

SENATE, No. 982

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 4, 2016

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SYNOPSIS

Requires members of unitary business groups to file combined reports of corporation business tax.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT requiring members of unitary business groups to file
2 combined reports of corporation business tax, supplementing and
3 amending P.L.1945, c.162, amending P.L.1987, c.76, and
4 repealing sections 5 and 30 of P.L.2002, c.40.

5

6 1. (New section) As used in P.L.1945, c.162 (C.54:10A-1 et
7 seq.):

8 “Combined group” means the group of corporations that are
9 engaged in a unitary business.

10 “Common ownership” means that more than 50 percent of the
11 voting control of each member of a combined group is directly or
12 indirectly owned by a common owner or owners, either corporate or
13 noncorporate, whether or not the owner or owners are members of
14 the combined group.

15 “Managerial member” means the managerial member selected
16 pursuant to section 5 of P.L. , c. (C.) (pending before the
17 Legislature as this bill).

18 “Member” means a corporation that is a part of a combined
19 group.

20 “Nontaxable member” means a member that is not subject to tax
21 pursuant to the Corporation Business Tax Act (1945), P.L.1945,
22 c.162 (C.54:10A-1 et seq.).

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

26 “Tax haven” means a jurisdiction that, during the privilege
27 period, has no or only nominal effective tax on relevant income
28 and:

29 a. has laws or practices that prevent effective exchange of
30 information for tax purposes with other governments on taxpayers
31 benefiting from the tax regime;

32 b. has a tax regime which lacks transparency. A tax regime
33 lacks transparency if the details of legislative, legal, or
34 administrative provisions are not open and apparent or are not
35 consistently applied among similarly situated taxpayers, or if the
36 information needed by tax authorities to determine a taxpayer’s
37 correct tax liability, such as accounting records and underlying
38 documentation, is not adequately available;

39 c. facilitates the establishment of foreign-owned entities
40 without the need for a local substantive presence or prohibits these
41 entities from having any commercial impact on the local economy;

42 d. explicitly or implicitly excludes the jurisdiction’s resident
43 taxpayers from taking advantage of the tax regime’s benefits or
44 prohibits enterprises that benefit from the regime from operating in
45 the jurisdiction’s domestic market; or

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 e. has created a tax regime which is favorable for tax
2 avoidance, based upon an overall assessment of relevant factors,
3 including whether the jurisdiction has a significant untaxed offshore
4 financial or other services sector relative to its overall economy.

5 “Unitary business” means a single economic enterprise that is
6 made up either of separate parts of a single business entity or of a
7 commonly controlled group of business entities that are sufficiently
8 interdependent, integrated, and interrelated through their activities
9 so as to provide a synergy and mutual benefit that produces a
10 sharing or exchange of value among them and a significant flow of
11 value among the separate parts. “Unitary business” shall be
12 construed to the broadest extent permitted under the Constitution of
13 the United States. Any business conducted by a partnership shall be
14 treated as the business of the partners, whether the partnership
15 interest is directly held or indirectly held through a series of
16 partnerships, to the extent of a partner’s distributive share of the
17 partnership’s income, regardless of the magnitude of the partner’s
18 ownership interest or its distributive share of partnership income.
19 Two corporations under common control are engaged in a unitary
20 business if the first corporation is engaged, directly or indirectly, in
21 a unitary business with a partnership that is owned, directly or
22 indirectly, by the second corporation, regardless of the magnitude
23 of the second corporation’s ownership interest in the partnership or
24 its distributive or any other share of partnership income.

25
26 2. (New section) A taxable member of a combined group shall
27 determine its entire net income from the unitary business as its
28 share of the allocated income of the combined group in accordance
29 with a combined report made pursuant to this section and section 3
30 of P.L. , c. (C.) (pending before the Legislature as this bill).

