

§1 –  
C.54:10A-5.41  
§2 - C.54:10A-6.5  
§§18-24, 28, 29-  
C.54:10A-4.6 to  
54:10A-4.14  
§32 - Repealer  
§33 - Note

P.L. 2018, CHAPTER 48, *approved July 1, 2018*  
Assembly, No. 4202 (*First Reprint*)

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

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

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

13 (1) For a taxpayer, except a public utility, that has <sup>1</sup>**[entire]**  
14 allocated<sup>1</sup> net income in excess of \$1 million <sup>1</sup>**[**, but less than \$25  
15 million<sup>1</sup> for the privilege <sup>1</sup>**[period]** periods, beginning on or after  
16 January 1, 2018 through December 31, 2019<sup>1</sup>, the surtax imposed shall  
17 be 2.5%;

18 (2) For a taxpayer, except a public utility, that has <sup>1</sup>**[entire]**  
19 allocated<sup>1</sup> net income in excess of <sup>1</sup>**[\$25]** \$1<sup>1</sup> million for the privilege  
20 <sup>1</sup>**[period]** periods, beginning on or after January 1, 2020 through  
21 December 31, 2021<sup>1</sup>, the surtax imposed shall be <sup>1</sup>**[4%]** 1.5%<sup>1</sup>.

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

30 The surtax imposed under this section shall be due and payable in  
31 accordance with section 15 of P.L.1945, c.162 (C.54:10A-15), and the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

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

1 surtax shall be administered pursuant to the provisions of P.L.1945,  
2 c.162 (C.54:10A-1 et seq.). Notwithstanding the provisions of any  
3 other law to the contrary, no credits shall be allowed against the surtax  
4 liability computed under this section except for credits for installment  
5 payments, estimated payments made with a request for an extension of  
6 time for filing a return, or overpayments from prior privilege periods.  
7

8 2. (New section) For privilege periods beginning on and after  
9 January 1, 2017, for the purposes of computing entire net income  
10 pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer  
11 shall not be allowed the amount of any deduction, exemption, or  
12 credit allowed under the Internal Revenue Code for income reported  
13 pursuant to section 965 of the Internal Revenue Code (26 U.S.C.  
14 s.965).  
15

16 <sup>1</sup>3. (New section) a. Notwithstanding the provisions of section  
17 4 of P.L.1945, c.162 (C.54:10A-4) or any other law to the contrary,  
18 as used in this section only:

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

23 “Gross domestic product” means the nominal gross domestic  
24 product for the prior calendar year.

25 “Subsidiary” means a business entity of which the taxpayer has a  
26 direct or indirect ownership interest regardless of its percentage of  
27 ownership.

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

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

44 c. A taxpayer shall not be liable for the tax imposed by this  
45 section, if so prohibited by any federal law, or if the total amount of  
46 dividends which were included in computing such taxable income  
47 for federal income tax purposes, paid to the taxpayer by one or

1 more subsidiaries owned by the taxpayer, are in aggregate less than  
2 \$1,000,000 for the tax year.

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

12 e. The tax imposed pursuant to this section shall not be deemed  
13 a tax on capital stock or property and shall be added back for the  
14 purposes of subparagraph (C) of paragraph (2) of subsection (k) of  
15 section 4 of P.L. 1945, c.162 (C.54:10A-4).

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

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

29 h. A taxpayer paying the tax imposed pursuant to this section  
30 shall be allowed a credit against the taxpayer's tax liability under  
31 subsection b. of this section in an amount equal to the tax, if any,  
32 paid on the same dividends under section 5 of P.L.1945, c.162  
33 (C.54:10A-5). The credit allowed by this subsection shall only be  
34 allowed to the extent the taxpayer paid tax on the dividends under  
35 both this section and section 5 of P.L.1945, c.162 (C.54:10A-5). A  
36 taxpayer shall not transfer the credit allowed pursuant to this  
37 subsection to any other taxpayer.

38 i. The tax imposed pursuant to this section shall be  
39 administered pursuant to the provisions of the State Uniform Tax  
40 Procedure Law, R.S.54:48-1. Penalties and interest shall be applied  
41 for failure to file and pay the tax imposed pursuant to this section.  
42 No penalties or interest shall be imposed upon payment of the tax  
43 imposed pursuant to this section if payment is made on or before  
44 May 15, 2019.】<sup>1</sup>

45

46 <sup>1</sup>【4.】 3.<sup>1</sup> Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended  
47 to read as follows:

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

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

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

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

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

44       In the case of banking corporations which have international  
45 banking facilities as defined in subsection (n), the foregoing aggregate  
46 of values shall also be reduced by retained earnings of the international  
47 banking facility. Retained earnings means the earnings accumulated  
48 over the life of such facility and shall not include the distributive share

1 of dividends paid and federal income taxes paid or payable during the  
2 tax year.

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

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

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

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

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

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

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

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

44 For the purpose of this act, the amount of a taxpayer's entire net  
45 income shall be deemed prima facie to be equal in amount to the  
46 taxable income, before net operating loss deduction and special  
47 deductions, which the taxpayer is required to report, or, if the taxpayer  
48 is classified as a partnership for federal tax purposes, would otherwise

1 be required to report, to the United States Treasury Department for the  
2 purpose of computing its federal income tax, provided however, that in  
3 the determination of such entire net income,

4 (1) Entire net income shall exclude for the periods set forth in  
5 paragraph (2)(F)(i) of this subsection, any amount, except with respect  
6 to qualified mass commuting vehicles as described in section  
7 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately  
8 prior to January 1, 1984, which is included in a taxpayer's federal  
9 taxable income solely as a result of an election made pursuant to the  
10 provisions of paragraph (8) of that section.

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

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

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

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

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

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

29 (F) (i) The amount by which depreciation reported to the United  
30 States Treasury Department for property placed in service on and after  
31 January 1, 1981, but prior to taxpayer fiscal or calendar accounting  
32 years beginning on and after the effective date of P.L.1993, c.172, for  
33 purposes of computing federal taxable income in accordance with  
34 section 168 of the Internal Revenue Code in effect after December 31,  
35 1980, exceeds the amount of depreciation determined in accordance  
36 with the Internal Revenue Code provisions in effect prior to January 1,  
37 1981, but only with respect to a taxpayer's accounting period ending  
38 after December 31, 1981; provided, however, that where a taxpayer's  
39 accounting period begins in 1981 and ends in 1982, no modification  
40 shall be required with respect to this paragraph (F) for the report filed  
41 for such period with respect to property placed in service during that  
42 part of the accounting period which occurs in 1981. The provisions of  
43 this subparagraph shall not apply to assets placed in service prior to  
44 January 1, 1998 of a gas, gas and electric, and electric public utility  
45 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
46 seq.) prior to 1998.

47 (ii) For the periods set forth in subparagraph (F)(i) of paragraph (2)  
48 of this subsection, any amount, except with respect to qualified mass

1 commuting vehicles as described in section 168(f)(8)(D)(v) of the  
2 Internal Revenue Code as in effect immediately prior to January 1,  
3 1984, which the taxpayer claimed as a deduction in computing federal  
4 income tax pursuant to a qualified lease agreement under paragraph (8)  
5 of that section.

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

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

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

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

35 (I) Interest paid, accrued or incurred for the privilege period to a  
36 related member, as defined in section 5 of P.L.2002, c.40 (C.54:10A-  
37 4.4), except that a deduction shall be permitted to the extent that the  
38 taxpayer establishes by clear and convincing evidence, as determined  
39 by the director, that: (i) a principal purpose of the transaction giving  
40 rise to the payment of the interest was not to avoid taxes otherwise due  
41 under Title 54 of the Revised Statutes or Title 54A of the New Jersey  
42 Statutes, (ii) the interest is paid pursuant to arm's length contracts at an  
43 arm's length rate of interest, and (iii)(aa) the related member was  
44 subject to a tax on its net income or receipts in this State or another  
45 state or possession of the United States or in a foreign nation, (bb) a  
46 measure of the tax includes the interest received from the related  
47 member, and (cc) the rate of tax applied to the interest received by the

1 related member is equal to or greater than a rate three percentage  
2 points less than the rate of tax applied to taxable interest by this State.

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

11 A deduction shall also be permitted to the extent that the taxpayer  
12 establishes by a preponderance of the evidence, as determined by the  
13 director, that the interest is directly or indirectly paid, accrued or  
14 incurred to (i) a related member in a foreign nation which has in force  
15 a comprehensive income tax treaty with the United States <sup>1</sup>containing  
16 an express exemption from state income taxation] and the related  
17 member (aa) was subject to tax in the foreign nation on a tax base that  
18 included the payment paid, accrued, or incurred; and (bb) under which  
19 the related member's income received from the transaction was taxed  
20 at an effective tax rate equal to or greater than a rate of three  
21 percentage points less than the rate of tax applied to taxable interest by  
22 the State of New Jersey<sup>1</sup>, provided however that the taxpayer shall  
23 disclose on its return for the privilege period the name of the related  
24 member, the amount of the interest, the relevant foreign nation, and  
25 such other information as the director may prescribe or (ii) to an  
26 independent lender and the taxpayer guarantees the debt on which the  
27 interest is required. <sup>1</sup>Transactions between members of a combined  
28 group are eliminated in the computation of the entire net income of the  
29 members of the combined group; therefore, this subparagraph only  
30 applies to interest paid, accrued or incurred by a taxable member of a  
31 combined group to related parties that are not members of the  
32 combined group.<sup>1</sup>

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



1 substantial change, and result in a transformation of property into a  
2 different or substantially more usable product.

