

[Second Reprint]
SENATE, No. 982

STATE OF NEW JERSEY
217th LEGISLATURE

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SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on September 15, 2016.



(Sponsorship Updated As Of: 9/16/2016)

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, ¹and
 4 P.L.2011, c.25,¹ and repealing sections 5 and 30 of P.L.2002,
 5 c.40.

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

9 ¹ “Combinable captive insurance company” means an entity that
 10 is treated as an association taxable as a corporation under the
 11 federal Internal Revenue Code:

12 more than 50 percent of the voting stock of which is owned or
 13 controlled, directly or indirectly, by a single entity that is treated as
 14 an association taxable as a corporation under the federal Internal
 15 Revenue Code and not exempt from federal income tax;

16 that is licensed as a captive insurance company under the laws of
 17 this State or another jurisdiction;

18 whose business includes providing, directly and indirectly,
 19 insurance or reinsurance covering the risks of its parent, or
 20 members of its affiliated group, or both; and

21 50 percent or less of whose gross receipts for the privilege period
 22 consist of premiums from arrangements that constitute insurance for
 23 federal income tax purposes. For purposes of this section,
 24 “affiliated group” has the same meaning as that term is given by
 25 section 1504 of the federal Internal Revenue Code (26 U.S.C.
 26 s.1504), except that the term “common parent corporation” in that
 27 section is deemed to mean any person, as defined in section 7701 of
 28 the federal internal revenue code (26 U.S.C. s.7701) and references
 29 to “at least eighty percent” in section 1504 of the federal Internal
 30 Revenue Code are to be read as “fifty percent or more;” section
 31 1504 of the federal Internal Revenue Code shall be read without
 32 regard to the exclusions provided for in subsection (b) of that
 33 section; “premiums” includes consideration for annuity contracts
 34 and excludes any part of the consideration for insurance,
 35 reinsurance, or annuity contracts that do not provide bona fide
 36 insurance, reinsurance, or annuity benefits; and “gross receipts”
 37 includes the amounts included in gross receipts for purposes of
 38 paragraph (15) of subsection (c) of section 501 of the federal
 39 Internal Revenue Code (26 U.S.C. s. 501), except that those
 40 amounts also include all premiums.¹

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

43 “Common ¹**[ownership]** control¹” means that more than 50

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted June 6, 2016.

²Senate floor amendments adopted September 15, 2016.

1 percent of the voting control of each member of a combined group
2 is directly or indirectly owned by a common owner or owners,
3 either corporate or noncorporate, whether or not the owner or
4 owners are members of the combined group.

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

8 “Member” means a corporation that is a part of a combined
9 group.

10 “Nontaxable member” means a member that is not subject to tax
11 pursuant to the Corporation Business Tax Act (1945), P.L.1945,
12 c.162 (C.54:10A-1 et seq.) ¹and is not a corporation exempted from
13 the tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3)
14 except for a combinable captive insurance company¹.

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

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

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

24 b. has a tax regime which lacks transparency. A tax regime
25 lacks transparency if the details of legislative, legal, or
26 administrative provisions are not open and apparent or are not
27 consistently applied among similarly situated taxpayers, or if the
28 information needed by tax authorities to determine a taxpayer’s
29 correct tax liability, such as accounting records and underlying
30 documentation, is not adequately available;

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

34 d. explicitly or implicitly excludes the jurisdiction’s resident
35 taxpayers from taking advantage of the tax regime’s benefits or
36 prohibits enterprises that benefit from the regime from operating in
37 the jurisdiction’s domestic market; or

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

42 ¹“Tax haven” does not include a jurisdiction that has entered into
43 a comprehensive income tax treaty with the United States.¹

44 “Unitary business” means a single economic enterprise that is
45 made up either of separate parts of a single business entity or of a
46 commonly controlled group of business entities that are sufficiently
47 interdependent, integrated, and interrelated through their activities
48 so as to provide a synergy and mutual benefit that produces a

