

ASSEMBLY, No. 5062

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 14, 2019

Sponsored by:

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

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District 3 (Cumberland, Gloucester and Salem)

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SYNOPSIS

Reduces rate on certain foreign-derived income and combined group minimum tax, broadens ability of combined group members to share net operating losses, and changes treatment of foreign income subject to federal treaty, under CBT.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/7/2019)

1 AN ACT concerning the corporation business tax, and amending
2 various parts of the statutory law.

3

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

6

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

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

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

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

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

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

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

Matter underlined thus is new matter.

1 deemed paid foreign tax credits or for the purpose of status as a
2 controlled foreign corporation. In calculating the net worth of a
3 taxpayer entitled to reduction for investment in subsidiaries, the
4 amount of liabilities of the taxpayer shall be reduced by such
5 proportion of the liabilities as corresponds to the ratio which the
6 excluded portion of the subsidiary values bears to the total assets of
7 the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (F) (i) The amount by which depreciation reported to the United
44 States Treasury Department for property placed in service on and
45 after January 1, 1981, but prior to taxpayer fiscal or calendar
46 accounting years beginning on and after the effective date of
47 P.L.1993, c.172, for purposes of computing federal taxable income
48 in accordance with section 168 of the Internal Revenue Code in

1 effect after December 31, 1980, exceeds the amount of depreciation
2 determined in accordance with the Internal Revenue Code
3 provisions in effect prior to January 1, 1981, but only with respect
4 to a taxpayer's accounting period ending after December 31, 1981;
5 provided, however, that where a taxpayer's accounting period
6 begins in 1981 and ends in 1982, no modification shall be required
7 with respect to this paragraph (F) for the report filed for such period
8 with respect to property placed in service during that part of the
9 accounting period which occurs in 1981. The provisions of this
10 subparagraph shall not apply to assets placed in service prior to
11 January 1, 1998 of a gas, gas and electric, and electric public utility
12 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
13 seq.) prior to 1998.

14 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
15 (2) of this subsection, any amount, except with respect to qualified
16 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
17 the Internal Revenue Code as in effect immediately prior to January
18 1, 1984, which the taxpayer claimed as a deduction in computing
19 federal income tax pursuant to a qualified lease agreement under
20 paragraph (8) of that section.

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

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

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

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

3 (I) Interest paid, accrued or incurred for the privilege period to
4 a related member, as defined in section 5 of P.L.2002, c.40
5 (C.54:10A-4.4), except that a deduction shall be permitted to the
6 extent that the taxpayer establishes by clear and convincing
7 evidence, as determined by the director, that: (i) a principal purpose
8 of the transaction giving rise to the payment of the interest was not
9 to avoid taxes otherwise due under Title 54 of the Revised Statutes
10 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
11 pursuant to arm's length contracts at an arm's length rate of interest,
12 and (iii)(aa) the related member was subject to a tax on its net
13 income or receipts in this State or another state or possession of the
14 United States or in a foreign nation, (bb) a measure of the tax
15 includes the interest received from the related member, and (cc) the
16 rate of tax applied to the interest received by the related member is
17 equal to or greater than a rate three percentage points less than the
18 rate of tax applied to taxable interest by this State pursuant to
19 section 5 of P.L.1945, c.162 (C.54:10A-5).

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

28 A deduction shall also be permitted to the extent that the
29 taxpayer establishes by a preponderance of the evidence, as
30 determined by the director, that the interest is directly or indirectly
31 paid, accrued or incurred to (i) a related member in a foreign nation
32 which has in force a comprehensive income tax treaty with the
33 United States [and the related member (aa) was subject to tax in the
34 foreign nation on a tax base that included the payment paid,
35 accrued, or incurred; and (bb) under which the related member's
36 income received from the transaction was taxed at an effective tax
37 rate equal to or greater than a rate of three percentage points less
38 than the rate of tax applied to taxable interest by the State of New
39 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)],
40 provided however that the taxpayer shall disclose on its return for
41 the privilege period the name of the related member, the amount of
42 the interest, the relevant foreign nation, and such other information
43 as the director may prescribe or (ii) to an independent lender and
44 the taxpayer guarantees the debt on which the interest is required.
45 The adjustments required by this subparagraph shall not apply to
46 transactions between related members included in a combined
47 group reported on a New Jersey combined return.

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

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

26 (K) For privilege periods beginning after December 31, 2017,
27 the interest deduction limitation in subsection (j) of section 163 of
28 the Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-
29 rata basis to interest paid to both related and unrelated parties,
30 regardless of whether the related parties are subject to the add-back
31 provision of either subparagraph (I) of paragraph (2) of this
32 subsection or in section 5 of P.L.2002, c.40 (C.54:10A-4.4).

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

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

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

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

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

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

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

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

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

21 (5) (A) (i) Entire net income shall exclude 100% of dividends
22 which were included in computing such taxable income for federal
23 income tax purposes, paid to the taxpayer by one or more
24 subsidiaries owned by the taxpayer to the extent of the 80% or more
25 ownership of investment described in subsection (d) of this section
26 for privilege periods beginning on or before December 31, 2016.

27 (ii) For privilege periods beginning after December 31, 2016 and
28 before January 1, 2019, entire net income shall exclude 95% of
29 dividends which were included in computing such taxable income
30 for federal income tax purposes, paid or deemed paid, to the
31 taxpayer by one or more subsidiaries owned by the taxpayer to the
32 extent of the 80% or more ownership of investment described in
33 subsection (d) of this section. For the purposes of calculating the
34 tax liability owed for the paid or deemed paid dividends included in
35 entire net income by this subsection, the taxpayer shall use either
36 their three-year average allocation factor for the taxpayer's 2014
37 through 2016 tax years reported on the taxpayer's tax returns or 3.5
38 percent, whichever is lower.

39 (iii) For privilege periods beginning on and after January 1,
40 2019, entire net income shall exclude 95% of dividends which were
41 included in computing such taxable income for federal income tax
42 purposes, paid or deemed paid to the taxpayer by one or more
43 subsidiaries owned by the taxpayer to the extent of the 80% or more
44 ownership of investment described in subsection (d) of this section.

45 (B) Entire net income shall exclude 50% of dividends which
46 were included in computing such taxable income for federal income
47 tax purposes, paid or deemed paid to the taxpayer by one or more
48 subsidiaries owned by the taxpayer to the extent of 50% or more

1 ownership of investment, such ownership of investment calculated
2 in the same manner as the 80% or more of ownership of investment
3 is calculated as described in subsection (d) of this section.

4 (C) To the extent a subsidiary received dividends from other
5 subsidiaries and included those dividends in its entire net income
6 for the purposes of determining its tax liability pursuant to section 5
7 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,
8 the taxpayer receiving those same dividends from the subsidiary
9 shall exclude those dividends from its entire net income based on
10 the subsidiary's allocation factor used by the subsidiary in
11 determining its tax liability pursuant to section 5 of P.L.1945, c.162
12 (C.54:10A-5).

