

[First Reprint]

ASSEMBLY, No. 4202

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JUNE 18, 2018

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Imposes surtax on corporation business tax liability; decouples certain provisions from Internal Revenue Code; imposes tax on certain dividends.

CURRENT VERSION OF TEXT

As amended on June 30, 2018 by the General Assembly pursuant to the Governor's recommendations.



(Sponsorship Updated As Of: 6/22/2018)

1 AN ACT concerning taxation, supplementing P.L.1945, c.162,
 2 ¹**[and]**¹ amending various parts of the statutory law ¹, and
 3 repealing section 30 of P.L.2002, c.40 (C.54:10A-18.1) and section
 4 7 of P.L.2002, c.40 (C.54:10A-5a)¹.

5
 6 **BE IT ENACTED** by the Senate and General Assembly of the State
 7 of New Jersey:

8
 9 1. (New section). a. In addition to the tax paid by each taxpayer
 10 determined pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
 11 each taxpayer, except for a public utility, shall be assessed and shall
 12 pay a surtax as follows:

13 (1) For a taxpayer, except a public utility, that has ¹**[entire]**
 14 allocated¹ net income in excess of \$1 million ¹**[**, but less than \$25
 15 million¹ for the privilege ¹**[period]** periods, beginning on or after
 16 January 1, 2018 through December 31, 2019¹, the surtax imposed shall
 17 be 2.5%;

18 (2) For a taxpayer, except a public utility, that has ¹**[entire]**
 19 allocated¹ net income in excess of ¹**[\$25]** \$1¹ million for the privilege
 20 ¹**[period]** periods, beginning on or after January 1, 2020 through
 21 December 31, 2021¹, the surtax imposed shall be ¹**[4%]** 1.5%¹.

22 b. ¹**[The surtax imposed pursuant to this section shall be upon a**
 23 **taxpayer's allocated net income for the privilege period ending on or**
 24 **after January 1, 2018 and upon a taxpayer's allocated net income for**
 25 **the next following privilege period.]** For purposes of this section,
 26 "taxpayer" shall mean any business entity required to report and pay
 27 tax for federal income tax purposes, and shall include any business
 28 entity subject to tax as provided in the Corporation Business Tax
 29 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.)¹.

30 The surtax imposed under this section shall be due and payable in
 31 accordance with section 15 of P.L.1945, c.162 (C.54:10A-15), and the
 32 surtax shall be administered pursuant to the provisions of P.L.1945,
 33 c.162 (C.54:10A-1 et seq.). Notwithstanding the provisions of any
 34 other law to the contrary, no credits shall be allowed against the surtax
 35 liability computed under this section except for credits for installment
 36 payments, estimated payments made with a request for an extension of
 37 time for filing a return, or overpayments from prior privilege periods.

38
 39 2. (New section) For privilege periods beginning on and after
 40 January 1, 2017, for the purposes of computing entire net income
 41 pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer
 42 shall not be allowed the amount of any deduction, exemption, or
 43 credit allowed under the Internal Revenue Code for income reported

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly amendments adopted in accordance with Governor's
 recommendations June 30, 2018.

1 pursuant to section 965 of the Internal Revenue Code (26 U.S.C.
2 s.965).

3

4 ¹3. (New section) a. Notwithstanding the provisions of section
5 4 of P.L.1945, c.162 (C.54:10A-4) or any other law to the contrary,
6 as used in this section only:

7 “Dividends” means all dividends, including but not limited to
8 dividends actually paid, deemed dividends, and all other
9 distributions treated as dividends, under the Internal Revenue Code
10 or under the laws of the State of New Jersey.

11 “Gross domestic product” means the nominal gross domestic
12 product for the prior calendar year.

13 “Subsidiary” means a business entity of which the taxpayer has a
14 direct or indirect ownership interest regardless of its percentage of
15 ownership.

16 “Taxpayer” means a business entity required to report and pay
17 tax on dividends for federal income tax purposes and either (1) is
18 subject to tax pursuant to section 2 of P.L.1945, c.162 (C.54:10A-
19 2); or (2) has taxable premiums subject to the taxes imposed
20 pursuant to R.S.54:16-1 et seq., R.S.54:18-1 et seq., and P.L.1945,
21 c.132 (C.54:18A-1 et seq.), or any other law of this State imposing
22 a tax on insurance companies for insuring risks in this State.

23 b. For tax years beginning on or after January 1, 2017 and
24 ending before December 31, 2018, in addition to the tax paid by a
25 taxpayer pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a
26 taxpayer shall pay a tax equal to a rate of 9% applied to all of the
27 taxpayer’s dividends included in the taxpayer’s income for federal
28 income tax purposes pursuant to the Internal Revenue Code without
29 any deduction, exemption, or credit allowed under the Internal
30 Revenue Code or any credits, grants, or net operating losses
31 allowed under the laws of the State of New Jersey.

32 c. A taxpayer shall not be liable for the tax imposed by this
33 section, if so prohibited by any federal law, or if the total amount of
34 dividends which were included in computing such taxable income
35 for federal income tax purposes, paid to the taxpayer by one or
36 more subsidiaries owned by the taxpayer, are in aggregate less than
37 \$1,000,000 for the tax year.

38 d. In order for a taxpayer to determine its tax liability under
39 this section, the taxpayer shall use an allocation factor based on the
40 gross domestic product of the State over the total gross domestic
41 product of every state within the United States, the District of
42 Columbia, and every United States territory, regardless of how such
43 amounts taxed by this section are classified under section 5 of
44 P.L.1993, c.173 (C.54:10A-6.1); provided, however, the director
45 may adjust and provide relief pursuant to section 8 of P.L.1945,
46 c.162 (C.54:10A-8).

47 e. The tax imposed pursuant to this section shall not be deemed
48 a tax on capital stock or property and shall be added back for the

1 purposes of subparagraph (C) of paragraph (2) of subsection (k) of
2 section 4 of P.L. 1945, c.162 (C.54:10A-4).

3 f. Except as provided in subsection c. of this section, a
4 taxpayer shall be liable to pay the tax imposed by this section if the
5 taxpayer is subject to tax pursuant to section 2 of P.L.1945, c.162
6 (C.54:10A-2), or if the taxpayer is an insurance company licensed
7 to insure risks in this State.

8 g. The tax imposed pursuant to this section shall be due and
9 payable on or before May 15, 2019 on amounts which the taxpayer
10 reports for federal income tax purposes for tax years beginning on
11 or after January 1, 2017 and ending before December 31, 2018
12 pursuant to the Internal Revenue Code. The tax shall be reported on
13 a form prescribed by the director and shall be due and payable
14 regardless of whether the taxpayer elects to pay its federal tax
15 liability for the amount in installment payments.

16 h. A taxpayer paying the tax imposed pursuant to this section
17 shall be allowed a credit against the taxpayer's tax liability under
18 subsection b. of this section in an amount equal to the tax, if any,
19 paid on the same dividends under section 5 of P.L.1945, c.162
20 (C.54:10A-5). The credit allowed by this subsection shall only be
21 allowed to the extent the taxpayer paid tax on the dividends under
22 both this section and section 5 of P.L.1945, c.162 (C.54:10A-5). A
23 taxpayer shall not transfer the credit allowed pursuant to this
24 subsection to any other taxpayer.

25 i. The tax imposed pursuant to this section shall be
26 administered pursuant to the provisions of the State Uniform Tax
27 Procedure Law, R.S.54:48-1. Penalties and interest shall be applied
28 for failure to file and pay the tax imposed pursuant to this section.
29 No penalties or interest shall be imposed upon payment of the tax
30 imposed pursuant to this section if payment is made on or before
31 May 15, 2019.】¹

32

33 ¹【4.】 3.¹ Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended
34 to read as follows:

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

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

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

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

1 (d) "Net worth" shall mean the aggregate of the values disclosed
2 by the books of the corporation for (1) issued and outstanding capital
3 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
4 profits, and (4) surplus reserves which can reasonably be expected to
5 accrue to holders or owners of equitable shares, not including
6 reasonable valuation reserves, such as reserves for depreciation or
7 obsolescence or depletion. Notwithstanding the foregoing, net worth
8 shall not include any deduction for the amount of the excess
9 depreciation described in paragraph (2) (F) of subsection (k) of this
10 section. The foregoing aggregate of values shall be reduced by
11 ~~1~~¹ ~~50%~~ 100% of the amount disclosed by the books of the
12 corporation for investment in the capital stock of one or more
13 subsidiaries, which investment is defined as ownership (1) of at least
14 80% of the total combined voting power of all classes of stock of the
15 subsidiary entitled to vote and (2) of at least 80% of the total number
16 of shares of all other classes of stock except nonvoting stock which is
17 limited and preferred as to dividends. In the case of investment in an
18 entity organized under the laws of a foreign country, the foregoing
19 requisite degree of ownership shall effect a like reduction of such
20 investment from the net worth of the taxpayer, if the foreign entity is
21 considered a corporation for any purpose under the United States
22 federal income tax laws, such as (but not by way of sole examples) for
23 the purpose of supplying deemed paid foreign tax credits or for the
24 purpose of status as a controlled foreign corporation. In calculating
25 the net worth of a taxpayer entitled to reduction for investment in
26 subsidiaries, the amount of liabilities of the taxpayer shall be reduced
27 by such proportion of the liabilities as corresponds to the ratio which
28 the excluded portion of the subsidiary values bears to the total assets of
29 the taxpayer.

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

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

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

46 (f) "Investment company" shall mean any corporation whose
47 business during the period covered by its report consisted, to the extent
48 of at least 90% thereof of holding, investing and reinvesting in stocks,

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

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

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

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

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

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

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

38 (1) Entire net income shall exclude for the periods set forth in
39 paragraph (2)(F)(i) of this subsection, any amount, except with respect
40 to qualified mass commuting vehicles as described in section
41 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
42 prior to January 1, 1984, which is included in a taxpayer's federal
43 taxable income solely as a result of an election made pursuant to the
44 provisions of paragraph (8) of that section.

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

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

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

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

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

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

17 (F) (i) The amount by which depreciation reported to the United
18 States Treasury Department for property placed in service on and after
19 January 1, 1981, but prior to taxpayer fiscal or calendar accounting
20 years beginning on and after the effective date of P.L.1993, c.172, for
21 purposes of computing federal taxable income in accordance with
22 section 168 of the Internal Revenue Code in effect after December 31,
23 1980, exceeds the amount of depreciation determined in accordance
24 with the Internal Revenue Code provisions in effect prior to January 1,
25 1981, but only with respect to a taxpayer's accounting period ending
26 after December 31, 1981; provided, however, that where a taxpayer's
27 accounting period begins in 1981 and ends in 1982, no modification
28 shall be required with respect to this paragraph (F) for the report filed
29 for such period with respect to property placed in service during that
30 part of the accounting period which occurs in 1981. The provisions of
31 this subparagraph shall not apply to assets placed in service prior to
32 January 1, 1998 of a gas, gas and electric, and electric public utility
33 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
34 seq.) prior to 1998.

35 (ii) For the periods set forth in subparagraph (F)(i) of paragraph (2)
36 of this subsection, any amount, except with respect to qualified mass
37 commuting vehicles as described in section 168(f)(8)(D)(v) of the
38 Internal Revenue Code as in effect immediately prior to January 1,
39 1984, which the taxpayer claimed as a deduction in computing federal
40 income tax pursuant to a qualified lease agreement under paragraph (8)
41 of that section.