1 sharing or exchange of value among them and a significant flow of
2 value among the separate parts. “Unitary business” shall be
3 construed to the broadest extent permitted under the Constitution of
4 the United States. Any business conducted by a partnership shall be
5 treated as the business of the partners, whether the partnership
6 interest is directly held or indirectly held through a series of
7 partnerships, to the extent of a partner’s distributive share of the
8 partnership’s income, regardless of the magnitude of the partner’s
9 ownership interest or its distributive share of partnership income.
10 Two corporations under common control are engaged in a unitary
11 business if the first corporation is engaged, directly or indirectly, in
12 a unitary business with a partnership that is owned, directly or
13 indirectly, by the second corporation, regardless of the magnitude
14 of the second corporation’s ownership interest in the partnership or
15 its distributive or any other share of partnership income.

16
17 2. (New section) A taxable member of a combined group shall
18 determine its entire net income from the unitary business as its
19 share of the allocated income of the combined group in accordance
20 with a combined report made pursuant to this section and section 3
21 of P.L. , c. (C.) (pending before the Legislature as this bill).

22 The entire net income from the unitary business of a combined
23 group is the sum of the entire net incomes of each taxable member
24 and each nontaxable member of the combined group derived from
25 the unitary business, which shall be determined as follows:

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

30 b. For a member not incorporated in the United States, the
31 income to be included in the combined group's net income shall be
32 determined from a profit and loss statement that shall be prepared
33 for each foreign branch or corporation in the currency in which the
34 books of account of the branch or corporation are regularly
35 maintained, adjusted to conform it to the accounting principles
36 generally accepted in the United States for the presentation of those
37 statements and further adjusted to take into account any book-tax
38 differences required by federal or State law. The profit and loss
39 statement of each foreign member of the combined group and the
40 allocation factors related thereto, whether United States or foreign,
41 shall be translated into or from the currency in which the parent
42 company maintains its books and records on any reasonable basis
43 consistently applied on a year-to-year or entity-by-entity basis.
44 Income shall be expressed in United States dollars. In lieu of these
45 procedures and subject to the determination of the director that the
46 income to be reported reasonably approximates income as
47 determined under the Corporation Business Tax Act (1945),
48 P.L.1945, c.162 (C.54:10A-1 et seq.), income may be determined

1 on any reasonable basis consistently applied on a year-to-year or
2 entity-by-entity basis.

3 c. If a member of a combined group receives income from the
4 unitary business from a partnership, the combined group's net
5 income shall include the member's direct and indirect distributive
6 share of the partnership's unitary business income.

7 d. All dividends paid by one member to another member of the
8 combined group shall be eliminated from the income of the
9 recipient.

10 e. Except as otherwise provided by regulation, business income
11 from an intercompany transaction among members of the same
12 combined group shall be deferred in a manner similar to the deferral
13 under 26 C.F.R. s.1.1502-13. Upon the occurrence of either of the
14 following events, deferred business income resulting from an
15 intercompany transaction among members of a combined group
16 shall be restored to the income of the seller and shall be included in
17 the combined group's net income as if the seller had earned the
18 income immediately before the event:

19 (1) The object of a deferred intercompany transaction is: (a)
20 resold by the buyer to an entity that is not a member of the
21 combined group, (b) resold by the buyer to an entity that is a
22 member of the combined group for use outside the unitary business
23 in which the buyer and seller are engaged, or (c) converted by the
24 buyer to a use outside the unitary business in which the buyer and
25 seller are engaged; or

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

31 f. A charitable expense incurred by a member of a combined
32 group shall, to the extent allowable as a deduction pursuant to
33 section 170 of the federal Internal Revenue Code (26 U.S.C. s.170),
34 be subtracted first from the combined group's net income, subject to
35 the income limitations of that section applied to the entire business
36 income of the group. A charitable deduction disallowed under the
37 foregoing rule, but allowed as a carryover deduction in a subsequent
38 year, shall be treated as originally incurred in the subsequent year
39 by the same member and the rules of this section shall apply in the
40 subsequent year in determining the allowable deduction for that
41 year.