13 (6) (A) Net operating loss deduction. For privilege periods
14 ending before July 31, 2019, there shall be allowed as a deduction
15 for the privilege period the net operating loss carryover to that
16 period.

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

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

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

47 (E) Notwithstanding the provisions of this paragraph (6) of
48 subsection (k) of this section to the contrary, for privilege periods

1 beginning during calendar year 2002 and calendar year 2003, no
2 deduction for any net operating loss carryover shall be allowed and
3 for privilege periods beginning during calendar year 2004 and
4 calendar year 2005, there shall be allowed as a deduction for the
5 privilege period so much of the net operating loss carryover as
6 reduces entire net income otherwise calculated by 50%. If and only
7 to the extent that any net operating loss carryover deduction is
8 disallowed by reason of this subparagraph (E), the date on which
9 the amount of the disallowed net operating loss carryover deduction
10 would otherwise expire shall be extended by a period equal to the
11 period for which application of the net operating loss was
12 disallowed by this subparagraph.

13 Provided, that this subparagraph (E) shall not restrict the
14 surrender or acquisition of corporation business tax benefit
15 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
16 7.42a) and shall not restrict the application of corporation business
17 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
18 (C.54:10A-4.2).

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

26 (7) The entire net income of gas, electric and gas and electric
27 public utilities that were subject to, or would have been subject to
28 tax if doing business in this State, the provisions of P.L.1940, c.5
29 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
30 substituting the New Jersey depreciation allowance for federal tax
31 depreciation with respect to assets placed in service prior to January
32 1, 1998. For gas, electric, and gas and electric public utilities that
33 were subject to, or would have been subject to tax if doing business
34 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
35 prior to 1998, the New Jersey depreciation allowance shall be
36 computed as follows: All depreciable assets placed in service prior
37 to January 1, 1998 shall be considered a single asset account. The
38 New Jersey tax basis of this depreciable asset account shall be an
39 amount equal to the carryover adjusted basis for federal income tax
40 purposes on December 31, 1997 of all depreciable assets in service
41 on December 31, 1997, increased by the excess, of the "net carrying
42 value," defined to be adjusted book basis of all assets and liabilities,
43 excluding deferred income taxes, recorded on the public utility's
44 books of account on December 31, 1997, over the carryover
45 adjusted basis for federal income tax purposes on December 31,
46 1997 of all assets and liabilities owned by the gas, electric, or gas
47 and electric public utility as of December 31, 1997. "Books of
48 account" for gas, gas and electric, and electric public utilities means

1 the uniform system of accounts as promulgated by the Federal
2 Energy Regulatory Commission and adopted by the Board of Public
3 Utilities. The following adjustments to entire net income shall be
4 made pursuant to this section:

5 (A) Depreciation for property placed in service prior to January
6 1, 1998 shall be adjusted as follows:

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

9 (ii) A deduction shall be allowed for the New Jersey
10 depreciation allowance. The New Jersey depreciation allowance
11 shall be computed for the single asset account described above
12 based on the New Jersey tax basis as adjusted above as if all assets
13 in the single asset account were first placed in service on January 1,
14 1998. Depreciation shall be computed using the straight line
15 method over a thirty-year life. A full year's depreciation shall be
16 allowed in the initial tax year. No half-year convention shall apply.
17 The depreciable basis of the single account shall be reduced by the
18 adjusted federal tax basis of assets sold, retired, or otherwise
19 disposed of during any year on which gain or loss is recognized for
20 federal income tax purposes as described in subparagraph (B) of
21 this paragraph.

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

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

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

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

43 (10) Entire net income shall exclude all income of an alien
44 corporation the activities of which are limited in this State to
45 investing or trading in stocks and securities for its own account,
46 investing or trading in commodities for its own account, or any
47 combination of those activities, within the meaning of section 864
48 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in

1 effect on December 31, 1998. Notwithstanding the previous
2 sentence, if an alien corporation undertakes one or more infrequent,
3 extraordinary or non-recurring activities, including but not limited
4 to the sale of tangible property, only the income from such
5 infrequent, extraordinary or non-recurring activity shall be subject
6 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
7 seq.), and that amount of income subject to tax shall be determined
8 without regard to the allocation to that specific transaction of any
9 general business expense of the taxpayer and shall be specifically
10 assigned to this State for taxation by this State without regard to
11 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
12 paragraph, "alien corporation" means a corporation organized under
13 the laws of a jurisdiction other than the United States or its political
14 subdivisions.

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

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

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

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

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

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

3 (14) Notwithstanding the provisions of subsection (i) of section
4 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
5 for privilege periods beginning after December 31, 2008 and before
6 January 1, 2011, entire net income shall include the amount of
7 discharge of indebtedness income excluded for federal income tax
8 purposes pursuant to subsection (i) of section 108 of the federal
9 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
10 periods beginning on or after January 1, 2014 and before January 1,
11 2019, entire net income shall exclude the amount of discharge of
12 indebtedness income included for federal income tax purposes,
13 pursuant to subsection (i) of section 108 of the federal Internal
14 Revenue Code of 1986 (26 U.S.C. s.108).

15 (15) Entire net income shall exclude the gain or income derived
16 from the sale or assignment of a tax credit transfer certificate
17 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
18 10 of P.L.2014, c.63 (C.34:1B-251).

19 (16) (A) There shall be allowed as a deduction an amount
20 computed in accordance with this paragraph.

21 (B) For purposes of this paragraph, "net deferred tax liability"
22 means deferred tax liabilities that exceed the deferred tax assets of
23 the combined group, as computed in accordance with generally
24 accepted accounting principles, and "net deferred tax asset" means
25 that deferred tax assets exceed the deferred tax liabilities of the
26 combined group, as computed in accordance with generally
27 accepted accounting principles.

28 (C) Only publicly traded companies, including affiliated
29 corporations participating in the filing of a publicly traded
30 company's financial statements prepared in accordance with
31 generally accepted accounting principles, as of the effective date of
32 this paragraph, shall be eligible for this deduction.

33 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48
34 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to
35 the members' net deferred tax liability or an aggregate decrease to
36 the members' net deferred tax asset, or an aggregate change from a
37 net deferred tax asset to a net deferred tax liability, the combined
38 group shall be entitled to a deduction, as determined in this
39 paragraph.

40 (E) For 10 years beginning with the combined group's first
41 privilege period beginning on or after January 1 of the fifth year
42 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a
43 combined group shall be entitled to a deduction from combined
44 group entire net income equal to one-tenth of the amount necessary
45 to offset the increase in the net deferred tax liability or decrease in
46 the net deferred tax asset, or aggregate change from a net deferred
47 tax asset to a net deferred tax liability. Such increase in the net
48 deferred tax liability or decrease in the net deferred tax asset or the

1 aggregate change from a net deferred tax asset to a net deferred tax
2 liability shall be computed based on the change that would result
3 from the imposition of the unitary reporting requirements under
4 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and
5 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided
6 under this paragraph as of the effective date of this paragraph.

