

# ASSEMBLY, No. 4029

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 24, 2018

**Sponsored by:**

**Assemblywoman ELIANA PINTOR MARIN**

**District 29 (Essex)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



A4029 PINTOR MARIN

2

1 AN ACT requiring members of unitary business groups to file  
2 combined reports of corporation business tax, supplementing and  
3 amending P.L.1945, c.162, amending P.L.1987, c.76, and  
4 P.L.2011, c.25, and repealing sections 5 and 30 of P.L.2002,  
5 c.40.

6  
7 **BE IT ENACTED** by the Senate and General Assembly of the State  
8 of New Jersey:

9  
10 1. (New section) As used in P.L.1945, c.162 (C.54:10A-1 et  
11 seq.):

12 “Combinable captive insurance company” means an entity that is  
13 treated as an association taxable as a corporation under the federal  
14 Internal Revenue Code:

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

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

21 whose business includes providing, directly and indirectly,  
22 insurance or reinsurance covering the risks of its parent, or  
23 members of its affiliated group, or both; and

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

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

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

**Matter underlined thus is new matter.**

1 “Common control” means that more than 50 percent of the  
2 voting control of each member of a combined group is directly or  
3 indirectly owned by a common owner or owners, either corporate or  
4 noncorporate, whether or not the owner or owners are members of  
5 the combined group.

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

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

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

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

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

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

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

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

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

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

43 "Tax haven" does not include a jurisdiction that has entered into  
44 a comprehensive income tax treaty with the United States.

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

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

17

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

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

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

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

1 P.L.1945, c.162 (C.54:10A-1 et seq.), income may be determined  
2 on any reasonable basis consistently applied on a year-to-year or  
3 entity-by-entity basis.

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

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

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

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

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

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

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

1       3. (New section) A taxable member of a combined group  
2 shall 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;

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 the member is incorporated in a tax haven for a  
42 legitimate business purpose; and

43       (4) For a combined group that determines its net income or loss  
44 on a water's edge basis, an item of income of a corporation that is  
45 organized outside of the United States shall not be included in the  
46 net income of the combined group to the extent that the item is  
47 exempt from United States federal income tax by virtue of a federal  
48 income tax treaty. Any items of expense and apportionment factors

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

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

29  
30 5. (New section) a. If the combined group has a common  
31 parent corporation and that common parent corporation is a taxable  
32 member, the managerial member shall be the common parent  
33 corporation. In other cases, the combined group shall select a  
34 taxable member as its managerial member or, in the discretion of  
35 the director or upon failure of the combined group to select its  
36 managerial member, the director shall designate a taxable member  
37 of the combined group as managerial member.

38 b. A combined group shall file a combined unitary tax return  
39 under this section in the form and manner prescribed by the  
40 director. The managerial member of the combined group shall file  
41 the combined unitary tax return on behalf of the taxable members of  
42 the combined group and each taxable member of the combined  
43 group shall include a copy of the combined unitary tax return with  
44 its own final return. The director may by regulation allow or  
45 require the managerial member to file taxable member returns, file  
46 taxable member extensions for filing, pay taxable member  
47 liabilities, receive taxable member findings, assessments, and

1 notices, make and receive taxable member claims, or file taxable  
2 member protests and appeals.

3 c. The privilege period for which the group shall file shall be  
4 determined as the privilege period of the managerial member. If a  
5 member of a combined group has a different fiscal or calendar  
6 accounting period from the group privilege period, that member  
7 with a different period shall report amounts from its return for its  
8 fiscal or calendar accounting year that ends during the group  
9 privilege period.

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

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

24

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

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

40 The amount computed pursuant to this section shall be the sum  
41 of the amount computed under subsection (a) hereof, or in the  
42 alternative to the amount computed under subsection (a) hereof, the  
43 amount computed under subsection (f) hereof, and the amount  
44 computed under subsection (c) hereof:

45 (a) That portion of its entire net worth as may be allocable to  
46 this State as provided in section 6, multiplied by the following  
47 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net  
48 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;

1 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a  
 2 mill per dollar on all amounts of allocated net worth in excess of  
 3 \$300,000,000.00; provided, however, that with respect to reports  
 4 covering accounting or privilege periods set forth below, the rate  
 5 shall be that percentage of the rate set forth in this subsection for  
 6 the appropriate year:

7 Accounting or Privilege	8 Periods Beginning on or	9 The Percentage of the Rate
10 after:	11 to be Imposed Shall be:	
12 April 1, 1983		75%
13 July 1, 1984		50%
14 July 1, 1985		25%
15 July 1, 1986		0