31 The entire net income from the unitary business of a combined
32 group is the sum of the entire net incomes of each taxable member
33 and each nontaxable member of the combined group derived from
34 the unitary business, which shall be determined as follows:

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

39 b. For a member not incorporated in the United States, the
40 income to be included in the combined group's net income shall be
41 determined from a profit and loss statement that shall be prepared
42 for each foreign branch or corporation in the currency in which the
43 books of account of the branch or corporation are regularly
44 maintained, adjusted to conform it to the accounting principles
45 generally accepted in the United States for the presentation of those
46 statements and further adjusted to take into account any book-tax
47 differences required by federal or State law. The profit and loss
48 statement of each foreign member of the combined group and the

1 allocation factors related thereto, whether United States or foreign,
2 shall be translated into or from the currency in which the parent
3 company maintains its books and records on any reasonable basis
4 consistently applied on a year-to-year or entity-by-entity basis.
5 Income shall be expressed in United States dollars. In lieu of these
6 procedures and subject to the determination of the director that the
7 income to be reported reasonably approximates income as
8 determined under the Corporation Business Tax Act (1945),
9 P.L.1945, c.162 (C.54:10A-1 et seq.), income may be determined
10 on any reasonable basis consistently applied on a year-to-year or
11 entity-by-entity basis.

12 c. If a member of a combined group receives income from the
13 unitary business from a partnership, the combined group's net
14 income shall include the member's direct and indirect distributive
15 share of the partnership's unitary business income.

16 d. All dividends paid by one member to another member of the
17 combined group shall be eliminated from the income of the
18 recipient.

19 e. Except as otherwise provided by regulation, business income
20 from an intercompany transaction among members of the same
21 combined group shall be deferred in a manner similar to the deferral
22 under 26 C.F.R. s.1.1502-13. Upon the occurrence of either of the
23 following events, deferred business income resulting from an
24 intercompany transaction among members of a combined group
25 shall be restored to the income of the seller and shall be included in
26 the combined group's net income as if the seller had earned the
27 income immediately before the event:

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

35 (2) The buyer and seller cease to be members of the same
36 combined group, regardless of whether the buyer and seller remain
37 sufficiently interdependent, integrated, and interrelated through
38 their activities so as to provide a synergy and mutual benefit that
39 produces a sharing or exchange of value between them.

40 f. A charitable expense incurred by a member of a combined
41 group shall, to the extent allowable as a deduction pursuant to
42 section 170 of the federal Internal Revenue Code (26 U.S.C. s.170),
43 be subtracted first from the combined group's net income, subject to
44 the income limitations of that section applied to the entire business
45 income of the group. A charitable deduction disallowed under the
46 foregoing rule, but allowed as a carryover deduction in a subsequent
47 year, shall be treated as originally incurred in the subsequent year
48 by the same member and the rules of this section shall apply in the

1 subsequent year in determining the allowable deduction for that
2 year.

3 g. Gain or loss from the sale or exchange of capital assets,
4 property described by paragraph (3) of subsection (a) of section
5 1231 of the federal Internal Revenue Code (26 U.S.C. s.1231) and
6 property subject to an involuntary conversion shall be removed
7 from the net income of each member of a combined group and shall
8 be included in the combined group's net income as follows:

9 (1) For each class of gain or loss, whether short-term capital,
10 long-term capital, gain or loss described in section 1231 of the
11 federal Internal Revenue Code (26 U.S.C. s.1231), or gain or loss
12 from involuntary conversions, all members' business gain and loss
13 for the class shall be combined, without netting among such classes,
14 and each class of net business gain or loss shall be apportioned to
15 each member using the member's allocation factor determined
16 pursuant to section 3 of P.L. , c. (C.) (pending before the
17 Legislature as this bill).

18 (2) Any resulting income or loss apportioned to this State, as
19 long as the loss is not subject to the limitations of section 1211 of
20 the federal Internal Revenue Code (26 U.S.C. s.1211), of a taxable
21 member produced by the application of paragraph (1) of this
22 subsection shall then be applied to all other income or loss of that
23 member apportioned to this State. Any resulting loss of a member
24 apportioned to this State that is subject to the limitations of section
25 1211 of the federal Internal Revenue Code (26 U.S.C. s.1211) shall
26 be carried forward by that member and shall be treated as short-
27 term capital loss apportioned to this State and incurred by that
28 member for the year for which the carryover applies.

