SENATE, No. 786

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 7/2/2018)

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

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

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

"Combinable captive insurance company" means an entity that is treated as an association taxable as a corporation under the federal Internal Revenue Code:

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

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

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

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

"Combined group" means the group of corporations that are engaged in a unitary business.

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

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

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

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

"Member" means a corporation that is a part of a combined group.

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

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

"Tax haven" means a jurisdiction that, during the privilege period, has no or only nominal effective tax on relevant income and:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Gain or loss from the sale or exchange of capital assets, property described by paragraph (3) of subsection (a) of section 1231 of the federal Internal Revenue Code (26 U.S.C. s.1231) and property subject to an involuntary conversion shall be removed from the net income of each member of a combined group and shall be included in the combined group's net income as follows:

(1) For each class of gain or loss, whether short-term capital, long-term capital, gain or loss described in section 1231 of the federal Internal Revenue Code (26 U.S.C. s.1231), or gain or loss from involuntary conversions, all members' business gain and loss for the class shall be combined, without netting among such classes, and each class of net business gain or loss shall be apportioned to each member using the member's allocation factor determined pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill).

(2) Any resulting income or loss apportioned to this State, as long as the loss is not subject to the limitations of section 1211 of the federal Internal Revenue Code (26 U.S.C. s.1211), of a taxable member produced by the application of paragraph (1) of this subsection shall then be applied to all other income or loss of that member apportioned to this State. Any resulting loss of a member apportioned to this State that is subject to the limitations of section 1211 of the federal Internal Revenue Code (26 U.S.C. s.1211) shall be carried forward by that member and shall be treated as short-term capital loss apportioned to this State and incurred by that member for the year for which the carryover applies.

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

i. Nothing in this section shall apply to a corporation or combined group which is licensed, in whole or in part, as an insurance company under the laws of this State or of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Banking and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks within this State that is not a combinable captive insurance company. Notwithstanding a provision, if any, to the contrary in this section, the income of an insurance company that is not a combinable captive insurance company, the allocation or apportionment of income related thereto and the apportionment factors of an insurance company that is not a combinable captive insurance company shall not be included in a combined report filed under this section and section 3 of P.L. , c. (C.) (pending before the Legislature as this bill). In addition, the dividend exclusion provisions of paragraph (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating to dividends paid by insurance companies to non-insurance companies included in the unitary group shall not be affected by this P.L. , c. (C.) (pending before the Legislature as this bill).

3. (New section) A taxable member of a combined group shall determine its allocation factor for determining its share of the income of the combined group, as determined pursuant to the provisions of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6); provided however:

a. In computing its denominator for the sales fraction, the taxable member shall use the combined group's denominator for that fraction. In computing the numerator of its sales fraction, each taxable member shall include in its numerator its share of sales of nontaxable members assigned to this State, as provided in subsection b. of this section.

b. Sales assignable to this State of each nontaxable member, determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6) as if it were a taxable member, shall be aggregated. Each taxable member of the combined group shall include in the numerator of its sales fraction a portion of the aggregate receipts assignable to this State of nontaxable members based on a ratio, the numerator of which is that taxable member's sales assigned to this State, without regard to this subsection, and the denominator of which is the aggregate receipts assignable to this State of all the taxable members of the combined group, without regard to this subsection.

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

4. (New section) a. The managerial member of a combined group may elect to have the combined group determined on a "water's edge" basis. If the election is made, each taxable member shall determine its share of the allocated income of the combined group on a water's edge basis under which each member shall take into account the incomes and allocation factors of only the following members of the combined group:

(1) each member incorporated in the United States, or formed under the laws of the United States or any state;

(2) each member, wherever incorporated or formed, if 20 percent or more of its sales fraction during the privilege period are assigned to the United States;

(3) each member that is doing business in a jurisdiction that is determined by the director to be a tax haven for the privilege period, unless the member is incorporated in a tax haven for a legitimate business purpose; and

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

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

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

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

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

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

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

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

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

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

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

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

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

3/10 of a mill per dollar on the third $100,000,000.00; and 2/10 of a mill per dollar on all amounts of allocated net worth in excess of $300,000,000.00; provided, however, that with respect to reports covering accounting or privilege periods set forth below, the rate shall be that percentage of 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 <u>that is not entire net income from a unitary business reported on a combined return</u> or such portion thereof as may be allocable to this State as provided in section 6 of P.L.1945, c.162 (C.54:10A-6)<u>, plus its allocated share of entire net income from a unitary business determined as provided by sections 2 and 3 of P.L. , c. (C. and)(pending before the Legislature as this bill),</u> 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%.

(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

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

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

(3) For a taxpayer that is a New Jersey S corporation, in addition to the amount, if any, determined under paragraph (2) of this subsection, 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 multiplied by its entire net income that is subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-10).

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

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

however, that for privilege periods beginning in calendar year 1994 and thereafter the minimum taxes for taxpayers other than an investment company or a regulated investment company shall be as provided in the following schedule:

Period Beginning In Calendar Year	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
1994	$ 50	$100
1995	$100	$200
1996	$150	$200
1997	$200	$200
1998	$200	$200
1999	$200	$200
2000	$200	$200
2001	$210	$210

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

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	.....$500
$100,000 or more but less than $250,000	..... $750
$250,000 or more but less than $500,000	..... $1,000
$500,000 or more but less than $1,000,000	..... $1,500
$1,000,000 or more	..... $2,000

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

New Jersey Gross Receipts:	Minimum Tax:
Less than $100,000	.....$375
$100,000 or more but less than $250,000	..... $562.50
$250,000 or more but less than $500,000	..... $750
$500,000 or more but less than $1,000,000	..... $1,125
$1,000,000 or more	..... $1,500

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(cf: P.L.2002, c.40, s.10)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT

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

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

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

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

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

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

The combined return is based on the inclusion of the income of both "taxable members" and "nontaxable members" of the combined group. Insurance companies are already excluded from both the definition of "taxable member" and "nontaxable member," but this amendment clarifies that the income of an insurance company is excluded from all aspects of the corporation business tax combined return.