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

10 (i) the deferred tax impact determined in subparagraph (E) of
11 this paragraph shall be divided by the rate determined under section
12 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
13 c.48 (C.54:10A-5.41 et al.);

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

19 (iii) the resulting amount represents the total net Deferred Tax
20 Deduction available over the ten-year period as described in
21 subparagraph (E) of this paragraph.

22 (G) The deduction calculated under this paragraph shall not be
23 adjusted as a result of any events happening subsequent to such
24 calculation, including, but not limited to, any disposition or
25 abandonment of assets. Such deduction shall be calculated without
26 regard to the federal tax effect and shall not alter the tax basis of
27 any asset. If the deduction under this section is greater than
28 combined group entire net income, any excess deduction shall be
29 carried forward and applied as a deduction to combined group entire
30 net income in future privilege periods until fully utilized.

31 (H) Any combined group intending to claim a deduction under
32 this paragraph shall file a statement with the director on or before
33 July 1 of the year subsequent to the first privilege period for which
34 a combined return is required. Such statement shall specify the
35 total amount of the deduction which the combined group claims on
36 such form and in such manner as prescribed by the director. No
37 deduction shall be allowed under this paragraph for any privilege
38 period except to the extent claimed on such timely filed statement
39 in accordance with this paragraph.

40 (17) The taxpayer shall include 90% of the taxpayer's income
41 required to be included in the taxpayer's federal gross income as
42 reported for the federal taxable year pursuant to subsection (a) of
43 section 951A of the federal Internal Revenue Code (26 U.S.C.
44 s.951A), without regard to the deduction permitted pursuant to
45 section 250 of the federal Internal Revenue Code (26 U.S.C. s.250).

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

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

38 (n) "International banking facility" shall mean a set of asset and
39 liability accounts segregated on the books and records of a
40 depository institution, United States branch or agency of a foreign
41 bank, or an Edge or Agreement Corporation that includes only
42 international banking facility time deposits and international
43 banking facility extensions of credit as such terms are defined in
44 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
45 board of governors of the Federal Reserve System, 12 CFR Part
46 204, effective December 3, 1981. In the event that the United
47 States enacts a law, or the board of governors of the Federal
48 Reserve System adopts a regulation which amends the present

1 definition of international banking facility or of such facilities' time
2 deposits or extensions of credit, the Commissioner of Banking and
3 Insurance shall forthwith adopt regulations defining such terms in
4 the same manner as such terms are set forth in the laws of the
5 United States or the regulations of the board of governors of the
6 Federal Reserve System. The regulations of the Commissioner of
7 Banking and Insurance shall thereafter provide the applicable
8 definitions.

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

12 (p) "New Jersey S corporation" means a corporation that is an S
13 corporation; which has made a valid election pursuant to section 3
14 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
15 corporation continuously since the effective date of the valid
16 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
17 5.22).

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

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

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

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

38 (u) "Prior net operating loss conversion carryover" means a net
39 operating loss incurred in a privilege period ending prior to July 31,
40 2019 and converted from a pre-allocation net operating loss to a
41 post-allocation net operating loss as follows:

42 (1) As used in this subsection:

43 "Base year" means the last privilege period ending prior to July
44 31, 2019.

45 "Base year BAF" means the taxpayer's business allocation factor
46 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
47 6 through C.54:10A-10) for purposes of calculating entire net

1 income for the base year, as such section was in effect for the last
2 privilege period ending prior to July 31, 2019.

3 "UNOL" means the unabsorbed portion of net operating loss as
4 calculated under paragraph (6) of subsection (k) of this section as
5 such paragraph was in effect for the last privilege period ending
6 prior to July 31, 2019, that was not deductible in previous privilege
7 periods and was eligible for carryover on the last day of the base
8 year subject to the limitations for deduction under such subsection,
9 including any net operating loss sustained by the taxpayer during
10 the base year.

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

13 (A) The taxpayer shall first calculate the tax value of its UNOL
14 for the base year and for each preceding privilege period for which
15 there is a UNOL. The value of the UNOL for each privilege period
16 is equal to the product of (I) the amount of the taxpayer's UNOL for
17 a privilege period, and (II) the taxpayer's base year BAF. This result
18 shall equal the taxpayer's prior net operating loss conversion
19 carryover.

20 (B) The taxpayer shall continue to carry over its prior net
21 operating loss conversion carryover to offset its allocated entire net
22 income as provided in sections 6 through 10 of P.L.1945, c.162
23 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
24 and after July 31, 2019. Such carryover periods shall not exceed
25 the twenty privilege periods following the privilege period of the
26 initial loss. The entire amount of the prior net operating loss
27 conversion carryover for any privilege period shall be carried to the
28 earliest of the privilege periods to which the loss may be carried.
29 The portion of the prior net operating loss conversion carryover
30 which shall be carried to each of the other privilege periods shall be
31 the excess, if any, of the amount of the prior net operating loss
32 conversion carryover over the sum of the entire net income,
33 computed without the exclusions permitted in paragraphs (4) and
34 (5) of subsection (k) of this section allocated to this State.

35 (C) The prior net operating loss conversion carryover computed
36 under this subsection shall be applied against the entire net income
37 allocated to this State before the net operating loss carryover
38 computed under subsection (v) of this section.

39 (v) "Net operating loss deduction" means the amount allowed as
40 a deduction for the net operating loss carryover to the privilege
41 period, calculated as follows:

42 (1) Net operating loss carryover. A net operating loss for any
43 privilege period ending on or after July 31, 2019, shall be a net
44 operating loss carryover to each of the twenty privilege periods
45 following the period of the loss. The entire amount of the net
46 operating loss for any privilege period shall be carried to the earliest
47 of the privilege periods to which the loss may be carried. The
48 portion of the loss which shall be carried to each of the other

1 privilege periods shall be the excess, if any, of the amount of the
2 loss over the sum of the entire net income, computed without the
3 exclusions permitted in paragraphs (4) and (5) of subsection (k) of
4 this section allocated to this State.

5 (2) Net operating loss. For purposes of this paragraph the term
6 "net operating loss" means the excess of the deductions over the
7 gross income used in computing entire net income, without regard
8 to any net operating loss carryover, and computed without the
9 exclusions in paragraphs (4) and (5) of subsection (k) of this
10 section, allocated to this State pursuant to sections 6 through 10 of
11 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

12 (3) Reduction for discharge of indebtedness. A net operating
13 loss for any privilege period ending on or after July 31, 2019, and
14 any net operating loss carryover to such privilege period, shall be
15 reduced by the amount excluded from federal taxable income under
16 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
17 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,
18 for the privilege period of the discharge of indebtedness.

19 (4) A net operating loss carryover shall not include any net
20 operating loss incurred during any privilege period ending prior to
21 July 31, 2019.