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

17 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3  
 18 1/4% of its entire net income that is not entire net income from a  
 19 unitary business reported on a combined return or such portion  
 20 thereof as may be allocable to this State as provided in section 6 of  
 21 P.L.1945, c.162 (C.54:10A-6), plus its allocated share of entire net  
 22 income from a unitary business determined as provided by sections  
 23 2 and 3 of P.L. , c. (C. and )(pending before the  
 24 Legislature as this bill), plus such portion thereof as is specifically  
 25 assigned to this State as provided in section 5 of P.L.1993, c.173  
 26 (C.54:10A-6.1); provided, however, that with respect to reports  
 27 covering accounting or privilege periods or parts thereof ending  
 28 after December 31, 1967, the rate shall be 4 1/4%; and that with  
 29 respect to reports covering accounting or privilege periods or parts  
 30 thereof ending after December 31, 1971, the rate shall be 5 1/2%;  
 31 and that with respect to reports covering accounting or privilege  
 32 periods or parts thereof ending after December 31, 1974, the rate  
 33 shall be 7 1/2%; and that with respect to reports covering privilege  
 34 periods or parts thereof ending after December 31, 1979, the rate  
 35 shall be 9%; provided however, that for a taxpayer that has entire  
 36 net income of \$100,000 or less for a privilege period and is not a  
 37 partnership the rate for that privilege period shall be 7 1/2% and  
 38 provided further that for a taxpayer that has entire net income of  
 39 \$50,000 or less for a privilege period and is not a partnership the  
 40 rate for that privilege period shall be 6 1/2%.

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

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

(ii) For a taxpayer that has entire net income in excess of  
 \$100,000 for the privilege period, for privilege periods ending on or

1 after July 1, 1998, but on or before June 30, 2001, the rate shall be  
2 2%,

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

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

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

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

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

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

30 (d) Provided, however, that the franchise tax to be annually  
31 assessed to and paid by any investment company or real estate  
32 investment trust, which has elected to report as such and has filed  
33 its return in the form and within the time provided in this act and  
34 the rules and regulations promulgated in connection therewith,  
35 shall, in the case of an investment company, be measured by 40% of  
36 its entire net income and 40% of its entire net worth, and in the case  
37 of a real estate investment trust, by 4% of its entire net income and  
38 15% of its entire net worth, at the rates hereinbefore set forth for the  
39 computation of tax on net income and net worth, respectively, but in  
40 no case less than \$250, and further provided, however, that the  
41 franchise tax to be annually assessed to and paid by a regulated  
42 investment company which for a period covered by its report  
43 satisfies the requirements of Chapter 1, Subchapter M, Part I,  
44 Section 852(a) of the federal Internal Revenue Code shall be \$250.

45 (e) The tax assessed to any taxpayer pursuant to this section  
46 shall not be less than \$25 in the case of a domestic corporation, \$50  
47 in the case of a foreign corporation, or \$250 in the case of an  
48 investment company or regulated investment company. Provided



1 provided however, that for a taxpayer that is a member of an  
2 affiliated group or a controlled group pursuant to section 1504 or  
3 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
4 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or  
5 more for the privilege period, the minimum tax shall be \$2,000 for  
6 the privilege period.

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

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

16 (1) that is a limited liability company or foreign limited liability  
17 company classified as a partnership for federal income tax purposes  
18 shall be the amount determined pursuant to the provisions of section  
19 3 of P.L.2001, c.136 (C.54:10A-15.6); or

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

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

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

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

31

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

34 10. a. Whenever it shall appear to the director that any taxpayer  
35 fails to maintain its records in accordance with sound accounting  
36 principles or conducts its business or maintains its records in such  
37 manner as either directly or indirectly to distort its true entire net  
38 income or its true entire net worth under this act or the proportion  
39 thereof properly allocable to this State, or whenever any taxpayer  
40 maintains a place of business outside this State, or whenever any  
41 agreement, understanding or arrangement exists between a taxpayer  
42 and any other corporation or any person or firm, for the purpose of  
43 evading tax under this act, or whereby the activity, business,  
44 receipts, expenses, assets, liabilities, income or net worth of the  
45 taxpayer are improperly or inaccurately reflected, the director is  
46 authorized and empowered, in the director's discretion and in such  
47 manner as the director may determine, to adjust and redetermine  
48 such items, and to adjust items of gross receipts, tangible or

1 intangible property and payrolls within and without the State and  
2 the allocation of entire net income or entire net worth or to make  
3 any other adjustments in any tax report or tax returns as may be  
4 necessary to make a fair and reasonable determination of the  
5 amount of tax payable under this act.