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

10 (K) For privilege periods beginning after December 31, 2017, the  
11 interest deduction limitation in subsection (j) of section 163 of the  
12 Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-rata  
13 basis to interest paid to both related and unrelated parties, regardless of  
14 whether the related parties are subject to the add-back provision of  
15 either subparagraph (I) of paragraph (2) of this subsection or in section  
16 5 of P.L.2002, c.40 (C.54:10A-4.4).

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

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

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

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

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

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

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

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

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

4 (5) (A) <sup>1</sup>(i)<sup>1</sup> Entire net income shall exclude 100% of dividends  
5 which were included in computing such taxable income for federal  
6 income tax purposes, paid to the taxpayer by one or more subsidiaries  
7 owned by the taxpayer to the extent of the 80% or more ownership of  
8 investment described in subsection (d) of this section **[and]** for  
9 privilege periods ending on or before December 31, <sup>1</sup>[2018] 2016.

10 (ii) For the privilege period beginning after December 31, 2016,  
11 entire net income shall exclude 95% of dividends which were included  
12 in computing such taxable income for federal income tax purposes,  
13 paid or deemed paid, to the taxpayer by one or more subsidiaries  
14 owned by the taxpayer to the extent of the 80% or more ownership of  
15 investment described in subsection (d) of this section. For the  
16 purposes of calculating the tax liability owed for the deemed dividends  
17 included in entire net income by this subsection, the taxpayer shall use  
18 either their three year average allocation factor for the taxpayer's 2015  
19 through 2017 tax years reported on the taxpayer's tax returns or 3.5  
20 percent, whichever is lower<sup>1</sup>.

21 <sup>1</sup>**[B)]** <sup>1</sup>(iii)<sup>1</sup> For privilege periods beginning on and after January  
22 1, <sup>1</sup>[2019] 2018<sup>1</sup>, entire net income shall exclude 95% of dividends  
23 which were included in computing such taxable income for federal  
24 income tax purposes, paid <sup>1</sup>or deemed paid<sup>1</sup> to the taxpayer by one or  
25 more subsidiaries owned by the taxpayer to the extent of the 80% or  
26 more ownership of investment described in subsection (d) of this  
27 section.

28 <sup>1</sup>(B)<sup>1</sup> Entire net income shall exclude 50% of dividends which  
29 were included in computing such taxable income for federal income  
30 tax purposes, paid <sup>1</sup>or deemed paid<sup>1</sup> to the taxpayer by one or more  
31 subsidiaries owned by the taxpayer to the extent of 50% or more  
32 ownership of investment, such ownership of investment calculated in  
33 the same manner as the 80% or more of ownership of investment is  
34 calculated as described in subsection (d) of this section.

35 <sup>1</sup>(C) To the extent a subsidiary received dividends from other  
36 subsidiaries and included those dividends in its entire net income for  
37 the purposes of determining its tax liability pursuant to section 5 of  
38 P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the  
39 taxpayer receiving those same dividends from the subsidiary shall  
40 exclude those dividends from its entire net income based on the  
41 subsidiary's allocation factor used by the subsidiary in determining its  
42 tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).<sup>1</sup>

43 (6) (A) Net operating loss deduction. <sup>1</sup>**[There]** For privilege  
44 periods before the effective date of P.L. , c. (pending before the  
45 Legislature as this bill), there<sup>1</sup> shall be allowed as a deduction for the  
46 privilege period the net operating loss carryover to that period.

1 (B) Net operating loss carryover. A net operating loss for any  
2 privilege period ending after June 30, 1984 shall be a net operating  
3 loss carryover to each of the seven privilege periods following the  
4 period of the loss and a net operating loss for any privilege period  
5 ending after June 30, 2009 shall be a net operating loss carryover to  
6 each of the twenty privilege periods following the period of the loss.  
7 The entire amount of the net operating loss for any privilege period  
8 (the "loss period") shall be carried to the earliest of the privilege  
9 periods to which the loss may be carried. The portion of the loss which  
10 shall be carried to each of the other privilege periods shall be the  
11 excess, if any, of the amount of the loss over the sum of the entire net  
12 income, computed without the <sup>1</sup>~~exclusions~~ exclusion<sup>1</sup> permitted in  
13 <sup>1</sup>~~paragraphs~~ paragraph<sup>1</sup> (4) <sup>1</sup>~~and (5)~~<sup>1</sup> of this subsection or the net  
14 operating loss deduction provided by subparagraph (A) of this  
15 paragraph, for each of the prior privilege periods to which the loss may  
16 be carried.

17 (C) Net operating loss. For purposes of this paragraph the term  
18 "net operating loss" means the excess of the deductions over the gross  
19 income used in computing entire net income without the net operating  
20 loss deduction provided for in subparagraph (A) of this paragraph and  
21 the <sup>1</sup>~~exclusions in paragraphs (4) and (5)~~ exclusion in paragraph  
22 (4)<sup>1</sup> of this subsection.

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

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

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

1 the application of corporation business tax benefit certificates pursuant  
2 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

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

10 (7) The entire net income of gas, electric and gas and electric  
11 public utilities that were subject to <sup>1</sup>, or would have been subject to tax  
12 if doing business in this State,<sup>1</sup> the provisions of P.L.1940, c.5  
13 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
14 the New Jersey depreciation allowance for federal tax depreciation  
15 with respect to assets placed in service prior to January 1, 1998. For  
16 gas, electric, and gas and electric public utilities that were subject to <sup>1</sup>,  
17 or would have been subject to tax if doing business in this State,<sup>1</sup> the  
18 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, the  
19 New Jersey depreciation allowance shall be computed as follows: All  
20 depreciable assets placed in service prior to January 1, 1998 shall be  
21 considered a single asset account. The New Jersey tax basis of this  
22 depreciable asset account shall be an amount equal to the carryover  
23 adjusted basis for federal income tax purposes on December 31, 1997  
24 of all depreciable assets in service on December 31, 1997, increased  
25 by the excess, of the "net carrying value," defined to be adjusted book  
26 basis of all assets and liabilities, excluding deferred income taxes,  
27 recorded on the public utility's books of account on December 31,  
28 1997, over the carryover adjusted basis for federal income tax  
29 purposes on December 31, 1997 of all assets and liabilities owned by  
30 the gas, electric, or gas and electric public utility as of December 31,  
31 1997. "Books of account" for gas, gas and electric, and electric public  
32 utilities means the uniform system of accounts as promulgated by the  
33 Federal Energy Regulatory Commission and adopted by the Board of  
34 Public Utilities. The following adjustments to entire net income shall  
35 be made pursuant to this section:

36 (A) Depreciation for property placed in service prior to January 1,  
37 1998 shall be adjusted as follows:

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

40 (ii) A deduction shall be allowed for the New Jersey depreciation  
41 allowance. The New Jersey depreciation allowance shall be computed  
42 for the single asset account described above based on the New Jersey  
43 tax basis as adjusted above as if all assets in the single asset account  
44 were first placed in service on January 1, 1998. Depreciation shall be  
45 computed using the straight line method over a thirty-year life. A full  
46 year's depreciation shall be allowed in the initial tax year. No half-  
47 year convention shall apply. The depreciable basis of the single  
48 account shall be reduced by the adjusted federal tax basis of assets

1 sold, retired, or otherwise disposed of during any year on which gain  
2 or loss is recognized for federal income tax purposes as described in  
3 subparagraph (B) of this paragraph.

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

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

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

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

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

43 (11) No deduction shall be allowed for research and experimental  
44 expenditures, to the extent that those research and experimental  
45 expenditures are qualified research expenses or basic research  
46 payments for which an amount of credit is claimed pursuant to section  
47 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research and  
48 experimental expenditures are also used to compute a federal credit

1 claimed pursuant to section 41 of the federal Internal Revenue Code of  
2 1986, 26 U.S.C. s.41.

3 (12) (A) Notwithstanding the provisions of subsection (k) of  
4 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
5 s.168, subsection (b) of section 1400L of the federal Internal Revenue  
6 Code of 1986, 26 U.S.C. s.1400L, or any other federal law, for  
7 property acquired after September 10, 2001, the depreciation  
8 deduction otherwise allowed pursuant to section 167 of the federal  
9 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
10 pursuant to the provisions of the federal Internal Revenue Code of  
11 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001.

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

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

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

29 (14) Notwithstanding the provisions of subsection (i) of section  
30 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),  
31 for privilege periods beginning after December 31, 2008 and before  
32 January 1, 2011, entire net income shall include the amount of  
33 discharge of indebtedness income excluded for federal income tax  
34 purposes pursuant to subsection (i) of section 108 of the federal  
35 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege  
36 periods beginning on or after January 1, 2014 and before January 1,  
37 2019, entire net income shall exclude the amount of discharge of  
38 indebtedness income included for federal income tax purposes,  
39 pursuant to subsection (i) of section 108 of the federal Internal  
40 Revenue Code of 1986 (26 U.S.C. s.108).