42 g. Gain or loss from the sale or exchange of capital assets,
43 property described by paragraph (3) of subsection (a) of section
44 1231 of the federal Internal Revenue Code (26 U.S.C. s.1231) and
45 property subject to an involuntary conversion shall be removed
46 from the net income of each member of a combined group and shall
47 be included in the combined group's net income as follows:

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

10 (2) Any resulting income or loss apportioned to this State, as
11 long as the loss is not subject to the limitations of section 1211 of
12 the federal Internal Revenue Code (26 U.S.C. s.1211), of a taxable
13 member produced by the application of paragraph (1) of this
14 subsection shall then be applied to all other income or loss of that
15 member apportioned to this State. Any resulting loss of a member
16 apportioned to this State that is subject to the limitations of section
17 1211 of the federal Internal Revenue Code (26 U.S.C. s.1211) shall
18 be carried forward by that member and shall be treated as short-
19 term capital loss apportioned to this State and incurred by that
20 member for the year for which the carryover applies.

21 h. An expense of a member of the combined group that is
22 directly or indirectly attributable to the income of any member of
23 the combined group, which income this State is prohibited from
24 taxing pursuant to the laws or Constitution of the United States,
25 shall be disallowed as a deduction for purposes of determining the
26 combined group's net income.

27 ²i. Nothing in this section shall apply to a corporation or
28 combined group which is licensed, in whole or in part, as an
29 insurance company under the laws of this State or of another state,
30 including corporations which are surplus lines insurers declared
31 eligible by the Commissioner of Banking and Insurance pursuant to
32 section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks within
33 this State that is not a combinable captive insurance company.
34 Notwithstanding a provision, if any, to the contrary in this section,
35 the income of an insurance company that is not a combinable
36 captive insurance company, the allocation or apportionment of
37 income related thereto and the apportionment factors of an
38 insurance company that is not a combinable captive insurance
39 company shall not be included in a combined report filed under this
40 section and section 3 of P.L. , c. (C.) (pending before the
41 Legislature as this bill). In addition, the dividend exclusion
42 provisions of paragraph (5) of subsection (k) of section 4 of
43 P.L.1945, c.162 (C.54:10A-4) relating to dividends paid by
44 insurance companies to non-insurance companies included in the
45 unitary group shall not be affected by this P.L. , c. (C.)
46 (pending before the Legislature as this bill).²

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

7 a. In computing its denominator for the sales fraction, the
8 taxable member shall use the combined group's denominator for
9 that fraction. In computing the numerator of its sales fraction, each
10 taxable member shall include in its numerator its share of sales of
11 nontaxable members assigned to this State, as provided in
12 subsection b. of this section.

13 b. Sales assignable to this State of each nontaxable member,
14 determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6)
15 as if it were a taxable member, shall be aggregated. Each taxable
16 member of the combined group shall include in the numerator of its
17 sales fraction a portion of the aggregate receipts assignable to this
18 State of nontaxable members based on a ratio, the numerator of
19 which is that taxable member's sales assigned to this State, without
20 regard to this subsection, and the denominator of which is the
21 aggregate receipts assignable to this State of all the taxable
22 members of the combined group, without regard to this subsection.

23 c. In determining the numerator and denominator of the
24 allocation factors of taxable members, transactions between or
25 among members of the combined group shall be eliminated.