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

27 c. [The entire net income of a taxpayer exercising its franchise  
28 in this State that is a member of an affiliated group or a controlled  
29 group pursuant to section 1504 or 1563 of the federal Internal  
30 Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, shall be  
31 determined by eliminating all payments to, or charges by, other  
32 members of the affiliated or controlled group in excess of fair  
33 compensation in all inter-group transactions of any kind.  
34 Notwithstanding the elimination of all inter-group transactions in  
35 excess of fair compensation, if the taxpayer cannot demonstrate by  
36 clear and convincing evidence that a report by a taxpayer discloses  
37 the true earnings of the taxpayer on its business carried on in this  
38 State, the director may, at the director's discretion, require the  
39 taxpayer to file a consolidated return of the entire operations of the  
40 affiliated group or controlled group, including its own operations  
41 and income to the extent permitted under the Constitution and  
42 statutes of the United States. The director shall determine the true  
43 amount of entire net income earned by the taxpayer in this State.  
44 The consolidated entire net income of the taxpayer and of the other  
45 members of its affiliated group or controlled group shall be  
46 allocated to this State by use of the applicable allocation formula  
47 that the director requires pursuant to P.L.1945, c.162 (C.54A:10A-1  
48 et seq.) be used by the taxpayer. The return shall include in the

1 allocation formula the property, payrolls, and sales of all  
2 corporations for which the return is made. The director may require  
3 a consolidated return under this section without regard to whether  
4 the other members of the affiliated or controlled group, other than  
5 the taxpayer, are or are not exercising their franchises in this State.

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

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

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

23 14. (a) The director may by general rule or by special notice  
24 require any taxpayer to submit copies or pertinent extracts of its  
25 federal income tax returns, or of any other tax return made to any  
26 agency of the federal government, or of this or any other state, or of  
27 any statement or registration made pursuant to any state or federal  
28 law pertaining to securities or securities exchange regulation.

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

40 (c) Each taxpayer filing a return that is a member of **[**an  
41 affiliated group or a controlled group pursuant to section 1504 or  
42 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
43 s.1504 or 1563**]** a combined group shall, upon the request of the  
44 director and 90 days' notice thereof, disclose in its return for the  
45 privilege period the amount of all inter-member costs or expenses,  
46 including but not limited to management fees, rents, and other  
47 services, for the privilege period. If the taxpayer acquires products  
48 or services from another member of its **[**affiliated group or

1 controlled] combined group, which it re-sells or otherwise uses to  
2 generate revenue, the taxpayer shall, upon the request of the  
3 director and 90 days' notice thereof, disclose the amount of revenue  
4 generated from those products or services. The director shall  
5 promulgate rules and procedures for the manner of disclosure. A  
6 failure to file such a disclosure shall be deemed the filing of an  
7 incomplete tax return, subject to the penalties of the State Uniform  
8 Tax Procedure Law, R.S.54:48-1 et seq.  
9 (cf: P.L.2002, c.40, s.11)

10

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

13 49. Every domestic or foreign corporation subject to the tax or  
14 to filing requirements imposed under the Corporation Business Tax  
15 Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), shall keep all  
16 records used to determine its tax liability and such other records as  
17 the Director of the Division of Taxation may by regulation require.  
18 The records shall be available for inspection and examination at any  
19 time upon demand by the director or his duly authorized agent or  
20 employee and shall be preserved for a period of five years, except  
21 that the director may consent to their destruction within that period  
22 or may require that they be kept longer.  
23 (cf: P.L.1987, c.76, s.49)

24

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

27 12. a. Each captive insurance company that is not a combinable  
28 captive insurance company as defined by section 1 of  
29 P.L. , c. (C. ) (pending before the Legislature as this bill) shall  
30 pay to the Director of the Division of Taxation in the Department of  
31 the Treasury, on or before March 1 of each year, a tax at the rate of  
32 .38 of one percent on the first \$20,000,000 and .285 of one percent  
33 on the next \$20,000,000 and .19 of one percent on the next  
34 \$20,000,000 and .072 of one percent on each dollar thereafter on  
35 the direct premiums collected or contracted for on policies or  
36 contracts of insurance written by the captive insurance company  
37 during the year ending December 31 next preceding, after deducting  
38 from the direct premiums subject to the tax the amounts paid to  
39 policyholders as return premiums, which shall include dividends on  
40 unabsorbed premiums or premium deposits returned or credited to  
41 policyholders; except that no tax shall be due or payable as to  
42 considerations received for annuity contracts.