22 (5) Change in ownership. Where there is a change in 50% or
23 more of the ownership of a corporation because of redemption or
24 sale of stock and the corporation changes the trade or business
25 giving rise to the loss, no net operating loss sustained before the
26 changes may be carried over to be deducted from income earned
27 after such changes. In addition, where the facts support the premise
28 that the corporation was acquired under any circumstances for the
29 primary purpose of the use of its net operating loss carryover, the
30 director may disallow the carryover; provided, however, this
31 paragraph shall not apply between members of a combined group
32 reported on a New Jersey combined return.

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

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

1 (y) "Combinable captive insurance company" means an entity
2 that is treated as an association taxable as a corporation under the
3 federal 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
6 an association taxable as a corporation under the federal Internal
7 Revenue Code, and not exempt from federal income tax;

8 (2) that is licensed as a captive insurance company under the
9 laws 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
12 of 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 A combinable captive insurance company shall not be exempt
17 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
18 insurance company that does not meet the definition of combinable
19 captive insurance company shall be excluded as provided in
20 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
21 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

22 For purposes of this definition:

23 "Affiliated group" shall have the same meaning as that term is
24 given by section 1504 of the federal Internal Revenue Code, 26
25 U.S.C. s.1504, except that the term "common parent corporation" as
26 used in section 1504 of the federal Internal Revenue Code, 26
27 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
28 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
29 to "at least 80%" in section 1504 of the federal Internal Revenue
30 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
31 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
32 be read without regard to the exclusions provided for in subsection
33 (b) of that section.

34 "Gross receipts" includes the amounts included in gross receipts
35 for purposes of paragraph (15) of subsection (c) of section 501 of
36 the federal Internal Revenue Code, 26 U.S.C. s.501, except that
37 those amounts also include all premiums.

38 "Premiums" includes consideration for annuity contracts and
39 excludes any part of the consideration for insurance, reinsurance, or
40 annuity contracts that do not provide bona fide insurance,
41 reinsurance, or annuity benefits.

42 (z) "Combined group" means the group of all companies that
43 have common ownership and are engaged in a unitary business,
44 where at least one company is subject to tax under this chapter, and
45 shall include all business entities, except as provided for under any
46 section of the Corporation Business Tax Act (1945), P.L.1945,
47 c.162 (C.54:10A-1 et seq.).

1 (aa) "Common ownership" means that more than 50% of the
2 voting control of each member of a combined group is directly or
3 indirectly owned by a common owner or owners, either corporate or
4 non-corporate, whether or not the owner or owners are members of
5 the combined group. Whether voting control is indirectly owned
6 shall be determined in accordance with section 318 of the federal
7 Internal Revenue Code, 26 U.S.C. s.318.

8 (bb) "Group privilege period" means, if two or more members in
9 the combined group file in the same federal consolidated tax return,
10 the same income year as that used on the federal consolidated tax
11 return and, in all other cases, the privilege period of the managerial
12 member.

13 (cc) "Managerial member" means if the combined group has a
14 common parent corporation and that common parent corporation is
15 a taxable member, the managerial member shall be the common
16 parent corporation. In other cases, the combined group shall select
17 a taxable member as its managerial member or, in the discretion of
18 the director or upon failure of the combined group to select its
19 managerial member, the director shall designate a taxable member
20 of the combined group as managerial member.

21 (dd) "Member" means a business entity that is a part of a
22 combined group.

23 (ee) "Nontaxable member" means a member that is: (i) not
24 subject to tax pursuant to the Corporation Business Tax Act (1945),
25 P.L.1945, c.162 (C.54:10A-1 et seq.) and is not a corporation
26 exempted from the tax pursuant to section 3 of P.L.1945, c.162
27 (C.54:10A-3) except for a combinable captive insurance company;
28 or (ii) a New Jersey S Corporation which does not elect to be
29 included in the combined group.

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

33 (gg) "Unitary business" means a single economic enterprise that
34 is made up either of separate parts of a single business entity or of a
35 group of business entities under common ownership that are
36 sufficiently interdependent, integrated, and interrelated through
37 their activities so as to provide a synergy and mutual benefit that
38 produces a sharing or exchange of value among them and a
39 significant flow of value among the separate parts. "Unitary
40 business" shall be construed to the broadest extent permitted under
41 the Constitution of the United States. A business conducted by a
42 partnership which is in a unitary business with the combined group
43 shall be treated as the business of the partners that are members of
44 the combined group, whether the partnership interest is held directly
45 or indirectly through a series of partnerships, to the extent of a
46 partner's distributive share of partnership income. The amount of
47 partnership income to be included in the partner's entire net income
48 shall be determined in accordance with subsection a. of section 3 of

1 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
2 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business
3 conducted directly or indirectly by one corporation is unitary with
4 that portion of a business conducted by another corporation through
5 its direct or indirect interest in a partnership.

6 (cf: P.L.2018, c.131, s.2)

7

8 2. Section 5 of P.L.2002, c.40 (C.54:10A-4.4) is amended to
9 read as follows:

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

11 "Intangible expenses and costs" includes (1) expenses, losses and
12 costs for, related to, or in connection directly or indirectly with the
13 direct or indirect acquisition, use, maintenance or management,
14 ownership, sale, exchange, or any other disposition of intangible
15 property to the extent such amounts are allowed as deductions or
16 costs in determining taxable income before operating loss deduction
17 and special deductions for the taxable year under the federal
18 Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses
19 related to, or incurred in connection directly or indirectly with,
20 factoring transactions or discounting transactions; (3) royalty,
21 patent, technical and copyright fees; (4) licensing fees; and (5) other
22 similar expenses and costs.

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

26 "Interest expenses and costs" means amounts directly or
27 indirectly allowed as deductions under section 163 of the federal
28 Internal Revenue Code of 1986, 26 U.S.C. s.163, for purposes of
29 determining taxable income under the code to the extent such
30 expenses and costs are directly or indirectly for, related to, or in
31 connection with the direct or indirect acquisition, maintenance,
32 management, ownership, sale, exchange or disposition of intangible
33 property.

34 "Related member" means a person that, with respect to the
35 taxpayer during all or any portion of the privilege period, is: (1) a
36 related entity, (2) a component member as defined in subsection (b)
37 of section 1563 of the federal Internal Revenue Code of 1986, 26
38 U.S.C. s.1563, (3) is a person to or from whom there is attribution
39 of stock ownership in accordance with subsection (e) of section
40 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
41 s.1563, or (4) is a person that, notwithstanding its form of
42 organization, bears the same relationship to the taxpayer as a person
43 described in (1) through (3) of this definition.