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

46 (G)(i) The amount of any civil, civil administrative, or criminal
47 penalty or fine, including a penalty or fine under an administrative
48 consent order, assessed and collected for a violation of a State or

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

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

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

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

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

46 A deduction shall also be permitted to the extent that the taxpayer
47 establishes by a preponderance of the evidence, as determined by the
48 director, that the interest is directly or indirectly paid, accrued or

1 incurred to (i) a related member in a foreign nation which has in force
2 a comprehensive income tax treaty with the United States ¹containing
3 an express exemption from state income taxation] and the related
4 member (aa) was subject to tax in the foreign nation on a tax base that
5 included the payment paid, accrued, or incurred; and (bb) under which
6 the related member's income received from the transaction was taxed
7 at an effective tax rate equal to or greater than a rate of three
8 percentage points less than the rate of tax applied to taxable interest by
9 the State of New Jersey¹, provided however that the taxpayer shall
10 disclose on its return for the privilege period the name of the related
11 member, the amount of the interest, the relevant foreign nation, and
12 such other information as the director may prescribe or (ii) to an
13 independent lender and the taxpayer guarantees the debt on which the
14 interest is required. ¹Transactions between members of a combined
15 group are eliminated in the computation of the entire net income of the
16 members of the combined group; therefore, this subparagraph only
17 applies to interest paid, accrued or incurred by a taxable member of a
18 combined group to related parties that are not members of the
19 combined group.¹

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

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

44 (K) For privilege periods beginning after December 31, 2017, the
45 interest deduction limitation in subsection (j) of section 163 of the
46 Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-rata
47 basis to interest paid to both related and unrelated parties, regardless of

1 whether the related parties are subject to the add-back provision of
2 either subparagraph (I) of paragraph (2) of this subsection or in section
3 5 of P.L.2002, c.40 (C.54:10A-4.4).

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

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

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

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

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

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

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

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

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

37 (5) (A) ¹(i)¹ Entire net income shall exclude 100% of dividends
38 which were included in computing such taxable income for federal
39 income tax purposes, paid to the taxpayer by one or more subsidiaries
40 owned by the taxpayer to the extent of the 80% or more ownership of
41 investment described in subsection (d) of this section **【and】** for
42 privilege periods ending on or before December 31, ¹【2018】 2016.

43 (ii) For the privilege period beginning after December 31, 2016,
44 entire net income shall exclude 95% of dividends which were included
45 in computing such taxable income for federal income tax purposes,
46 paid or deemed paid, to the taxpayer by one or more subsidiaries
47 owned by the taxpayer to the extent of the 80% or more ownership of
48 investment described in subsection (d) of this section. For the

1 purposes of calculating the tax liability owed for the deemed dividends
2 included in entire net income by this subsection, the taxpayer shall use
3 either their three year average allocation factor for the taxpayer's 2015
4 through 2017 tax years reported on the taxpayer's tax returns or 3.5
5 percent, whichever is lower¹ .

6 ¹~~[(B)]~~ (iii)¹ For privilege periods beginning on and after January
7 1, ¹~~[2019]~~ 2018¹, entire net income shall exclude 95% of dividends
8 which were included in computing such taxable income for federal
9 income tax purposes, paid ¹or deemed paid¹ to the taxpayer by one or
10 more subsidiaries owned by the taxpayer to the extent of the 80% or
11 more ownership of investment described in subsection (d) of this
12 section.

13 ¹~~(B)~~¹ Entire net income shall exclude 50% of dividends which
14 were included in computing such taxable income for federal income
15 tax purposes, paid ¹or deemed paid¹ to the taxpayer by one or more
16 subsidiaries owned by the taxpayer to the extent of 50% or more
17 ownership of investment, such ownership of investment calculated in
18 the same manner as the 80% or more of ownership of investment is
19 calculated as described in subsection (d) of this section.

20 ¹~~(C)~~ To the extent a subsidiary received dividends from other
21 subsidiaries and included those dividends in its entire net income for
22 the purposes of determining its tax liability pursuant to section 5 of
23 P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the
24 taxpayer receiving those same dividends from the subsidiary shall
25 exclude those dividends from its entire net income based on the
26 subsidiary's allocation factor used by the subsidiary in determining its
27 tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).¹

28 (6) (A) Net operating loss deduction. ¹~~[(There)]~~ For privilege
29 periods before the effective date of P.L. , c. (pending before the
30 Legislature as this bill), there¹ shall be allowed as a deduction for the
31 privilege period the net operating loss carryover to that period.

32 (B) Net operating loss carryover. A net operating loss for any
33 privilege period ending after June 30, 1984 shall be a net operating
34 loss carryover to each of the seven privilege periods following the
35 period of the loss and a net operating loss for any privilege period
36 ending after June 30, 2009 shall be a net operating loss carryover to
37 each of the twenty privilege periods following the period of the loss.
38 The entire amount of the net operating loss for any privilege period
39 (the "loss period") shall be carried to the earliest of the privilege
40 periods to which the loss may be carried. The portion of the loss which
41 shall be carried to each of the other privilege periods shall be the
42 excess, if any, of the amount of the loss over the sum of the entire net
43 income, computed without the ¹~~[(exclusions)]~~ exclusion¹ permitted in
44 ¹~~[(paragraphs)]~~ paragraph¹ (4) ¹~~[(and (5))]~~¹ of this subsection or the net
45 operating loss deduction provided by subparagraph (A) of this
46 paragraph, for each of the prior privilege periods to which the loss may
47 be carried.

1 (C) Net operating loss. For purposes of this paragraph the term
2 "net operating loss" means the excess of the deductions over the gross
3 income used in computing entire net income without the net operating
4 loss deduction provided for in subparagraph (A) of this paragraph and
5 the ¹~~["exclusions in paragraphs (4) and (5)"]~~ exclusion in paragraph
6 (4)¹ of this subsection.

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

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

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

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

41 (7) The entire net income of gas, electric and gas and electric
42 public utilities that were subject to ¹, or would have been subject to tax
43 if doing business in this State.¹ the provisions of P.L.1940, c.5
44 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting
45 the New Jersey depreciation allowance for federal tax depreciation
46 with respect to assets placed in service prior to January 1, 1998. For
47 gas, electric, and gas and electric public utilities that were subject to ¹,

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

20 (A) Depreciation for property placed in service prior to January 1,
21 1998 shall be adjusted as follows:

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

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

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

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

44 (8) In the case of taxpayers that are gas, electric, gas and electric,
45 or telecommunications public utilities as defined pursuant to
46 subsection (q) of this section, the director shall have authority to
47 promulgate rules and issue guidance correcting distortions and

1 adjusting timing differences resulting from the adoption of P.L.1997,
2 c.162 (C.54:10A-5.25 et al.).

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

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

28 (11) No deduction shall be allowed for research and experimental
29 expenditures, to the extent that those research and experimental
30 expenditures are qualified research expenses or basic research
31 payments for which an amount of credit is claimed pursuant to section
32 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and
33 experimental expenditures are also used to compute a federal credit
34 claimed pursuant to section 41 of the federal Internal Revenue Code of
35 1986, 26 U.S.C. s.41.

36 (12) (A) Notwithstanding the provisions of subsection (k) of
37 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.
38 s.168, subsection (b) of section 1400L of the federal Internal Revenue
39 Code of 1986, 26 U.S.C. s.1400L, or any other federal law, for
40 property acquired after September 10, 2001, the depreciation
41 deduction otherwise allowed pursuant to section 167 of the federal
42 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined
43 pursuant to the provisions of the federal Internal Revenue Code of
44 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001.

45 (B) The director shall prescribe the rules and regulations necessary
46 to carry out the provisions of this paragraph, including, among others,
47 those for determining the adjusted basis of the acquired property for

1 the purposes of the Corporation Business Tax Act (1945), P.L.1945,
2 c.162.

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

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

15 (14) Notwithstanding the provisions of subsection (i) of section
16 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
17 for privilege periods beginning after December 31, 2008 and before
18 January 1, 2011, entire net income shall include the amount of
19 discharge of indebtedness income excluded for federal income tax
20 purposes pursuant to subsection (i) of section 108 of the federal
21 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
22 periods beginning on or after January 1, 2014 and before January 1,
23 2019, entire net income shall exclude the amount of discharge of
24 indebtedness income included for federal income tax purposes,
25 pursuant to subsection (i) of section 108 of the federal Internal
26 Revenue Code of 1986 (26 U.S.C. s.108).

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

31 (16.) ¹Entire net income shall be determined without the
32 exclusion, exemption, deduction, or credit of any income exempt from
33 federal taxable income under any treaty obligation of the United
34 States, unless such exclusion, exemption, deduction, or credit is
35 explicitly made applicable to states under the express terms of a tax
36 treaty entered into by the United States.] (A) There shall be allowed
37 as a deduction an amount computed in accordance with this paragraph.

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

45 (C) Only publicly traded companies, including affiliated
46 corporations participating in the filing of a publicly traded company's
47 financial statements prepared in accordance with generally accepted

1 accounting principles, as of the effective date of this paragraph, shall
2 be eligible for this deduction.

3 (D) If the provisions of sections 18 through 22 of P.L. , c.
4 (C.) (pending before the Legislature as this bill) result in an
5 aggregate increase to the members' net deferred tax liability or an
6 aggregate decrease to the members' net deferred tax asset, or an
7 aggregate change from a net deferred tax asset to a net deferred tax
8 liability, the combined group shall be entitled to a deduction, as
9 determined in this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

27 (q) "Public Utility" means "public utility" as defined in R.S.48:2-
28 13.

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

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

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

46 ¹(u) "Prior net operating loss conversion carryover" means a net
47 operating loss incurred in a privilege period prior to the effective date
48 of P.L. , c. (C.) (pending before the Legislature as this bill) and

1 converted from a pre-allocation net operating loss to a post-allocation
2 net operating loss as follows:

3 (1) As used in this subsection:

4 "Base year" means the last privilege period prior to the effective
5 date of P.L. , c. (C.) (pending before the Legislature as this bill).

6 "Base year BAF" means the taxpayer's business allocation factor as
7 provided in sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6
8 through 54:10A-8) for purposes of calculating entire net income for
9 the base year, as such section was in effect for the last privilege period
10 prior to the effective date of P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12 "UNOL" means the unabsorbed portion of net operating loss as
13 calculated under paragraph (6) of subsection (k) of this section as such
14 paragraph was in effect for the last privilege period prior to the
15 effective date of P.L. , c. (C.) (pending before the Legislature as
16 this bill), that was not deductible in previous privilege periods and was
17 eligible for carryover on the last day of the base year subject to the
18 limitations for deduction under such subsection, including any net
19 operating loss sustained by the taxpayer during the base year.

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

22 (A) The taxpayer shall first calculate the tax value of its UNOL for
23 the base year and for each preceding privilege period for which there is
24 a UNOL. The value of the UNOL for each privilege period is equal to
25 the product of (I) the amount of the taxpayer's UNOL for a privilege
26 period, and (II) the taxpayer's base year BAF. This result shall equal
27 the taxpayer's prior net operating loss conversion carryover.