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

35
36 3. (New section) A taxable member of a combined group shall
37 determine its allocation factor for determining its share of the
38 income of the combined group, as determined pursuant to the
39 provisions of section 2 of P.L. , c. (C.) (pending before the
40 Legislature as this bill), pursuant to section 6 of P.L.1945, c.162
41 (C.54:10A-6); provided however:

42 a. In computing its denominator for the sales fraction, the
43 taxable member shall use the combined group's denominator for
44 that fraction. In computing the numerator of its sales fraction, each
45 taxable member shall include in its numerator its share of sales of
46 nontaxable members assigned to this State, as provided in
47 subsection b. of this section.

1 b. Sales assignable to this State of each nontaxable member,
2 determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6)
3 as if it were a taxable member, shall be aggregated. Each taxable
4 member of the combined group shall include in the numerator of its
5 sales fraction a portion of the aggregate receipts assignable to this
6 State of nontaxable members based on a ratio, the numerator of
7 which is that taxable member's sales assigned to this State, without
8 regard to this subsection, and the denominator of which is the
9 aggregate receipts assignable to this State of all the taxable
10 members of the combined group, without regard to this subsection.

11 c. In determining the numerator and denominator of the
12 allocation factors of taxable members, transactions between or
13 among members of the combined group shall be eliminated.

14

15 4. (New section) a. The managerial member of a combined
16 group may elect to have the combined group determined on a
17 "water's edge" basis. If the election is made, each taxable member
18 shall determine its share of the allocated income of the combined
19 group on a water's edge basis under which each member shall take
20 into account the incomes and allocation factors of only the
21 following members of the combined group:

22 (1) each member incorporated in the United States, or formed
23 under the laws of the United States or any state;

24 (2) each member, wherever incorporated or formed, if 20
25 percent or more of its sales fraction during the privilege period are
26 assigned to the United States; and

27 (3) each member that is doing business in a jurisdiction that is
28 determined by the director to be a tax haven for the privilege
29 period, unless it is proven to the satisfaction of the director by clear
30 and convincing evidence that the member's business activity in the
31 tax haven is entirely outside the scope of the laws, provisions, and
32 practices that cause the jurisdiction to meet the definition of a tax
33 haven.

34 b. A water's edge election is effective only if made on a
35 timely-filed, original return for a privilege period by the managerial
36 member of the combined group. The election is binding for, and
37 applicable to, the privilege period for which it is made and for the
38 10 immediately succeeding privilege periods.

39 c. The director shall publish a list of jurisdictions that the
40 director determines to be tax havens for relevant privilege periods.

41

42 5. (New section) a. If the combined group has a common
43 parent corporation and that common parent corporation is a taxable
44 member, the managerial member shall be the common parent
45 corporation. In other cases, the combined group shall select a
46 taxable member as its managerial member or, in the discretion of
47 the director or upon failure of the combined group to select its

1 managerial member, the director shall designate a taxable member
2 of the combined group as managerial member.

3 b. A combined group shall file a combined unitary tax return
4 under this section in the form and manner prescribed by the
5 director. The managerial member of the combined group shall file
6 the combined unitary tax return on behalf of the taxable members of
7 the combined group and each taxable member of the combined
8 group shall include a copy of the combined unitary tax return with
9 its own final return. The director may by regulation allow or
10 require the managerial member to file taxable member returns, file
11 taxable member extensions for filing, pay taxable member
12 liabilities, receive taxable member findings, assessments, and
13 notices, make and receive taxable member claims, or file taxable
14 member protests and appeals.

15 c. The privilege period for which the group shall file shall be
16 determined as the privilege period of the managerial member. If a
17 member of a combined group has a different fiscal or calendar
18 accounting period from the group privilege period, that member
19 with a different period shall report amounts from its return for its
20 fiscal or calendar accounting year that ends during the group
21 privilege period.