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

45 (16.) <sup>1</sup>Entire net income shall be determined without the  
46 exclusion, exemption, deduction, or credit of any income exempt from  
47 federal taxable income under any treaty obligation of the United  
48 States, unless such exclusion, exemption, deduction, or credit is

1 explicitly made applicable to states under the express terms of a tax  
2 treaty entered into by the United States.】 (A) There shall be allowed  
3 as a deduction an amount computed in accordance with this paragraph.

4 (B) For purposes of this paragraph, "net deferred tax liability"  
5 means deferred tax liabilities that exceed the deferred tax assets of the  
6 combined group, as computed in accordance with generally accepted  
7 accounting principles, and "net deferred tax asset" means that deferred  
8 tax assets exceed the deferred tax liabilities of the combined group, as  
9 computed in accordance with generally accepted accounting  
10 principles.

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

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

23 (E) For 10 years beginning with the combined group's first  
24 privilege period beginning on or after January 1 of the fifth year after  
25 the effective date of P.L. , c. (C. ) (pending before the  
26 Legislature as this bill) becomes effective, a combined group shall be  
27 entitled to a deduction from combined group entire net income equal  
28 to one-tenth of the amount necessary to offset the increase in the net  
29 deferred tax liability or decrease in the net deferred tax asset, or  
30 aggregate change from a net deferred tax asset to a net deferred tax  
31 liability. Such increase in the net deferred tax liability or decrease in  
32 the net deferred tax asset or the aggregate change from a net deferred  
33 tax asset to a net deferred tax liability shall be computed based on the  
34 change that would result from the imposition of the unitary reporting  
35 requirements under sections 1 through 17-21 of P.L. , c. (C. )  
36 (pending before the Legislature as this bill) but for the deduction  
37 provided under this paragraph as of the effective date of this  
38 paragraph.

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

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

46 (ii) the resulting amount shall be further divided by the New Jersey  
47 unitary business allocation factor that was used by the combined group

1 in the calculation of the deferred tax assets and deferred tax liabilities  
2 as described in subparagraph (E) of this paragraph;

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

6 (G) The deduction calculated under this paragraph shall not be  
7 adjusted as a result of any events happening subsequent to such  
8 calculation, including, but not limited to, any disposition or  
9 abandonment of assets. Such deduction shall be calculated without  
10 regard to the federal tax effect and shall not alter the tax basis of any  
11 asset. If the deduction under this section is greater than combined  
12 group entire net income, any excess deduction shall be carried forward  
13 and applied as a deduction to combined group entire net income in  
14 future privilege periods until fully utilized.

15 (H) Any combined group intending to claim a deduction under this  
16 paragraph shall file a statement with the director on or before July 1 of  
17 the year subsequent to the first privilege period for which a combined  
18 return is required. Such statement shall specify the total amount of the  
19 deduction which the combined group claims on such form and in such  
20 manner as prescribed by the director. No deduction shall be allowed  
21 under this paragraph for any privilege period except to the extent  
22 claimed on such timely filed statement in accordance with this  
23 paragraph.<sup>1</sup>

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

27 (m) "Financial business corporation" shall mean any corporate  
28 enterprise which is (1) in substantial competition with the business of  
29 national banks and which (2) employs moneyed capital with the object  
30 of making profit by its use as money, through discounting and  
31 negotiating promissory notes, drafts, bills of exchange and other  
32 evidences of debt; buying and selling exchange; making of or dealing  
33 in secured or unsecured loans and discounts; dealing in securities and  
34 shares of corporate stock by purchasing and selling such securities and  
35 stock without recourse, solely upon the order and for the account of  
36 customers; or investing and reinvesting in marketable obligations  
37 evidencing indebtedness of any person, copartnership, association or  
38 corporation in the form of bonds, notes or debentures commonly  
39 known as investment securities; or dealing in or underwriting  
40 obligations of the United States, any state or any political subdivision  
41 thereof, or of a corporate instrumentality of any of them. This shall  
42 include, without limitation of the foregoing, business commonly  
43 known as industrial banks, dealers in commercial paper and  
44 acceptances, sales finance, personal finance, small loan and mortgage  
45 financing businesses, as well as any other enterprise employing  
46 moneyed capital coming into competition with the business of national  
47 banks; provided that the holding of bonds, notes, or other evidences of  
48 indebtedness by individual persons not employed or engaged in the



1 banking or investment business and representing merely personal  
2 investments not made in competition with the business of national  
3 banks, shall not be deemed financial business. Nor shall "financial  
4 business" include national banks, production credit associations  
5 organized under the Farm Credit Act of 1933 or the Farm Credit Act  
6 of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
7 insurance companies duly authorized to transact business in this State,  
8 security brokers or dealers or investment companies or bankers not  
9 employing moneyed capital coming into competition with the business  
10 of national banks, real estate investment trusts, or any of the following  
11 entities organized under the laws of this State: credit unions, savings  
12 banks, savings and loan and building and loan associations,  
13 pawnbrokers, and State banks and trust companies.

14 (n) "International banking facility" shall mean a set of asset and  
15 liability accounts segregated on the books and records of a depository  
16 institution, United States branch or agency of a foreign bank, or an  
17 Edge or Agreement Corporation that includes only international  
18 banking facility time deposits and international banking facility  
19 extensions of credit as such terms are defined in section 204.8(a)(2)  
20 and section 204.8(a)(3) of Regulation D of the board of governors of  
21 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
22 1981. In the event that the United States enacts a law, or the board of  
23 governors of the Federal Reserve System adopts a regulation which  
24 amends the present definition of international banking facility or of  
25 such facilities' time deposits or extensions of credit, the Commissioner  
26 of Banking and Insurance shall forthwith adopt regulations defining  
27 such terms in the same manner as such terms are set forth in the laws  
28 of the United States or the regulations of the board of governors of the  
29 Federal Reserve System. The regulations of the Commissioner of  
30 Banking and Insurance shall thereafter provide the applicable  
31 definitions.

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

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

40 (q) "Public Utility" means "public utility" as defined in R.S.48:2-  
41 13.

42 (r) "Qualified investment partnership" means a partnership under  
43 this act that has more than 10 members or partners with no member or  
44 partner owning more than a 50% interest in the entity and that derives  
45 at least 90% of its gross income from dividends, interest, payments  
46 with respect to securities loans, and gains from the sale or other  
47 disposition of stocks or securities or foreign currencies or commodities  
48 or other similar income (including but not limited to gains from swaps,

1 options, futures or forward contracts) derived with respect to its  
2 business of investing or trading in those stocks, securities, currencies  
3 or commodities, but "investment partnership" shall not include a  
4 "dealer in securities" within the meaning of section 1236 of the federal  
5 Internal Revenue Code of 1986, 26 U.S.C. s.1236.

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

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

11 <sup>1</sup>(u) "Prior net operating loss conversion carryover" means a net  
12 operating loss incurred in a privilege period prior to the effective date  
13 of P.L. , c. (C. ) (pending before the Legislature as this bill) and  
14 converted from a pre-allocation net operating loss to a post-allocation  
15 net operating loss as follows:

16 (1) As used in this subsection:

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

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

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

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

35 (A) The taxpayer shall first calculate the tax value of its UNOL for  
36 the base year and for each preceding privilege period for which there is  
37 a UNOL. The value of the UNOL for each privilege period is equal to  
38 the product of (I) the amount of the taxpayer's UNOL for a privilege  
39 period, and (II) the taxpayer's base year BAF. This result shall equal  
40 the taxpayer's prior net operating loss conversion carryover.

41 (B) The taxpayer shall continue to carry over its prior net operating  
42 loss conversion carryover to offset its allocated entire net income as  
43 provided in sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6  
44 through 54:10A-8) for privilege periods beginning on and after the  
45 effective date of P.L. , c. (C. ) (pending before the Legislature as  
46 this bill). Such carryover periods shall not exceed the twenty privilege  
47 periods following the privilege period of the initial loss. The entire  
48 amount of the prior net operating loss conversion carryover for any

1 privilege period shall be carried to the earliest of the privilege periods  
2 to which the loss may be carried. The portion of the prior net  
3 operating loss conversion carryover which shall be carried to each of  
4 the other privilege periods shall be the excess, if any, of the amount of  
5 the prior net operating loss conversion carryover over the sum of the  
6 entire net income, computed without the exclusion permitted in  
7 paragraph (4) of subsection (k) of this section allocated to this state.

8 (C) The prior net operating loss conversion carryover computed  
9 under this subsection shall be applied against the entire net income  
10 allocated to this State before the net operating loss carryover computed  
11 under subsection (v) of this section.

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

15 (1) Net operating loss carryover. A net operating loss for any  
16 privilege period beginning on or after the effective date of this Act  
17 shall be a net operating loss carryover to each of the twenty privilege  
18 periods following the period of the loss. The entire amount of the net  
19 operating loss for any privilege period shall be carried to the earliest of  
20 the privilege periods to which the loss may be carried. The portion of  
21 the loss which shall be carried to each of the other privilege periods  
22 shall be the excess, if any, of the amount of the loss over the sum of  
23 the entire net income, computed without the exclusion permitted in  
24 paragraph (4) of subsection (k) of this section allocated to this State.