28 (B) The taxpayer shall continue to carry over its prior net operating
29 loss conversion carryover to offset its allocated entire net income as
30 provided in sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6
31 through 54:10A-8) for privilege periods beginning on and after the
32 effective date of P.L. , c. (C.) (pending before the Legislature as
33 this bill). Such carryover periods shall not exceed the twenty privilege
34 periods following the privilege period of the initial loss. The entire
35 amount of the prior net operating loss conversion carryover for any
36 privilege period shall be carried to the earliest of the privilege periods
37 to which the loss may be carried. The portion of the prior net
38 operating loss conversion carryover which shall be carried to each of
39 the other privilege periods shall be the excess, if any, of the amount of
40 the prior net operating loss conversion carryover over the sum of the
41 entire net income, computed without the exclusion permitted in
42 paragraph (4) of subsection (k) of this section allocated to this state.

43 (C) The prior net operating loss conversion carryover computed
44 under this subsection shall be applied against the entire net income
45 allocated to this State before the net operating loss carryover computed
46 under subsection (v) of this section.

1 (v) “Net operating loss deduction” means the amount allowed as a
2 deduction for the net operating loss carryover to the privilege period,
3 calculated as follows:

4 (1) Net operating loss carryover. A net operating loss for any
5 privilege period beginning on or after the effective date of this Act
6 shall be a net operating loss carryover to each of the twenty privilege
7 periods following the period of the loss. The entire amount of the net
8 operating loss for any privilege period shall be carried to the earliest of
9 the privilege periods to which the loss may be carried. The portion of
10 the loss which shall be carried to each of the other privilege periods
11 shall be the excess, if any, of the amount of the loss over the sum of
12 the entire net income, computed without the exclusion permitted in
13 paragraph (4) of subsection (k) of this section allocated to this State.

14 (2) Net operating loss. For purposes of this paragraph the term "net
15 operating loss" means the excess of the deductions over the gross
16 income used in computing entire net income, without regard to any net
17 operating loss carryover, and computed without the exclusion in
18 paragraph (4) of subsection (k) of this section, allocated to this State
19 pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6
20 through 54:10A-8).

21 (3) Reduction for discharge of indebtedness. A net operating loss
22 for any privilege period beginning after the effective date of this act,
23 and any net operating loss carryover to such privilege period, shall be
24 reduced by the amount excluded from federal taxable income under
25 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
26 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108, for
27 the privilege period of the discharge of indebtedness.

28 (4) A net operating loss carryover shall not include any net
29 operating loss incurred during any privilege period beginning prior to
30 the effective date of P.L. , c. (C.) (pending before the Legislature
31 as this bill).

32 (w) “Taxable net income” means entire net income allocated to
33 this State as calculated pursuant to sections 6 through 8 of P.L.1945,
34 c.162 (C.54:10A-6 through 54:10A-8) as modified by subtracting any
35 prior net operating loss conversion carryforward calculated pursuant to
36 subsection (u) of this section, and any net operating loss calculated
37 pursuant to subsection (v) of this section.

38 (x) "Affiliated group" means an affiliated group as defined in
39 section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504,
40 except such affiliated group shall include all domestic corporations
41 that are commonly owned, directly or indirectly, by any member of
42 such affiliated group, without regard to whether the affiliated group
43 includes (1) corporations included in more than one federal
44 consolidated return, (2) corporations engaged in one or more unitary
45 businesses, or (3) corporations that are not engaged in a unitary
46 business with any other member of the affiliated group.

1 (y) “Combinable captive insurance company” means an entity that
2 is treated as an association taxable as a corporation under the federal
3 Internal Revenue Code:

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

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

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

13 (4) 50% or less of whose gross receipts for the privilege period
14 consist of premiums from arrangements that constitute insurance for
15 federal income tax purposes.

16 For purposes of this definition:

17 “Affiliated group” shall have the same meaning as that term is
18 given by section 1504 of the federal Internal Revenue Code, 26
19 U.S.C. s.1504, except that the term “common parent corporation” as
20 used in section 1504 of the federal Internal Revenue Code, 26 U.S.C.
21 s.1504, shall mean any person, as defined in section 7701 of the
22 federal Internal Revenue Code, 26 U.S.C. s.7701, and references to “at
23 least 80%” in section 1504 of the federal Internal Revenue Code, 26
24 U.S.C. s.1504, shall be read as “50% or more.” Section 1504 of the
25 federal Internal Revenue Code, 26 U.S.C. s.1504, shall be read without
26 regard to the exclusions provided for in subsection (b) of that section.

27 “Gross receipts” includes the amounts included in gross receipts
28 for purposes of paragraph (15) of subsection (c) of section 501 of the
29 federal Internal Revenue Code, 26 U.S.C. s.501, except that those
30 amounts also include all premiums.

31 “Premiums” includes consideration for annuity contracts and
32 excludes any part of the consideration for insurance, reinsurance, or
33 annuity contracts that do not provide bona fide insurance, reinsurance,
34 or annuity benefits.

35 (z) “Combined group” means the group of all companies that have
36 common ownership and are engaged in a unitary business, where at
37 least one company is subject to tax under this chapter, except as
38 provided in paragraph k of section 17 of P.L. , c. (C.) (pending
39 before the Legislature as this bill).

40 (aa) “Common ownership” means that more than 50% of the
41 voting control of each member of a combined group is directly or
42 indirectly owned by a common owner or owners, either corporate or
43 non-corporate, whether or not the owner or owners are members of the
44 combined group. Whether voting control is indirectly owned shall be
45 determined in accordance with section 318 of the federal Internal
46 Revenue Code, 26 U.S.C. s.318.

47 (bb) “Group privilege period” means, if two or more members in
48 the combined group file in the same federal consolidated tax return,

1 the same income year as that used on the federal consolidated tax
2 return and, in all other cases, the privilege period of the managerial
3 member.

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

12 (dd) "Member" means a corporation that is a part of a combined
13 group.

14 (ee) "Nontaxable member" means a member that is not subject to
15 tax pursuant to the Corporation Business Tax Act (1945), P.L.1945,
16 c.162 (C.54:10A-1 et seq.) and is not a corporation exempted from the
17 tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3) except for a
18 combinable captive insurance company. (ii) a New Jersey S
19 Corporation which does not elect to be included in the combine group.

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

23 (gg) "Unitary business" means a single economic enterprise that is
24 made up either of separate parts of a single business entity or of a
25 group of business entities under common ownership that are
26 sufficiently interdependent, integrated, and interrelated through their
27 activities so as to provide a synergy and mutual benefit that produces a
28 sharing or exchange of value among them and a significant flow of
29 value among the separate parts. "Unitary business" shall be construed
30 to the broadest extent permitted under the Constitution of the United
31 States. A business conducted by a partnership which is in a unitary
32 business with the combined group shall be treated as the business of
33 the partners that are members of the combined group, whether the
34 partnership interest is held directly or indirectly through a series of
35 partnerships, to the extent of a partner's distributive share of
36 partnership income. The amount of partnership income to be included
37 in the partner's entire net income shall be determined in accordance
38 with section 3 of P.L.2001, c. 136 (C.54:10A-15.6(a)). A business
39 conducted directly or indirectly by one corporation is unitary with that
40 portion of a business conducted by another corporation through its
41 direct or indirect interest in a partnership.¹

42 (cf: P.L.2017, c.313, s.4)

43
44 ¹**[5.]** 4.¹ Section 5 of P.L.2002, c.40 (C.54:10A-4.4) is amended
45 to read as follows:

46 5. a. For the purposes of this section:

47 "Intangible expenses and costs" includes (1) expenses, losses and
48 costs for, related to, or in connection directly or indirectly with the

1 direct or indirect acquisition, use, maintenance or management,
2 ownership, sale, exchange, or any other disposition of intangible
3 property to the extent such amounts are allowed as deductions or costs
4 in determining taxable income before operating loss deduction and
5 special deductions for the taxable year under the federal Internal
6 Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses related to, or
7 incurred in connection directly or indirectly with, factoring
8 transactions or discounting transactions; (3) royalty, patent, technical
9 and copyright fees; (4) licensing fees; and (5) other similar expenses
10 and costs.

11 "Intangible property" means patents, patent applications, trade
12 names, trademarks, service marks, copyrights, mask works, trade
13 secrets and similar types of intangible assets.

14 "Interest expenses and costs" means amounts directly or indirectly
15 allowed as deductions under section 163 of the federal Internal
16 Revenue Code of 1986, 26 U.S.C. s.163, for purposes of determining
17 taxable income under the code to the extent such expenses and costs
18 are directly or indirectly for, related to, or in connection with the direct
19 or indirect acquisition, maintenance, management, ownership, sale,
20 exchange or disposition of intangible property.

21 "Related member" means a person that, with respect to the
22 taxpayer during all or any portion of the privilege period, is: (1) a
23 related entity, (2) a component member as defined in subsection (b) of
24 section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
25 s.1563, (3) is a person to or from whom there is attribution of stock
26 ownership in accordance with subsection (e) of section 1563 of the
27 federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, or (4) is a
28 person that, notwithstanding its form of organization, bears the same
29 relationship to the taxpayer as a person described in (1) through (3) of
30 this definition.

31 "Related entity" means (1) a stockholder who is an individual, or a
32 member of the stockholder's family enumerated in section 318 of the
33 federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
34 stockholder and the members of the stockholder's family own, directly,
35 indirectly, beneficially or constructively, in the aggregate, **[at least]**
36 50% or more of the value of the taxpayer's outstanding stock; (2) a
37 stockholder, or a stockholder's partnership, limited liability company,
38 estate, trust or corporation, if the stockholder and the stockholder's
39 partnerships, limited liability companies, estates, trusts and
40 corporations own directly, indirectly, beneficially or constructively, in
41 the aggregate, **[at least]** 50% or more per cent of the value of the
42 taxpayer's outstanding stock; or (3) a corporation, or a party related to
43 the corporation in a manner that would require an attribution of stock
44 from the corporation to the party or from the party to the corporation
45 under the attribution rules of the federal Internal Revenue Code of
46 1986, 26 U.S.C. s.318, if the taxpayer owns, directly, indirectly,
47 beneficially or constructively, **[at least]** 50% or more percent of the
48 value of the corporation's outstanding stock. The attribution rules of

1 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, shall
2 apply for purposes of determining whether the ownership requirements
3 of this definition have been met.

4 b. For purposes of computing its entire net income under section
5 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add back
6 otherwise deductible interest expenses and costs and intangible
7 expenses and costs directly or indirectly paid, accrued or incurred to,
8 or in connection directly or indirectly with one or more direct or
9 indirect transactions with, one or more related members.

10 c. (1) The adjustments required in subsection b. of this section
11 shall not apply if: (a) the interest expenses and costs and intangible
12 expenses and costs are directly or indirectly paid, accrued or incurred
13 to a related member in a foreign nation which has in force a
14 comprehensive income tax treaty with the United States ¹containing
15 an express exemption from state income taxation and the (i) related
16 member was subject to tax in the foreign nation on a tax base that
17 included the payment paid, accrued, or incurred and (ii) the related
18 member's income received from the transaction was taxed at an
19 effective tax rate equal to or greater than a rate of three percentage
20 points less than the rate of tax applied to taxable interest by the State
21 of New Jersey¹ ; or (b) the taxpayer establishes by clear and
22 convincing evidence, as determined by the director, that the
23 adjustments are unreasonable; or (c) the taxpayer and the director
24 agree in writing to the application or use of an alternative method of
25 apportionment under section 8 of P.L.1945, c.162 (C.54:10A-8).
26 Nothing in this subsection shall be construed to limit or negate the
27 director's authority to otherwise enter into agreements and
28 compromises otherwise allowed by law.

