SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 3305

STATE OF NEW JERSEY

217th LEGISLATURE

ADOPTED JUNE 15, 2017

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)
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District 7 (Burlington)
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SYNOPSIS

Revises tax credit transfer provisions for certain tax incentive programs and revises certain tax treatment of tax credit transfer certificates.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.

(Sponsorship Updated As Of: 1/9/2018)

AN ACT concerning certain tax incentive programs and the provisions associated with tax credit transfer certificates, revising the tax treatment of those tax credit transfer certificates, and amending various parts of the statutory law.

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

1. Section 6 of P.L.2011, c.149 (C.34:1B-247) is amended to read as follows:

6. a. (1) The combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L.2011, c.149 (C.34:1B-242 et al.) prior to December 31, 2013 shall not exceed $1,750,000,000, except as may be increased by the authority as set forth in paragraph (5) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3). Following the enactment of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), there shall be no monetary cap on the value of credits approved by the authority attributable to the program pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

(2) (Deleted by amendment, P.L.2013, c.161).

(3) (Deleted by amendment, P.L.2013, c.161).

(4) (Deleted by amendment, P.L.2013, c.161).

(5) (Deleted by amendment, P.L.2013, c.161).

b. (1) A business shall submit an application for tax credits prior to July 1, 2019. The authority shall not approve an application for tax credits unless the application was submitted prior to July 1, 2019.

(2) (a) A business shall submit its documentation indicating that it has met the capital investment and employment requirements specified in the incentive agreement for certification of its tax credit amount within three years following the date of approval of its application by the authority. The authority shall have the discretion to grant two six-month extensions of this deadline. Except as provided in subparagraph (b) of this paragraph, in no event shall the incentive effective date occur later than four years following the date of approval of an application by the authority.

(b) As of the effective date of P.L.2015, c.252, a business which applied for the tax credit prior to July 1, 2014 under P.L.2011, c.149 (C.34:1B-242 et al.), shall submit its documentation to the authority no later than July 28, 2018, indicating that it has met the capital investment and employment requirements specified in the incentive agreement for certification of its tax credit amount.

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 <u>thus</u> is new matter.

(3) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(4) A business seeking a credit for a mega project shall apply for the credit within four years after the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

c. (1) In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

The credit amount for any tax period for which the documentation of a business's credit amount remains uncertified as of a date three years after the closing date of that period shall be forfeited, although credit amounts for the remainder of the years of the eligibility period shall remain available to it.

The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period **[**during**]** for which it was **[**transferred**]** issued or in any of the next **[**three**]** 20 successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

(2) Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the director may require.

(3) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

d. (1) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval under section 3 of P.L.2011, c.149 (C.34:1B-244), then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the authority, for

which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(2) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area drops below 80 percent of the number of new and retained full-time jobs specified in the incentive agreement, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 80 percent of the number of jobs specified in the incentive agreement.

(3) (a) If the qualified business facility is sold by the owner in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however that any credits of the business shall remain unaffected.

(b) In connection with a regional distribution facility of foodstuffs, the business entity or entities which own or lease the facility shall qualify as a business regardless of: (i) the type of the business entity or entities which own or lease the facility; (ii) the ownership or leasing of the facility by more than one business entity; or (iii) the ownership of the business entity or entities which own or lease the facility. The ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. The members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. The business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this section, leasing shall include subleasing and tenants shall include subtenants.

(4) (a) For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an increased base credit amount for that tax period and each subsequent tax period, for each additional full-time

employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this section.

(b) For a project located within a Garden State Growth Zone which qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, and which qualifies for a tax credit pursuant to subsubparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), then the authority shall recalculate the total tax credit amount per full-time job by using the certified capital investment of the project allowable under the applicable subsubparagraph and the number of full-time jobs certified on the date of the recalculation and applying those numbers to subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section.

e. The authority shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et seq.), or any other program administered by the authority unless:

(1) the business has satisfied all of its obligations underlying the previous award of incentives or is compliant with section 4 of P.L.2011, c.149 (C.34:1B-245); or

(2) the capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.

f. A business which has already applied for a tax credit incentive award prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), but who has not yet been approved for the tax credits,

or has not executed an agreement with the authority, may proceed under that application or seek to amend the application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.
(cf: P.L.2015, c.252, s.4)

2. Section 7 of P.L.2011, c.149 (C.34:1B-248) is amended to read as follows:

7. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the chief executive officer of the authority for a tax credit transfer certificate, covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. The tax credit transfer certificate, upon receipt thereof by the business from the director and the chief executive officer of the authority, may be sold or assigned, in full or in part, in an amount not less than $25,000, to any other person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and 54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted<u>, except that the 75 percent minimum measure of consideration shall not apply to the sale or assignment of a tax credit transfer certificate to an affiliate irrespective of whether the affiliate met the capital investment and employment requirements specified in the incentive agreement</u>. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was allowed the credit.
(cf: P.L.2014, c.63, s.6)

3. Section 10 of P.L.2014, c.63 (C.34:1B-251) is amended to read as follows:

10. a. For the purposes of this section:

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Government entity" means the State government, a local unit of government, or a State or local government agency or authority.