44 "Related entity" means (1) a stockholder who is an individual, or
45 a member of the stockholder's family enumerated in section 318 of
46 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
47 stockholder and the members of the stockholder's family own,
48 directly, indirectly, beneficially or constructively, in the aggregate,

1 50% or more of the value of the taxpayer's outstanding stock; (2) a
2 stockholder, or a stockholder's partnership, limited liability
3 company, estate, trust or corporation, if the stockholder and the
4 stockholder's partnerships, limited liability companies, estates,
5 trusts and corporations own directly, indirectly, beneficially or
6 constructively, in the aggregate, 50% or more per cent of the value
7 of the taxpayer's outstanding stock; or (3) a corporation, or a party
8 related to the corporation in a manner that would require an
9 attribution of stock from the corporation to the party or from the
10 party to the corporation under the attribution rules of the federal
11 Internal Revenue Code of 1986, 26 U.S.C. s.318, if the taxpayer
12 owns, directly, indirectly, beneficially or constructively, 50% or
13 more percent of the value of the corporation's outstanding stock.
14 The attribution rules of the federal Internal Revenue Code of 1986,
15 26 U.S.C. s.318, shall apply for purposes of determining whether
16 the ownership requirements of this definition have been met.

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

23 c. (1) The adjustments required in subsection b. of this section
24 shall not apply if: (a) the interest expenses and costs and intangible
25 expenses and costs are directly or indirectly paid, accrued or
26 incurred to a related member in a foreign nation which has in force
27 a comprehensive income tax treaty with the United States [and the
28 (i) related member was subject to tax in the foreign nation on a tax
29 base that included the amount paid, accrued, or incurred and (ii) the
30 related member's income received from the transaction was taxed at
31 an effective tax rate equal to or greater than a rate of three
32 percentage points less than the rate of tax applied to taxable interest
33 by the State of New Jersey pursuant to section 5 of P.L.1945, c.162
34 (C.54:10A-5)]; or (b) the taxpayer establishes by clear and
35 convincing evidence, as determined by the director, that the
36 adjustments are unreasonable; or (c) the taxpayer and the director
37 agree in writing to the application or use of an alternative method of
38 apportionment under section 8 of P.L.1945, c.162 (C.54:10A-8).
39 Nothing in this subsection shall be construed to limit or negate the
40 director's authority to otherwise enter into agreements and
41 compromises otherwise allowed by law.

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

1 (3) The adjustments required in subsection b. of this section
2 shall not apply to the portion of interest expenses and costs and
3 intangible expenses and costs that the taxpayer establishes by a
4 preponderance of the evidence meets both of the following: (a) the
5 related member during the same income year directly or indirectly
6 paid, received, accrued or incurred the portion to or from a person
7 that is not a related member, and (b) the transaction giving rise to
8 the interest expenses and costs or the intangible expenses and costs
9 between the taxpayer and the related member did not have as a
10 principal purpose the avoidance of any portion of the tax due under
11 Title 54 of the Revised Statutes or Title 54A of the New Jersey
12 Statutes.

13 d. Nothing in this section shall require a taxpayer to add to its
14 net income more than once any amount of interest expenses and
15 costs and intangible expenses and costs that the taxpayer pays,
16 accrues or incurs to a related member described in subsection b. of
17 this section.

18 e. The adjustments required by this section shall not apply to
19 transactions between related members included in a combined
20 group reported on a New Jersey combined return.

21 f. Nothing in this section shall be construed to limit or negate
22 the director's authority to make adjustments under paragraph (3) of
23 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section
24 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
25 (C.54:10A-10).

26 (cf: P.L.2018, c.131, s.3)

27

28 3. Section 18 of P.L.2018, c.48 (C.54:10A-4.6) is amended to
29 read as follows:

30 18. A taxable member of a combined group shall determine its
31 entire net income from the unitary business as its share of the entire
32 net income of the combined group in accordance with a combined
33 unitary tax return made pursuant to this section and sections 19, 20,
34 and 23 of P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and
35 C.54:10A-4.11). The entire net income from the unitary business of
36 a combined group is the sum of the entire net incomes of each
37 taxable member and each nontaxable member of the combined
38 group derived from the unitary business, which shall be determined
39 as follows:

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

44 b. For a member not incorporated in the United States, the
45 income to be included in the entire net income of the combined
46 group shall be determined from a profit and loss statement that shall
47 be prepared for each foreign branch or corporation in the currency
48 in which the books of account of the branch or corporation are

1 regularly maintained, adjusted to conform it to the accounting
2 principles generally accepted in the United States for the
3 presentation of those statements and further adjusted to take into
4 account any book-tax differences required by federal or State law.
5 The profit and loss statement of each foreign member of the
6 combined group and the allocation factors related thereto, whether
7 United States or foreign, shall be translated into or from the
8 currency in which the parent company maintains its books and
9 records on any reasonable basis consistently applied on a year-to-
10 year or entity-by-entity basis. Income shall be expressed in United
11 States dollars. In lieu of these procedures and subject to the
12 determination of the director that the income to be reported
13 reasonably approximates income as determined under the
14 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
15 et seq.), income may be determined on any reasonable basis
16 consistently applied on a year-to-year or entity-by-entity basis.

17 c. (1) If a member of a combined group receives income from the
18 unitary business from a partnership, the combined group's entire net
19 income shall include the member's direct and indirect distributive
20 share of the partnership's unitary business income.

21 (2) The distributive share of income received by a limited
22 partner from a qualified investment partnership shall not be
23 considered to be derived from a unitary business unless the general
24 partner of such investment partnership and such limited partner
25 have common ownership. To the extent that the limited partner is
26 otherwise carrying on or doing business in New Jersey, it shall
27 allocate its distributive share of income from a qualified investment
28 partnership in accordance with subsection a. of section 3 of
29 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
30 P.L.2001, c.136 (C.54:10A-15.7) as applicable. If the limited
31 partner is not otherwise carrying on or doing business in New
32 Jersey, its distributive share of income from an investment
33 partnership is not subject to tax under this chapter.

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

37 e. Except as otherwise provided by regulation, business income
38 from an intercompany transaction among members of the same
39 combined group shall be deferred in a manner similar to the deferral
40 under 26 C.F.R. s.1.1502-13, as determined by the director. Upon
41 the occurrence of either of the events set forth in subparagraphs (1)
42 and (2) of this subsection, deferred income resulting from an
43 intercompany transaction among members of a combined group
44 shall be restored to the income of the seller and shall be included in
45 the net income of the combined group as if the seller had earned the
46 income immediately before the event:

47 (1) The object of a deferred intercompany transaction is: (a)
48 resold by the buyer to an entity that is not a member of the

1 combined group, (b) resold by the buyer to an entity that is a
2 member of the combined group for use outside the unitary business
3 in which the buyer and seller are engaged, or (c) converted by the
4 buyer to a use outside the unitary business in which the buyer and
5 seller are engaged; or

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

11 f. A charitable expense incurred by a member of a combined
12 group shall, to the extent allowable as a deduction pursuant to
13 section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170,
14 be subtracted first from the combined group's entire net income,
15 subject to the income limitations of that section applied to the entire
16 business income of the group. A charitable deduction disallowed
17 under section 170 of the federal Internal Revenue Code, 26 U.S.C.
18 s.170, but allowed as a carryover deduction in a subsequent
19 privilege period, shall be treated as originally incurred in the
20 subsequent year by the same member and the provisions of this
21 section shall apply in the subsequent privilege period in
22 determining the allowable deduction for that privilege period.