29 (2) For the purposes of qualifying for the exception provided by
30 subparagraph (a) of paragraph (1) of this subsection, the taxpayer shall
31 disclose on its return for the privilege period the name of the related
32 member, the amount of the interest expenses and costs and intangible
33 expenses and costs deducted, the relevant foreign nation, and such
34 other information as the director may prescribe.

35 (3) The adjustments required in subsection b. of this section shall
36 not apply to the portion of interest expenses and costs and intangible
37 expenses and costs that the taxpayer establishes by a preponderance of
38 the evidence meets both of the following: (a) the related member
39 during the same income year directly or indirectly paid, received,
40 accrued or incurred the portion to or from a person that is not a related
41 member, and (b) the transaction giving rise to the interest expenses and
42 costs or the intangible expenses and costs between the taxpayer and
43 the related member did not have as a principal purpose the avoidance
44 of any portion of the tax due under Title 54 of the Revised Statutes or
45 Title 54A of the New Jersey Statutes.

46 d. Nothing in this section shall require a taxpayer to add to its net
47 income more than once any amount of interest expenses and costs and

1 intangible expenses and costs that the taxpayer pays, accrues or incurs
2 to a related member described in subsection b. of this section.

3 e. Nothing in this section shall be construed to limit or negate the
4 director's authority to make adjustments under paragraph (3) of
5 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section 8
6 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
7 (C.54:10A-10).

8 (cf: P.L.2002, c.40, s.5)

9

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

12 5. The franchise tax to be annually assessed to and paid by each
13 taxpayer shall be the greater of the amount computed pursuant to this
14 section or the alternative minimum assessment computed pursuant to
15 section 7 of P.L.2002, c.40 (C.54:10A-5a); provided however, that in
16 the case of a taxpayer that is a New Jersey S corporation, an
17 investment company, a professional corporation organized pursuant to
18 P.L.1969, c.232 (C.14A:17-1 et seq.) or a similar corporation for profit
19 organized for the purpose of rendering professional services under the
20 laws of another state, or a person operating on a cooperative basis
21 under Part I of Subchapter T of the federal Internal Revenue Code of
22 1986, 26 U.S.C. s.1381 et seq., there shall be no alternative minimum
23 assessment computed pursuant to section 7 of P.L.2002, c.40
24 (C.54:10A-5a).

25 The amount computed pursuant to this section shall be the sum of
26 the amount computed under subsection (a) hereof, or in the alternative
27 to the amount computed under subsection (a) hereof, the amount
28 computed under subsection (f) hereof, and the amount computed under
29 subsection (c) hereof:

30 (a) That portion of its entire net worth as may be allocable to this
31 State as provided in section 6, multiplied by the following rates: 2
32 mills per dollar on the first \$100,000,000.00 of allocated net worth;
33 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill
34 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar
35 on all amounts of allocated net worth in excess of \$300,000,000.00;
36 provided, however, that with respect to reports covering accounting or
37 privilege periods set forth below, the rate shall be that percentage of
38 the rate set forth in this subsection for the appropriate year:

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

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

47 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
48 1/4% of its entire net income or such portion thereof as may be

1 allocable to this State as provided in **[section]** sections 6 through 8 of
2 P.L.1945, c.162 **[(C.54:10A-6)]**(C.54:10A-6 through C.54:10A-8),
3 plus such portion thereof as is specifically assigned to this State as
4 provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided,
5 however, that with respect to reports covering accounting or privilege
6 periods or parts thereof ending after December 31, 1967, the rate shall
7 be 4 1/4%; and that with respect to reports covering accounting or
8 privilege periods or parts thereof ending after December 31, 1971, the
9 rate shall be 5 1/2%; and that with respect to reports covering
10 accounting or privilege periods or parts thereof ending after December
11 31, 1974, the rate shall be 7 1/2%; and that with respect to reports
12 covering privilege periods or parts thereof ending after December 31,
13 1979, the rate shall be 9%; provided however, that for a taxpayer that
14 has entire net income of \$100,000 or less for a privilege period and is
15 not a partnership the rate for that privilege period shall be 7 1/2% and
16 provided further that for a taxpayer that has entire net income of
17 \$50,000 or less for a privilege period and is not a partnership the rate
18 for that privilege period shall be 6 1/2%.

19 For privilege periods beginning on or after the effective date of
20 P.L. _____, c. (pending before the Legislature as this bill), the tax rate
21 shall be applied against the net income.

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

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

29 (ii) For a taxpayer that has entire net income in excess of \$100,000
30 for the privilege period, for privilege periods ending on or after July 1,
31 1998, but on or before June 30, 2001, the rate shall be 2%,

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

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

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

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

43 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or
44 (iii) of this paragraph shall be multiplied by its entire net income that
45 is not subject to federal income taxation or such portion thereof as may
46 be allocable to this State pursuant to sections 6 through **[10]** § of
47 P.L.1945, c.162 (C.54:10A-6 through **[54:10A-10]** 54:10A-8) plus

1 such portion thereof as is specifically assigned to this State as provided
2 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

3 (3) For a taxpayer that is a New Jersey S corporation, in addition
4 to the amount, if any, determined under paragraph (2) of this
5 subsection, the tax rate that would otherwise be applicable to the
6 taxpayer's entire net income for the privilege period if the taxpayer
7 were not an S corporation provided under paragraph (1) of this
8 subsection for the privilege period multiplied by its entire net income
9 that is subject to federal income taxation or such portion thereof as
10 may be allocable to this State pursuant to sections 6 through ~~10~~ 8 of
11 P.L.1945, c.162 (C.54:10A-6 through ~~54:10A-10~~ 54:10A-8). For
12 privilege periods beginning on or after the effective date of P.L. , c.
13 (C.) (pending before the Legislature as this bill), the tax rate shall be
14 applied against taxable net income.

15 (d) Provided, however, that the franchise tax to be annually
16 assessed to and paid by any investment company or real estate
17 investment trust, which has elected to report as such and has filed its
18 return in the form and within the time provided in this act and the rules
19 and regulations promulgated in connection therewith, shall, in the case
20 of an investment company, be measured by 40% of its entire net
21 income and 40% of its entire net worth, and in the case of a real estate
22 investment trust, by 4% of its entire net income and 15% of its entire
23 net worth, at the rates hereinbefore set forth for the computation of tax
24 on net income and net worth, respectively, but in no case less than
25 \$250, and further provided, however, that the franchise tax to be
26 annually assessed to and paid by a regulated investment company
27 which for a period covered by its report satisfies the requirements of
28 Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal
29 Revenue Code shall be \$250. For privilege periods beginning on or
30 after the effective date of P.L. , c. (C.) (pending before the
31 Legislature as this bill), the tax rate shall be applied against taxable net
32 income.

33 (e) The tax assessed to any taxpayer pursuant to this section shall
34 not be less than \$25 in the case of a domestic corporation, \$50 in the
35 case of a foreign corporation, or \$250 in the case of an investment
36 company or regulated investment company. Provided however, that
37 for privilege periods beginning in calendar year 1994 and thereafter
38 the minimum taxes for taxpayers other than an investment company or
39 a regulated investment company shall be as provided in the following
40 schedule:

41	Period Beginning	Domestic	Foreign
42	In Calendar Year	Corporation	Corporation
43		Minimum Tax	Minimum Tax
44	1994	\$ 50	\$100
45	1995	\$100	\$200
46	1996	\$150	\$200
47	1997	\$200	\$200
48	1998	\$200	\$200

1	1999	\$200	\$200
2	2000	\$200	\$200
3	2001	\$210	\$210

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

12	New Jersey Gross Receipts:	Minimum Tax:
13	Less than \$100,000	.....\$500
14	\$100,000 or more but	
15	less than \$250,000	..... \$750
16	\$250,000 or more but	
17	less than \$500,000	..... \$1,000
18	\$500,000 or more but	
19	less than \$1,000,000	..... \$1,500
20	\$1,000,000 or more	..... \$2,000

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

27	New Jersey Gross Receipts:	Minimum Tax:
28	Less than \$100,000	.....\$375
29	\$100,000 or more but	
30	less than \$250,000	..... \$562.50
31	\$250,000 or more but	
32	less than \$500,000	..... \$750
33	\$500,000 or more but	
34	less than \$1,000,000	..... \$1,125
35	\$1,000,000 or more	..... \$1,500

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

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

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

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

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

12 (h) Provided however, that for privilege periods beginning on or
13 after January 1, 2002 the franchise tax annually assessed to and paid
14 by a taxpayer that is a partnership shall be the amount determined
15 pursuant to the provisions of section 12 of P.L.2002, c.40 (C.54:10A-
16 15.11).

17 (i) (Deleted by amendment, P.L.2008, c.120)¹
18 (cf: P.L.2011, c.84, s.1)

19
20 ¹6. Section 1 of P.L. 1993, c. 175 (C.54:10A-5.24) is amended to
21 read as follows:

22 1. a. A taxpayer shall be allowed a credit, subject to the
23 provisions of subsection b. of this section, against the tax imposed
24 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount
25 equal to

26 (1) 10% of the excess of the qualified research expenses for the
27 privilege period over the base amount; and

28 (2) 10% of the basic research payments for the privilege period
29 determined in accordance with section 41 of the federal Internal
30 Revenue Code of 1986, 26 U.S.C. s.41~~],~~ as in effect on June 30, 1992,
31 and provided that subsection (h) of 26 U.S.C. s.41 relating to
32 termination shall not apply~~].~~ Provided however, that the terms
33 “qualified research expenses,” “base amount,” “qualified organization
34 base amount period,” “basic research” and any other terms determined
35 by the Director of the Division of Taxation to affect the calculation of
36 the credit shall include only expenditures for research conducted in
37 this State.

38 b. No credit shall be allowed under section 42 of P.L.1987, c.102
39 (C.54:10A-5.3), or under the “Manufacturing Equipment and
40 Employment Investment Tax Credit Act,” P.L.1993, c.171 (C.54:10A-
41 5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for
42 property or expenditures for which a credit is allowed, or which are
43 includable in the calculation of a credit allowed, under this section.

44 The order of priority of the application of the credit allowed
45 pursuant to this section and any other credits allowed by law shall be
46 as prescribed by the director. Credits allowable pursuant to this
47 section shall be applied in the order of the privilege periods for which
48 the credits were allowed.

1 For privilege periods beginning before January 1, 2012, the
2 amount of the credits applied under this section against the tax
3 imposed pursuant to section 5 of P.L.1945, c.162, for the privilege
4 period shall not exceed 50% of the tax liability otherwise due and shall
5 not reduce the tax liability to an amount less than the statutory
6 minimum provided in subsection (e) of section 5 of P.L.1945, c.162.

7 For privilege periods beginning on or after January 1, 2012, the
8 amount of the credits applied under this section against the tax
9 imposed pursuant to section 5 of P.L.1945, c.162, for the privilege
10 period shall not reduce the tax liability to an amount less than the
11 statutory minimum provided in subsection (e) of section 5 of P.L.1945,
12 c.162.

13 For privilege periods beginning on or after January 1, 2018, the
14 credit taken under this section shall not be refundable.

15 The amount of credit otherwise allowable under this section which
16 cannot be applied for the privilege period due to the limitations of this
17 subsection may be carried over, if necessary, to the seven privilege
18 periods following a credit's privilege period.