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

28 e. If a combined group is eligible to select the managerial
29 member of the combined group, notice of the selection shall be
30 submitted in written form to the director not later than the due date,
31 or, if an extension of time to file has been requested and granted,
32 not later than the extended due date of the combined unitary tax
33 return for the initial privilege period for which a return is required.
34 The subsequent selection of another designated taxable member
35 shall be subject to the approval of the director.

36
37 6. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to
38 read as follows:

39 5. The franchise tax to be annually assessed to and paid by
40 each taxpayer shall be the greater of the amount computed pursuant
41 to this section or the alternative minimum assessment computed
42 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
43 however, that in the case of a taxpayer that is a New Jersey S
44 corporation, an investment company, a professional corporation
45 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a
46 similar corporation for profit organized for the purpose of rendering
47 professional services under the laws of another state, or a person
48 operating on a cooperative basis under Part I of Subchapter T of the

1 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
 2 there shall be no alternative minimum assessment computed
 3 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

4 The amount computed pursuant to this section shall be the sum
 5 of the amount computed under subsection (a) hereof, or in the
 6 alternative to the amount computed under subsection (a) hereof, the
 7 amount computed under subsection (f) hereof, and the amount
 8 computed under subsection (c) hereof:

9 (a) That portion of its entire net worth as may be allocable to
 10 this State as provided in section 6, multiplied by the following
 11 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
 12 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
 13 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
 14 mill per dollar on all amounts of allocated net worth in excess of
 15 \$300,000,000.00; provided, however, that with respect to reports
 16 covering accounting or privilege periods set forth below, the rate
 17 shall be that percentage of the rate set forth in this subsection for
 18 the appropriate year:

| 19 Accounting or Privilege | |
|----------------------------|----------------------------|
| 20 Periods Beginning on or | The Percentage of the Rate |
| 21 after: | to be Imposed Shall be: |
| 22 April 1, 1983 | 75% |
| 23 July 1, 1984 | 50% |
| 24 July 1, 1985 | 25% |
| 25 July 1, 1986 | 0 |

26 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

27 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
 28 1/4% of its entire net income that is not entire net income from a
 29 unitary business reported on a combined return or such portion
 30 thereof as may be allocable to this State as provided in section 6 of
 31 P.L.1945, c.162 (C.54:10A-6), plus its allocated share of entire net
 32 income from a unitary business determined as provided by sections
 33 2 and 3 of P.L. , c. (C. and)(pending before the
 34 Legislature as this bill), plus such portion thereof as is specifically
 35 assigned to this State as provided in section 5 of P.L.1993, c.173
 36 (C.54:10A-6.1); provided, however, that with respect to reports
 37 covering accounting or privilege periods or parts thereof ending
 38 after December 31, 1967, the rate shall be 4 1/4%; and that with
 39 respect to reports covering accounting or privilege periods or parts
 40 thereof ending after December 31, 1971, the rate shall be 5 1/2%;
 41 and that with respect to reports covering accounting or privilege
 42 periods or parts thereof ending after December 31, 1974, the rate
 43 shall be 7 1/2%; and that with respect to reports covering privilege
 44 periods or parts thereof ending after December 31, 1979, the rate
 45 shall be 9%; provided however, that for a taxpayer that has entire
 46 net income of \$100,000 or less for a privilege period and is not a
 47 partnership the rate for that privilege period shall be 7 1/2% and
 48 provided further that for a taxpayer that has entire net income of

1 \$50,000 or less for a privilege period and is not a partnership the
2 rate for that privilege period shall be 6 1/2%.

3 (2) For a taxpayer that is a New Jersey S corporation:

4 (i) for privilege periods ending on or before June 30, 1998 the
5 rate determined by subtracting the maximum tax bracket rate
6 provided under N.J.S.54A:2-1 for the privilege period from the tax
7 rate that would otherwise be applicable to the taxpayer's entire net
8 income for the privilege period if the taxpayer were not an S
9 corporation provided under paragraph (1) of this subsection for the
10 privilege period; and

11 (ii) For a taxpayer that has entire net income in excess of
12 \$100,000 for the privilege period, for privilege periods ending on or
13 after July 1, 1998, but on or before June 30, 2001, the rate shall be
14 2%,