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

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

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

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

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

10       (y) "Combinable captive insurance company" means an entity that  
11 is treated as an association taxable as a corporation under the federal  
12 Internal Revenue Code:

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

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

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

22       (4) 50% or less of whose gross receipts for the privilege period  
23 consist of premiums from arrangements that constitute insurance for  
24 federal income tax purposes.

25       For purposes of this definition:

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

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

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

44       (z) "Combined group" means the group of all companies that have  
45 common ownership and are engaged in a unitary business, where at  
46 least one company is subject to tax under this chapter, except as  
47 provided in paragraph k of section 17 of P.L. , c. (C. ) (pending  
48 before the Legislature as this bill).

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 the  
5 combined group. Whether voting control is indirectly owned shall be  
6 determined in accordance with section 318 of the federal Internal  
7 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 a  
15 taxable member, the managerial member shall be the common parent  
16 corporation. In other cases, the combined group shall select a taxable  
17 member as its managerial member or, in the discretion of the director  
18 or upon failure of the combined group to select its managerial member,  
19 the director shall designate a taxable member of the combined group  
20 as managerial member.

21        (dd) “Member” means a corporation that is a part of a combined  
22 group.

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

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

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

1 portion of a business conducted by another corporation through its  
2 direct or indirect interest in a partnership.<sup>1</sup>

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

4

5 <sup>1</sup>**[5.]** 4.<sup>1</sup> Section 5 of P.L.2002, c.40 (C.54:10A-4.4) is amended  
6 to read as follows:

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

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

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

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

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

40 "Related entity" means (1) a stockholder who is an individual, or a  
41 member of the stockholder's family enumerated in section 318 of the  
42 federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the  
43 stockholder and the members of the stockholder's family own, directly,  
44 indirectly, beneficially or constructively, in the aggregate, **[at least]**  
45 50% or more of the value of the taxpayer's outstanding stock; (2) a  
46 stockholder, or a stockholder's partnership, limited liability company,  
47 estate, trust or corporation, if the stockholder and the stockholder's  
48 partnerships, limited liability companies, estates, trusts and

1 corporations own directly, indirectly, beneficially or constructively, in  
2 the aggregate, **[at least] 50% or more** per cent of the value of the  
3 taxpayer's outstanding stock; or (3) a corporation, or a party related to  
4 the corporation in a manner that would require an attribution of stock  
5 from the corporation to the party or from the party to the corporation  
6 under the attribution rules of the federal Internal Revenue Code of  
7 1986, 26 U.S.C. s.318, if the taxpayer owns, directly, indirectly,  
8 beneficially or constructively, **[at least] 50% or more** percent of the  
9 value of the corporation's outstanding stock. The attribution rules of  
10 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, shall  
11 apply for purposes of determining whether the ownership requirements  
12 of this definition have been met.

13 b. For purposes of computing its entire net income under section  
14 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add back  
15 otherwise deductible interest expenses and costs and intangible  
16 expenses and costs directly or indirectly paid, accrued or incurred to,  
17 or in connection directly or indirectly with one or more direct or  
18 indirect transactions with, one or more related members.

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

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

44 (3) The adjustments required in subsection b. of this section shall  
45 not apply to the portion of interest expenses and costs and intangible  
46 expenses and costs that the taxpayer establishes by a preponderance of  
47 the evidence meets both of the following: (a) the related member

1 during the same income year directly or indirectly paid, received,  
2 accrued or incurred the portion to or from a person that is not a related  
3 member, and (b) the transaction giving rise to the interest expenses and  
4 costs or the intangible expenses and costs between the taxpayer and  
5 the related member did not have as a principal purpose the avoidance  
6 of any portion of the tax due under Title 54 of the Revised Statutes or  
7 Title 54A of the New Jersey Statutes.

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

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

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

18  
19 <sup>1</sup>5. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read  
20 as follows:

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

34 The amount computed pursuant to this section shall be the sum of  
35 the amount computed under subsection (a) hereof, or in the alternative  
36 to the amount computed under subsection (a) hereof, the amount  
37 computed under subsection (f) hereof, and the amount computed under  
38 subsection (c) hereof:

39 (a) That portion of its entire net worth as may be allocable to this  
40 State as provided in section 6, multiplied by the following rates: 2  
41 mills per dollar on the first \$100,000,000.00 of allocated net worth;  
42 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill  
43 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar  
44 on all amounts of allocated net worth in excess of \$300,000,000.00;  
45 provided, however, that with respect to reports covering accounting or  
46 privilege periods set forth below, the rate shall be that percentage of  
47 the rate set forth in this subsection for the appropriate year:



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

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

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

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

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

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

(ii) For a taxpayer that has entire net income in excess of \$100,000 for the privilege period, for privilege periods ending on or after July 1, 1998, but on or before June 30, 2001, the rate shall be 2%, for privilege periods ending on or after July 1, 2001, but on or before June 30, 2006, the rate shall be 1.33%, for privilege periods ending on or after July 1, 2006, but on or before June 30, 2007, the rate shall be 0.67%, and for privilege periods ending on or after July 1, 2007 there shall be no rate of tax imposed under this paragraph; and

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

6 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or  
7 (iii) of this paragraph shall be multiplied by its entire net income that  
8 is not subject to federal income taxation or such portion thereof as may  
9 be allocable to this State pursuant to sections 6 through ~~10~~ 8 of  
10 P.L.1945, c.162 (C.54:10A-6 through ~~54:10A-10~~ 54:10A-8) plus  
11 such portion thereof as is specifically assigned to this State as provided  
12 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

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

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

43 (e) The tax assessed to any taxpayer pursuant to this section shall  
44 not be less than \$25 in the case of a domestic corporation, \$50 in the  
45 case of a foreign corporation, or \$250 in the case of an investment  
46 company or regulated investment company. Provided however, that  
47 for privilege periods beginning in calendar year 1994 and thereafter  
48 the minimum taxes for taxpayers other than an investment company or

1 a regulated investment company shall be as provided in the following  
 2 schedule:

3	Period Beginning	Domestic	Foreign
4	In Calendar Year	Corporation	Corporation
5		Minimum Tax	Minimum Tax
6	1994	\$ 50	\$100
7	1995	\$100	\$200
8	1996	\$150	\$200
9	1997	\$200	\$200
10	1998	\$200	\$200
11	1999	\$200	\$200
12	2000	\$200	\$200
13	2001	\$210	\$210

14 and for calendar years 2002 through 2005 the minimum tax for all  
 15 taxpayers shall be \$500, and for calendar year 2006 through calendar  
 16 year 2011 the minimum tax for all corporations, and for privilege  
 17 periods beginning in calendar year 2012 and thereafter the minimum  
 18 tax for corporations that are not New Jersey S corporations shall be  
 19 based on the New Jersey gross receipts[, as defined for the purposes of  
 20 this section pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a),] of  
 21 the taxpayer pursuant to the following schedule:

22	New Jersey Gross Receipts:	Minimum Tax:
23	Less than \$100,000	.....\$500
24	\$100,000 or more but	
25	less than \$250,000	..... \$750
26	\$250,000 or more but	
27	less than \$500,000	..... \$1,000
28	\$500,000 or more but	
29	less than \$1,000,000	..... \$1,500
30	\$1,000,000 or more	..... \$2,000

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

37	New Jersey Gross Receipts:	Minimum Tax:
38	Less than \$100,000	.....\$375
39	\$100,000 or more but	
40	less than \$250,000	..... \$562.50
41	\$250,000 or more but	
42	less than \$500,000	..... \$750
43	\$500,000 or more but	
44	less than \$1,000,000	..... \$1,125
45	\$1,000,000 or more	..... \$1,500

46 provided however, that for a taxpayer that is a member of an affiliated  
 47 group or a controlled group pursuant to section 1504 or 1563 of the  
 48 federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, and

1 whose group has total payroll of \$5,000,000 or more for the privilege  
2 period, the minimum tax shall be \$2,000 for the privilege period.

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

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

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

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

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

25 (i) (Deleted by amendment, P.L.2008, c.120)<sup>1</sup>  
26 (cf: P.L.2011, c.84, s.1)

27

28 <sup>1</sup>6. Section 1 of P.L. 1993, c. 175 (C.54:10A-5.24) is amended to  
29 read as follows:

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

34 (1) 10% of the excess of the qualified research expenses for the  
35 privilege period over the base amount; and

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

46 b. No credit shall be allowed under section 42 of P.L.1987, c.102  
47 (C.54:10A-5.3), or under the “Manufacturing Equipment and  
48 Employment Investment Tax Credit Act,” P.L.1993, c.171 (C.54:10A-

1 5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for  
2 property or expenditures for which a credit is allowed, or which are  
3 includable in the calculation of a credit allowed, under this section.

4 The order of priority of the application of the credit allowed  
5 pursuant to this section and any other credits allowed by law shall be  
6 as prescribed by the director. Credits allowable pursuant to this  
7 section shall be applied in the order of the privilege periods for which  
8 the credits were allowed.

