this section to the contrary, for privilege periods  
20 beginning during calendar year 2002 and calendar year 2003, no  
21 deduction for any net operating loss carryover shall be allowed and  
22 for privilege periods beginning during calendar year 2004 and  
23 calendar year 2005, there shall be allowed as a deduction for the  
24 privilege period so much of the net operating loss carryover as  
25 reduces entire net income otherwise calculated by 50%. If and only  
26 to the extent that any net operating loss carryover deduction is  
27 disallowed by reason of this subparagraph (E), the date on which  
28 the amount of the disallowed net operating loss carryover deduction  
29 would otherwise expire shall be extended by a period equal to the  
30 period for which application of the net operating loss was  
31 disallowed by this subparagraph.

32 Provided, that this subparagraph (E) shall not restrict the  
33 surrender or acquisition of corporation business tax benefit  
34 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-  
35 7.42a) and shall not restrict the application of corporation business  
36 tax benefit certificates pursuant to section 2 of P.L.1997, c.334  
37 (C.54:10A-4.2).

38 (F) Reduction for discharge of indebtedness. A net operating  
39 loss for any privilege period ending after June 30, 2014, and any net  
40 operating loss carryover to such privilege period, shall be reduced  
41 by the amount excluded from federal taxable income under  
42 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
43 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),  
44 for the privilege period of the discharge of indebtedness.

45 (7) The entire net income of gas, electric and gas and electric  
46 public utilities that were subject to, or would have been subject to  
47 tax if doing business in this State, the provisions of P.L.1940, c.5  
48 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by

1 substituting the New Jersey depreciation allowance for federal tax  
2 depreciation with respect to assets placed in service prior to January  
3 1, 1998. For gas, electric, and gas and electric public utilities that  
4 were subject to, or would have been subject to tax if doing business  
5 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)  
6 prior to 1998, the New Jersey depreciation allowance shall be  
7 computed as follows: All depreciable assets placed in service prior  
8 to January 1, 1998 shall be considered a single asset account. The  
9 New Jersey tax basis of this depreciable asset account shall be an  
10 amount equal to the carryover adjusted basis for federal income tax  
11 purposes on December 31, 1997 of all depreciable assets in service  
12 on December 31, 1997, increased by the excess, of the "net carrying  
13 value," defined to be adjusted book basis of all assets and liabilities,  
14 excluding deferred income taxes, recorded on the public utility's  
15 books of account on December 31, 1997, over the carryover  
16 adjusted basis for federal income tax purposes on December 31,  
17 1997 of all assets and liabilities owned by the gas, electric, or gas  
18 and electric public utility as of December 31, 1997. "Books of  
19 account" for gas, gas and electric, and electric public utilities means  
20 the uniform system of accounts as promulgated by the Federal  
21 Energy Regulatory Commission and adopted by the Board of Public  
22 Utilities. The following adjustments to entire net income shall be  
23 made pursuant to this section:

24 (A) Depreciation for property placed in service prior to January  
25 1, 1998 shall be adjusted as follows:

26 (i) Depreciation for federal income tax purposes shall be  
27 disallowed in full.

28 (ii) A deduction shall be allowed for the New Jersey  
29 depreciation allowance. The New Jersey depreciation allowance  
30 shall be computed for the single asset account described above  
31 based on the New Jersey tax basis as adjusted above as if all assets  
32 in the single asset account were first placed in service on January 1,  
33 1998. Depreciation shall be computed using the straight line method  
34 over a thirty-year life. A full year's depreciation shall be allowed in  
35 the initial tax year. No half-year convention shall apply. The  
36 depreciable basis of the single account shall be reduced by the  
37 adjusted federal tax basis of assets sold, retired, or otherwise  
38 disposed of during any year on which gain or loss is recognized for  
39 federal income tax purposes as described in subparagraph (B) of  
40 this paragraph.

41 (B) Gains and losses on sales, retirements and other dispositions  
42 of assets placed in service prior to January 1, 1998 shall be  
43 recognized and reported on the same basis as for federal income tax  
44 purposes.

45 (C) The Director of the Division of Taxation shall promulgate  
46 regulations describing the methodology for allocating the single  
47 asset account in the event that a portion of the utility's operations

1 are separated, spun-off, transferred to a separate company or  
2 otherwise desegregated.

3 (8) In the case of taxpayers that are gas, electric, gas and  
4 electric, or telecommunications public utilities as defined pursuant  
5 to subsection (q) of this section, the director shall have authority to  
6 promulgate rules and issue guidance correcting distortions and  
7 adjusting timing differences resulting from the adoption of  
8 P.L.1997, c.162 (C.54:10A-5.25 et al.).

9 (9) Notwithstanding paragraph (1) of this subsection, entire net  
10 income shall not include the income derived by a corporation  
11 organized in a foreign country from the international operation of a  
12 ship or ships, or from the international operation of aircraft, if such  
13 income is exempt from federal taxation pursuant to section 883 of  
14 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

15 (10) Entire net income shall exclude all income of an alien  
16 corporation the activities of which are limited in this State to  
17 investing or trading in stocks and securities for its own account,  
18 investing or trading in commodities for its own account, or any  
19 combination of those activities, within the meaning of section 864  
20 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in  
21 effect on December 31, 1998. Notwithstanding the previous  
22 sentence, if an alien corporation undertakes one or more infrequent,  
23 extraordinary or non-recurring activities, including but not limited  
24 to the sale of tangible property, only the income from such  
25 infrequent, extraordinary or non-recurring activity shall be subject  
26 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-  
27 1 et seq.), and that amount of income subject to tax shall be  
28 determined without regard to the allocation to that specific  
29 transaction of any general business expense of the taxpayer and  
30 shall be specifically assigned to this State for taxation by this State  
31 without regard to section 6 of P.L.1945, c.162 (C.54:10A-6). For  
32 the purposes of this paragraph, "alien corporation" means a  
33 corporation organized under the laws of a jurisdiction other than the  
34 United States or its political subdivisions.