19 c. No provision terminating section 41 of the federal Internal
20 Revenue Code, 26 U.S.C. s.41, shall apply.¹

21 (cf: P.L.2011, c.83, s.1)

22
23 ¹7. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read
24 as follows:

25 6. The portion of a taxpayer's entire net worth to be used as a
26 measure of the tax imposed by subsection (a) of section 5 of P.L.1945,
27 c.162 (C.54:10A-5), and the portion of its entire net income to be used
28 as a measure of the tax imposed by subsection (c) of section 5 of
29 P.L.1945, c.162 (C.54:10A-5), shall be determined by multiplying
30 such entire net worth and entire net income, respectively, by an
31 allocation factor which is the property fraction, plus twice the sales
32 fraction plus the payroll fraction and the denominator of which is
33 four, and which, for privilege periods beginning on or after January 1,
34 2012, is the sum of the portions of the property fraction, the sales
35 fraction, and the payroll fraction determined in accordance with the
36 following schedule:

37 for privilege periods beginning on or after January 1, 2012 but
38 before January 1, 2013, 15% of the property fraction plus 70% of the
39 sales fraction plus 15% of the payroll fraction, for privilege periods
40 beginning on or after January 1, 2013 but before January 1, 2014, 5%
41 of the property fraction plus 90% of the sales fraction plus 5% of the
42 payroll fraction, and for privilege periods beginning on or after
43 January 1, 2014, 100% of the sales fraction, except as the director may
44 determine pursuant to section 8 of P.L.1945, c.162 (C.54:10A-8), that
45 is:

46 (A) The property fraction is the average value of the taxpayer's real
47 and tangible personal property within the State during the period
48 covered by its report divided by the average value of all the taxpayer's

1 real and tangible personal property wherever situated during such
2 period; provided, however, that for the purpose of determining average
3 value, the provisions with respect to depreciation as set forth in
4 subparagraph (F) of paragraph (2) of subsection (k) of section 4 of
5 P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving
6 at such value.

7 (B) The sales fraction is the receipts of the taxpayer, computed on
8 the cash or accrual basis according to the method of accounting used in
9 the computation of its net income for federal tax purposes, arising
10 during such period from:

11 (1) sales of its tangible personal property located within this State
12 at the time of the receipt of or appropriation to the orders where
13 shipments are made to points within this State,

14 (2) sales of tangible personal property located without the State at
15 the time of the receipt of or appropriation to the orders where shipment
16 is made to points within the State,

17 (3) (Deleted by amendment.)

18 (4) **【services performed within the State,】** (i) sales of services, if
19 the benefit of the service is received at a location in this State. If the
20 benefit of the service is received both at a location within and outside
21 this State, the portion of the sale that is allocated to this State is based
22 on the percentage of the total value of the benefit of the service
23 received at a location in this State or a reasonable approximation to the
24 total value of the benefit of the service received in all locations both
25 within and outside this State; (ii) if the state or states of assignment of
26 services under subparagraph (i) of this paragraph cannot be determined
27 for a customer who is an individual that is not a sole proprietor, the
28 benefit of the service is deemed to be received at the customer's billing
29 address; (iii) if the state or states of assignment of services under
30 subparagraph (i) cannot be determined for a customer, except for a
31 customer under subparagraph (ii) of this paragraph, the benefit of the
32 service is deemed to be received at the location from which the
33 services were ordered in the customer's regular course of operations.
34 If the location from which the services were ordered in the customer's
35 regular course of operations cannot be determined, the benefit of the
36 service is deemed to be received at the customer's billing address.

37 (5) rentals from property situated, and royalties from the use of
38 patents or copyrights, within the State,

39 (6) all other business receipts (excluding dividends excluded from
40 entire net income by paragraph (1) of subsection (k) of section 4 of
41 P.L.1945, c.162 (C.54:10A-4)) earned within the State, divided by the
42 total amount of the taxpayer's receipts, similarly computed, arising
43 during such period from all sales of its tangible personal property,
44 services, rentals, royalties and all other business receipts, whether
45 within or without the State.

46 (C) The payroll fraction is the total wages, salaries and other
47 personal service compensation, similarly computed, during such
48 period of officers and employees within the State divided by the total

1 wages, salaries and other personal service compensation, similarly
2 computed, during such period of all the taxpayer's officers and
3 employees within and without the State.

4 In the case of a banking corporation which maintains a regular place of
5 business outside this State other than a statutory office, and which
6 elects to take the exclusion from net worth provided in subsection (d)
7 of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from
8 entire net income provided in paragraph (4) of subsection (k) of
9 section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall
10 be computed and applied in accordance with section 6 of P.L.1945,
11 c.162 (C.54:10A-6); provided, however, that the numerators and the
12 denominators of the fractions described in (A), (B) or (C) above shall
13 include all amounts attributable, directly or indirectly, to the
14 production of the eligible net income of an international banking
15 facility as defined in paragraph (4) of subsection (k) of section 4 of
16 P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are
17 otherwise attributable to this State.¹

18 (cf: P.L.2011, c.59, s.1)

19

20 ¹8. Section 26 of P.L. 2002, c. 40 (C.54:10A-6.2) is amended to
21 read as follows:

22 26. a. (1) For the purposes of determining the receipts from
23 services **【performed】** within the State under paragraph (4) of
24 subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6), **【and for**
25 **the purposes of paragraph (3) of the definition of New Jersey gross**
26 **receipts pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a),】** the
27 receipts from the services of a registered securities or commodities
28 broker or dealer and the receipts from asset management services shall
29 be from services **【performed】** within the State if the customer is
30 located within this State.

31 b. For purposes of this subsection:

32 "Asset management services" means the rendering of investment
33 advice, making determinations as to when sales and purchases are to
34 be made, or the selling or purchasing of assets, and related activities;

35 "Securities" has the meaning provided by paragraph (2) of
36 subsection (c) of section 475 of the federal Internal Revenue Code of
37 1986, 26 U.S.C. s.475;

38 "Commodities" has the meaning provided by paragraph (2) of
39 subsection (e) of section 475 of the federal Internal Revenue Code of
40 1986, 26 U.S.C. s.475; and

41 "Registered securities or commodities broker or dealer" means a
42 broker or dealer registered as such by the federal Securities and
43 Exchange Commission or the federal Commodities Futures Trading
44 Commission.¹

45 (cf: P.L.2002, c.40, s.26)

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

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

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

42 c. **【**The entire net income of a taxpayer exercising its franchise in
43 this State that is a member of an affiliated group or a controlled group
44 pursuant to section 1504 or 1563 of the federal Internal Revenue Code
45 of 1986, 26 U.S.C. s.1504 or 1563, shall be determined by eliminating
46 all payments to, or charges by, other members of the affiliated or
47 controlled group in excess of fair compensation in all inter-group
48 transactions of any kind. Notwithstanding the elimination of all inter-

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

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

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

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

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

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

1 information returns, under oath, of facts pertinent to the determination
2 of the tax or liability for tax hereunder, pursuant to such regulations, at
3 such times and in such form and manner and to such extent as the
4 director may prescribe pursuant to law.

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

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

23

24 ¹**[6.] 11.**¹ Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is
25 amended to read as follows:

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

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

37

38 ¹**[7.] 12.**¹ Section 17 of P.L.1945, c.162 (C.54:10A-17) is
39 amended to read as follows:

40 17. (a) If the period covered by the report under this act is other
41 than the period covered by the report to the United States Treasury
42 Department or is a period of less than 12 calendar months, the
43 **commissioner** director may, under regulations prescribed by him,
44 determine the entire net worth and entire net income of the
45 taxpayer in such manner as shall properly reflect its entire net worth
46 and entire net income for the period covered by its report under this
47 act.

1 (b) Any taxpayer which shall fail to file its return when due or
2 to pay any tax when the same becomes due, as herein provided,
3 shall be subject to such penalties and interest as provided in the
4 State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the
5 Revised Statutes. The **【commissioner】** director, if satisfied that
6 the failure to comply with any provision of this act was excusable,
7 may abate or remit the whole or part of any penalty.

8 (cf: P.L.1975, c.177, s.9)

9

10 ¹**【8.】** 13.¹ Section 20 of P.L.1945, c.162 (C.54:10A-20) is
11 amended to read as follows:

12 20. In addition to other remedies for the collection of the tax
13 imposed by this chapter, the Attorney-General may of his own
14 motion or upon the request of the **【commissioner】** director,
15 whenever any tax due under this chapter shall have remained in
16 arrears for a period of three months after the tax shall have become
17 payable, bring an action in the Superior Court in the name of the
18 State, against such corporation for injunctive relief to restrain it
19 from the exercise of any franchise, or the transaction of any
20 business within this State until the payment of such tax and
21 penalties and interest due thereon, and the costs of such
22 application, to be fixed by the court. The court may proceed in the
23 action in a summary manner or otherwise and may grant the
24 injunctive relief, if a proper case appear. Upon the granting and
25 service of the order or judgment giving injunctive relief, it shall not
26 be lawful for such company thereafter to exercise any franchise or
27 transact any business in this State until such injunction be
28 dissolved.

29 (cf: P.L.1953, c.51, s.116)

30

31 ¹**【9.】** 14.¹ Section 21 of P.L.1945, c.162 (C.54:10A-21) is
32 amended to read as follows:

33 21. In the event of failure or neglect of any taxpayer which is a
34 foreign corporation to pay the tax imposed by this chapter, on or
35 before the first day of December in each year, immediate notice
36 thereof may be given by the **【commissioner】** director to the
37 Secretary of State who shall immediately revoke the certificate of
38 authority of said corporation to do business in the State of New
39 Jersey and notice of such revocation shall be given by the Secretary
40 of State to the corporation affected and thereafter such corporation,
41 so far as the further transaction of business in the State of New
42 Jersey is concerned, shall be in the same condition as if no
43 certificate of authority had ever been issued to it by the Secretary
44 of State, but remedies provided by this chapter for the collection of
45 the tax and interest and penalties shall remain unimpaired. After
46 the revocation of any such certificate of authority, no new
47 certificate shall be issued by the Secretary of State to such

1 defaulting corporation until the payment of all assessments
2 imposed hereunder and remaining unpaid with penalties and
3 interest and any costs that may have accrued, such payment to be
4 evidenced by a certificate of the **【commissioner】** director.

5 (cf: P.L.1945, c.162, s.21)

6
7 ¹**【10.】** 15.¹ Section 28 of P.L.1945, c.162 (C.54:10A-27) is
8 amended to read as follows:

9 28. The **【commissioner】** director shall prescribe and issue such
10 rules and regulations, not inconsistent herewith, for the
11 interpretation and application of the provisions of this act, as he
12 may deem necessary.

13 (cf: P.L.1945, c.162, s.28)

14
15 ¹**【11.】** 16.¹ Section 29 of P.L.1945, c.162 (C.54:10A-28) is
16 amended to read as follows:

17 29. This act shall take effect January first, one thousand nine
18 hundred and forty-six, except that the **【commissioner】** director may
19 prior thereto take such action as he may deem appropriate in
20 anticipation of or in preparation for the operation of the provisions
21 hereof, and except further that the appropriation contained herein
22 for the reduction of the State school tax shall be first made for the
23 fiscal year beginning July first, one thousand nine hundred and
24 forty-six.