43 b. Each captive insurance company shall pay to the Director of  
44 the Division of Taxation in the Department of the Treasury, on or  
45 before March 1 of each year, a tax at the rate of .214 of one percent  
46 on the first \$20,000,000 of assumed reinsurance premium, and .143  
47 of one percent on the next \$20,000,000 and .048 of one percent on  
48 the next \$20,000,000 and .024 of one percent of each dollar

1 thereafter. However, no tax under this subsection applies to  
2 premiums for risks or portions of risks which are subject to taxation  
3 on a direct basis pursuant to subsection a. of this section. No tax  
4 under this subsection shall apply in connection with the receipt of  
5 assets in exchange for the assumption of loss reserves and other  
6 liabilities of another insurer under common ownership and control  
7 if the transaction is part of a plan to discontinue the operations of  
8 the other insurer, and if the intent of the parties to the transaction is  
9 to renew or maintain the business with the captive insurance  
10 company.

11 c. The annual minimum aggregate tax to be paid by a captive  
12 insurance company calculated under subsections a. and b. of this  
13 section shall be \$7,500, and the annual maximum aggregate tax  
14 shall be \$200,000. The maximum aggregate tax to be paid by a  
15 sponsored captive insurance company shall apply to each protected  
16 cell only and not to the sponsored captive insurance company as a  
17 whole.

18 d. (1) A captive insurance company shall, on or before March  
19 1 of each year, file with the commissioner an annual tax return,  
20 signed and sworn to by an officer of the company, or by its United  
21 States manager, if a company of a foreign country, in the form and  
22 containing matters as may be necessary for carrying out the  
23 provisions of this section.

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

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

32 e. Two or more captive insurance companies under common  
33 ownership and control shall be taxed as though they were a single  
34 captive insurance company.

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

37 (1) in the case of stock corporations, the direct or indirect  
38 ownership of 80 percent or more of the outstanding voting stock of  
39 two or more corporations by the same shareholder or shareholders;  
40 and

41 (2) in the case of mutual or nonprofit corporations, the direct or  
42 indirect ownership of 80 percent or more of the surplus and the  
43 voting power of two or more corporations by the same member or  
44 members.

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

1 h. The tax provided for by this section shall be calculated on an  
2 annual basis, notwithstanding policies or contracts of insurance or  
3 contracts of reinsurance issued on a multiyear basis. In the case of  
4 multiyear policies or contracts, the premium shall be prorated for  
5 purposes of determining the tax under this section.

6 i. The tax provided for by this section shall only apply to the  
7 branch business of a branch captive insurance company.

8 (cf: P.L.2011, c.25, s.12)

9  
10 11. Sections 5 and 30 of P.L.2002, c.40 (C.54:10A-4.4 and  
11 54:10A-18.1) are repealed.

12  
13 12. This act shall take effect immediately and apply to privilege  
14 periods ending after its date of enactment.

15  
16  
17 STATEMENT

18  
19 This bill updates the New Jersey corporation business tax  
20 reporting system to reduce tax sheltering and improve the efficiency  
21 and fairness of corporate income reporting.

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

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

29 This bill improves tax fairness by requiring the multiple  
30 organizations that are really one business to determine their income  
31 as one business. The combined income reporting system required  
32 by the bill treats a group of interrelated companies as a single  
33 company for determining income under the corporation business  
34 tax, which reduces or eliminates the use of intercorporate  
35 transactions to shelter income from taxation. A share of this  
36 combined income is then apportioned to New Jersey, allocated  
37 among the corporation business taxpayers, the same taxpayers as  
38 under current law, and each corporation files its own corporation  
39 business tax return.

40 The bill allows one of the members of the corporate group,  
41 selected because it is the controlling “parent” corporation in the  
42 corporate tax structure or chosen by the other group members, to  
43 become the managerial member of the group. This managerial  
44 member has the key responsibility for filing the combined income  
45 report for the group, and may, pursuant to regulations to be  
46 developed by the Director of the Division of Taxation, elect or be  
47 assigned other administrative responsibilities for the other members  
48 of the group.

1       The bill gives the managerial member the power to elect a more  
2 limited form of combined measurement, the so-called “water’s  
3 edge” approach, which omits from the combined report foreign  
4 corporations that do not independently conduct activity in New  
5 Jersey and that do very little business in the United States.  
6 However, the bill requires a corporate group that elects water’s edge  
7 treatment to include in its combined tax report a related company  
8 that does business in a “tax haven” jurisdiction. Such a company  
9 may be excluded from the combined report only if it is proven, to  
10 the satisfaction of the Director of the Division of Taxation, that its  
11 business in that jurisdiction is outside the scope of the laws,  
12 provisions, and practices that cause the jurisdiction to meet the  
13 bill’s definition of a tax haven.

14       The combined return is based on the inclusion of the income of  
15 both “taxable members” and “nontaxable members” of the  
16 combined group. Insurance companies are already excluded from  
17 both the definition of “taxable member” and “nontaxable member,”  
18 but this amendment clarifies that the income of an insurance  
19 company is excluded from all aspects of the corporation business  
20 tax combined return.