35 (11) No deduction shall be allowed for research and  
36 experimental expenditures, to the extent that those research and  
37 experimental expenditures are qualified research expenses or basic  
38 research payments for which an amount of credit is claimed  
39 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless  
40 those research and experimental expenditures are also used to  
41 compute a federal credit claimed pursuant to section 41 of the  
42 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

43 (12) (A) Notwithstanding the provisions of subsection (k) of  
44 section 168 of the federal Internal Revenue Code of 1986, 26  
45 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal  
46 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal  
47 law, for property acquired after September 10, 2001, the  
48 depreciation deduction otherwise allowed pursuant to section 167 of



1 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall  
2 be determined pursuant to the provisions of the federal Internal  
3 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on  
4 December 31, 2001.

5 (B) The director shall prescribe the rules and regulations  
6 necessary to carry out the provisions of this paragraph, including,  
7 among others, those for determining the adjusted basis of the  
8 acquired property for the purposes of the Corporation Business Tax  
9 Act (1945), P.L.1945, c.162.

10 (13) (A) Notwithstanding the provisions of section 179 of the  
11 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for  
12 property placed in service on or after January 1, 2004, the costs that  
13 a taxpayer may otherwise elect to treat as an expense which is not  
14 chargeable to a capital account shall be determined pursuant to the  
15 provisions of the federal Internal Revenue Code of 1986  
16 (26 U.S.C. s.1 et seq.) in effect on December 31, 2002.

17 (B) The director shall prescribe the rules and regulations  
18 necessary to carry out the provisions of this paragraph, including,  
19 among others, those for determining the adjusted basis of the  
20 acquired property for the purposes of the Corporation Business Tax  
21 Act (1945), P.L.1945, c.162.

22 (14) Notwithstanding the provisions of subsection (i) of section  
23 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),  
24 for privilege periods beginning after December 31, 2008 and before  
25 January 1, 2011, entire net income shall include the amount of  
26 discharge of indebtedness income excluded for federal income tax  
27 purposes pursuant to subsection (i) of section 108 of the federal  
28 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege  
29 periods beginning on or after January 1, 2014 and before January 1,  
30 2019, entire net income shall exclude the amount of discharge of  
31 indebtedness income included for federal income tax purposes,  
32 pursuant to subsection (i) of section 108 of the federal Internal  
33 Revenue Code of 1986 (26 U.S.C. s.108).

34 (15) Entire net income shall exclude the gain or income derived  
35 from the sale or assignment of a tax credit transfer certificate  
36 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section  
37 10 of P.L.2014, c.63 (C.34:1B-251).

38 (16) (A) There shall be allowed as a deduction an amount  
39 computed in accordance with this paragraph.

40 (B) For purposes of this paragraph, "net deferred tax liability"  
41 means deferred tax liabilities that exceed the deferred tax assets of  
42 the combined group, as computed in accordance with generally  
43 accepted accounting principles, and "net deferred tax asset" means  
44 that deferred tax assets exceed the deferred tax liabilities of the  
45 combined group, as computed in accordance with generally  
46 accepted accounting principles.

47 (C) Only publicly traded companies, including affiliated  
48 corporations participating in the filing of a publicly traded

1 company's financial statements prepared in accordance with  
2 generally accepted accounting principles, as of the effective date of  
3 this paragraph, shall be eligible for this deduction.

4 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48  
5 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to  
6 the members' net deferred tax liability or an aggregate decrease to  
7 the members' net deferred tax asset, or an aggregate change from a  
8 net deferred tax asset to a net deferred tax liability, the combined  
9 group shall be entitled to a deduction, as determined in this  
10 paragraph.

11 (E) For 10 years beginning with the combined group's first  
12 privilege period beginning on or after January 1 of the fifth year  
13 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a  
14 combined group shall be entitled to a deduction from combined  
15 group entire net income equal to one-tenth of the amount necessary  
16 to offset the increase in the net deferred tax liability or decrease in  
17 the net deferred tax asset, or aggregate change from a net deferred  
18 tax asset to a net deferred tax liability. Such increase in the net  
19 deferred tax liability or decrease in the net deferred tax asset or the  
20 aggregate change from a net deferred tax asset to a net deferred tax  
21 liability shall be computed based on the change that would result  
22 from the imposition of the unitary reporting requirements under  
23 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and  
24 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided  
25 under this paragraph as of the effective date of this paragraph.

26 (F) The deferred tax impact determined in subparagraph (E) of  
27 this paragraph must be converted to the annual Deferred Tax  
28 Deduction amount, as follows:

29 (i) the deferred tax impact determined in subparagraph (E) of  
30 this paragraph shall be divided by the rate determined under section  
31 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,  
32 c.48 (C.54:10A-5.41 et al.);

33 (ii) the resulting amount shall be further divided by the New  
34 Jersey unitary business allocation factor that was used by the  
35 combined group in the calculation of the deferred tax assets and  
36 deferred tax liabilities as described in subparagraph (E) of this  
37 paragraph;

38 (iii) the resulting amount represents the total net Deferred Tax  
39 Deduction available over the ten-year period as described in  
40 subparagraph (E) of this paragraph.

41 (G) The deduction calculated under this paragraph shall not be  
42 adjusted as a result of any events happening subsequent to such  
43 calculation, including, but not limited to, any disposition or  
44 abandonment of assets. Such deduction shall be calculated without  
45 regard to the federal tax effect and shall not alter the tax basis of  
46 any asset. If the deduction under this section is greater than  
47 combined group entire net income, any excess deduction shall be

1 carried forward and applied as a deduction to combined group entire  
2 net income in future privilege periods until fully utilized.