15 for privilege periods ending on or after July 1, 2001, but on or
16 before June 30, 2006, the rate shall be 1.33%,

17 for privilege periods ending on or after July 1, 2006, but on or
18 before June 30, 2007, the rate shall be 0.67%, and

19 for privilege periods ending on or after July 1, 2007 there shall
20 be no rate of tax imposed under this paragraph; and

21 (iii) For a taxpayer that has entire net income of \$100,000 or less
22 for privilege periods ending on or after July 1, 1998, but on or
23 before June 30, 2001 the rate for that privilege period shall be 0.5%,
24 and for privilege periods ending on or after July 1, 2001 there shall
25 be no rate of tax imposed under this paragraph.

26 (iv) The taxpayer's rate determined under subparagraph (i), (ii)
27 or (iii) of this paragraph shall be multiplied by its entire net income
28 that is not subject to federal income taxation or such portion thereof
29 as may be allocable to this State pursuant to sections 6 through 10
30 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10) plus such
31 portion thereof as is specifically assigned to this State as provided
32 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

33 (3) For a taxpayer that is a New Jersey S corporation, in
34 addition to the amount, if any, determined under paragraph (2) of
35 this subsection, the tax rate that would otherwise be applicable to
36 the taxpayer's entire net income for the privilege period if the
37 taxpayer were not an S corporation provided under paragraph (1) of
38 this subsection for the privilege period multiplied by its entire net
39 income that is subject to federal income taxation or such portion
40 thereof as may be allocable to this State pursuant to sections 6
41 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

42 (d) Provided, however, that the franchise tax to be annually
43 assessed to and paid by any investment company or real estate
44 investment trust, which has elected to report as such and has filed
45 its return in the form and within the time provided in this act and
46 the rules and regulations promulgated in connection therewith,
47 shall, in the case of an investment company, be measured by 40% of
48 its entire net income and 40% of its entire net worth, and in the case

1 of a real estate investment trust, by 4% of its entire net income and
 2 15% of its entire net worth, at the rates hereinbefore set forth for the
 3 computation of tax on net income and net worth, respectively, but in
 4 no case less than \$250, and further provided, however, that the
 5 franchise tax to be annually assessed to and paid by a regulated
 6 investment company which for a period covered by its report
 7 satisfies the requirements of Chapter 1, Subchapter M, Part I,
 8 Section 852(a) of the federal Internal Revenue Code shall be \$250.

9 (e) The tax assessed to any taxpayer pursuant to this section
 10 shall not be less than \$25 in the case of a domestic corporation, \$50
 11 in the case of a foreign corporation, or \$250 in the case of an
 12 investment company or regulated investment company. Provided
 13 however, that for privilege periods beginning in calendar year 1994
 14 and thereafter the minimum taxes for taxpayers other than an
 15 investment company or a regulated investment company shall be as
 16 provided in the following schedule:

| 17 | Period Beginning | Domestic | Foreign |
|----|------------------|-------------|-------------|
| 18 | In Calendar Year | Corporation | Corporation |
| 19 | | Minimum Tax | Minimum Tax |
| 20 | 1994 | \$ 50 | \$100 |
| 21 | 1995 | \$100 | \$200 |
| 22 | 1996 | \$150 | \$200 |
| 23 | 1997 | \$200 | \$200 |
| 24 | 1998 | \$200 | \$200 |
| 25 | 1999 | \$200 | \$200 |
| 26 | 2000 | \$200 | \$200 |
| 27 | 2001 | \$210 | \$210 |

28 and for calendar years 2002 through 2005 the minimum tax for all
 29 taxpayers shall be \$500, and for calendar year 2006 through
 30 calendar year 2011 the minimum tax for all corporations, and for
 31 privilege periods beginning in calendar year 2012 and thereafter the
 32 minimum tax for corporations that are not New Jersey S
 33 corporations shall be based on the New Jersey gross receipts, as
 34 defined for the purposes of this section pursuant to section 7 of
 35 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the
 36 following schedule:

| 37 | New Jersey Gross Receipts: | Minimum Tax: |
|----|----------------------------|---------------|
| 38 | Less than \$100,000 |\$500 |
| 39 | \$100,000 or more but | |
| 40 | less than \$250,000 | \$750 |
| 41 | \$250,000 or more but | |
| 42 | less than \$500,000 | \$1,000 |
| 43 | \$500,000 or more but | |
| 44 | less than \$1,000,000 | \$1,500 |
| 45 | \$1,000,000 or more | \$2,000 |