23 g. A prior net operating loss conversion carryover incurred by a
24 member of a combined group shall be deducted from the entire net
25 income or loss allocated to this state pursuant to section 19 of
26 P.L.2018, c.48 (C.54:10A-4.7) as follows:

27 (1) Such prior net operating loss conversion carryover deduction
28 shall be allowed to offset only the entire net income allocated to
29 this state of the corporation that created the prior net operating loss;
30 the prior net operating loss conversion carryover cannot be shared
31 with other members of the combined group.

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

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

42 h. A net operating loss carryover incurred by a member of a
43 combined group shall be deducted from entire net income or loss
44 allocated to this State pursuant to section 19 of P.L.2018, c.48
45 (C.54:10A-4.7) as follows:

46 (1) For privilege periods beginning on or after the first day of
47 the initial privilege period for which a combined unitary tax return
48 is required under this section and sections 19, 20, and 23 of

1 P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11),
2 **【if the computation of a combined group's entire net income**
3 **allocated to this state results in a net operating loss,】** a taxable
4 member of **【such】** a combined group may carry over the net
5 operating loss allocated to this state, as calculated under this section
6 and sections 19 and 23 of P.L.2018, c.48 (C.54:18A-4.7 and
7 C.54:18A-4.11), and shall be deductible from entire net income
8 derived from the unitary business in a future privilege period to the
9 extent that the carryover and deduction is otherwise consistent with
10 subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4).

11 (2) Where a taxable member of a combined group has a net
12 operating loss carryover derived from a loss incurred by **【a**
13 **combined group】** the taxable member in a privilege period
14 beginning on or after the first day of the initial privilege period for
15 which a combined unitary tax return is required under this section
16 and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:18A-4.7,
17 C.54:18A-4.8, and C.54:18A-4.11), then the taxable member may
18 share the net operating loss carryover with other taxable members
19 of the combined group if such other taxable members were
20 members of the combined group in the privilege period that the loss
21 was incurred. Any amount of net operating loss carryover that is
22 deducted by another taxable member of the combined group shall
23 reduce the amount of net operating loss carryover that may be
24 carried over by the taxable member that originally incurred the loss.

25 (3) Where a taxable member of a combined group has a net
26 operating loss carryover derived from a loss incurred in a privilege
27 period during which the taxable member was not a member of such
28 combined group, the carryover shall remain available to be
29 deducted by that taxable member or other group members that, in
30 the year the loss was incurred, were part of the same combined
31 group as such taxable member. Such carryover shall not be
32 deductible by any other members of the combined group.

33 (4) A net operating loss carryover shall not include any net
34 operating loss incurred during any privilege period beginning prior
35 to the first day of the initial privilege period for which a combined
36 unitary tax return is required under this section and sections 19 and
37 23 of P.L.2018, c.48 (C.54:18A-4.7 and C.54:18A-4.11).

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

40 (1) If a taxable member of a combined group earns a tax credit
41 in a privilege period beginning on or after the first day of the initial
42 privilege period for which a combined unitary tax return is required
43 under this section and sections 19, 20, and 23 of P.L.2018, c.48
44 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11), then the taxable
45 member may share the credit with other taxable members of the
46 combined group. Any amount of credit that is utilized by another
47 taxable member of the combined group shall reduce the amount of

1 credit carryover that may be carried over by the taxable member
2 that originally earned the credit. If a taxable member of a combined
3 group has a tax credit carryover derived from a privilege period
4 beginning on or after the first day of the initial privilege period for
5 which a combined unitary tax return is required under this section
6 and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:18A-4.7,
7 C.54:18A-4.8, and C.54:18A-4.11), then the taxable member may
8 share the carryover credit with other taxable members of the
9 combined group.

10 (2) If a taxable member of a combined group has a tax credit
11 carryover derived from a privilege period beginning prior to the
12 first day of the initial privilege period for which a combined unitary
13 tax return is required under this section and sections 19, 20, and 23
14 of P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
15 4.11), then the taxable member may share the carryover credit with
16 other taxable members of the combined group.

17 (3) If a taxable member of a combined group has a tax credit
18 carryover derived from a privilege period during which the taxable
19 member was not a member of such combined group, the credit
20 carryover shall remain available to be utilized by such taxable
21 member or other group members.

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

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

34 k. Nothing in this section shall apply to:

35 (1) A corporation or combined group which is licensed, in
36 whole or in part, as an insurance company under the laws of this
37 State or of another state, including corporations which are surplus
38 lines insurers declared eligible by the Commissioner of Banking
39 and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-
40 6.45) to insure risks within this State that is not a combinable
41 captive insurance company. Notwithstanding a provision, if any, to
42 the contrary in this section, the income of an insurance company
43 that is not a combinable captive insurance company, the allocation
44 or apportionment of income related thereto and the apportionment
45 factors of an insurance company that is not a combinable captive
46 insurance company shall not be included in a combined unitary tax
47 return filed under this section and sections 19, 20, and 23 of
48 P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11).

1 In addition, the dividend exclusion provisions of paragraph (5) of
2 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating
3 to dividends paid by insurance companies to non-insurance
4 companies included in the unitary group shall not be affected by
5 P.L.2018, c.48 (C.54:10A-5.41 et al.).

6 (2) A corporation that is regulated, in whole or in part, by the
7 Federal Energy Regulatory Commission, the New Jersey Board of
8 Public Utilities, or similar regulatory body of another state, with
9 respect to rates charged to customers for electric or gas services and
10 water and wastewater services.

11 1. The director shall promulgate rules and regulations
12 necessary to carry out the provisions of this section.
13 (cf: P.L.2018, c.131, s.4)

14

15 4. Section 23 of P.L.2018, c.48 (C.54:10A-4.11) is amended to
16 read as follows:

17 23. a. The managerial member of a combined group may elect
18 to have the combined group determined on a world-wide basis or an
19 affiliated group basis. If no such election is made, the combined
20 group shall be determined on a water's-edge basis and will take into
21 account the incomes and allocation factors of only the following
22 members of the combined group:

23 (1) each member incorporated in the United States, or formed
24 under the laws of the United States, any state, the District of
25 Columbia, or any territory or possession of the United States,
26 excluding such a member if eighty per cent or more of both its
27 property and payroll during the privilege period are located outside
28 the United States, the District of Columbia, and any territory or
29 possession of the United States;

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

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

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

42 b. A world-wide election or an affiliated group election is
43 effective only if made on a timely filed, original return for a
44 privilege period by the managerial member of the combined group.
45 Such election is binding for, and applicable to, the privilege period
46 for which it is made and for the five immediately succeeding
47 privilege periods. Provided however, the election can be revoked
48 prior to the expiration of the binding period by written request to

1 the Director of Taxation for reasonable cause including but not
2 limited to a substantial change in ownership, members of the
3 combined group or principal business, or changes in tax law,
4 regulation or policy.