26
27 4. (New section) a. The managerial member of a combined
28 group may elect to have the combined group determined on a
29 "water's edge" basis. If the election is made, each taxable member
30 shall determine its share of the allocated income of the combined
31 group on a water's edge basis under which each member shall take
32 into account the incomes and allocation factors of only the
33 following members of the combined group:

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

36 (2) each member, wherever incorporated or formed, if 20
37 percent or more of its sales fraction during the privilege period are
38 assigned to the United States; **'[and]'**

39 (3) each member that is doing business in a jurisdiction that is
40 determined by the director to be a tax haven for the privilege
41 period, unless **'[it is proven to the satisfaction of the director by**
42 **clear and convincing evidence that the member's business activity**
43 **in the tax haven is entirely outside the scope of the laws, provisions,**
44 **and practices that cause the jurisdiction to meet the definition of a**
45 **tax haven]** the member is incorporated in a tax haven for a
46 legitimate business purpose; and

47 (4) For a combined group that determines its net income or loss
48 on a water's edge basis, an item of income of a corporation that is

1 organized outside of the United States shall not be included in the
2 net income of the combined group to the extent that the item is
3 exempt from United States federal income tax by virtue of a federal
4 income tax treaty. Any items of expense and apportionment factors
5 related to that item of exempt income shall be excluded in the
6 determination of net income of the combined group to the extent
7 provided in regulations issued by the director. However, that item
8 of exempt income shall be taken into account to determine whether
9 the corporation is included in the water's edge group under
10 paragraph (2) of this subsection. If a corporation organized outside
11 of the United States is included in a water's edge combined group
12 and has an item of income that is exempt from United States federal
13 income tax by virtue of a federal tax treaty, the corporation shall be
14 considered to be included in the combined group under paragraph
15 (2) of this subsection only with regard to any items of income
16 described in that paragraph that are not exempt, taking into account
17 items of expense and apportionment factors associated with those
18 items of non-exempt income to the extent provided by regulations
19 issued by the director. Nothing in this paragraph shall prevent the
20 director from adjusting, pursuant to section 5 of P.L.2002, c.40
21 (C.54:10A-4.4), section 10 of P.L.1945, c.162 (C.54:10A-10), or
22 any other provision of law, any deduction claimed by the payer for
23 amounts that are excluded from the net income of the combined
24 group's under this paragraph. The director may require the
25 reporting of the amounts of excluded income and the documentation
26 of any claimed treaty exemption as conditions to be met by a payer
27 claiming a deduction of those payments¹.

28 b. A water's edge election is effective only if made on a timely-
29 filed, original return for a privilege period by the managerial
30 member of the combined group. The election is binding for, and
31 applicable to, the privilege period for which it is made and for the
32 10 immediately succeeding privilege periods.

33 ¹[c. The director shall publish a list of jurisdictions that the
34 director determines to be tax havens for relevant privilege
35 periods.]¹

36
37 5. (New section) a. If the combined group has a common
38 parent corporation and that common parent corporation is a taxable
39 member, the managerial member shall be the common parent
40 corporation. In other cases, the combined group shall select a
41 taxable member as its managerial member or, in the discretion of
42 the director or upon failure of the combined group to select its
43 managerial member, the director shall designate a taxable member
44 of the combined group as managerial member.

45 b. A combined group shall file a combined unitary tax return
46 under this section in the form and manner prescribed by the
47 director. The managerial member of the combined group shall file
48 the combined unitary tax return on behalf of the taxable members of

1 the combined group and each taxable member of the combined
2 group shall include a copy of the combined unitary tax return with
3 its own final return. The director may by regulation allow or
4 require the managerial member to file taxable member returns, file
5 taxable member extensions for filing, pay taxable member
6 liabilities, receive taxable member findings, assessments, and
7 notices, make and receive taxable member claims, or file taxable
8 member protests and appeals.

9 c. The privilege period for which the group shall file shall be
10 determined as the privilege period of the managerial member. If a
11 member of a combined group has a different fiscal or calendar
12 accounting period from the group privilege period, that member
13 with a different period shall report amounts from its return for its
14 fiscal or calendar accounting year that ends during the group
15 privilege period.