"Providing public infrastructure" means undertaking and paying for the construction of public infrastructure; contributing money or paying debt service for the construction of public infrastructure; or deeding land to a government entity for use as public infrastructure.

"Public infrastructure" means: (1) buildings and structures, such as schools; fire houses; police stations; recreation centers; public works garages; and water and sewer treatment and pumping facilities; (2) open space with improvements such as athletic fields; playgrounds; planned parks; (3) open space without improvements; and (4) public transportation facilities such as train stations and public parking facilities. To qualify as public infrastructure under this section, the facilities, land, or both, shall have a minimum fair market value of $5 million; provided, however, that multiple lands and facilities, valued individually at less than $5 million, that are part of the same redevelopment project may be aggregated to achieve the minimum $5 million requirement. In the case of open space without improvements, the land shall have a minimum fair market value of at least $1 million prior to its dedication as open space. Sidewalks, streets, roads, ramps, and jug handles shall not be deemed public infrastructure for the purposes of this section.

"Tax credit" means a credit equal to 100 percent of the applicant's cost of providing public infrastructure for use to offset a tax liability.

"Tax liability" means a liability for the taxes imposed pursuant to the "Corporation Business Tax (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), and liability for basic, general, additional, and supplemental realty transfer fees imposed pursuant to P.L.1968, c.49 (C.46:15-5 et seq.), as amended and supplemented.

"Urban transit hub municipality" means an urban transit hub municipality, as defined in section 2 of P.L.2011, c.149 (C.34:1B-243).

b. Commencing with October 24, 2014, the effective date of P.L.2014, c.63 (C.34:1B-251 et al.), and ending on December 31 of the fifth complete year next following, an applicant that has agreed to, or has provided, public infrastructure may apply to the New Jersey Economic Development Authority for a tax credit under the following conditions:

(1) The applicant or another entity by contract or development agreement either makes a new capital investment in an amount equal to or greater than $10,000,000 at any time during the term set forth in this subsection, or causes another entity by contract or development agreement to construct a building, complex of buildings or other similar structures or facilities, which relies on the completed public infrastructure and completes construction during the term set forth in this subsection.

(2) The applicant has not received a tax credit under the "Grow New Jersey Assistance Program" established by section 3 of P.L.2011, c.149 (C.34:1B-244).

(3) The applicant has not received a grant under a State or a local Economic Redevelopment and Growth Grant program pursuant to section 4 or section 5 of P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e).

(4) The applicant is not a "Garden State Growth Zone Development Entity," as defined in section 23 of P.L.2013, c.161 (C.52:27D-489r).

(5) The applicant is not partnered with the New Jersey Sports and Exposition Authority for the capital investment pursuant to this section.

c. The New Jersey Economic Development Authority shall grant an application for a tax credit if the government entity receiving the public infrastructure adopts a resolution and files it with the authority, consenting to the award of the tax credit and the ownership of the public infrastructure is transferred to that government entity, and either: (1) the construction commences after January 1, 2013; (2) the construction is completed, as evidenced by a certificate of occupancy or other certificate of completion, after January 1, 2013; (3) the first monetary or debt service payment occurs after January 1, 2013; or (4) the land is deeded to the government entity after January 1, 2013.

d. (1) (a) Except as provided in subparagraph (b) of this paragraph, the total amount of tax credits that may be awarded to an eligible applicant for a single project shall not exceed $5,000,000.

(b) In the case of an applicant engaged in a brownfields redevelopment project comprising park and infrastructure development within an urban transit hub municipality, the total amount of tax credits the authority may award to the applicant shall not exceed $2,000,000 cumulative of all applications submitted under this section by the applicant. As used in this subparagraph, "applicant" means an entity applying for a tax credit pursuant to subsection b. of this section and shall include its subsidiaries, its parent, affiliated entities, and common principal owners.

(c) The total value of all tax credits approved by the authority pursuant to this section shall not exceed $22,000,000.

(2) A tax credit granted pursuant to this section may be transferred in the same manner as tax credits are transferred **[**under section 33 of P.L.2009, c.90 (C.34:1B-209.1)**]** pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and utilized in the same manner as provided pursuant to paragraph (1) of subsection c. of section 6 of P.L.2011, c.149 (C.34:1B-247).