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

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

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

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

27 c. No provision terminating section 41 of the federal Internal  
28 Revenue Code, 26 U.S.C. s.41, shall apply.<sup>1</sup>

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

30

31 <sup>1</sup>7. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read  
32 as follows:

33 6. The portion of a taxpayer's entire net worth to be used as a  
34 measure of the tax imposed by subsection (a) of section 5 of P.L.1945,  
35 c.162 (C.54:10A-5), and the portion of its entire net income to be used  
36 as a measure of the tax imposed by subsection (c) of section 5 of  
37 P.L.1945, c.162 (C.54:10A-5), shall be determined by multiplying  
38 such entire net worth and entire net income, respectively, by an  
39 allocation factor which is the property fraction, plus twice the sales  
40 fraction plus the payroll fraction and the denominator of which is  
41 four, and which, for privilege periods beginning on or after January 1,  
42 2012, is the sum of the portions of the property fraction, the sales  
43 fraction, and the payroll fraction determined in accordance with the  
44 following schedule:

45 for privilege periods beginning on or after January 1, 2012 but  
46 before January 1, 2013, 15% of the property fraction plus 70% of the  
47 sales fraction plus 15% of the payroll fraction, for privilege periods  
48 beginning on or after January 1, 2013 but before January 1, 2014, 5%

1 of the property fraction plus 90% of the sales fraction plus 5% of the  
2 payroll fraction, and for privilege periods beginning on or after  
3 January 1, 2014, 100% of the sales fraction, except as the director may  
4 determine pursuant to section 8 of P.L.1945, c.162 (C.54:10A-8), that  
5 is:

6 (A) The property fraction is the average value of the taxpayer's real  
7 and tangible personal property within the State during the period  
8 covered by its report divided by the average value of all the taxpayer's  
9 real and tangible personal property wherever situated during such  
10 period; provided, however, that for the purpose of determining average  
11 value, the provisions with respect to depreciation as set forth in  
12 subparagraph (F) of paragraph (2) of subsection (k) of section 4 of  
13 P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving  
14 at such value.

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

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

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

25 (3) (Deleted by amendment.)

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

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

47 (6) all other business receipts (excluding dividends excluded from  
48 entire net income by paragraph (1) of subsection (k) of section 4 of

1 P.L.1945, c.162 (C.54:10A-4)) earned within the State, divided by the  
2 total amount of the taxpayer's receipts, similarly computed, arising  
3 during such period from all sales of its tangible personal property,  
4 services, rentals, royalties and all other business receipts, whether  
5 within or without the State.

6 (C) The payroll fraction is the total wages, salaries and other  
7 personal service compensation, similarly computed, during such  
8 period of officers and employees within the State divided by the total  
9 wages, salaries and other personal service compensation, similarly  
10 computed, during such period of all the taxpayer's officers and  
11 employees within and without the State.

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

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

27

28 <sup>1</sup>8. Section 26 of P.L. 2002, c. 40 (C.54:10A-6.2) is amended to  
29 read as follows:

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

39 b. For purposes of this subsection:

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

43 "Securities" has the meaning provided by paragraph (2) of  
44 subsection (c) of section 475 of the federal Internal Revenue Code of  
45 1986, 26 U.S.C. s.475;

1       “Commodities” has the meaning provided by paragraph (2) of  
2 subsection (e) of section 475 of the federal Internal Revenue Code of  
3 1986, 26 U.S.C. s.475; and

4       “Registered securities or commodities broker or dealer” means a  
5 broker or dealer registered as such by the federal Securities and  
6 Exchange Commission or the federal Commodities Futures Trading  
7 Commission.<sup>1</sup>

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

9

10       <sup>1</sup>9. Section 10 of P.L.1945, c.162 (C.54:10A-10) is amended to  
11 read as follows:

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

31       b. Where (1) any taxpayer conducts its activity or business under  
32 any agreement, arrangement or understanding in such manner as either  
33 directly or indirectly to benefit its members or stockholders, or any of  
34 them, or any person or persons directly or indirectly interested in such  
35 activity or business, by entering into any transaction at more or less  
36 than a fair price which, but for such agreement, arrangement or  
37 understanding, might have been paid or received therefor, or (2) any  
38 taxpayer, a substantial portion of whose capital stock is owned either  
39 directly or indirectly by or through another corporation, enters into any  
40 transaction with such other corporation on such terms as to create an  
41 improper loss or net income, the director may include in the entire net  
42 income of the taxpayer the fair profits which, but for such agreement,  
43 arrangement or understanding, the taxpayer might have derived from  
44 such transaction. The director may require any person or corporation  
45 to submit such information under oath or affirmation, or to permit such  
46 examination of its books, papers and documents, as may be necessary  
47 to enable the director to determine the existence, nature or extent of an  
48 agreement, understanding or arrangement to which this section relates,



1 whether or not such person or corporation is subject to the tax imposed  
2 by this act.

3 c. **【**The entire net income of a taxpayer exercising its franchise in  
4 this State that is a member of an affiliated group or a controlled group  
5 pursuant to section 1504 or 1563 of the federal Internal Revenue Code  
6 of 1986, 26 U.S.C. s.1504 or 1563, shall be determined by eliminating  
7 all payments to, or charges by, other members of the affiliated or  
8 controlled group in excess of fair compensation in all inter-group  
9 transactions of any kind. Notwithstanding the elimination of all inter-  
10 group transactions in excess of fair compensation, if the taxpayer  
11 cannot demonstrate by clear and convincing evidence that a report by a  
12 taxpayer discloses the true earnings of the taxpayer on its business  
13 carried on in this State, the director may, at the director's discretion,  
14 require the taxpayer to file a consolidated return of the entire  
15 operations of the affiliated group or controlled group, including its  
16 own operations and income to the extent permitted under the  
17 Constitution and statutes of the United States. The director shall  
18 determine the true amount of entire net income earned by the taxpayer  
19 in this State. The consolidated entire net income of the taxpayer and  
20 of the other members of its affiliated group or controlled group shall  
21 be allocated to this State by use of the applicable allocation formula  
22 that the director requires pursuant to P.L.1945, c.162 (C.54A:10A-1 et  
23 seq.) be used by the taxpayer. The return shall include in the  
24 allocation formula the property, payrolls, and sales of all corporations  
25 for which the return is made. The director may require a consolidated  
26 return under this section without regard to whether the other members  
27 of the affiliated or controlled group, other than the taxpayer, are or are  
28 not exercising their franchises in this State.

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

32 The member of an affiliated group or a controlled group shall  
33 incorporate in its return required under this section information needed  
34 to determine under this section its taxable entire net income, and shall  
35 furnish any additional information the director requires, subject to the  
36 penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.  
37 A taxpayer shall furnish any additional information requested within  
38 30 days after it is demanded, subject to the penalties of the State  
39 Uniform Tax Procedure Law, R.S.54:48-1 et seq.】 (Deleted by  
40 amendment, P.L. , c. (pending before the Legislature as this bill))<sup>1</sup>  
41 (cf: P.L.2002, c.40, s.10)

42  
43 <sup>1</sup>10. Section 14 of P.L.1945, c.162 (C.54:10A-14) is amended to  
44 read as follows:

45 (a) The director may by **【**general rule**】** regulation or by special  
46 notice require any taxpayer to submit copies or pertinent extracts of its  
47 federal income tax returns, or of any other tax return **【**made to**】** filed

1 with any agency of the federal government, or of this or any other  
2 state, or of any statement or registration made pursuant to any state or  
3 federal law pertaining to securities or securities exchange regulation.

4 (b) The director may require all taxpayers to keep such records as  
5 the director may prescribe, and the director may require the production  
6 of books, papers, documents and other data, to provide or secure  
7 information pertinent to the determination of the tax hereunder and the  
8 enforcement and collection thereof. The director may, also, by general  
9 rule or by special notice require any taxpayer to make and file  
10 information returns, under oath, of facts pertinent to the determination  
11 of the tax or liability for tax hereunder, pursuant to such regulations, at  
12 such times and in such form and manner and to such extent as the  
13 director may prescribe pursuant to law.

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

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

32

33 <sup>1</sup>~~[6.]~~ 11.<sup>1</sup> Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is  
34 amended to read as follows:

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

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

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

3       17. (a) If the period covered by the report under this act is other  
4 than the period covered by the report to the United States Treasury  
5 Department or is a period of less than 12 calendar months, the  
6 **[commissioner]** director may, under regulations prescribed by him,  
7 determine the entire net worth and entire net income of the  
8 taxpayer in such manner as shall properly reflect its entire net worth  
9 and entire net income for the period covered by its report under this  
10 act.

11       (b) Any taxpayer which shall fail to file its return when due or  
12 to pay any tax when the same becomes due, as herein provided,  
13 shall be subject to such penalties and interest as provided in the  
14 State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the  
15 Revised Statutes. The **[commissioner]** director, if satisfied that  
16 the failure to comply with any provision of this act was excusable,  
17 may abate or remit the whole or part of any penalty.

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

19

20       <sup>1</sup>**[8.]** 13.<sup>1</sup> Section 20 of P.L.1945, c.162 (C.54:10A-20) is  
21 amended to read as follows:

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

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

40

41       <sup>1</sup>**[9.]** 14.<sup>1</sup> Section 21 of P.L.1945, c.162 (C.54:10A-21) is  
42 amended to read as follows:

43       21. In the event of failure or neglect of any taxpayer which is a  
44 foreign corporation to pay the tax imposed by this chapter, on or  
45 before the first day of December in each year, immediate notice  
46 thereof may be given by the **[commissioner]** director to the  
47 Secretary of State who shall immediately revoke the certificate of

1 authority of said corporation to do business in the State of New  
2 Jersey and notice of such revocation shall be given by the Secretary  
3 of State to the corporation affected and thereafter such corporation,  
4 so far as the further transaction of business in the State of New  
5 Jersey is concerned, shall be in the same condition as if no  
6 certificate of authority had ever been issued to it by the Secretary  
7 of State, but remedies provided by this chapter for the collection of  
8 the tax and interest and penalties shall remain unimpaired. After  
9 the revocation of any such certificate of authority, no new  
10 certificate shall be issued by the Secretary of State to such  
11 defaulting corporation until the payment of all assessments  
12 imposed hereunder and remaining unpaid with penalties and  
13 interest and any costs that may have accrued, such payment to be  
14 evidenced by a certificate of the **【commissioner】** director.