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

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

30
31 6. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to
32 read as follows:

33 5. The franchise tax to be annually assessed to and paid by
34 each taxpayer shall be the greater of the amount computed pursuant
35 to this section or the alternative minimum assessment computed
36 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
37 however, that in the case of a taxpayer that is a New Jersey S
38 corporation, an investment company, a professional corporation
39 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a
40 similar corporation for profit organized for the purpose of rendering
41 professional services under the laws of another state, or a person
42 operating on a cooperative basis under Part I of Subchapter T of the
43 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
44 there shall be no alternative minimum assessment computed
45 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

46 The amount computed pursuant to this section shall be the sum
47 of the amount computed under subsection (a) hereof, or in the
48 alternative to the amount computed under subsection (a) hereof, the

1 amount computed under subsection (f) hereof, and the amount
2 computed under subsection (c) hereof:

3 (a) That portion of its entire net worth as may be allocable to
4 this State as provided in section 6, multiplied by the following
5 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
6 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
7 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
8 mill per dollar on all amounts of allocated net worth in excess of
9 \$300,000,000.00; provided, however, that with respect to reports
10 covering accounting or privilege periods set forth below, the rate
11 shall be that percentage of the rate set forth in this subsection for
12 the appropriate year:

Accounting or Privilege	
Periods Beginning on or	The Percentage of the Rate
after:	to be Imposed Shall be:
April 1, 1983	75%
July 1, 1984	50%
July 1, 1985	25%
July 1, 1986	0

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

21 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
22 1/4% of its entire net income that is not entire net income from a
23 unitary business reported on a combined return or such portion
24 thereof as may be allocable to this State as provided in section 6 of
25 P.L.1945, c.162 (C.54:10A-6), plus its allocated share of entire net
26 income from a unitary business determined as provided by sections
27 2 and 3 of P.L. , c. (C. and)(pending before the
28 Legislature as this bill), plus such portion thereof as is specifically
29 assigned to this State as provided in section 5 of P.L.1993, c.173
30 (C.54:10A-6.1); provided, however, that with respect to reports
31 covering accounting or privilege periods or parts thereof ending
32 after December 31, 1967, the rate shall be 4 1/4%; and that with
33 respect to reports covering accounting or privilege periods or parts
34 thereof ending after December 31, 1971, the rate shall be 5 1/2%;
35 and that with respect to reports covering accounting or privilege
36 periods or parts thereof ending after December 31, 1974, the rate
37 shall be 7 1/2%; and that with respect to reports covering privilege
38 periods or parts thereof ending after December 31, 1979, the rate
39 shall be 9%; provided however, that for a taxpayer that has entire
40 net income of \$100,000 or less for a privilege period and is not a
41 partnership the rate for that privilege period shall be 7 1/2% and
42 provided further that for a taxpayer that has entire net income of
43 \$50,000 or less for a privilege period and is not a partnership the
44 rate for that privilege period shall be 6 1/2%.

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

46 (i) for privilege periods ending on or before June 30, 1998 the
47 rate determined by subtracting the maximum tax bracket rate
48 provided under N.J.S.54A:2-1 for the privilege period from the tax

1 rate that would otherwise be applicable to the taxpayer's entire net
2 income for the privilege period if the taxpayer were not an S
3 corporation provided under paragraph (1) of this subsection for the
4 privilege period; and

5 (ii) For a taxpayer that has entire net income in excess of
6 \$100,000 for the privilege period, for privilege periods ending on or
7 after July 1, 1998, but on or before June 30, 2001, the rate shall be
8 2%,

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

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

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

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

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

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

36 (d) Provided, however, that the franchise tax to be annually
37 assessed to and paid by any investment company or real estate
38 investment trust, which has elected to report as such and has filed
39 its return in the form and within the time provided in this act and
40 the rules and regulations promulgated in connection therewith,
41 shall, in the case of an investment company, be measured by 40% of
42 its entire net income and 40% of its entire net worth, and in the case
43 of a real estate investment trust, by 4% of its entire net income and
44 15% of its entire net worth, at the rates hereinbefore set forth for the
45 computation of tax on net income and net worth, respectively, but in
46 no case less than \$250, and further provided, however, that the
47 franchise tax to be annually assessed to and paid by a regulated
48 investment company which for a period covered by its report

1 satisfies the requirements of Chapter 1, Subchapter M, Part I,
2 Section 852(a) of the federal Internal Revenue Code shall be \$250.