(3) Except for the limitations set forth in paragraph (1) of this subsection, nothing in this section shall prohibit an applicant from applying for and being awarded multiple tax credit awards based on separate public infrastructure projects.

e. The chief executive of the authority, in consultation with the Director of the Division of Taxation in the Department of the Treasury, may adopt rules and regulations pursuant to the

"Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to implement the provisions of this section.
(cf: P.L.2015, c.217, s.2)

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

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

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

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

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

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2)(F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from the net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the

excluded portion of the subsidiary values bears to the total assets of the taxpayer.

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

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

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

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

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

(h) "Taxpayer" shall mean any corporation, and any partnership required, or consenting, to report or to pay taxes, interest or penalties under this act. "Taxpayer" shall not include a partnership that is listed on a United States national stock exchange.

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

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

(k) "Entire net income" shall mean total net income from all sources, whether within or without the United States, and shall

include the gain derived from the employment of capital or labor, or from both combined, as well as profit gained through a sale or conversion of capital assets.

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

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

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

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

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

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

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

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

(F) (i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on and after the effective date of P.L.1993, c.172, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in effect after December 31, 1980, exceeds the amount of depreciation determined in accordance with the Internal Revenue Code provisions in effect prior to January 1, 1981, but only with respect to a taxpayer's accounting period ending after December 31, 1981; provided, however, that where a taxpayer's accounting period

begins in 1981 and ends in 1982, no modification shall be required with respect to this paragraph (F) for the report filed for such period with respect to property placed in service during that part of the accounting period which occurs in 1981. The provisions of this subparagraph shall not apply to assets placed in service prior to January 1, 1998 of a gas, gas and electric, and electric public utility that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998.

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

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

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

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

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

(I) Interest paid, accrued or incurred for the privilege period to a related member, as defined in section 5 of P.L.2002, c.40 (C.54:10A-4.4), except that a deduction shall be permitted to the

extent that the taxpayer establishes by clear and convincing evidence, as determined by the director, that: (i) a principal purpose of the transaction giving rise to the payment of the interest was not to avoid taxes otherwise due under Title 54 of the Revised Statutes or Title 54A of the New Jersey Statutes, (ii) the interest is paid pursuant to arm's length contracts at an arm's length rate of interest, and (iii)(aa) the related member was subject to a tax on its net income or receipts in this State or another state or possession of the United States or in a foreign nation, (bb) a measure of the tax includes the interest received from the related member, and (cc) the rate of tax applied to the interest received by the related member is equal to or greater than a rate three percentage points less than the rate of tax applied to taxable interest by this State.

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

A deduction shall also be permitted to the extent that the taxpayer establishes by a preponderance of the evidence, as determined by the director, that the interest is directly or indirectly paid, accrued or incurred to (i) a related member in a foreign nation which has in force a comprehensive income tax treaty with the United States, provided however that the taxpayer shall disclose on its return for the privilege period the name of the related member, the amount of the interest, the relevant foreign nation, and such other information as the director may prescribe or (ii) to an independent lender and the taxpayer guarantees the debt on which the interest is required.

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

a transformation of property into a different or substantially more usable product.

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

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

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

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

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

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

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

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

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

(5) Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section and shall exclude 50% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of 50% or more ownership of investment, such ownership of investment calculated in the same manner as the 80% or more of

ownership of investment is calculated as described in subsection (d) of this section.

(6) (A) Net operating loss deduction. There shall be allowed as a deduction for the privilege period the net operating loss carryover to that period.

(B) Net operating loss carryover. A net operating loss for any privilege period ending after June 30, 1984 shall be a net operating loss carryover to each of the seven privilege periods following the period of the loss and a net operating loss for any privilege period ending after June 30, 2009 shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period (the "loss period") shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusions permitted in paragraphs (4) and (5) of this subsection or the net operating loss deduction provided by subparagraph (A) of this paragraph, for each of the prior privilege periods to which the loss may be carried.

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

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

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

period for which application of the net operating loss was disallowed by this subparagraph.

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

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

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

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

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

(ii) A deduction shall be allowed for the New Jersey depreciation allowance. The New Jersey depreciation allowance shall be computed for the single asset account described above based on the New Jersey tax basis as adjusted above as if all assets

in the single asset account were first placed in service on January 1, 1998. Depreciation shall be computed using the straight line method over a thirty-year life. A full year's depreciation shall be allowed in the initial tax year. No half-year convention shall apply. The depreciable basis of the single account shall be reduced by the adjusted federal tax basis of assets sold, retired, or otherwise disposed of during any year on which gain or loss is recognized for federal income tax purposes as described in subparagraph (B) of this paragraph.

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

(C) The Director of the Division of Taxation shall promulgate regulations describing the methodology for allocating the single asset account in the event that a portion of the utility's operations are separated, spun-off, transferred to a separate company or otherwise desegregated.

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

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

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

the laws of a jurisdiction other than the United States or its political subdivisions.