3 (H) Any combined group intending to claim a deduction under  
4 this paragraph shall file a statement with the director on or before  
5 July 1 of the year subsequent to the first privilege period for which  
6 a combined return is required. Such statement shall specify the  
7 total amount of the deduction which the combined group claims on  
8 such form and in such manner as prescribed by the director. No  
9 deduction shall be allowed under this paragraph for any privilege  
10 period except to the extent claimed on such timely filed statement  
11 in accordance with this paragraph.

12 (I) "Real estate investment trust" shall mean any corporation,  
13 trust or association qualifying and electing to be taxed as a real  
14 estate investment trust under federal law.

15 (m) "Financial business corporation" shall mean any corporate  
16 enterprise which is (1) in substantial competition with the business  
17 of national banks and which (2) employs moneyed capital with the  
18 object of making profit by its use as money, through discounting  
19 and negotiating promissory notes, drafts, bills of exchange and  
20 other evidences of debt; buying and selling exchange; making of or  
21 dealing in secured or unsecured loans and discounts; dealing in  
22 securities and shares of corporate stock by purchasing and selling  
23 such securities and stock without recourse, solely upon the order  
24 and for the account of customers; or investing and reinvesting in  
25 marketable obligations evidencing indebtedness of any person,  
26 copartnership, association or corporation in the form of bonds,  
27 notes or debentures commonly known as investment securities; or  
28 dealing in or underwriting obligations of the United States, any  
29 state or any political subdivision thereof, or of a corporate  
30 instrumentality of any of them. This shall include, without  
31 limitation of the foregoing, business commonly known as industrial  
32 banks, dealers in commercial paper and acceptances, sales finance,  
33 personal finance, small loan and mortgage financing businesses, as  
34 well as any other enterprise employing moneyed capital coming  
35 into competition with the business of national banks; provided that  
36 the holding of bonds, notes, or other evidences of indebtedness by  
37 individual persons not employed or engaged in the banking or  
38 investment business and representing merely personal investments  
39 not made in competition with the business of national banks, shall  
40 not be deemed financial business. Nor shall "financial business"  
41 include national banks, production credit associations organized  
42 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,  
43 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
44 insurance companies duly authorized to transact business in this  
45 State, security brokers or dealers or investment companies or  
46 bankers not employing moneyed capital coming into competition  
47 with the business of national banks, real estate investment trusts, or  
48 any of the following entities organized under the laws of this State:

1 credit unions, savings banks, savings and loan and building and  
2 loan associations, pawnbrokers, and State banks and trust  
3 companies.

4 (n) "International banking facility" shall mean a set of asset and  
5 liability accounts segregated on the books and records of a  
6 depository institution, United States branch or agency of a foreign  
7 bank, or an Edge or Agreement Corporation that includes only  
8 international banking facility time deposits and international  
9 banking facility extensions of credit as such terms are defined in  
10 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the  
11 board of governors of the Federal Reserve System, 12 CFR Part  
12 204, effective December 3, 1981. In the event that the United  
13 States enacts a law, or the board of governors of the Federal  
14 Reserve System adopts a regulation which amends the present  
15 definition of international banking facility or of such facilities' time  
16 deposits or extensions of credit, the Commissioner of Banking and  
17 Insurance shall forthwith adopt regulations defining such terms in  
18 the same manner as such terms are set forth in the laws of the  
19 United States or the regulations of the board of governors of the  
20 Federal Reserve System. The regulations of the Commissioner of  
21 Banking and Insurance shall thereafter provide the applicable  
22 definitions.

23 (o) "S corporation" means a corporation **included in the**  
24 **definition of** that has elected to be an "S corporation" pursuant to  
25 section 1361 of the federal Internal Revenue Code of 1986,  
26 26 U.S.C. s.1361 , for the taxable year.

27 (p) "New Jersey S corporation" means a **corporation that is an**  
28 **S corporation; which has made a valid election pursuant to section 3**  
29 **of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S**  
30 **corporation continuously since the effective date of the valid**  
31 **election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-**  
32 **5.22)] taxpayer that has made a valid election to be an S**  
33 **corporation for federal tax purposes.**

34 (q) "Public Utility" means "public utility" as defined in  
35 R.S.48:2-13.

36 (r) "Qualified investment partnership" means a partnership  
37 under this act that has more than 10 members or partners with no  
38 member or partner owning more than a 50% interest in the entity  
39 and that derives at least 90% of its gross income from dividends,  
40 interest, payments with respect to securities loans, and gains from  
41 the sale or other disposition of stocks or securities or foreign  
42 currencies or commodities or other similar income (including but  
43 not limited to gains from swaps, options, futures or forward  
44 contracts) derived with respect to its business of investing or  
45 trading in those stocks, securities, currencies or commodities, but  
46 "investment partnership" shall not include a "dealer in securities"  
47 within the meaning of section 1236 of the federal Internal Revenue  
48 Code of 1986, 26 U.S.C. s.1236.

1 (s) "Savings institution" means a state or federally chartered  
2 building and loan association, savings and loan association, or  
3 savings bank.

4 (t) "Partnership" means an entity classified as a partnership for  
5 federal income tax purposes.

6 (u) "Prior net operating loss conversion carryover" means a net  
7 operating loss incurred in a privilege period ending prior to July 31,  
8 2019 and converted from a pre-allocation net operating loss to a  
9 post-allocation net operating loss as follows:

10 (1) As used in this subsection:

11 "Base year" means the last privilege period ending prior to July  
12 31, 2019.

13 "Base year BAF" means the taxpayer's business allocation factor  
14 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-  
15 6 through C.54:10A-10) for purposes of calculating entire net  
16 income for the base year, as such section was in effect for the last  
17 privilege period ending prior to July 31, 2019.