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

11	Period Beginning	Domestic	Foreign
12	In Calendar Year	Corporation	Corporation
13		Minimum Tax	Minimum Tax
14	1994	\$ 50	\$100
15	1995	\$100	\$200
16	1996	\$150	\$200
17	1997	\$200	\$200
18	1998	\$200	\$200
19	1999	\$200	\$200
20	2000	\$200	\$200
21	2001	\$210	\$210

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

31	New Jersey Gross Receipts:	Minimum Tax:
32	Less than \$100,000\$500
33	\$100,000 or more but	
34	less than \$250,000 \$750
35	\$250,000 or more but	
36	less than \$500,000 \$1,000
37	\$500,000 or more but	
38	less than \$1,000,000 \$1,500
39	\$1,000,000 or more \$2,000

40 and for privilege periods beginning in calendar year 2012 and
41 thereafter the minimum tax for corporations that are New Jersey S
42 corporations shall be based on the New Jersey gross receipts, as
43 defined for the purposes of this section pursuant to section 7 of
44 P.L.2002, c.40 (C.54:10A-5a), of the taxpayer pursuant to the
45 following schedule:

46	New Jersey Gross Receipts:	Minimum Tax:
47	Less than \$100,000\$375
48	\$100,000 or more but	

1 less than \$250,000 \$562.50
2 \$250,000 or more but
3 less than \$500,000 \$750
4 \$500,000 or more but
5 less than \$1,000,000 \$1,125
6 \$1,000,000 or more \$1,500
7 provided however, that for a taxpayer that is a member of an
8 affiliated group or a controlled group pursuant to section 1504 or
9 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
10 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
11 more for the privilege period, the minimum tax shall be \$2,000 for
12 the privilege period.

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

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

22 (1) that is a limited liability company or foreign limited liability
23 company classified as a partnership for federal income tax purposes
24 shall be the amount determined pursuant to the provisions of section
25 3 of P.L.2001, c.136 (C.54:10A-15.6); or

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

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

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

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

37

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

40 10. a. Whenever it shall appear to the director that any taxpayer
41 fails to maintain its records in accordance with sound accounting
42 principles or conducts its business or maintains its records in such
43 manner as either directly or indirectly to distort its true entire net
44 income or its true entire net worth under this act or the proportion
45 thereof properly allocable to this State, or whenever any taxpayer
46 maintains a place of business outside this State, or whenever any
47 agreement, understanding or arrangement exists between a taxpayer
48 and any other corporation or any person or firm, for the purpose of

1 evading tax under this act, or whereby the activity, business,
2 receipts, expenses, assets, liabilities, income or net worth of the
3 taxpayer are improperly or inaccurately reflected, the director is
4 authorized and empowered, in the director's discretion and in such
5 manner as the director may determine, to adjust and redetermine
6 such items, and to adjust items of gross receipts, tangible or
7 intangible property and payrolls within and without the State and
8 the allocation of entire net income or entire net worth or to make
9 any other adjustments in any tax report or tax returns as may be
10 necessary to make a fair and reasonable determination of the
11 amount of tax payable under this act.