46 and for privilege periods beginning in calendar year 2012 and
 47 thereafter the minimum tax for corporations that are New Jersey S
 48 corporations shall be based on the New Jersey gross receipts, as

1 defined for the purposes of this section pursuant to section 7 of
 2 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the
 3 following schedule:

| New Jersey Gross Receipts: | Minimum Tax: |
|--|--------------------|
| 4 Less than \$100,000 | \$375 |
| 5 \$100,000 or more but | |
| 6 less than \$250,000 | \$562.50 |
| 7 \$250,000 or more but | |
| 8 less than \$500,000 | \$750 |
| 9 \$500,000 or more but | |
| 10 less than \$1,000,000 | \$1,125 |
| 11 \$1,000,000 or more | \$1,500 |

12 provided however, that for a taxpayer that is a member of an
 13 affiliated group or a controlled group pursuant to section 1504 or
 14 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
 15 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
 16 more for the privilege period, the minimum tax shall be \$2,000 for
 17 the privilege period.
 18

19 (f) In lieu of the portion of the tax based on net worth and to be
 20 computed under subsection (a) of this section, any taxpayer, the
 21 value of whose total assets everywhere, less reasonable reserves for
 22 depreciation, as of the close of the period covered by its report,
 23 amounts to less than \$150,000, may elect to pay the tax shown in a
 24 table which shall be promulgated by the director.

25 (g) Provided however, that for privilege periods beginning on or
 26 after January 1, 2001 but before January 1, 2002 the franchise tax
 27 annually assessed to and paid by a taxpayer:

28 (1) that is a limited liability company or foreign limited liability
 29 company classified as a partnership for federal income tax purposes
 30 shall be the amount determined pursuant to the provisions of section
 31 3 of P.L.2001, c.136 (C.54:10A-15.6); or

32 (2) that is a limited partnership or foreign limited partnership
 33 classified as a partnership for federal income tax purposes shall be
 34 the amount determined pursuant to the provisions of section 4 of
 35 P.L.2001, c.136 (C.54:10A-15.7).

36 (h) Provided however, that for privilege periods beginning on or
 37 after January 1, 2002 the franchise tax annually assessed to and paid
 38 by a taxpayer that is a partnership shall be the amount determined
 39 pursuant to the provisions of section 12 of P.L.2002, c.40
 40 (C.54:10A-15.11).

41 (i) (Deleted by amendment, P.L.2008, c.120)

42 (cf: P.L.2011, c.84, s.1)

43
 44 7. Section 10 of P.L.1945, c.162 (C.54:10A-10) is amended to
 45 read as follows:

46 10. a. Whenever it shall appear to the director that any taxpayer
 47 fails to maintain its records in accordance with sound accounting
 48 principles or conducts its business or maintains its records in such

1 manner as either directly or indirectly to distort its true entire net
2 income or its true entire net worth under this act or the proportion
3 thereof properly allocable to this State, or whenever any taxpayer
4 maintains a place of business outside this State, or whenever any
5 agreement, understanding or arrangement exists between a taxpayer
6 and any other corporation or any person or firm, for the purpose of
7 evading tax under this act, or whereby the activity, business,
8 receipts, expenses, assets, liabilities, income or net worth of the
9 taxpayer are improperly or inaccurately reflected, the director is
10 authorized and empowered, in the director's discretion and in such
11 manner as the director may determine, to adjust and redetermine
12 such items, and to adjust items of gross receipts, tangible or
13 intangible property and payrolls within and without the State and
14 the allocation of entire net income or entire net worth or to make
15 any other adjustments in any tax report or tax returns as may be
16 necessary to make a fair and reasonable determination of the
17 amount of tax payable under this act.