18 "UNOL" means the unabsorbed portion of net operating loss as  
19 calculated under paragraph (6) of subsection (k) of this section as  
20 such paragraph was in effect for the last privilege period ending  
21 prior to July 31, 2019, that was not deductible in previous privilege  
22 periods and was eligible for carryover on the last day of the base  
23 year subject to the limitations for deduction under such subsection,  
24 including any net operating loss sustained by the taxpayer during  
25 the base year.

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

28 (A) The taxpayer shall first calculate the tax value of its UNOL  
29 for the base year and for each preceding privilege period for which  
30 there is a UNOL. The value of the UNOL for each privilege period  
31 is equal to the product of (I) the amount of the taxpayer's UNOL for  
32 a privilege period, and (II) the taxpayer's base year BAF. This result  
33 shall equal the taxpayer's prior net operating loss conversion  
34 carryover.

35 (B) The taxpayer shall continue to carry over its prior net  
36 operating loss conversion carryover to offset its allocated entire net  
37 income as provided in sections 6 through 10 of P.L.1945, c.162  
38 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on  
39 and after July 31, 2019. Such carryover periods shall not exceed  
40 the twenty privilege periods following the privilege period of the  
41 initial loss. The entire amount of the prior net operating loss  
42 conversion carryover for any privilege period shall be carried to the  
43 earliest of the privilege periods to which the loss may be  
44 carried. The portion of the prior net operating loss conversion  
45 carryover which shall be carried to each of the other privilege  
46 periods shall be the excess, if any, of the amount of the prior net  
47 operating loss conversion carryover over the sum of the entire net

1 income, computed without the exclusions permitted in paragraphs  
2 (4) and (5) of subsection (k) of this section allocated to this State.

3 (C) The prior net operating loss conversion carryover computed  
4 under this subsection shall be applied against the entire net income  
5 allocated to this State before the net operating loss carryover  
6 computed under subsection (v) of this section.

7 (v) "Net operating loss deduction" means the amount allowed as  
8 a deduction for the net operating loss carryover to the privilege  
9 period, calculated as follows:

10 (1) Net operating loss carryover. A net operating loss for any  
11 privilege period ending on or after July 31, 2019, shall be a net  
12 operating loss carryover to each of the twenty privilege periods  
13 following the period of the loss. The entire amount of the net  
14 operating loss for any privilege period shall be carried to the earliest  
15 of the privilege periods to which the loss may be carried. The  
16 portion of the loss which shall be carried to each of the other  
17 privilege periods shall be the excess, if any, of the amount of the  
18 loss over the sum of the entire net income, computed without the  
19 exclusions permitted in paragraphs (4) and (5) of subsection (k) of  
20 this section allocated to this State.

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

28 (3) Reduction for discharge of indebtedness. A net operating  
29 loss for any privilege period ending on or after July 31, 2019, and  
30 any net operating loss carryover to such privilege period, shall be  
31 reduced by the amount excluded from federal taxable income under  
32 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
33 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,  
34 for the privilege period of the discharge of indebtedness.

35 (4) A net operating loss carryover shall not include any net  
36 operating loss incurred during any privilege period ending prior to  
37 July 31, 2019.

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

1 (w) "Taxable net income" means entire net income allocated to  
2 this State as calculated pursuant to sections 6 through 8 of  
3 P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by  
4 subtracting any prior net operating loss conversion carryforward  
5 calculated pursuant to subsection (u) of this section, and any net  
6 operating loss calculated pursuant to subsection (v) of this section.

7 (x) "Affiliated group" means, for purposes of section 23 of  
8 P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in  
9 section 1504 of the federal Internal Revenue Code, 26 U.S.C.  
10 s.1504, except such affiliated group shall include all U.S. domestic  
11 corporations that are commonly owned, directly or indirectly, by  
12 any member of such affiliated group, without regard to whether the  
13 affiliated group includes (1) corporations included in more than one  
14 federal consolidated return, (2) corporations engaged in one or more  
15 unitary businesses, or (3) corporations that are not engaged in a  
16 unitary business with any other member of the affiliated group.

17 For purposes of this subsection:

18 "U.S. domestic corporations" means: (1) business entities  
19 wherever incorporated or formed that are U.S. domestic  
20 corporations, are deemed to be, or are treated as U.S. domestic  
21 corporations under the provisions of the federal Internal Revenue  
22 Code; or (2) any entities incorporated or formed under the laws of a  
23 foreign nation that are required to file federal tax returns if such  
24 entities have effectively connected income within the meaning of  
25 the federal Internal Revenue Code; and

26 "Commonly owned" means that more than 50 percent of the  
27 voting control of each member of an affiliated group is directly or  
28 indirectly owned by a common owner or owners, either corporate or  
29 non-corporate, whether or not the owner or owners are members of  
30 the affiliated group. Whether voting control is indirectly owned  
31 shall be determined in accordance with section 318 of the federal  
32 Internal Revenue Code (26 U.S.C. s.318).

33 (y) "Combinable captive insurance company" means an entity  
34 that is treated as an association taxable as a corporation under the  
35 federal Internal Revenue Code:

36 (1) more than 50% of the voting stock of which is owned or  
37 controlled, directly or indirectly, by a single entity that is treated as  
38 an association taxable as a corporation under the federal Internal  
39 Revenue Code, and not exempt from federal income tax;

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

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

45 (4) 50% or less of whose gross receipts for the privilege period  
46 consist of premiums from arrangements that constitute insurance for  
47 federal income tax purposes.

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

7 For purposes of this definition:

8 "Affiliated group" shall have the same meaning as that term is  
9 given by section 1504 of the federal Internal Revenue Code, 26  
10 U.S.C. s.1504, except that the term "common parent corporation" as  
11 used in section 1504 of the federal Internal Revenue Code, 26  
12 U.S.C. s.1504, shall mean any person, as defined in section 7701 of  
13 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references  
14 to "at least 80%" in section 1504 of the federal Internal Revenue  
15 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section  
16 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall  
17 be read without regard to the exclusions provided for in subsection  
18 (b) of that section.