25 (cf: P.L.1945, c.162, s.29)

26
27 ¹**【12.】** 17.¹ Section 4 of P.L.1947, c.51 (C.54:10A-30) is
28 amended to read as follows:

29 4. The **【Commissioner】** director upon written application made
30 to him and upon the payment of a fee of five dollars (\$5.00), may
31 release any property from the lien of any tax, interest or penalty
32 imposed upon any corporation in accordance with the provisions of
33 this act or of chapters thirteen or thirty-two-A of Title 54 of the
34 Revised Statutes, or of any certificate, judgment or levy procured
35 by him; provided, payment be made to the **【commissioner】**
36 director of such sum as he shall deem adequate consideration for
37 such release or deposit be made of such security or such bond be
38 filed as the **【commissioner】** director shall deem proper to secure
39 payment of any debt evidenced by any such tax, interest, penalty,
40 certificate, judgment or levy, the lien of which is sought to be
41 released, or provided the **【commissioner】** director is satisfied that
42 payment of the tax is otherwise provided for. The application for
43 such release shall be in such form as shall be prescribed by the
44 **【commissioner】** director and shall contain an accurate description
45 of the property to be released together with such other information
46 as the **【commissioner】** director may require. Such release shall be
47 given under the seal of the **【commissioner】** director, and may be

1 recorded in any office in which conveyances of real estate may be
2 recorded.

3 (cf: P.L.1947, c.51, s.4)

4

5 18. (New section) A taxable member of a combined group shall
6 determine its entire net income from the unitary business as its share of
7 the entire net income of the combined group in accordance with a
8 combined unitary tax return made pursuant to this section and sections
9 19, 20, and 23 of P.L. , c. (C.) (pending before the Legislature
10 as this bill). The entire net income from the unitary business of a
11 combined group is the sum of the entire net incomes of each taxable
12 member and each nontaxable member of the combined group derived
13 from the unitary business, which shall be determined as follows:

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

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

38 c. (1) If a member of a combined group receives income from the
39 unitary business from a partnership, the combined group's entire net
40 income shall include the member's direct and indirect distributive
41 share of the partnership's unitary business income.

42 (2) The distributive share of income received by a limited partner
43 from a qualified investment partnership shall not be considered to be
44 derived from a unitary business unless the general partner of such
45 investment partnership and such limited partner have common
46 ownership. To the extent that the limited partner is otherwise carrying
47 on or doing business in New Jersey, it shall allocate its distributive
48 share of income from a qualified investment partnership in accordance

1 with subsection a of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or
2 subsection a of section 4 of (C.54:10A-15.7) as applicable. If the
3 limited partner is not otherwise carrying on or doing business in New
4 Jersey, its distributive share of income from an investment partnership
5 is not subject to tax under this chapter.

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

8 e. Except as otherwise provided by regulation, business income
9 from an intercompany transaction among members of the same
10 combined group shall be deferred in a manner similar to the deferral
11 under 26 C.F.R. s.1.1502-13, as determined by the director. Upon the
12 occurrence of either of the events set forth in subparagraphs (1) and (2)
13 of this subsection, deferred income resulting from an intercompany
14 transaction among members of a combined group shall be restored to
15 the income of the seller and shall be included in the net income of the
16 combined group as if the seller had earned the income immediately
17 before the event:

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

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

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

41 g. A prior net operating loss conversion carryover incurred by a
42 member of a combined group shall be deducted from the entire net
43 income or loss allocated to this state pursuant to section 19 of P.L. ,
44 c. (C.) (pending before the Legislature as this bill) as follows:

45 (1) Such prior net operating loss conversion carryover deduction
46 shall be allowed to offset only the entire net income allocated to this
47 state of the corporation that created the prior net operating loss; the

1 prior net operating loss conversion carryover cannot be shared with
2 other members of the combined group.

3 (2) The prior net operating loss conversion carryover deduction
4 computed under subsection (u) of section 4 of P.L.1945, c.162
5 (C.54:10A-4) shall be applied against the entire net income allocated
6 to this state of the corporation that created the prior net operating loss
7 before the net operating loss carryover computed under subsection h of
8 this section.

9 The director shall provide regulations establishing rules on how
10 each such corporation shall apply its prior net operating loss
11 conversion carryover against its share of entire net income allocated as
12 if filing on a separate entity basis.

13 h. A net operating loss carryover incurred by a member of a
14 combined group shall be deducted from entire net income or loss
15 allocated to this state pursuant to section 19 of P.L. , c. (C.)
16 (pending before the Legislature as this bill) as follows:

17 (1) For privilege periods beginning on or after the first day of the
18 initial privilege period for which a combined unitary tax return is
19 required under this section and sections 19, 20, and 23 of P.L. , c.
20 (C.) (pending before the Legislature as this bill), if the computation
21 of a combined group's entire net income allocated to this state results
22 in a net operating loss, a taxable member of such group may carry over
23 the net operating loss allocated to this state, as calculated under this
24 section and sections 19 and 23 of P.L. , c. (C.) (pending before
25 the Legislature as this bill), and shall be deductible from entire net
26 income derived from the unitary business in a future privilege period
27 to the extent that the carryover and deduction is otherwise consistent
28 with subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4).

29 (2) Where a taxable member of a combined group has a net
30 operating loss carryover derived from a loss incurred by a combined
31 group in a privilege period beginning on or after the first day of the
32 initial privilege period for which a combined unitary tax return is
33 required under this section and sections 19, 20, and 23 of P.L. , c.
34 (C.) (pending before the Legislature as this bill), then the taxable
35 member may share the net operating loss carryover with other taxable
36 members of the combined group if such other taxable members were
37 members of the combined group in the privilege period that the loss
38 was incurred. Any amount of net operating loss carryover that is
39 deducted by another taxable member of the combined group shall
40 reduce the amount of net operating loss carryover that may be carried
41 over by the taxable member that originally incurred the loss.

42 (3) Where a taxable member of a combined group has a net
43 operating loss carryover derived from a loss incurred in a privilege
44 period during which the taxable member was not a member of such
45 combined group, the carryover shall remain available to be deducted
46 by that taxable member or other group members that, in the year the
47 loss was incurred, were part of the same combined group as such

1 taxable member. Such carryover shall not be deductible by any other
2 members of the combined group.

3 (4) A net operating loss carryover shall not include any net
4 operating loss incurred during any privilege period beginning prior to
5 the first day of the initial privilege period for which a combined
6 unitary tax return is required under this section and sections 19 and 23
7 of P.L. , c. (C.) (pending before the legislature as this bill).

8 i. Tax credits earned by a member of a combined group shall be
9 utilized as follows:

10 (1) If a taxable member of a combined group earns a tax credit in
11 a privilege period beginning on or after the first day of the initial
12 privilege period for which a combined unitary tax return is required
13 under this section and sections 19, 20, and 23 of P.L. , c. (C.)
14 (pending before the Legislature as this bill), then the taxable member
15 may share the credit with other taxable members of the combined
16 group. Any amount of credit that is utilized by another taxable member
17 of the combined group shall reduce the amount of credit carryover that
18 may be carried over by the taxable member that originally earned the
19 credit. If a taxable member of a combined group has a tax credit
20 carryover derived from a privilege period beginning on or after the
21 first day of the initial privilege period for which a combined unitary
22 tax return is required under this section and sections 19, 20, and 23 of
23 P.L. , c. (C.) (pending before the Legislature as this bill), then
24 the taxable member may share the carryover credit with other taxable
25 members of the combined group.

26 (2) If a taxable member of a combined group has a tax credit
27 carryover derived from a privilege period beginning prior to the first
28 day of the initial privilege period for which a combined unitary tax
29 return is required under this section and sections 19, 20, and 23 of
30 P.L. , c. (C.) (pending before the Legislature as this bill), then
31 the taxable member may share the carryover credit with other taxable
32 members of the combined group.

33 (3) If a taxable member of a combined group has a tax credit
34 carryover derived from a privilege period during which the taxable
35 member was not a member of such combined group, the credit
36 carryover shall remain available to be utilized by such taxable member
37 or other group members.

38 (4) To the extent a taxable member has more than one corporation
39 business tax credit that it may utilize in a privilege period, whether
40 such credits were earned by said member or are available to said
41 member in accordance with paragraphs (1), (2) and (3) of this
42 subsection, the order of priority of the application of the credits shall
43 be as prescribed by the director.

44 j. An expense of a member of the combined group that is directly
45 or indirectly attributable to the income of any member of the combined
46 group, which income this State is prohibited from taxing pursuant to
47 the laws or Constitution of the United States, shall be disallowed as a

1 deduction for purposes of determining the combined group's entire net
2 income.

3 k. Nothing in this section shall apply to:

4 (1) A corporation or combined group which is licensed, in whole
5 or in part, as an insurance company under the laws of this State or of
6 another state, including corporations which are surplus lines insurers
7 declared eligible by the Commissioner of Banking and Insurance
8 pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks
9 within this State that is not a combinable captive insurance company.
10 Notwithstanding a provision, if any, to the contrary in this section, the
11 income of an insurance company that is not a combinable captive
12 insurance company, the allocation or apportionment of income related
13 thereto and the apportionment factors of an insurance company that is
14 not a combinable captive insurance company shall not be included in a
15 combined unitary tax return filed under this section and sections 19,
16 20, and 23 of P.L. , c. (C.) (pending before the Legislature as
17 this bill). In addition, the dividend exclusion provisions of paragraph
18 (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4)
19 relating to dividends paid by insurance companies to non-insurance
20 companies included in the unitary group shall not be affected by P.L. ,
21 c. (C.) (pending before the Legislature as this bill).

22 (2) A corporation that is regulated, in whole or in part, by the
23 Federal Energy Regulatory Commission, the New Jersey Board of
24 Public Utilities or similar regulatory body of another state, with
25 respect to rates charged to customers for electric or gas services.

26 1. The director shall promulgate rules and regulations necessary to
27 carry out the provisions of this section.¹

28

29 ¹19. (New section) A taxable member of a combined group shall
30 determine its allocation factor for determining its share of the entire
31 net income of the combined group, as determined pursuant to the
32 provisions of section 18 of P.L. , c. (C.) (pending before the
33 Legislature as this bill), pursuant to sections 6 through 8 of P.L.1945,
34 c.162 (C.54:10A-6 through 54:10A-8); provided however:

35 a. In computing its denominator for the sales fraction, the taxable
36 member shall use the combined group's denominator for that fraction.
37 In computing the numerator of its sales fraction, each taxable member
38 shall be treated as a separate taxpayer and that taxable member's
39 numerator will include only that taxable member's receipts assignable
40 to this state.

41 b. All business income of a combined group engaged in the
42 transportation of freight by air or ground shall be apportioned to this
43 state by multiplying the income by a fraction, the numerator of which
44 is the ton miles traveled by the combined group's mobile assets in this
45 State by type of mobile asset and the denominator of which is the total
46 ton miles traveled by the combined group's mobile assets everywhere.
47 This section applies, if 50 per cent or more of the combined group's

1 entire net income is derived from the transportation of freight by air or
2 ground.

3 c. In determining the numerator and denominator of the allocation
4 factors of taxable members, transactions between or among members
5 of the combined group shall be eliminated.

6 d. The director shall promulgate rules and regulations necessary to
7 carry out the provisions of this section.¹

8
9 ¹20. (New section) a. A combined group shall file a combined
10 unitary tax return under this section in the form and manner prescribed
11 by the director. The managerial member of the combined group shall
12 file the combined unitary tax return on behalf of the taxable members
13 of the combined group and shall pay the tax on behalf of such taxable
14 members. The managerial member is authorized to file taxable
15 member returns, file taxable member extensions for filing, pay taxable
16 member liabilities, receive taxable member findings, assessments, and
17 notices, make and receive taxable member claims, or file taxable
18 member protests and appeals.