5 c. If the managerial member elects to determine the members
6 of a combined group on an affiliated group basis, the taxable
7 members shall take into account the entire net income or loss and
8 allocation factors of all of the members of its affiliated group,
9 regardless of whether such members are engaged in a unitary
10 business, that are subject to tax or would be subject to tax under this
11 chapter, if doing business in this State.

12 d. For a combined group that determines its net income or loss
13 on a water's-edge basis pursuant to this section, an item of income
14 of a corporation that is organized outside of the United States shall
15 not be included in the net income of the combined group to the
16 extent that the item is exempt from United States federal income tax
17 by virtue of a federal income tax treaty. Any items of expense and
18 apportionment factors related to that item of exempt income shall
19 be excluded in the determination of net income of the combined
20 group to the extent provided in regulations issued by the director.
21 However, that item of exempt income shall be taken into account to
22 determine whether the corporation is included in the water's-edge
23 group pursuant to this section. If a corporation organized outside of
24 the United States is included in a water's-edge combined group and
25 has an item of income that is exempt from United States federal
26 income tax by virtue of a federal tax treaty, the corporation shall be
27 considered to be included in the combined group pursuant to this
28 section only with regard to any items of income described pursuant
29 to this section that are not exempt, taking into account items of
30 expense and apportionment factors associated with those items of
31 non-exempt income to the extent provided by regulations issued by
32 the director.

33 Nothing in this subsection shall prevent the director from
34 adjusting, pursuant to section 5 of P.L.2002, c.40 (C.54:10A-4.4),
35 section 10 of P.L.1945, c.162 (C.54:10A-10), or any other provision
36 of law, any deduction claimed by the payer for amounts that are
37 excluded from the net income of the combined groups pursuant to
38 this subsection. The director may require the reporting of the
39 amounts of excluded income and the documentation of any claimed
40 treaty exemption as conditions to be met by a payer claiming a
41 deduction of those payments.

42 e. The director shall promulgate rules and regulations
43 necessary to carry out the provisions of this section.
44 (cf: P.L.2018, c.48, s.23)

45

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

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

14 The amount computed pursuant to this section shall be the sum
 15 of the amount computed under subsection (a) hereof, or in the
 16 alternative to the amount computed under subsection (a) hereof, the
 17 amount computed under subsection (f) hereof, and the amount
 18 computed under subsection (c) hereof:

19 (a) That portion of its entire net worth as may be allocable to
 20 this State as provided in section 6, multiplied by the following
 21 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
 22 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
 23 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
 24 mill per dollar on all amounts of allocated net worth in excess of
 25 \$300,000,000.00; provided, however, that with respect to reports
 26 covering accounting or privilege periods set forth below, the rate
 27 shall be that percentage of the rate set forth in this subsection for
 28 the appropriate year:

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

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

37 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
 38 1/4% of its entire net income or such portion thereof as may be
 39 allocable to this State as provided in sections 6 through 10 of
 40 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), plus such
 41 portion thereof as is specifically assigned to this State as provided
 42 in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided, however,
 43 that with respect to reports covering accounting or privilege periods
 44 or parts thereof ending after December 31, 1967, the rate shall be 4
 45 1/4%; and that with respect to reports covering accounting or
 46 privilege periods or parts thereof ending after December 31, 1971,
 47 the rate shall be 5 1/2%; and that with respect to reports covering
 48 accounting or privilege periods or parts thereof ending after

1 December 31, 1974, the rate shall be 7 1/2%; and that with respect
2 to reports covering privilege periods or parts thereof ending after
3 December 31, 1979, the rate shall be 9%; provided however, that
4 for a taxpayer that has entire net income of \$100,000 or less for a
5 privilege period and is not a partnership the rate for that privilege
6 period shall be 7 1/2% and provided further that for a taxpayer that
7 has entire net income of \$50,000 or less for a privilege period and is
8 not a partnership the rate for that privilege period shall be 6 1/2%.

9 For privilege periods ending on or after July 31, 2019, the tax
10 rate shall be applied against taxable net income.

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

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

19 (ii) For a taxpayer that has entire net income in excess of
20 \$100,000 for the privilege period,

21 for privilege periods ending on or after July 1, 1998, but on or
22 before June 30, 2001, the rate shall be 2%,

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

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

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

29 (iii) For a taxpayer that has entire net income of \$100,000 or less
30 for privilege periods ending on or after July 1, 1998, but on or
31 before June 30, 2001, the rate for that privilege period shall be
32 0.5%, and for privilege periods ending on or after July 1, 2001,
33 there shall be no rate of tax imposed under this paragraph.

34 (iv) The taxpayer's rate determined under subparagraph (i), (ii)
35 or (iii) of this paragraph shall be multiplied by its entire net income
36 that is not subject to federal income taxation or such portion thereof
37 as may be allocable to this State pursuant to sections 6 through 10
38 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) plus such
39 portion thereof as is specifically assigned to this State as provided
40 in section 5 of P.L.1993, c.173 (C.54:10A-6.1). For privilege
41 periods ending on or after July 31, 2019, the tax rate shall be
42 applied against taxable net income.

43 (3) For a taxpayer that is a New Jersey S corporation, in
44 addition to the amount, if any, determined under paragraph (2) of
45 this subsection, the tax rate that would otherwise be applicable to
46 the taxpayer's entire net income for the privilege period if the
47 taxpayer were not an S corporation provided under paragraph (1) of
48 this subsection for the privilege period multiplied by its entire net

1 income that is subject to federal income taxation or such portion
 2 thereof as may be allocable to this State pursuant to sections 6
 3 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).
 4 For privilege periods ending on or after July 31, 2019, the tax rate
 5 shall be applied against taxable net income.

6 (d) Provided, however, that the franchise tax to be annually
 7 assessed to and paid by any investment company or real estate
 8 investment trust, which has elected to report as such and has filed
 9 its return in the form and within the time provided in this act and
 10 the rules and regulations promulgated in connection therewith,
 11 shall, in the case of an investment company, be measured by 40% of
 12 its entire net income and 40% of its entire net worth, and in the case
 13 of a real estate investment trust, by 4% of its entire net income and
 14 15% of its entire net worth, at the rates hereinbefore set forth for the
 15 computation of tax on net income and net worth, respectively, but in
 16 no case less than \$250, and further provided, however, that the
 17 franchise tax to be annually assessed to and paid by a regulated
 18 investment company which for a period covered by its report
 19 satisfies the requirements of Chapter 1, Subchapter M, Part I,
 20 Section 852(a) of the federal Internal Revenue Code shall be \$250.
 21 For privilege periods ending on or after July 31, 2019, the tax rate
 22 shall be applied against taxable net income.