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

16

17 <sup>1</sup>**【10.】** 15.<sup>1</sup> Section 28 of P.L.1945, c.162 (C.54:10A-27) is  
18 amended to read as follows:

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

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

24

25 <sup>1</sup>**【11.】** 16.<sup>1</sup> Section 29 of P.L.1945, c.162 (C.54:10A-28) is  
26 amended to read as follows:

27 29. This act shall take effect January first, one thousand nine  
28 hundred and forty-six, except that the **【commissioner】** director may  
29 prior thereto take such action as he may deem appropriate in  
30 anticipation of or in preparation for the operation of the provisions  
31 hereof, and except further that the appropriation contained herein  
32 for the reduction of the State school tax shall be first made for the  
33 fiscal year beginning July first, one thousand nine hundred and  
34 forty-six.

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

36

37 <sup>1</sup>**【12.】** 17.<sup>1</sup> Section 4 of P.L.1947, c.51 (C.54:10A-30) is  
38 amended to read as follows:

39 4. The **【Commissioner】** director upon written application made  
40 to him and upon the payment of a fee of five dollars (\$5.00), may  
41 release any property from the lien of any tax, interest or penalty  
42 imposed upon any corporation in accordance with the provisions of  
43 this act or of chapters thirteen or thirty-two-A of Title 54 of the  
44 Revised Statutes, or of any certificate, judgment or levy procured  
45 by him; provided, payment be made to the **【commissioner】**  
46 director of such sum as he shall deem adequate consideration for  
47 such release or deposit be made of such security or such bond be

1 filed as the **【commissioner】** director shall deem proper to secure  
2 payment of any debt evidenced by any such tax, interest, penalty,  
3 certificate, judgment or levy, the lien of which is sought to be  
4 released, or provided the **【commissioner】** director is satisfied that  
5 payment of the tax is otherwise provided for. The application for  
6 such release shall be in such form as shall be prescribed by the  
7 **【commissioner】** director and shall contain an accurate description  
8 of the property to be released together with such other information  
9 as the **【commissioner】** director may require. Such release shall be  
10 given under the seal of the **【commissioner】** director, and may be  
11 recorded in any office in which conveyances of real estate may be  
12 recorded.

13 (cf: P.L.1947, c.51, s.4)  
14

15 <sup>1</sup>18. (New section) A taxable member of a combined group shall  
16 determine its entire net income from the unitary business as its share of  
17 the entire net income of the combined group in accordance with a  
18 combined unitary tax return made pursuant to this section and sections  
19 19, 20, and 23 of P.L. , c. (C. ) (pending before the Legislature  
20 as this bill). The entire net income from the unitary business of a  
21 combined group is the sum of the entire net incomes of each taxable  
22 member and each nontaxable member of the combined group derived  
23 from the unitary business, which shall be determined as follows:

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

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

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

5       (2) The distributive share of income received by a limited partner  
6 from a qualified investment partnership shall not be considered to be  
7 derived from a unitary business unless the general partner of such  
8 investment partnership and such limited partner have common  
9 ownership. To the extent that the limited partner is otherwise carrying  
10 on or doing business in New Jersey, it shall allocate its distributive  
11 share of income from a qualified investment partnership in accordance  
12 with subsection a of section 3 of P.L.2001, c.136 (C.54:10A-15.6) or  
13 subsection a of section 4 of (C.54:10A-15.7) as applicable. If the  
14 limited partner is not otherwise carrying on or doing business in New  
15 Jersey, its distributive share of income from an investment partnership  
16 is not subject to tax under this chapter.

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

19       e. Except as otherwise provided by regulation, business income  
20 from an intercompany transaction among members of the same  
21 combined group shall be deferred in a manner similar to the deferral  
22 under 26 C.F.R. s.1.1502-13, as determined by the director. Upon the  
23 occurrence of either of the events set forth in subparagraphs (1) and (2)  
24 of this subsection, deferred income resulting from an intercompany  
25 transaction among members of a combined group shall be restored to  
26 the income of the seller and shall be included in the net income of the  
27 combined group as if the seller had earned the income immediately  
28 before the event:

29       (1) The object of a deferred intercompany transaction is: (a) resold  
30 by the buyer to an entity that is not a member of the combined group,  
31 (b) resold by the buyer to an entity that is a member of the combined  
32 group for use outside the unitary business in which the buyer and seller  
33 are engaged, or (c) converted by the buyer to a use outside the unitary  
34 business in which the buyer and seller are engaged; or

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

40       f. A charitable expense incurred by a member of a combined  
41 group shall, to the extent allowable as a deduction pursuant to section  
42 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, be  
43 subtracted first from the combined group's entire net income, subject  
44 to the income limitations of that section applied to the entire business  
45 income of the group. A charitable deduction disallowed under section  
46 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, but  
47 allowed as a carryover deduction in a subsequent privilege period,  
48 shall be treated as originally incurred in the subsequent year by the

1 same member and the provisions of this section shall apply in the  
2 subsequent privilege period in determining the allowable deduction for  
3 that privilege period.

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

8 (1) Such prior net operating loss conversion carryover deduction  
9 shall be allowed to offset only the entire net income allocated to this  
10 state of the corporation that created the prior net operating loss; the  
11 prior net operating loss conversion carryover cannot be shared with  
12 other members of the combined group.

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

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

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

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

39 (2) Where a taxable member of a combined group has a net  
40 operating loss carryover derived from a loss incurred by a combined  
41 group in a privilege period beginning on or after the first day of the  
42 initial privilege period for which a combined unitary tax return is  
43 required under this section and sections 19, 20, and 23 of P.L. , c.  
44 (C. ) (pending before the Legislature as this bill), then the taxable  
45 member may share the net operating loss carryover with other taxable  
46 members of the combined group if such other taxable members were  
47 members of the combined group in the privilege period that the loss  
48 was incurred. Any amount of net operating loss carryover that is

1 deducted by another taxable member of the combined group shall  
2 reduce the amount of net operating loss carryover that may be carried  
3 over by the taxable member that originally incurred the loss.

4 (3) Where a taxable member of a combined group has a net  
5 operating loss carryover derived from a loss incurred in a privilege  
6 period during which the taxable member was not a member of such  
7 combined group, the carryover shall remain available to be deducted  
8 by that taxable member or other group members that, in the year the  
9 loss was incurred, were part of the same combined group as such  
10 taxable member. Such carryover shall not be deductible by any other  
11 members of the combined group.

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

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

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

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

42 (3) If a taxable member of a combined group has a tax credit  
43 carryover derived from a privilege period during which the taxable  
44 member was not a member of such combined group, the credit  
45 carryover shall remain available to be utilized by such taxable member  
46 or other group members.

47 (4) To the extent a taxable member has more than one corporation  
48 business tax credit that it may utilize in a privilege period, whether



1 such credits were earned by said member or are available to said  
2 member in accordance with paragraphs (1), (2) and (3) of this  
3 subsection, the order of priority of the application of the credits shall  
4 be as prescribed by the director.

5 j. An expense of a member of the combined group that is directly  
6 or indirectly attributable to the income of any member of the combined  
7 group, which income this State is prohibited from taxing pursuant to  
8 the laws or Constitution of the United States, shall be disallowed as a  
9 deduction for purposes of determining the combined group's entire net  
10 income.

11 k. Nothing in this section shall apply to:

12 (1) A corporation or combined group which is licensed, in whole  
13 or in part, as an insurance company under the laws of this State or of  
14 another state, including corporations which are surplus lines insurers  
15 declared eligible by the Commissioner of Banking and Insurance  
16 pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks  
17 within this State that is not a combinable captive insurance company.  
18 Notwithstanding a provision, if any, to the contrary in this section, the  
19 income of an insurance company that is not a combinable captive  
20 insurance company, the allocation or apportionment of income related  
21 thereto and the apportionment factors of an insurance company that is  
22 not a combinable captive insurance company shall not be included in a  
23 combined unitary tax return filed under this section and sections 19,  
24 20, and 23 of P.L. , c. (C. ) (pending before the Legislature as  
25 this bill). In addition, the dividend exclusion provisions of paragraph  
26 (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4)  
27 relating to dividends paid by insurance companies to non-insurance  
28 companies included in the unitary group shall not be affected by P.L. ,  
29 c. (C. ) (pending before the Legislature as this bill).