19 b. The privilege period for which the group shall file shall be
20 determined as the privilege period of the managerial member. If a
21 member of a combined group has a different fiscal or calendar
22 accounting period from the group privilege period, that member with a
23 different period shall report amounts from its return for its fiscal or
24 calendar accounting year that ends during the group privilege period,
25 provided no such reporting of amounts shall be required of such
26 member until its first privilege period beginning on or after the first
27 day of the initial privilege period of the managerial member for which
28 a combined unitary tax return is required under this section and
29 sections 18, 19 and 23 of P.L. , c. (C.) (pending before the
30 Legislature as this bill).

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

36 d. If a combined group is eligible to select the managerial
37 member of the combined group, notice of the selection shall be
38 submitted in written form to the director not later than the due date, or,
39 if an extension of time to file has been requested and granted, not later
40 than the extended due date of the combined unitary tax return for the
41 initial privilege period for which such return is required. The
42 subsequent selection of another designated taxable member shall be
43 subject to the approval of the director.

44 e. For purposes of this section:

45 (1) Any notice shall be sent to the managerial member of the
46 combined group at the last known address of the managerial member
47 as indicated on either the last filing required or made under this

1 Chapter or a subsequent electronic or written notice provided by the
2 managerial member under rules prescribed by the director;

3 (2) The director may, at the director's sole discretion: (a) make any
4 deficiency assessment against either the managerial member or a
5 taxable member of the combined group; (b) refund or credit any
6 overpayment to either the managerial member or a taxable member of
7 the combined group; (c) require any payment to be made by electronic
8 funds transfer; and (d) require the combined unitary tax return to be
9 electronically filed.

10 f. The director shall promulgate rules and regulations necessary to
11 carry out the provisions of this section.¹

12
13 ¹21. (New section) A combined group filing a combined return
14 that has any outstanding alternative minimum assessment credit or
15 credits at the time of the effective date of the repeal of section 7 of
16 P.L.2002, c.40 (C.54:10A-5a) shall be allowed to use the credit to
17 offset the combined group's net deferred tax liability resulting from
18 the transition to a mandatory unitary combined return. For purposes of
19 this section, "net deferred tax liability" shall mean the net increase, if
20 any, in deferred tax liabilities minus the net increase, if any, in
21 deferred tax assets of the combined group, as computed in accordance
22 with generally accepted accounting principles, that is the result of the
23 transition from filing separate returns to filing a mandatory unitary
24 combined return. The remaining balance of the credit carryovers of
25 members of the combined group from prior to the effective date of the
26 repeal of section 7 of P.L.2002, c.40 (C.54:10A-5a) shall not reduce
27 the combined tax liability below 50% of the tax owed by the group.
28 The remaining balance of the credit may be carried over until used by
29 the combined group¹

30
31 ¹22. (New section) a. Determination of Managerial Member. If
32 the combined group has a common parent corporation within the
33 meaning of the Corporation Business Tax Act (1945), P.L.1945, c.162
34 (C.54:10A-1 et seq.), and that common parent corporation is a taxable
35 member of the corporate group, the managerial member shall be the
36 common parent corporation. In other cases, the combined group shall
37 select a taxable member as its managerial member or, in the discretion
38 of the director or upon failure of the combined group to select its
39 managerial member, the director shall designate a taxable member of
40 the combined group as managerial member. Once the election of the
41 managerial member is made, the election shall be binding for 10
42 successive privilege periods, except as otherwise provided for by the
43 director.

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

1 taxable member returns; file taxable member extensions for filing tax
2 returns and other documents with the director; pay taxable member
3 liabilities; receive taxable member findings, assessments, and notices;
4 make and receive taxable member claims, or file taxable member
5 protests and appeals; and shall be the responsible party liable for filing
6 and paying the tax on behalf of the combined group.

7 c. The privilege period for the combined group is the privilege
8 period of the managerial member. If a member of a combined group
9 has a different fiscal or calendar accounting period from the combined
10 group's privilege period, that member with a different period shall
11 report amounts from its return for its fiscal or calendar accounting year
12 that ends during the group privilege period.

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

17 e. If a combined group is eligible to elect the managerial member
18 of the combined group, notice of the election shall be submitted in
19 writing to the director not later than the due date or, if an extension of
20 time to file has been requested and granted, not later than the extended
21 due date of the mandatory combined return for the initial privilege
22 period for which a return is required. The managerial member shall be
23 the designated agent and the responsible person for filing the
24 combined return and paying the tax for the combined group. If
25 another taxable member is subsequently designated as the managerial
26 member, the subsequent designation shall be subject to the approval of
27 the director.

28 f. The director is authorized to promulgate regulations with
29 regards to installment payments, estimated payments, overpayments,
30 refunds and any other filing or payment matters related to combined
31 groups filing combined returns.

32 g. For privilege periods beginning on and after January 1, 2019 a
33 combined group must file a mandatory combined return. However, if
34 privilege periods of the members of the combined group differ, the
35 first mandatory combined return for the combined group shall be
36 required for the privilege period of the managerial member.

37 h. The members of a combined group shall notify the director
38 within 90 days of a change in the combined group where a member
39 dissolves, a merger of any kind occurs, a member withdraws from the
40 group, a member ceases doing business, a member of the group is
41 acquired by a third party not in the group, or additional members enter
42 group which are required to be included.

43 i. Any notice shall be sent to the managerial member of the
44 combined group at the last known address of the managerial member
45 as indicated on either the last filing required or made under this
46 Chapter or a subsequent electronic or written notice provided by the
47 managerial member under rules prescribed by the director.

48 j. The director may, at the director's sole discretion:

1 (1) make any deficiency assessment against either the managerial
2 member or a taxable member of the combined group;

3 (2) refund or credit any overpayment to either the managerial
4 member or a taxable member of the combined group;

5 (3) require any payment to be made by electronic funds transfer;
6 and

7 (4) require the mandatory combined return to be filed
8 electronically.¹

9
10 ¹23. (New section) a. The managerial member of a combined
11 group may elect to have the combined group determined on a world-
12 wide basis or an affiliated group basis. If no such election is made, the
13 combined group shall be determined on a water's-edge basis and will
14 take into account the incomes and allocation factors of only the
15 following members of the combined group:

16 (1) each member incorporated in the United States, or formed
17 under the laws of the United States, any state, the District of
18 Columbia, or any territory or possession of the United States,
19 excluding such a member if eighty per cent or more of both its
20 property and payroll during the privilege period are located outside the
21 United States, the District of Columbia, and any territory or possession
22 of the United States;

23 (2) each member, wherever incorporated or formed, if twenty per
24 cent or more of both its property and payroll during the privilege
25 period are located in the United States, the District of Columbia, or
26 any territory or possession of the United States;

27 (3) any member that earns more than 20% of its income, directly
28 or indirectly, from intangible property or related service activities that
29 are deductible against the income of other members of the combined
30 group;

31 (4) each member that has income as defined under the Corporation
32 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and
33 has sufficient nexus in New Jersey pursuant to section 2 of P.L.1945,
34 c.162 (C.54:10A-2).

35 b. A world-wide election or an affiliated group election is
36 effective only if made on a timely filed, original return for a privilege
37 period by the managerial member of the combined group. Such
38 election is binding for, and applicable to, the privilege period for
39 which it is made and for the five immediately succeeding privilege
40 periods. Provided however, the election can be revoked prior to the
41 expiration of the binding period by written request to the Director of
42 Taxation for reasonable cause including but not limited to a substantial
43 change in ownership, members of the combined group or principal
44 business, or changes in tax law, regulation or policy.

45 c. If the managerial member elects to determine the members of a
46 combined group on an affiliated group basis, the taxable members
47 shall take into account the entire net income or loss and allocation
48 factors of all of the members of its affiliated group, regardless of

1 whether such members are engaged in a unitary business, that are
2 subject to tax or would be subject to tax under this chapter, if doing
3 business in this State.

4 d. The director shall promulgate rules and regulations necessary to
5 carry out the provisions of this section.¹

6
7 ¹24. (New section) Following the enactment of P.L. , c.
8 (C.)(pending before the Legislature as this bill), no penalties or
9 interest shall accrue for underpayment of tax for the provisions of
10 P.L., c. (C.)(pending before the Legislature as this bill) applying
11 retroactively to tax years beginning on or after January 1, 2017, that
12 create an additional tax liability due to the provisions of P.L. , c.
13 (C.)(pending before the Legislature as this bill), provided, however,
14 the additional payments must be made by either the second next
15 estimated payment subsequent to the enactment of P.L. ,c.
16 (C.)(pending before the Legislature as this bill), by December 31,
17 2018 for tax years beginning on or after January 1, 2017, or by the first
18 estimated payment due after January 1, 2019 for tax years beginning
19 on or after January 1, 2018. In the first tax year that a mandatory
20 combined return is due pursuant to P.L. , c. (C.)(pending before
21 the Legislature as this bill), no penalties or interest shall accrue due to
22 underpayment that may result from the switch from separate returns to
23 mandatory combined returns, and any overpayment by a member of
24 the combined group from the prior tax year will be credited as an
25 overpayment of the tax owed by the combined group, credited toward
26 future estimated payments by the combined group.¹

27
28 ¹25. Section 27 of P.L.2002, c.40 (C.54:10A-4.5) is amended as
29 follows:

30 27. a. Notwithstanding any provision of subsection (k) of section
31 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal Revenue
32 Code, including but not limited to 26 U.S.C. s.381 or any successor or
33 equivalent provision, that permits a corporation to use the net
34 operating losses of another for federal income tax purposes following
35 certain transactions, including but not limited to those qualifying as
36 reorganizations under the provisions of subparagraph (A), (C), (D), (F)
37 or (G) of paragraph (1) of subsection (a) of section 368 of the federal
38 Internal Revenue Code, 26 U.S.C. s.368, a net operating loss for a
39 privilege period ending after June 30, 1984, may be carried over and
40 allowed as a deduction only by the corporation that sustained the loss;
41 provided, however, that in the case of a merger of two or more
42 corporations pursuant to statute of this State or any other jurisdiction,
43 the net operating loss may be carried over only by the corporation that
44 sustained the loss and that is also the surviving corporation following
45 the merger. The net operating loss may not be carried over by a
46 taxpayer that changes its state of incorporation. **【**No net operating loss
47 shall be allowed as a deduction by a corporation resulting from a

1 consolidation pursuant to statute of this State or of any other
2 jurisdiction.】

3 b. Subsection a. of this section shall not apply between members
4 of a combined group reported on a combined return in New Jersey, or
5 between members of a commonly owned group reported on the
6 elective combined return in New Jersey.¹

7 (cf: P.L.2002, c.40, s.27).
8

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

10 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
11 income shall consist of the following categories of income:

12 a. Salaries, wages, tips, fees, commissions, bonuses, and other
13 remuneration received for services rendered whether in cash or in
14 property, and amounts paid or distributed, or deemed paid or
15 distributed, out of a medical savings account that are not excluded
16 from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-
17 27).

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

24 (1) taxes based on income;

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

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

47 c. Net gains or income from disposition of property. Net gains or
48 net income, less net losses, derived from the sale, exchange or other

1 disposition of property, including real or personal, whether tangible or
2 intangible as determined in accordance with the method of accounting
3 allowed for federal income tax purposes. For the purpose of
4 determining gain or loss, the basis of property shall be the adjusted
5 basis used for federal income tax purposes, except as expressly
6 provided for under this act, but without a deduction for penalties, fines,
7 or economic benefits excepted pursuant to paragraph (2), or for treble
8 damages excepted pursuant to paragraph (3) of subsection b. of this
9 section.