18 b. Where (1) any taxpayer conducts its activity or business
19 under any agreement, arrangement or understanding in such manner
20 as either directly or indirectly to benefit its members or
21 stockholders, or any of them, or any person or persons directly or
22 indirectly interested in such activity or business, by entering into
23 any transaction at more or less than a fair price which, but for such
24 agreement, arrangement or understanding, might have been paid or
25 received therefor, or (2) any taxpayer, a substantial portion of
26 whose capital stock is owned either directly or indirectly by or
27 through another corporation, enters into any transaction with such
28 other corporation on such terms as to create an improper loss or net
29 income, the director may include in the entire net income of the
30 taxpayer the fair profits which, but for such agreement, arrangement
31 or understanding, the taxpayer might have derived from such
32 transaction. The director may require any person or corporation to
33 submit such information under oath or affirmation, or to permit
34 such examination of its books, papers and documents, as may be
35 necessary to enable the director to determine the existence, nature
36 or extent of an agreement, understanding or arrangement to which
37 this section relates, whether or not such person or corporation is
38 subject to the tax imposed by this act.

39 c. **【**The entire net income of a taxpayer exercising its franchise
40 in this State that is a member of an affiliated group or a controlled
41 group pursuant to section 1504 or 1563 of the federal Internal
42 Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, shall be
43 determined by eliminating all payments to, or charges by, other
44 members of the affiliated or controlled group in excess of fair
45 compensation in all inter-group transactions of any kind.
46 Notwithstanding the elimination of all inter-group transactions in
47 excess of fair compensation, if the taxpayer cannot demonstrate by
48 clear and convincing evidence that a report by a taxpayer discloses

1 the true earnings of the taxpayer on its business carried on in this
2 State, the director may, at the director's discretion, require the
3 taxpayer to file a consolidated return of the entire operations of the
4 affiliated group or controlled group, including its own operations
5 and income to the extent permitted under the Constitution and
6 statutes of the United States. The director shall determine the true
7 amount of entire net income earned by the taxpayer in this State.
8 The consolidated entire net income of the taxpayer and of the other
9 members of its affiliated group or controlled group shall be
10 allocated to this State by use of the applicable allocation formula
11 that the director requires pursuant to P.L.1945, c.162 (C.54A:10A-1
12 et seq.) be used by the taxpayer. The return shall include in the
13 allocation formula the property, payrolls, and sales of all
14 corporations for which the return is made. The director may require
15 a consolidated return under this section without regard to whether
16 the other members of the affiliated or controlled group, other than
17 the taxpayer, are or are not exercising their franchises in this State.

18 A consolidated return required by this section shall be filed
19 within 60 days after it is demanded, subject to the penalties of the
20 State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

21 The member of an affiliated group or a controlled group shall
22 incorporate in its return required under this section information
23 needed to determine under this section its taxable entire net income,
24 and shall furnish any additional information the director requires,
25 subject to the penalties of the State Uniform Tax Procedure Law,
26 R.S.54:48-1 et seq. A taxpayer shall furnish any additional
27 information requested within 30 days after it is demanded, subject
28 to the penalties of the State Uniform Tax Procedure Law,
29 R.S.54:48-1 et seq. **】** (Deleted by amendment, P.L. , c.)
30 (pending before the Legislature as this bill)
31 (cf: P.L.2002, c.40, s.10)
32

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

35 14. (a) The director may by general rule or by special notice
36 require any taxpayer to submit copies or pertinent extracts of its
37 federal income tax returns, or of any other tax return made to any
38 agency of the federal government, or of this or any other state, or of
39 any statement or registration made pursuant to any state or federal
40 law pertaining to securities or securities exchange regulation.

41 (b) The director may require all taxpayers to keep such records
42 as the director may prescribe, and the director may require the
43 production of books, papers, documents and other data, to provide
44 or secure information pertinent to the determination of the tax
45 hereunder and the enforcement and collection thereof. The director
46 may, also, by general rule or by special notice require any taxpayer
47 to make and file information returns, under oath, of facts pertinent
48 to the determination of the tax or liability for tax hereunder,

1 pursuant to such regulations, at such times and in such form and
2 manner and to such extent as the director may prescribe pursuant to
3 law.