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

34 l. The director shall promulgate rules and regulations necessary to  
35 carry out the provisions of this section.<sup>1</sup>

36  
37 <sup>1</sup>19. (New section) A taxable member of a combined group shall  
38 determine its allocation factor for determining its share of the entire  
39 net income of the combined group, as determined pursuant to the  
40 provisions of section 18 of P.L. , c. (C. ) (pending before the  
41 Legislature as this bill), pursuant to sections 6 through 8 of P.L.1945,  
42 c.162 (C.54:10A-6 through 54:10A-8); provided however:

43 a. In computing its denominator for the sales fraction, the taxable  
44 member shall use the combined group's denominator for that fraction.  
45 In computing the numerator of its sales fraction, each taxable member  
46 shall be treated as a separate taxpayer and that taxable member's  
47 numerator will include only that taxable member's receipts assignable  
48 to this state.

1        b. All business income of a combined group engaged in the  
2 transportation of freight by air or ground shall be apportioned to this  
3 state by multiplying the income by a fraction, the numerator of which  
4 is the ton miles traveled by the combined group's mobile assets in this  
5 State by type of mobile asset and the denominator of which is the total  
6 ton miles traveled by the combined group's mobile assets everywhere.  
7 This section applies, if 50 per cent or more of the combined group's  
8 entire net income is derived from the transportation of freight by air or  
9 ground.

10        c. In determining the numerator and denominator of the allocation  
11 factors of taxable members, transactions between or among members  
12 of the combined group shall be eliminated.

13        d. The director shall promulgate rules and regulations necessary to  
14 carry out the provisions of this section.<sup>1</sup>

15  
16        <sup>1</sup>20. (New section) a. A combined group shall file a combined  
17 unitary tax return under this section in the form and manner prescribed  
18 by the director. The managerial member of the combined group shall  
19 file the combined unitary tax return on behalf of the taxable members  
20 of the combined group and shall pay the tax on behalf of such taxable  
21 members. The managerial member is authorized to file taxable  
22 member returns, file taxable member extensions for filing, pay taxable  
23 member liabilities, receive taxable member findings, assessments, and  
24 notices, make and receive taxable member claims, or file taxable  
25 member protests and appeals.

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

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

43        d. If a combined group is eligible to select the managerial  
44 member of the combined group, notice of the selection shall be  
45 submitted in written form to the director not later than the due date, or,  
46 if an extension of time to file has been requested and granted, not later  
47 than the extended due date of the combined unitary tax return for the  
48 initial privilege period for which such return is required. The

1 subsequent selection of another designated taxable member shall be  
2 subject to the approval of the director.

3 e. For purposes of this section:

4 (1) Any notice shall be sent to the managerial member of the  
5 combined group at the last known address of the managerial member  
6 as indicated on either the last filing required or made under this  
7 Chapter or a subsequent electronic or written notice provided by the  
8 managerial member under rules prescribed by the director;

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

16 f. The director shall promulgate rules and regulations necessary to  
17 carry out the provisions of this section.<sup>1</sup>

18  
19 <sup>1</sup>21. (New section) A combined group filing a combined return  
20 that has any outstanding alternative minimum assessment credit or  
21 credits at the time of the effective date of the repeal of section 7 of  
22 P.L.2002, c.40 (C.54:10A-5a) shall be allowed to use the credit to  
23 offset the combined group's net deferred tax liability resulting from  
24 the transition to a mandatory unitary combined return. For purposes of  
25 this section, "net deferred tax liability" shall mean the net increase, if  
26 any, in deferred tax liabilities minus the net increase, if any, in  
27 deferred tax assets of the combined group, as computed in accordance  
28 with generally accepted accounting principles, that is the result of the  
29 transition from filing separate returns to filing a mandatory unitary  
30 combined return. The remaining balance of the credit carryovers of  
31 members of the combined group from prior to the effective date of the  
32 repeal of section 7 of P.L.2002, c.40 (C.54:10A-5a) shall not reduce  
33 the combined tax liability below 50% of the tax owed by the group.  
34 The remaining balance of the credit may be carried over until used by  
35 the combined group<sup>1</sup>

36  
37 <sup>1</sup>22. (New section) a. Determination of Managerial Member. If  
38 the combined group has a common parent corporation within the  
39 meaning of the Corporation Business Tax Act (1945), P.L.1945, c.162  
40 (C.54:10A-1 et seq.), and that common parent corporation is a taxable  
41 member of the corporate group, the managerial member shall be the  
42 common parent corporation. In other cases, the combined group shall  
43 select a taxable member as its managerial member or, in the discretion  
44 of the director or upon failure of the combined group to select its  
45 managerial member, the director shall designate a taxable member of  
46 the combined group as managerial member. Once the election of the  
47 managerial member is made, the election shall be binding for 10

1 successive privilege periods, except as otherwise provided for by the  
2 director.

3 b. A combined group shall file a mandatory combined return  
4 under this section in the form and manner prescribed by the director.  
5 The managerial member of the combined group shall file the  
6 mandatory combined return on behalf of the taxable members of the  
7 combined group. The managerial member shall be required to file  
8 taxable member returns; file taxable member extensions for filing tax  
9 returns and other documents with the director; pay taxable member  
10 liabilities; receive taxable member findings, assessments, and notices;  
11 make and receive taxable member claims, or file taxable member  
12 protests and appeals; and shall be the responsible party liable for filing  
13 and paying the tax on behalf of the combined group.

14 c. The privilege period for the combined group is the privilege  
15 period of the managerial member. If a member of a combined group  
16 has a different fiscal or calendar accounting period from the combined  
17 group's privilege period, that member with a different period shall  
18 report amounts from its return for its fiscal or calendar accounting year  
19 that ends during the group privilege period.

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

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

35 f. The director is authorized to promulgate regulations with  
36 regards to installment payments, estimated payments, overpayments,  
37 refunds and any other filing or payment matters related to combined  
38 groups filing combined returns.

39 g. For privilege periods beginning on and after January 1, 2019 a  
40 combined group must file a mandatory combined return. However, if  
41 privilege periods of the members of the combined group differ, the  
42 first mandatory combined return for the combined group shall be  
43 required for the privilege period of the managerial member.

44 h. The members of a combined group shall notify the director  
45 within 90 days of a change in the combined group where a member  
46 dissolves, a merger of any kind occurs, a member withdraws from the  
47 group, a member ceases doing business, a member of the group is

1 acquired by a third party not in the group, or additional members enter  
2 group which are required to be included.

3 i. Any notice shall be sent to the managerial member of the  
4 combined group at the last known address of the managerial member  
5 as indicated on either the last filing required or made under this  
6 Chapter or a subsequent electronic or written notice provided by the  
7 managerial member under rules prescribed by the director.

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

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

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

13 (3) require any payment to be made by electronic funds transfer;  
14 and

15 (4) require the mandatory combined return to be filed  
16 electronically.<sup>1</sup>

17  
18 <sup>1</sup>23. (New section) a. The managerial member of a combined  
19 group may elect to have the combined group determined on a world-  
20 wide basis or an affiliated group basis. If no such election is made, the  
21 combined group shall be determined on a water's-edge basis and will  
22 take into account the incomes and allocation factors of only the  
23 following members of the combined group:

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

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

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

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

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

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

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

12 d. The director shall promulgate rules and regulations necessary to  
13 carry out the provisions of this section.<sup>1</sup>

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

35  
36 <sup>1</sup>25. Section 27 of P.L.2002, c.40 (C.54:10A-4.5) is amended as  
37 follows:

38 27. a. Notwithstanding any provision of subsection (k) of section  
39 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal Revenue  
40 Code, including but not limited to 26 U.S.C. s.381 or any successor or  
41 equivalent provision, that permits a corporation to use the net  
42 operating losses of another for federal income tax purposes following  
43 certain transactions, including but not limited to those qualifying as  
44 reorganizations under the provisions of subparagraph (A), (C), (D), (F)  
45 or (G) of paragraph (1) of subsection (a) of section 368 of the federal  
46 Internal Revenue Code, 26 U.S.C. s.368, a net operating loss for a  
47 privilege period ending after June 30, 1984, may be carried over and  
48 allowed as a deduction only by the corporation that sustained the loss;

1 provided, however, that in the case of a merger of two or more  
2 corporations pursuant to statute of this State or any other jurisdiction,  
3 the net operating loss may be carried over only by the corporation that  
4 sustained the loss and that is also the surviving corporation following  
5 the merger. The net operating loss may not be carried over by a  
6 taxpayer that changes its state of incorporation. **【No net operating loss  
7 shall be allowed as a deduction by a corporation resulting from a  
8 consolidation pursuant to statute of this State or of any other  
9 jurisdiction.】**

10 b. Subsection a. of this section shall not apply between members  
11 of a combined group reported on a combined return in New Jersey, or  
12 between members of a commonly owned group reported on the  
13 elective combined return in New Jersey.<sup>1</sup>

14 (cf: P.L.2002, c.40, s.27).  
15

16 <sup>1</sup>26. N.J.S.54A:5-1 is amended to read as follows:

17 54A:5-1. New Jersey Gross Income Defined. New Jersey gross  
18 income shall consist of the following categories of income:

19 a. Salaries, wages, tips, fees, commissions, bonuses, and other  
20 remuneration received for services rendered whether in cash or in  
21 property, and amounts paid or distributed, or deemed paid or  
22 distributed, out of a medical savings account that are not excluded  
23 from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-  
24 27).