19 "Gross receipts" includes the amounts included in gross receipts  
20 for purposes of paragraph (15) of subsection (c) of section 501 of  
21 the federal Internal Revenue Code, 26 U.S.C. s.501, except that  
22 those amounts also include all premiums.

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

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

33 A combined group shall be treated, for privilege periods ending  
34 on and after July 31, 2020, as one taxpayer for purposes of  
35 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162  
36 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for  
37 the income derived from the unitary business; provided however,  
38 with regard to the surtax imposed pursuant to section 1 of P.L.2018,  
39 c.48 (C.54:10A-5.41) and for that purpose only, the portion of  
40 income that is attributable to a member which is a public utility  
41 exempt from the surtax shall not be included when computing the  
42 surtax due.

43 (aa) "Common ownership" means that more than 50% of the  
44 voting control of each member of a combined group is directly or  
45 indirectly owned by a common owner or owners, either corporate or  
46 non-corporate, whether or not the owner or owners are members of  
47 the combined group. Whether voting control is indirectly owned



1 shall be determined in accordance with section 318 of the federal  
2 Internal Revenue Code, 26 U.S.C. s.318.

3 (bb) "Group privilege period" means, if two or more members in  
4 the combined group file in the same federal consolidated tax return,  
5 the same income year as that used on the federal consolidated tax  
6 return and, in all other cases, the privilege period of the managerial  
7 member.

8 (cc) "Managerial member" means if the combined group has a  
9 common parent corporation and that common parent corporation is  
10 a taxable member, the managerial member shall be the common  
11 parent corporation. In other cases, the combined group shall select  
12 a taxable member as its managerial member or, in the discretion of  
13 the director or upon failure of the combined group to select its  
14 managerial member, the director shall designate a taxable member  
15 of the combined group as managerial member.

16 (dd) "Member" means a business entity that is a part of a  
17 combined group.

18 A corporation exempt pursuant to section 3 of P.L.1945, c.162  
19 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-1  
20 et seq.) shall not be a member of a combined group.

21 (ee) "Nontaxable member" means a member that is: (i) not  
22 subject to tax pursuant to the Corporation Business Tax Act (1945),  
23 P.L.1945, c.162 (C.54:10A-1 et seq.); or (ii) (deleted by  
24 amendment, P.L.2020, c.118 (C.54:10A-5.46 et al.).

25 (ff) "Taxable member" means a member that is subject to tax  
26 pursuant to the Corporation Business Tax Act (1945), P.L.1945,  
27 c.162 (C.54:10A-1 et seq.).

28 A New Jersey S corporation shall only be included as a taxable  
29 member of a combined group filing a New Jersey combined return  
30 if the New Jersey S Corporation elects to be included as a member  
31 and taxed at the same rate as the other members of the combined  
32 group. A New Jersey S corporation that does not elect to be  
33 included shall be excluded as a member of the combined return and  
34 shall file a separate return.

35 (gg) "Unitary business" means a single economic enterprise that  
36 is made up either of separate parts of a single business entity or of a  
37 group of business entities under common ownership that are  
38 sufficiently interdependent, integrated, and interrelated through  
39 their activities so as to provide a synergy and mutual benefit that  
40 produces a sharing or exchange of value among them and a  
41 significant flow of value among the separate parts. "Unitary  
42 business" shall be construed to the broadest extent permitted under  
43 the Constitution of the United States. A business conducted by a  
44 partnership which is in a unitary business with the combined group  
45 shall be treated as the business of the partners that are members of  
46 the combined group, whether the partnership interest is held directly  
47 or indirectly through a series of partnerships, to the extent of a  
48 partner's distributive share of partnership income. The amount of

1 partnership income to be included in the partner's entire net income  
2 shall be determined in accordance with subsection a. of section 3 of  
3 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of  
4 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business  
5 conducted directly or indirectly by one corporation is unitary with  
6 that portion of a business conducted by another corporation through  
7 its direct or indirect interest in a partnership.  
8 (cf: P.L.2020, c.118, s.3)

9  
10 21. Section 3 of P.L.1993, c.173 (C.54:10A-5.22) is amended to  
11 read as follows:

12 3. a. **【A corporation may elect, in accordance with the**  
13 **provisions of this section, to be a New Jersey S corporation. In**  
14 **order for an election to be valid, the corporation and each of its**  
15 **shareholders on the day on which the election is made (hereinafter**  
16 **"initial shareholders") must consent to such election and the**  
17 **jurisdictional requirements of becoming a New Jersey S**  
18 **corporation. The form of the election and consent to jurisdictional**  
19 **requirements and the place for filing shall be as prescribed by the**  
20 **Director of the Division of Taxation.】** (Deleted by amendment  
21 P.L. , c. ) (pending before the Legislature as this bill)

22 b. **【Each initial shareholder and the corporation】** A New Jersey  
23 S Corporation and each shareholder shall consent to the following  
24 jurisdictional requirements:

25 (1) That this State shall have the right and jurisdiction to tax and  
26 collect the tax on each shareholder's S corporation income as  
27 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) and,  
28 if applicable, the pass-through business alternative income tax  
29 pursuant to P.L.2019, c.320 (C.54A:12-1 et al.);

30 (2) That New Jersey's right and jurisdiction to tax the income as  
31 set forth in paragraph (1) of this subsection shall not be affected by  
32 a change of a shareholder's residency, except as provided by the  
33 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

34 (3) If shareholders that are not initial shareholders of the  
35 corporation, while the corporation is a New Jersey S corporation,  
36 fail to consent to New Jersey's jurisdiction to tax S corporation  
37 income to such shareholders, this State shall have the right and  
38 jurisdiction to collect a payment of tax each year directly from the  
39 corporation equal to the S corporation income allocated to this  
40 State, as defined pursuant to section 12 of P.L.1993, c.173  
41 (C.54A:5-10), of the nonconsenting shareholders for the accounting  
42 or privilege period multiplied by the maximum tax bracket rate  
43 provided under N.J.S.54A:2-1 for the accounting or privilege  
44 period. In such case, the corporation shall have the right, but not  
45 the obligation, to recover payments made by the corporation  
46 pursuant to this paragraph from each nonconsenting shareholder.