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

33 c. **【**The entire net income of a taxpayer exercising its franchise
34 in this State that is a member of an affiliated group or a controlled
35 group pursuant to section 1504 or 1563 of the federal Internal
36 Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, shall be
37 determined by eliminating all payments to, or charges by, other
38 members of the affiliated or controlled group in excess of fair
39 compensation in all inter-group transactions of any kind.
40 Notwithstanding the elimination of all inter-group transactions in
41 excess of fair compensation, if the taxpayer cannot demonstrate by
42 clear and convincing evidence that a report by a taxpayer discloses
43 the true earnings of the taxpayer on its business carried on in this
44 State, the director may, at the director's discretion, require the
45 taxpayer to file a consolidated return of the entire operations of the
46 affiliated group or controlled group, including its own operations
47 and income to the extent permitted under the Constitution and
48 statutes of the United States. The director shall determine the true

1 amount of entire net income earned by the taxpayer in this State.
2 The consolidated entire net income of the taxpayer and of the other
3 members of its affiliated group or controlled group shall be
4 allocated to this State by use of the applicable allocation formula
5 that the director requires pursuant to P.L.1945, c.162 (C.54A:10A-1
6 et seq.) be used by the taxpayer. The return shall include in the
7 allocation formula the property, payrolls, and sales of all
8 corporations for which the return is made. The director may require
9 a consolidated return under this section without regard to whether
10 the other members of the affiliated or controlled group, other than
11 the taxpayer, are or are not exercising their franchises in this State.

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

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

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

29 14. (a) The director may by general rule or by special notice
30 require any taxpayer to submit copies or pertinent extracts of its
31 federal income tax returns, or of any other tax return made to any
32 agency of the federal government, or of this or any other state, or of
33 any statement or registration made pursuant to any state or federal
34 law pertaining to securities or securities exchange regulation.

35 (b) The director may require all taxpayers to keep such records
36 as the director may prescribe, and the director may require the
37 production of books, papers, documents and other data, to provide
38 or secure information pertinent to the determination of the tax
39 hereunder and the enforcement and collection thereof. The director
40 may, also, by general rule or by special notice require any taxpayer
41 to make and file information returns, under oath, of facts pertinent
42 to the determination of the tax or liability for tax hereunder,
43 pursuant to such regulations, at such times and in such form and
44 manner and to such extent as the director may prescribe pursuant to
45 law.

46 (c) Each taxpayer filing a return that is a member of 【an
47 affiliated group or a controlled group pursuant to section 1504 or
48 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.

1 s.1504 or 1563】 a combined group shall, upon the request of the
2 director and 90 days' notice thereof, disclose in its return for the
3 privilege period the amount of all inter-member costs or expenses,
4 including but not limited to management fees, rents, and other
5 services, for the privilege period. If the taxpayer acquires products
6 or services from another member of its 【affiliated group or
7 controlled】 combined group, which it re-sells or otherwise uses to
8 generate revenue, the taxpayer shall, upon the request of the
9 director and 90 days' notice thereof, disclose the amount of revenue
10 generated from those products or services. The director shall
11 promulgate rules and procedures for the manner of disclosure. A
12 failure to file such a disclosure shall be deemed the filing of an
13 incomplete tax return, subject to the penalties of the State Uniform
14 Tax Procedure Law, R.S.54:48-1 et seq.

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

16
17 9. Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is amended to
18 read as follows:

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

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

30
31 ¹10. Section 12 of P.L.2011, c.25 (C.17:47B-12) is amended to
32 read as follows:

33 12. a. Each captive insurance company that is not a combinable
34 captive insurance company as defined by section 1 of P.L. , c.
35 (C.)(pending before the Legislature as this bill) shall pay to the
36 Director of the Division of Taxation in the Department of the
37 Treasury, on or before March 1 of each year, a tax at the rate of .38
38 of one percent on the first \$20,000,000 and .285 of one percent on
39 the next \$20,000,000 and .19 of one percent on the next
40 \$20,000,000 and .072 of one percent on each dollar thereafter on
41 the direct premiums collected or contracted for on policies or
42 contracts of insurance written by the captive insurance company
43 during the year ending December 31 next preceding, after deducting
44 from the direct premiums subject to the tax the amounts paid to
45 policyholders as return premiums, which shall include dividends on
46 unabsorbed premiums or premium deposits returned or credited to
47 policyholders; except that no tax shall be due or payable as to
48 considerations received for annuity contracts.