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

(12) (A) Notwithstanding the provisions of subsection (k) of section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal law, for property acquired after September 10, 2001, the depreciation deduction otherwise allowed pursuant to section 167 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined pursuant to the provisions of the federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001.

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

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

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

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

pursuant to subsection (i) of section 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108).

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

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

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

(n) "International banking facility" shall mean a set of asset and liability accounts segregated on the books and records of a

depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit as such terms are defined in section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the board of governors of the Federal Reserve System, 12 CFR Part 204, effective December 3, 1981. In the event that the United States enacts a law, or the board of governors of the Federal Reserve System adopts a regulation which amends the present definition of international banking facility or of such facilities' time deposits or extensions of credit, the Commissioner of Banking and Insurance shall forthwith adopt regulations defining such terms in the same manner as such terms are set forth in the laws of the United States or the regulations of the board of governors of the Federal Reserve System. The regulations of the Commissioner of Banking and Insurance shall thereafter provide the applicable definitions.

(o) "S corporation" means a corporation included in the definition of an "S corporation" pursuant to section 1361 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

(p) "New Jersey S corporation" means a corporation that is an S corporation; which has made a valid election pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S corporation continuously since the effective date of the valid election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

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

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

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

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

(cf: P.L. 2014, c.13, s.3)

5. N.J.S.54A:5-1 is amended to read as follows:

54A:5-1. New Jersey Gross Income Defined. New Jersey gross income shall consist of the following categories of income:

a. Salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property, and amounts paid or distributed, or deemed paid or distributed, out of a medical savings account that are not excluded from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-27).

b. Net profits from business. The net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction of the amount of:

(1) taxes based on income;

(2) a civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator; and

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

c. Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with the method of accounting allowed for federal income tax purposes. For the purpose of determining gain or loss, the basis of property shall be the adjusted basis used for federal income tax purposes, except as expressly provided for under this act, but without a deduction for penalties, fines, or economic benefits excepted pursuant to

paragraph (2), or for treble damages excepted pursuant to paragraph (3) of subsection b. of this section.

A taxpayer's net gain or loss on the sale, exchange or other disposition of a share of an S corporation shall be calculated by increasing the adjusted basis of the share by an amount equal to the shareholder's net losses and deductions in respect of the share allowed and deducted from income for federal income tax purposes, not including any personal net operating loss deductions, to the extent that such net losses were not offset by the taxpayer's pro rata share of S corporation income otherwise subject to taxation pursuant to subsection p. of this section in respect of another S corporation, subject to rules of priority and assignment determined by the director.

For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of N.J.S.54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). <u>The term “net gains or income” shall not include gains or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).</u> The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

For purposes of this clause, the term "reorganization" means--

(i) A statutory merger or consolidation;

(ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part

of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(iii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(iv) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;

(v) A recapitalization;

(vi) A mere change in identity, form, or place of organization however effected; or

(vii) The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;

(viii) A transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

For purposes of this clause, the term "control" means the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.

For purposes of this clause, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under subclause (i) by reason of subclause (vii) the term "a party to a reorganization" includes the controlling corporation referred to in such subclause (vii).

Notwithstanding any provisions hereof, upon every such exchange or conversion, the taxpayer's basis for the stock or securities received shall be the same as the taxpayer's actual or attributed basis for the stock, securities or property surrendered in exchange therefor.

d. Net gains or net income derived from or in the form of rents, royalties, patents, and copyrights.

e. Interest, except interest referred to in clause (1) or (2) of N.J.S.54A:6-14, or distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

f. Dividends. "Dividends" means any distribution in cash or property made by a corporation, association or business trust that is not an S corporation, (1) out of accumulated earnings and profits, or (2) out of earnings and profits of the year in which such dividend is paid and any distribution in cash or property made by an S corporation, as specifically determined pursuant to section 16 of P.L.1993, c.173 (C.54A:5-14).

The term "dividends" shall not include distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

g. Gambling winnings.

h. Net gains or income derived through estates or trusts.

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust attributable to contributions to the trust which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey Statutes, amounts rolled over from an IRA, as defined pursuant to subsection (a) of section 408 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as defined pursuant to subsection b. of section 2 of P.L.1998,c.57 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and annuities except to the extent of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

k. Distributive share of partnership income, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).

l. Amounts received as prizes and awards, except as provided in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

m. Rental value of a residence furnished by an employer or a rental allowance paid by an employer to provide a home.

n. Alimony and separate maintenance payments to the extent that such payments are required to be made under a decree of divorce or separate maintenance but not including payments for support of minor children.

o. Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of this State or any other jurisdiction.

p. Net pro rata share of S corporation income, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).

(cf: P.L.1998, c.57, s.1)

6. This act shall take effect immediately and section 4 shall apply to accounting and privilege periods beginning on and after January 1, 2017 and section 5 shall apply to taxable years beginning on and after January 1, 2017.