47 c. **【A corporation may make an election to become a New**  
48 **Jersey S corporation with respect to an accounting or privilege**

1 period for which the corporation is or will be an S corporation. The  
2 election for an accounting or privilege period, along with the **】** The  
3 consents to jurisdictional requirements **【,】** shall be filed within one  
4 calendar month of the time at which a federal S corporation election  
5 would be required if such accounting or privilege period were a  
6 "taxable year" for which a federal S corporation election were to be  
7 made pursuant to section 1362 of the federal Internal Revenue Code  
8 of 1986, 26 U.S.C. s.1362. Such elections may only be revoked  
9 pursuant to subsection d. of this section. **【**Such election shall  
10 terminate immediately upon the corporation's failure to satisfy the  
11 definition of a New Jersey S corporation pursuant to paragraph (p)  
12 of section 4 of P.L.1945, c.162 (C.54:10A-4).**】**

13 d. **【**A corporation may revoke an election pursuant to this  
14 section on or before the last day of the first accounting or privilege  
15 period to which the election would otherwise apply.**】** Deleted by  
16 amendment P.L. , c. ) (pending before the Legislature as this  
17 bill)

18 e. A corporation shall report any change in its shareholders or  
19 their share of ownership to the Director of the Division of Taxation  
20 in a form and manner determined by the director.  
21 (cf: P.L.2019, c.320, s.6)  
22

23 22. Section 4 of P.L.1993, c.173 (C.54:10A-5.23) is amended to  
24 read as follows:

25 4. a. **【**With respect to each of its shareholders that is not an  
26 initial shareholder,**】** Each shareholder of a New Jersey S  
27 corporation shall satisfy the requirements of **【**either**】** paragraph b.  
28 **【**or c.**】** of this section.

29 b. Deliver a consent to the jurisdictional requirements as set  
30 forth in **【**subsection b. of**】** section 3 of P.L.1993, c.173 (C.54:10A-  
31 5.22) , in a form and manner determined by the director.

32 c. **【**Make**】** A New Jersey S corporation shall make payments to  
33 the Director of the Division of Taxation on behalf of each  
34 nonconsenting shareholder in an amount equal to the shareholder's  
35 pro rata share of S corporation income allocated to this State, as  
36 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10),  
37 reflected on the corporation's return for the accounting or privilege  
38 period, multiplied by the maximum tax bracket rate provided under  
39 N.J.S.54A:2-1 in effect at the end of the accounting or privilege  
40 period. The payments shall be made no later than the time for filing  
41 of the return for the accounting or privilege period. The director  
42 may, by regulation, require that amounts estimated to be equal to  
43 the liability expected to be due pursuant to this subsection be  
44 withheld from any distribution made to a nonconsenting  
45 shareholder.

46 d. If a shareholder that is not an initial shareholder of a New  
47 Jersey S corporation fails to deliver a consent to the jurisdictional

1 requirements set forth in [subsection b. of] section 3 of P.L.1993,  
2 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to  
3 withhold payments pursuant to subsection c. of this section, then  
4 this State shall have the right and jurisdiction to collect a tax each  
5 year directly from the corporation equal to the pro rata share of the  
6 S corporation income allocated to this State, as defined pursuant to  
7 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting  
8 shareholder times the maximum tax bracket rate provided under  
9 N.J.S.54A:2-1 for the appropriate accounting or privilege  
10 period. In such case, the corporation shall have the right, but not  
11 the obligation, to recover payments made by the corporation  
12 pursuant to this subsection from each nonconsenting  
13 shareholder. The corporation shall not be liable for the pass-  
14 through business alternative income tax pursuant to P.L.2019, c.320  
15 (C.54A:12-1 et al.) relative to collections made in a taxable year for  
16 such nonconsenting members.  
17 (cf: P.L.2019, c.320, s.7)

18

19 23. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to  
20 read as follows:

21 12. For the purposes of the "New Jersey Gross Income Tax Act,"  
22 N.J.S.54A:1-1 et seq.:

23 "New Jersey S corporation" means a [corporation that is an S  
24 corporation ; which has made a valid election pursuant to section 3  
25 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
26 corporation continuously since the effective date of the valid  
27 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-  
28 5.22)] taxpayer that has made a valid election to be an S  
29 corporation for federal tax purposes for the taxable year.

30 "Pro rata share" means the portion of any items attributable to an  
31 S corporation shareholder for a taxable year determined in the  
32 manner provided in, and subject to any election made under  
33 subsection (a) of section 1377 or subsection (e) of section 1362 of  
34 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and  
35 s.1362.

36 "Pro rata share of S corporation income" means the sum of the  
37 shareholder's proportionate share of:

38 For a New Jersey S corporation, the S corporation income  
39 allocated to this State of all New Jersey S corporations; and the S  
40 corporation income not allocated to this State.

41 "S corporation" means a corporation [included in the definition  
42 of] that has elected to be an "S corporation" pursuant to section  
43 1361 of the federal Internal Revenue Code [of 1986], 26 U.S.C.  
44 s.1361, for the taxable year.