4 (c) Each taxpayer filing a return that is a member of [an
5 affiliated group or a controlled group pursuant to section 1504 or
6 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
7 s.1504 or 1563] a combined group shall, upon the request of the
8 director and 90 days' notice thereof, disclose in its return for the
9 privilege period the amount of all inter-member costs or expenses,
10 including but not limited to management fees, rents, and other
11 services, for the privilege period. If the taxpayer acquires products
12 or services from another member of its [affiliated group or
13 controlled] combined group, which it re-sells or otherwise uses to
14 generate revenue, the taxpayer shall, upon the request of the
15 director and 90 days' notice thereof, disclose the amount of revenue
16 generated from those products or services. The director shall
17 promulgate rules and procedures for the manner of disclosure. A
18 failure to file such a disclosure shall be deemed the filing of an
19 incomplete tax return, subject to the penalties of the State Uniform
20 Tax Procedure Law, R.S.54:48-1 et seq.

21 (cf: P.L.2002, c.40, s.11)

22

23 9. Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is amended to
24 read as follows:

25 49. Every domestic or foreign corporation subject to the tax or
26 to filing requirements imposed under the Corporation Business Tax
27 Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), shall keep all
28 records used to determine its tax liability and such other records as
29 the Director of the Division of Taxation may by regulation require.
30 The records shall be available for inspection and examination at any
31 time upon demand by the director or his duly authorized agent or
32 employee and shall be preserved for a period of five years, except
33 that the director may consent to their destruction within that period
34 or may require that they be kept longer.

35 (cf: P.L.1987, c.76, s.49)

36

37 10. Sections 5 and 30 of P.L.2002, c.40 (C.54:10A-4.4 and
38 54:10A-18.1) are repealed.

39

40 11. This act shall take effect immediately and apply to privilege
41 periods ending after its date of enactment.

42

43

44

STATEMENT

45

46 This bill updates the New Jersey corporation business tax
47 reporting system to reduce tax sheltering and improve the efficiency
48 and fairness of corporate income reporting.

1 The bill requires related corporations to file a combined income
2 report using an income reporting system that is similar to those
3 currently in place in a majority of states.

4 Most large businesses are structured as a family of corporations
5 under common ownership and control. This type of structure
6 facilitates the sheltering of corporate income from taxation through
7 transactions among various related corporate entities.

8 This bill improves tax fairness by requiring the multiple
9 organizations that are really one business to determine their income
10 as one business. The combined income reporting system required
11 by the bill treats a group of interrelated companies as a single
12 company for determining income under the corporation business
13 tax, which reduces or eliminates the use of intercorporate
14 transactions to shelter income from taxation. A share of this
15 combined income is then apportioned to New Jersey, allocated
16 among the corporation business taxpayers, the same taxpayers as
17 under current law, and each corporation files its own corporation
18 business tax return.

19 The bill allows one of the members of the corporate group,
20 selected because it is the controlling “parent” corporation in the
21 corporate tax structure or chosen by the other group members, to
22 become the managerial member of the group. This managerial
23 member has the key responsibility for filing the combined income
24 report for the group, and may, pursuant to regulations to be
25 developed by the Director of the Division of Taxation, elect or be
26 assigned other administrative responsibilities for the other members
27 of the group.

28 The bill gives the managerial member the power to elect a more
29 limited form of combined measurement, the so-called “water’s
30 edge” approach, which omits from the combined report foreign
31 corporations that do not independently conduct activity in New
32 Jersey and that do very little business in the United
33 States. However, the bill requires a corporate group that elects
34 water’s edge treatment to include in its combined tax report a
35 related company that does business in a “tax haven”
36 jurisdiction. Such a company may be excluded from the combined
37 report only if it is proven, to the satisfaction of the Director of the
38 Division of Taxation, that its business in that jurisdiction is outside
39 the scope of the laws, provisions, and practices that cause the
40 jurisdiction to meet the bill’s definition of a tax haven.