1 b. Each captive insurance company shall pay to the Director of
2 the Division of Taxation in the Department of the Treasury, on or
3 before March 1 of each year, a tax at the rate of .214 of one percent
4 on the first \$20,000,000 of assumed reinsurance premium, and .143
5 of one percent on the next \$20,000,000 and .048 of one percent on
6 the next \$20,000,000 and .024 of one percent of each dollar
7 thereafter. However, no tax under this subsection applies to
8 premiums for risks or portions of risks which are subject to taxation
9 on a direct basis pursuant to subsection a. of this section. No tax
10 under this subsection shall apply in connection with the receipt of
11 assets in exchange for the assumption of loss reserves and other
12 liabilities of another insurer under common ownership and control
13 if the transaction is part of a plan to discontinue the operations of
14 the other insurer, and if the intent of the parties to the transaction is
15 to renew or maintain the business with the captive insurance
16 company.

17 c. The annual minimum aggregate tax to be paid by a captive
18 insurance company calculated under subsections a. and b. of this
19 section shall be \$7,500, and the annual maximum aggregate tax
20 shall be \$200,000. The maximum aggregate tax to be paid by a
21 sponsored captive insurance company shall apply to each protected
22 cell only and not to the sponsored captive insurance company as a
23 whole.

24 d. (1) A captive insurance company shall, on or before March 1
25 of each year, file with the commissioner an annual tax return,
26 signed and sworn to by an officer of the company, or by its United
27 States manager, if a company of a foreign country, in the form and
28 containing matters as may be necessary for carrying out the
29 provisions of this section.

30 (2) A captive insurance company shall pay the balance of any
31 tax due under this section based on the company's business during
32 the preceding calendar year and make an installment payment in an
33 amount equal to one-half of the tax payable under this section on
34 the company's business done during the preceding calendar year.

35 (3) The examination of returns and the assessment of additional
36 taxes, penalties and interest shall be as provided by the State
37 Uniform Tax Procedure Law, R.S.54:48-1 et seq.

38 e. Two or more captive insurance companies under common
39 ownership and control shall be taxed as though they were a single
40 captive insurance company.

41 f. For the purposes of this section, "common ownership and
42 control" shall mean:

43 (1) in the case of stock corporations, the direct or indirect
44 ownership of 80 percent or more of the outstanding voting stock of
45 two or more corporations by the same shareholder or shareholders;
46 and

47 (2) in the case of mutual or nonprofit corporations, the direct or
48 indirect ownership of 80 percent or more of the surplus and the

1 voting power of two or more corporations by the same member or
2 members.

3 g. The tax provided for in this section shall constitute all taxes
4 collectible under the laws of this State from any captive insurance
5 company, and a captive insurance company shall not pay taxes
6 pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).

7 h. The tax provided for by this section shall be calculated on an
8 annual basis, notwithstanding policies or contracts of insurance or
9 contracts of reinsurance issued on a multiyear basis. In the case of
10 multiyear policies or contracts, the premium shall be prorated for
11 purposes of determining the tax under this section.

12 i. The tax provided for by this section shall only apply to the
13 branch business of a branch captive insurance company. ¹
14 (cf: P.L.2011, c.25, s.12)

15

16 ¹**[10.] 11.** ¹ Sections 5 and 30 of P.L.2002, c.40 (C.54:10A-4.4
17 and 54:10A-18.1) are repealed.

18

19 ¹**[11.] 12.** ¹ This act shall take effect immediately and apply to
20 privilege periods ending after its date of enactment.