45 "S corporation income" means the net of an S corporation's items  
46 of income, loss or deduction taken into account by the shareholder  
47 in the manner provided in section 1366 of the federal Internal  
48 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

1       a. S corporation income shall be determined without the  
2 exclusion, deduction or credit of:

3       (1) any dividend exclusion or deduction otherwise allowed  
4 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,  
5 c.162 (C.54:10A-4);

6       (2) taxes paid or accrued to the United States, a possession or  
7 territory of the United States, a state including this State, a political  
8 subdivision thereof, or the District of Columbia on or measured by  
9 profits or income, or business presence or business activity, of the  
10 corporation;

11       (3) any income taxes paid or accrued to the United States, a  
12 possession or territory of the United States, a state including this  
13 State, a political subdivision thereof, or the District of Columbia  
14 paid or accrued by the S corporation on behalf of, or in satisfaction  
15 of the liabilities of, shareholders of the corporation;

16       (4) interest income on obligations of any state other than this  
17 State, or of a political subdivision thereof, or of the federal  
18 government, except as deducted pursuant to subsection b. of this  
19 section; or

20       (5) interest on indebtedness incurred or continued, expenses  
21 paid and incurred to purchase, carry, manage or conserve, and  
22 expenses of collection of the income or gain from obligations the  
23 income or gain from which is deductible pursuant to subsection b.  
24 of this definition; and

25       b. S corporation income shall be determined after deduction of  
26 any gains or income derived from obligations which are referred to  
27 in N.J.S.54A:6-14 or from securities which evidence ownership in a  
28 qualified investment fund as defined in section 2 of P.L.1987, c.310  
29 (C.54A:6-14.1), and any interest excluded from gross income  
30 pursuant to N.J.S.54A:6-14, or distributions excluded from income  
31 pursuant to section 2 of P.L.1987, c.310 (C.54A:6-14.1); and

32       c. The character of any S corporation item taken into account  
33 by a shareholder of an S corporation shall be determined as if such  
34 items were received or incurred by the S corporation and not its  
35 shareholder.

36       "S corporation income allocated to this State" means that portion  
37 of the S corporation income that is allocated to this State by the  
38 allocation factor of the corporation for the fiscal or calendar  
39 accounting period pursuant to sections 6 through 10 of P.L.1945,  
40 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax  
41 imposed pursuant to paragraph (3) of subsection (c) of section 5 of  
42 P.L.1945, c.162 (C. 54:10A-5).

43       "S corporation income not allocated to this State" means S  
44 corporation income less S corporation income allocated to this  
45 State.

46       (cf: P.L.1993, c.173, s.12)

1       24. Section 13 of P.L.1993, c.173 (C.54A:5-11) is amended to  
2 read as follows:

3       13. a. A resident shareholder of S corporation stock held by the  
4 shareholder on the first day of the first taxable year following  
5 enactment of this section shall have an initial basis in the stock of  
6 that S corporation and any indebtedness of the S corporation equal  
7 to the basis of the stock determined as though the stock was stock  
8 of a corporation not an S corporation plus any indebtedness of the S  
9 corporation to the shareholder and shall be determined as of the first  
10 day of the first taxable year following enactment of this section

11       b. A resident shareholder of S corporation stock to which  
12 subsection a. of this section does not apply shall have an initial  
13 basis in the stock of the S corporation and any indebtedness of the S  
14 corporation as determined pursuant to the federal Internal Revenue  
15 Code of 1986, determined as of the date that is the latest to occur  
16 of: the date on which the shareholder last became a resident of this  
17 State; the date on which the shareholder acquired the stock of the  
18 corporation; or the effective date of the corporation's most recent S  
19 election under the federal Internal Revenue Code of 1986.

20       c. The initial basis of a resident shareholder in the stock and  
21 indebtedness of an S corporation shall be adjusted after the date  
22 specified in subsections a. or b. of this section in the manner  
23 required by section 1011 of the federal Internal Revenue Code of  
24 1986, 26 U.S.C. s.1011, except that such adjustments shall be  
25 limited to that portion of S corporation income allocated to this  
26 State and S corporation income not allocated to this State that is  
27 included in the shareholder's pro rata share of S corporation income  
28 and except that, with respect to any taxable period during which the  
29 shareholder is a resident of this State:

30       (1) any modification made pursuant to the definition of S  
31 corporation income pursuant to section 12 of P.L.1993, c.173  
32 (C.54A:5-10) other than those for income exempt from taxation by  
33 this State pursuant to paragraph (5) of subsection a. and subsection  
34 b. of that definition shall be taken into account; and

35       (2) any adjustments made pursuant to section 1367 of the  
36 federal Internal Revenue Code of 1986, 26 U.S.C. s.1367, for a  
37 taxable period during which this State did not measure the income  
38 of a shareholder of an S corporation by reference to the S  
39 corporation's income shall not be taken into account.

40       d. A nonresident shareholder of S corporation stock shall have  
41 an initial basis in the stock of the S corporation and any  
42 indebtedness of the S corporation of zero as of the date that is the  
43 latest to occur of: the date on which the shareholder last became a  
44 nonresident of this State; the date on which the shareholder  
45 acquired the stock of the corporation; or the effective date of the  
46 corporation's most recent S election under the federal Internal  
47 Revenue Code of 1986 **【**; or the effective date of the corporation's

1 most recent election pursuant to section 3 of P.L.1993, c.173  
2 (C.54:10A-5.22)】.

3 e. The initial basis of a nonresident shareholder in the stock  
4 and indebtedness of an S corporation shall be adjusted after the date  
5 specified in subsection d. of this section as provided in section 1367  
6 of the of the federal Internal Revenue Code of 1986, 26 U.S.C.  
7 s.1367, except that such adjustments shall be limited to that portion  
8 of S corporation income allocated to this State that is included in  
9 the shareholder's pro rata share of S corporation income. In  
10 computing S corporation income allocated to this State any  
11 modification made pursuant to the definition of S corporation  
12 income pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) for  
13 income exempt from taxation by this State pursuant to paragraph (5)  
14 of subsection a. and subsection b. of that definition shall not be  
15 taken into account.