23 (e) The tax assessed to any taxpayer pursuant to this section
 24 shall not be less than \$25 in the case of a domestic corporation, \$50
 25 in the case of a foreign corporation, or \$250 in the case of an
 26 investment company or regulated investment company. Provided
 27 however, that for privilege periods beginning in calendar year 1994
 28 and thereafter the minimum taxes for taxpayers other than an
 29 investment company or a regulated investment company shall be as
 30 provided in the following schedule:

31	Period Beginning	Domestic	Foreign
32	In Calendar Year	Corporation	Corporation
33		Minimum Tax	Minimum Tax
34	1994	\$ 50	\$100
35	1995	\$100	\$200
36	1996	\$150	\$200
37	1997	\$200	\$200
38	1998	\$200	\$200
39	1999	\$200	\$200
40	2000	\$200	\$200
41	2001	\$210	\$210

42 and for calendar years 2002 through 2005 the minimum tax for
 43 all taxpayers shall be \$500, and for calendar year 2006 through
 44 calendar year 2011 the minimum tax for all corporations, and for
 45 privilege periods beginning in calendar year 2012 and thereafter the
 46 minimum tax for corporations that are not New Jersey S
 47 corporations shall be based on the New Jersey gross receipts of the
 48 taxpayer pursuant to the following schedule:

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	New Jersey Gross Receipts:	Minimum Tax:
1		
2	Less than \$100,000\$500
3	\$100,000 or more but	
4	less than \$250,000 \$750
5	\$250,000 or more but	
6	less than \$500,000 \$1,000
7	\$500,000 or more but	
8	less than \$1,000,000 \$1,500
9	\$1,000,000 or more \$2,000

10 and for privilege periods beginning in calendar year 2012 and
11 thereafter the minimum tax for corporations that are New Jersey S
12 corporations shall be based on the New Jersey gross receipts of the
13 taxpayer pursuant to the following schedule:

	New Jersey Gross Receipts:	Minimum Tax:
14		
15	Less than \$100,000\$375
16	\$100,000 or more but	
17	less than \$250,000 \$562.50
18	\$250,000 or more but	
19	less than \$500,000 \$750
20	\$500,000 or more but	
21	less than \$1,000,000 \$1,125
22	\$1,000,000 or more \$1,500

23 provided however, that for a taxpayer that is a member of an
24 affiliated group or a controlled group pursuant to section 1504 or
25 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
26 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
27 more for the privilege period, the minimum tax shall be \$2,000 for
28 the privilege period. For privilege periods ending on and after July
29 31, 2019, the minimum tax of each member of a combined group
30 filing a mandatory or elective New Jersey combined return shall be
31 **[\$2,000]** \$1,000 for the group privilege period.

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

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

41 (1) that is a limited liability company or foreign limited liability
42 company classified as a partnership for federal income tax purposes
43 shall be the amount determined pursuant to the provisions of section
44 3 of P.L.2001, c.136 (C.54:10A-15.6); or

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

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

6 (i) (Deleted by amendment, P.L.2008, c.120)
7 (cf: P.L.2018, c.131, s.6)

8
9 6. This act shall take effect immediately; provided, however,
10 that sections 1 and 2 shall apply to privilege periods ending on or
11 after July 31, 2019.

12 13 14 STATEMENT 15

16 This bill amends certain provisions of the corporation business
17 tax, including provisions related to combined reporting, relative to:
18 (1) global intangible low-tax income; (2) CBT minimum
19 assessments; (3) ability of taxable members of a combined group to
20 carryover and share net operating losses; and (4) treatment of
21 certain foreign-sourced income subject to a federal income tax
22 treaty.

23 24 *GLOBAL INTANGIBLE LOW-TAXED INCOME* 25

26 The federal Tax Cuts and Jobs Act of 2017, Public Law 115-97,
27 includes a provision that defined a new category of taxable income,
28 known as global intangible low-taxed income (“GILTI”), and
29 thereby taxes income received from American shareholders that is
30 derived from tangible assets of controlled foreign corporations.
31 Under current State law, this federally-reported income is to be
32 included in entire net income when a corporate taxpayer determines
33 corporate business tax (“CBT”) liability in a privilege period.

34 This bill changes current law to provide that, for purposes of
35 determining entire net income under the CBT, a corporate taxpayer
36 should report only 90 percent of the amount of GILTI reported for
37 federal income tax purposes.

38 Section 250 of the federal Internal Revenue Code (26 U.S.C.
39 s.250) allows taxpayers to receive a 50 percent deduction in the
40 amount of GILTI reported for federal income tax purposes, and
41 chapter 131 of P.L.2018 allows CBT taxpayers to claim a
42 corresponding State deduction. The bill clarifies that the amount of
43 GILTI to be reported for CBT purposes should be determined prior
44 to the application of the federal deduction allowed by section 250 or
45 the State analog, per N.J.S.A.54:10A-4.15.

1 *Combined Group Minimum Tax*

2

3 This bill reduces the minimum tax imposed on members of a
4 combined group for purposes of combined reporting under the CBT.

5 Under current law, each member of a combined group filing a
6 mandatory or elective New Jersey combined return is required to
7 pay a minimum tax of \$2,000 for the group privilege period. The
8 bill reduces this minimum tax to \$1,000.

9

10 *Net Operating Loss and Combined Groups*

11

12 This bill broadens the ability of members of a combined group to
13 share a net operating loss carryover under the CBT.

14 Under current law, if a combined group's entire net income for a
15 privilege period, allocated to the State, results in a net operating
16 loss ("NOL"), then a taxable member of the group may carry over a
17 NOL, which shall be deductible from entire net income for the
18 unitary business. Moreover, the taxable member may share the
19 NOL carryover with other taxable members who were part of the
20 combined group during the privilege period in which the loss was
21 incurred.

22 The bill changes the law to provide that a taxable member may
23 carry over an NOL incurred in any privilege period, irrespective of
24 whether the combined group's entire net income allocated to the
25 State resulted in an NOL. The taxable member may carry over the
26 NOL in accordance with otherwise current law pertaining to NOL
27 carryovers.

28 Additionally, the taxable member may share the NOL carryover
29 with other taxable members of the combined group that were
30 members of the combined group in the privilege period in which the
31 NOL was incurred.

32

33 *Treatment of Foreign-Sourced Income Subject to Federal Treaty*

34

35 Finally, the bill changes the CBT treatment of certain foreign-
36 sourced income that is subject to a federal income tax treaty.

37 Specifically, the bill provides that, for a combined group that
38 elects to be taxed on a water's-edge basis, certain income derived
39 from a corporation organized outside of the United States should
40 not be included in the net income of the combined group if that
41 income is exempt from federal income tax by operation of a federal
42 income tax treaty. The Director of the Division of Taxation in the
43 Department of the Treasury, however, is to develop regulations to
44 clarify the treatment of expenses and apportionment factors related
45 to such exempt income.

46 Moreover, for purposes of the add-back provisions of
47 N.J.S.A.54:10A-4.4 and the related-member interest paid deduction
48 per N.J.S.A.54:10A-4, the bill removes the requirements that the

1 related member be subject to tax in the foreign nation on such
2 amounts in order to qualify for the deduction or avoid the add-back
3 provision. Thus, the taxpayer must only demonstrate that the
4 amounts were paid or incurred by a related member in a foreign
5 nation with an effective comprehensive income tax treaty in effect
6 with the United States.