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

31 (1) taxes based on income;

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

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

7 c. Net gains or income from disposition of property. Net gains or  
8 net income, less net losses, derived from the sale, exchange or other  
9 disposition of property, including real or personal, whether tangible or  
10 intangible as determined in accordance with the method of accounting  
11 allowed for federal income tax purposes. For the purpose of  
12 determining gain or loss, the basis of property shall be the adjusted  
13 basis used for federal income tax purposes, except as expressly  
14 provided for under this act, but without a deduction for penalties, fines,  
15 or economic benefits excepted pursuant to paragraph (2), or for treble  
16 damages excepted pursuant to paragraph (3) of subsection b. of this  
17 section.

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

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

38 The term "net gains or income" shall not include gains or income  
39 derived from obligations which are referred to in clause (1) or (2) of  
40 N.J.S.54A:6-14 of this act or from securities which evidence  
41 ownership in a qualified investment fund as defined in section 2 of  
42 P.L.1987, c.310 (C.54A:6-14.1). **【The term "net gains or income"**  
43 **shall not include gains or income derived from the sale or assignment**  
44 **of a tax credit transfer certificate pursuant to section 7 of P.L.2011,**  
45 **c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).】**  
46 The term "net gains or net income" shall not include gains or income  
47 from transactions to the extent to which nonrecognition is allowed for  
48 federal income tax purposes. The term "sale, exchange or other



1 disposition” shall not include the exchange of stock or securities in a  
2 corporation a party to a reorganization in pursuance of a plan of  
3 reorganization, solely for stock or securities in such corporation or in  
4 another corporation a party to the reorganization and the transfer of  
5 property to a corporation by one or more persons solely in exchange  
6 for stock or securities in such corporation if immediately after the  
7 exchange such person or persons are in control of the corporation. For  
8 purposes of this clause, stock or securities issued for services shall not  
9 be considered as issued in return for property.

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

11 (i) A statutory merger or consolidation;

12 (ii) The acquisition by one corporation, in exchange solely for all  
13 or part of its voting stock (or in exchange solely for all or a part of the  
14 voting stock of a corporation which is in control of the acquiring  
15 corporation) of stock of another corporation if, immediately after the  
16 acquisition, the acquiring corporation has control of such other  
17 corporation (whether or not such acquiring corporation had control  
18 immediately before the acquisition);

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

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

33 (v) A recapitalization;

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

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

45 (viii) A transaction otherwise qualifying under subclause (i) shall  
46 not be disqualified by reason of the fact that stock of a corporation  
47 (referred to in this subclause as the “controlling corporation”) which  
48 before the merger was in control of the merged corporation is used in

1 the transaction, if after the transaction, the corporation surviving the  
2 merger holds substantially all of its properties and of the properties of  
3 the merged corporation (other than stock of the controlling corporation  
4 distributed in the transaction); and in the transaction, former  
5 shareholders of the surviving corporation exchanged, for an amount of  
6 voting stock of the controlling corporation, an amount of stock in the  
7 surviving corporation which constitutes control of such corporation.

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

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

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

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

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

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

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

40 g. Gambling winnings.

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

42 i. Income in respect of a decedent.

43 j. Amounts distributed or withdrawn from an employee trust  
44 attributable to contributions to the trust which were excluded from  
45 gross income under the provisions of chapter 6 of Title 54A of the  
46 New Jersey Statutes, amounts rolled over from an IRA, as defined  
47 pursuant to subsection (a) of section 408 of the federal Internal  
48 Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as

1 defined pursuant to subsection b. of section 2 of P.L.1998,c.57  
2 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and annuities  
3 except to the extent of exclusions in N.J.S.54A:6-10 hereunder,  
4 notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140,  
5 s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944,  
6 c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45),  
7 R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310,  
8 s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,  
9 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13  
10 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

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

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

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

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

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

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

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

31

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

34 2. Notwithstanding the provisions of N.J.S.54A:5-1, if any, or  
35 any other law to the contrary, for the purposes of determining the  
36 amount of a category of income pursuant to N.J.S.54A:5-1 that is  
37 net of expenses, no amounts shall be taken as a deduction pursuant  
38 to section 199 of the federal Internal Revenue Code of 1986, 26  
39 U.S.C. s.199, and the deduction of any amounts pursuant to section  
40 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199  
41 shall be disallowed except that this disallowance shall not apply to  
42 amounts deducted pursuant to section 199 of the federal Internal  
43 Revenue Code of 1986 that are exclusively based upon domestic  
44 production gross receipts of the taxpayer or allocable to the  
45 taxpayer under that section which are derived only from any lease,  
46 rental, license, sale, exchange, or other disposition of qualifying  
47 production property which the taxpayer shall demonstrate to the

1 satisfaction of the director was manufactured or produced by the  
2 taxpayer in whole or in significant part within the United States but  
3 not qualified production property that was grown or extracted by  
4 the taxpayer. "Manufactured or produced" as used in this paragraph  
5 shall be limited to performance of an operation or series of  
6 operations the object of which is to place items of tangible personal  
7 property in a form, composition, or character different from that in  
8 which they were acquired. The change in form, composition, or  
9 character shall be a substantial change, and result in a  
10 transformation of property into a different or substantially more  
11 usable product.

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

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

20

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

33

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

44

45 <sup>1</sup>30. Section 12 of P.L.2011, c.25 (C.17:47B-12) is amended to  
46 read as follows:

47 12. a. Each captive insurance company that is not a combinable  
48 captive insurance company as defined by section 18 of P.L. , c.

1 (C. ) (pending before the Legislature as this bill) shall pay to the  
2 Director of the Division of Taxation in the Department of the  
3 Treasury, on or before March 1 of each year, a tax at the rate of .38 of  
4 one percent on the first \$20,000,000 and .285 of one percent on the  
5 next \$20,000,000 and .19 of one percent on the next \$20,000,000 and  
6 .072 of one percent on each dollar thereafter on the direct premiums  
7 collected or contracted for on policies or contracts of insurance written  
8 by the captive insurance company during the year ending December 31  
9 next preceding, after deducting from the direct premiums subject to the  
10 tax the amounts paid to policyholders as return premiums, which shall  
11 include dividends on unabsorbed premiums or premium deposits  
12 returned or credited to policyholders; except that no tax shall be due or  
13 payable as to considerations received for annuity contracts.

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

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

42 d. (1) A captive insurance company that is not a combinable  
43 captive insurance company as defined by section 18 of P.L. , c.  
44 (C. ) (pending before the Legislature as this bill) shall, on or before  
45 March 1 of each year, file with the commissioner an annual tax return,  
46 signed and sworn to by an officer of the company, or by its United  
47 States manager, if a company of a foreign country, in the form and

1 containing matters as may be necessary for carrying out the provisions  
2 of this section.

3 (2) A captive insurance company that is not a combinable captive  
4 insurance company as defined by section 18 of P.L. , c. (C. )  
5 (pending before the Legislature as this bill) shall pay the balance of  
6 any tax due under this section based on the company's business during  
7 the preceding calendar year and make an installment payment in an  
8 amount equal to one-half of the tax payable under this section on the  
9 company's business done during the preceding calendar year.

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

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

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

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

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

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

34 h. The tax provided for by this section shall be calculated on an  
35 annual basis, notwithstanding policies or contracts of insurance or  
36 contracts of reinsurance issued on a multiyear basis. In the case of  
37 multiyear policies or contracts, the premium shall be prorated for  
38 purposes of determining the tax under this section.

39 i. The tax provided for by this section shall only apply to the  
40 branch business of a branch captive insurance company that is not a  
41 combinable captive insurance company as defined by section 18 of  
42 P.L. , c. (C. ) (pending before the Legislature as this bill).<sup>1</sup>  
43 (cf: P.L.2011, c.25, s.12)

44  
45 <sup>1</sup>31. Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is amended to  
46 read as follows:

47 49. Every domestic or foreign corporation subject to the tax or to  
48 filing requirements imposed under the Corporation Business Tax Act

1 (1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), shall keep all records  
2 used to determine its tax liability and such other records as the  
3 Director of the Division of Taxation may by regulation require. The  
4 records shall be available for inspection and examination at any time  
5 upon demand by the director or his duly authorized agent or employee  
6 and shall be preserved for a period of five years, except that the  
7 director may consent to their destruction within that period or may  
8 require that they be kept longer.<sup>1</sup>

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

10

11 <sup>1</sup>32. Section 30 of P.L.2002, c.40 (C.54:10A-18.1) and section 7  
12 of P.L.2002, c.40 (C.54:10A-5a) are repealed.<sup>1</sup>

13

14 <sup>1</sup>[16.] 33.<sup>1</sup> This act shall take effect immediately <sup>1</sup>[. Sections 2  
15 and 3 shall apply retroactively to tax years beginning on and after  
16 January 1, 2017, and section 3 shall expire on December 31, 2019.  
17 The remaining sections shall apply to tax years beginning on and after  
18 January 1, 2018.] but section 1 shall be effective for tax years  
19 beginning on and after January 1, 2018, sections 2 and 3 are  
20 retroactive to January 1, 2017, and the remaining sections shall apply  
21 to tax years beginning on and after January 1, 2018, provided however  
22 that the provisions of this act related to combined reporting and market  
23 based sourcing shall apply to tax years beginning on and after January  
24 1, 2019. Section 35 shall be effective for tax years beginning on and  
25 after January 1, 2019.<sup>1</sup>

26

27

28

29

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