16 f. The basis in the hands of a resident shareholder of an S  
17 corporation in stock of the S corporation shall be reduced by the  
18 amount of any cash distribution which is not taxable to the  
19 shareholder as a result of the application of section 16 of P.L.1993,  
20 c.173 (C.54A:5-14).

21 g. For purposes of this section, any person acquiring stock or  
22 indebtedness of an S corporation by gift shall be considered to have  
23 acquired the stock or indebtedness at the time the donor acquired  
24 the stock or indebtedness.  
25 (cf: P.L.1993, c.173, s.13)

26

27 25. (New section) The Directors of the Divisions of Revenue  
28 and Enterprise Services and Taxation, when determining whether to  
29 grant retroactive election of S corporation status, shall liberally  
30 construe regulatory requirements in favor of the corporation and  
31 shall have the discretion to authorize retroactive S corporation  
32 status in circumstances in which a taxpayer may not be capable of  
33 meeting all regulatory requirements for such retroactive election  
34 through no fault of the taxpayer.

35

36 26. Sections 1 through 19 of this act shall take effect  
37 immediately, and sections 1 through 16 shall apply to any  
38 adjustments to a taxpayer's federal taxable income on or after  
39 January 1, 2020 and sections 17 through 19 shall apply retroactively  
40 to the effective date of P.L.2020, c.19. Sections 20 through 25 of  
41 this act shall take effect on the 60th day after the date of enactment  
42 and the Directors of the Divisions of Taxation and Revenue and  
43 Enterprise Services shall take such anticipatory administrative  
44 action in advance as is necessary to effectuate the purposes of this  
45 bill.

## STATEMENT

This bill makes various changes to administration of the gross income tax and the corporation business tax by adapting new federal partnership audit regime, ending COVID-related extensions concerning certain State taxes and eliminating requirement to affirmatively elect New Jersey S Corporation status.

Partnership Audit Regime

New Jersey imposes income tax on partners in accordance with N.J.S.A. 54A:2-2 and N.J.S.A. 54A:5-4. The United States Internal Revenue Service has changed its partnership audit regime so that partnerships are the focus of an audit instead of partners due to legislative changes made by the enactment of Title XI of the Bipartisan Budget Act of 2015 (PL 114-74) and I.R.C. Section 6221(a). Federal audit determinations will be made at the partnership level for post-2017 partnership returns. The provisions of this Bill adapt the New Jersey Gross Income Tax to this new federal partnership audit regime that audits the partnership for greater efficiency instead of auditing individual partners. This Bill adopts the Multistate Tax Commission's Model Uniform Statute for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments for purposes of the New Jersey Gross Income Tax Act and Corporation Business Tax Act.

Ends COVID-related Extension

This bill ends the extension of time for the statute of limitations on tax due that was enacted in response to the COVID-19 pandemic. The bill also ends the extension for the provisions regarding the State's payment of interest on a taxpayer's overpayment of tax.

Both of these extension's end dates are currently tied by statute to the end of the state of emergency declared by the Governor in Executive Order No. 103. Separately, in Executive Order No. 170, the Governor extended the time for taxpayers to file a claim for a refund on taxes paid. The end date for that extension is tied to the end of the public health emergency.

On June 4, 2021, the Governor terminated the public health emergency with Executive Order No. 244, but did not terminate the state of emergency. As a result, the extension of time for the statute of limitations on tax due, and payment of interest on tax overpayments, still do not have an end date, while the extension of time for the filing of refund claims does have an end date.

This bill changes the end dates for the extension of time for the statute of limitations on tax due, and payment of interest on overpayments of tax, so that the extensions are tied to the end of the



1 public health emergency, as is the case with the extension for the  
2 filing of refund claims.

3

4 Separate S Corporation Election

5

6 This bill eliminates the requirement that a taxpayer which  
7 qualifies as a Subchapter S Corporation for federal tax purposes  
8 affirmatively elect New Jersey S Corporation status for purposes of  
9 the State's Corporation Business Tax and Gross Income Tax. S  
10 Corporations retain certain benefits of the corporate form, such as  
11 limited liability, without the "double" taxation of corporate income  
12 and dividends distributed that applies to C Corporations. When S  
13 Corporation status is elected for federal purposes, the income and  
14 losses incurred by the entity pass-through to the shareholders of the  
15 S Corporation.

16 A "small business corporation" as defined in the federal Internal  
17 Revenue Code may elect to be an S Corporation for purposes of  
18 federal income taxation. The corporation must affirmatively elect  
19 to be an S Corporation for a particular taxable year, and all  
20 shareholders must give their consent to the election.

21 New Jersey currently requires that entities which have elected to  
22 be S Corporations for federal tax purposes, and that want to be  
23 treated as S Corporations for State tax purposes, must affirmatively  
24 elect to be treated as a New Jersey S Corporation by annually  
25 submitting a form to the Director of the Division of Taxation.  
26 Failure to make such an election for State purposes results in the  
27 taxation by the State of the entity's corporate income and of  
28 dividends received by shareholders, as occurs for corporations  
29 generally.

30 This bill removes the requirement that a taxpayer which elects  
31 treatment as an S Corporation for federal tax purposes must also  
32 elect to be a "New Jersey S Corporation." This bill links New  
33 Jersey S Corporation status to the S Corporation election for federal  
34 income tax purposes and eliminates the confusion and  
35 administrative snafus that have prevented some eligible taxpayers  
36 from receiving the benefits of "pass-through" taxation.

37 Upon enactment of this bill, New Jersey would join the majority  
38 of states that accept a federal S Corporation election for state tax  
39 purposes without requiring any additional action on the part of the  
40 corporation. The bill streamlines the process by which eligible  
41 corporations may avail themselves of "pass-through" tax treatment  
42 on the State level.

43 The bill retains the requirement that the S Corporation and each  
44 shareholder affirmatively consent to existing jurisdictional  
45 requirements, in a form and manner to be determined by the  
46 director.