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

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

30 The term "net gains or income" shall not include gains or income
31 derived from obligations which are referred to in clause (1) or (2) of
32 N.J.S.54A:6-14 of this act or from securities which evidence
33 ownership in a qualified investment fund as defined in section 2 of
34 P.L.1987, c.310 (C.54A:6-14.1). **【The term "net gains or income"**
35 **shall not include gains or income derived from the sale or assignment**
36 **of a tax credit transfer certificate pursuant to section 7 of P.L.2011,**
37 **c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).】**
38 The term "net gains or net income" shall not include gains or income
39 from transactions to the extent to which nonrecognition is allowed for
40 federal income tax purposes. The term "sale, exchange or other
41 disposition" shall not include the exchange of stock or securities in a
42 corporation a party to a reorganization in pursuance of a plan of
43 reorganization, solely for stock or securities in such corporation or in
44 another corporation a party to the reorganization and the transfer of
45 property to a corporation by one or more persons solely in exchange
46 for stock or securities in such corporation if immediately after the
47 exchange such person or persons are in control of the corporation. For

1 purposes of this clause, stock or securities issued for services shall not
2 be considered as issued in return for property.

3 For purposes of this clause, the term “reorganization” means--

4 (i) A statutory merger or consolidation;

5 (ii) The acquisition by one corporation, in exchange solely for all
6 or part of its voting stock (or in exchange solely for all or a part of the
7 voting stock of a corporation which is in control of the acquiring
8 corporation) of stock of another corporation if, immediately after the
9 acquisition, the acquiring corporation has control of such other
10 corporation (whether or not such acquiring corporation had control
11 immediately before the acquisition);

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

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

26 (v) A recapitalization;

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

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

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

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

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

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

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

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

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

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

33 g. Gambling winnings.

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

35 i. Income in respect of a decedent.

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

1 s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
2 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
3 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

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

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

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

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

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

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

23 (cf: P.L.2017, c.313, s.5)

24

25 ¹**■[13.] 27.**¹ Section 2 of P.L.2005, c.127 (C.54A:5-15) is
26 amended to read as follows:

27 2. Notwithstanding the provisions of N.J.S.54A:5-1, if any, or
28 any other law to the contrary, for the purposes of determining the
29 amount of a category of income pursuant to N.J.S.54A:5-1 that is
30 net of expenses, no amounts shall be taken as a deduction pursuant
31 to section 199 of the federal Internal Revenue Code of 1986, 26
32 U.S.C. s.199, and the deduction of any amounts pursuant to section
33 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199
34 shall be disallowed except that this disallowance shall not apply to
35 amounts deducted pursuant to section 199 of the federal Internal
36 Revenue Code of 1986 that are exclusively based upon domestic
37 production gross receipts of the taxpayer or allocable to the
38 taxpayer under that section which are derived only from any lease,
39 rental, license, sale, exchange, or other disposition of qualifying
40 production property which the taxpayer shall demonstrate to the
41 satisfaction of the director was manufactured or produced by the
42 taxpayer in whole or in significant part within the United States but
43 not qualified production property that was grown or extracted by
44 the taxpayer. "Manufactured or produced" as used in this paragraph
45 shall be limited to performance of an operation or series of
46 operations the object of which is to place items of tangible personal
47 property in a form, composition, or character different from that in

1 which they were acquired. The change in form, composition, or
2 character shall be a substantial change, and result in a
3 transformation of property into a different or substantially more
4 usable product.

5 For tax years beginning after December 31, 2017,
6 notwithstanding the provisions of N.J.S.54A:5-1 or any other law to
7 the contrary, for the purposes of determining the amount of a
8 category of income pursuant to N.J.S.54A:5-1 that is net of
9 expenses, no amounts shall be taken as a deduction pursuant to
10 section 199A of the federal Internal Revenue Code (26 U.S.C.
11 s.199A).

12 (cf: P.L.2005, c.127, s.2)

13

14 ¹**[14.] 28.** (New section) If any material provision within a
15 clause, sentence, paragraph, section, or part of P.L. , c. (C.)
16 (pending before the Legislature as this bill) or the application
17 thereof shall be judged invalid by a court of competent jurisdiction,
18 such order or judgment shall be confined in its operation to the
19 controversy in which it was rendered, and shall not affect or
20 invalidate the remainder of any provision of P.L. , c. (C.)
21 (pending before the Legislature as this bill), or the application of
22 any part thereof to any other person or circumstance and, to this
23 end, the provisions of each clause, sentence, paragraph, section, or
24 part of P.L. , c. (C.) (pending before the Legislature as this
25 bill) are declared to be severable.

26

27 ¹**[15.] 29.** (New section) Notwithstanding the provisions of
28 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.), to the contrary, the director may adopt, immediately, upon
30 filing with the Office of Administrative Law, regulations that the
31 director deems necessary to implement the provisions of
32 P.L. , c. (C.) (pending before the Legislature as this bill),
33 which regulations shall be effective for a period not to exceed 180
34 days from the date of the filing. The director may thereafter amend,
35 adopt, or readopt the regulations in accordance with the
36 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

37

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

40 12. a. Each captive insurance company that is not a combinable
41 captive insurance company as defined by section 18 of P.L. , c.
42 (C.) (pending before the Legislature as this bill) shall pay to the
43 Director of the Division of Taxation in the Department of the
44 Treasury, on or before March 1 of each year, a tax at the rate of .38 of
45 one percent on the first \$20,000,000 and .285 of one percent on the
46 next \$20,000,000 and .19 of one percent on the next \$20,000,000 and
47 .072 of one percent on each dollar thereafter on the direct premiums
48 collected or contracted for on policies or contracts of insurance written

1 by the captive insurance company during the year ending December 31
2 next preceding, after deducting from the direct premiums subject to the
3 tax the amounts paid to policyholders as return premiums, which shall
4 include dividends on unabsorbed premiums or premium deposits
5 returned or credited to policyholders; except that no tax shall be due or
6 payable as to considerations received for annuity contracts.

7 b. Each captive insurance company that is not a combinable
8 captive insurance company as defined by section 18 of P.L. , c.
9 (C.) (pending before the Legislature as this bill) shall pay to the
10 Director of the Division of Taxation in the Department of the
11 Treasury, on or before March 1 of each year, a tax at the rate of .214 of
12 one percent on the first \$20,000,000 of assumed reinsurance premium,
13 and .143 of one percent on the next \$20,000,000 and .048 of one
14 percent on the next \$20,000,000 and .024 of one percent of each dollar
15 thereafter. However, no tax under this subsection applies to premiums
16 for risks or portions of risks which are subject to taxation on a direct
17 basis pursuant to subsection a. of this section. No tax under this
18 subsection shall apply in connection with the receipt of assets in
19 exchange for the assumption of loss reserves and other liabilities of
20 another insurer under common ownership and control if the transaction
21 is part of a plan to discontinue the operations of the other insurer, and
22 if the intent of the parties to the transaction is to renew or maintain the
23 business with the captive insurance company.

24 c. The annual minimum aggregate tax to be paid by a captive
25 insurance company that is not a combinable captive insurance
26 company as defined by section 18 of P.L. , c. (C.) (pending
27 before the Legislature as this bill) calculated under subsections a. and
28 b. of this section shall be \$7,500, and the annual maximum aggregate
29 tax shall be \$200,000. The maximum aggregate tax to be paid by a
30 sponsored captive insurance company that is not a combinable captive
31 insurance company as defined by section 18 of P.L. , c. (C.)
32 (pending before the Legislature as this bill) shall apply to each
33 protected cell only and not to the sponsored captive insurance
34 company as a whole.

35 d. (1) A captive insurance company that is not a combinable
36 captive insurance company as defined by section 18 of P.L. , c.
37 (C.) (pending before the Legislature as this bill) shall, on or before
38 March 1 of each year, file with the commissioner an annual tax return,
39 signed and sworn to by an officer of the company, or by its United
40 States manager, if a company of a foreign country, in the form and
41 containing matters as may be necessary for carrying out the provisions
42 of this section.

43 (2) A captive insurance company that is not a combinable captive
44 insurance company as defined by section 18 of P.L. , c. (C.)
45 (pending before the Legislature as this bill) shall pay the balance of
46 any tax due under this section based on the company's business during
47 the preceding calendar year and make an installment payment in an

1 amount equal to one-half of the tax payable under this section on the
2 company's business done during the preceding calendar year.

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

6 e. Two or more captive insurance companies that are not
7 combinable captive insurance companies as defined by section 18 of
8 P.L. , c. (C.) (pending before the Legislature as this bill) under
9 common ownership and control shall be taxed as though they were a
10 single captive insurance company.

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

13 (1) in the case of stock corporations, the direct or indirect
14 ownership of 80 percent or more of the outstanding voting stock of
15 two or more corporations by the same shareholder or shareholders; and

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

19 g. The tax provided for in this section shall constitute all taxes
20 collectible under the laws of this State from any captive insurance
21 company that is not a combinable captive insurance company as
22 defined by section 18 of P.L. , c. (C.) (pending before the
23 Legislature as this bill), and a captive insurance company that is not a
24 combinable captive insurance company as defined by section 18 of
25 P.L. , c. (C.) (pending before the Legislature as this bill) shall not
26 pay taxes pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).

27 h. The tax provided for by this section shall be calculated on an
28 annual basis, notwithstanding policies or contracts of insurance or
29 contracts of reinsurance issued on a multiyear basis. In the case of
30 multiyear policies or contracts, the premium shall be prorated for
31 purposes of determining the tax under this section.

32 i. The tax provided for by this section shall only apply to the
33 branch business of a branch captive insurance company that is not a
34 combinable captive insurance company as defined by section 18 of
35 P.L. , c. (C.) (pending before the Legislature as this bill).¹

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

37

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

40 49. Every domestic or foreign corporation subject to the tax or to
41 filing requirements imposed under the Corporation Business Tax Act
42 (1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), shall keep all records
43 used to determine its tax liability and such other records as the
44 Director of the Division of Taxation may by regulation require. The
45 records shall be available for inspection and examination at any time
46 upon demand by the director or his duly authorized agent or employee
47 and shall be preserved for a period of five years, except that the

1 director may consent to their destruction within that period or may
2 require that they be kept longer.¹

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

4

5 ¹32. Section 30 of P.L.2002, c.40 (C.54:10A-18.1) and section 7
6 of P.L.2002, c.40 (C.54:10A-5a) are repealed.¹

7

8 ¹~~16.~~ 33.¹ This act shall take effect immediately ¹~~1~~. Sections 2
9 and 3 shall apply retroactively to tax years beginning on and after
10 January 1, 2017, and section 3 shall expire on December 31, 2019.
11 The remaining sections shall apply to tax years beginning on and after
12 January 1, 2018.] but section 1 shall be effective for tax years
13 beginning on and after January 1, 2018, sections 2 and 3 are
14 retroactive to January 1, 2017, and the remaining sections shall apply
15 to tax years beginning on and after January 1, 2018, provided however
16 that the provisions of this act related to combined reporting and market
17 based sourcing shall apply to tax years beginning on and after January
18 1, 2019. Section 35 shall be effective for tax years beginning on and
19 after January 1, 2019.¹