

SENATE, No. 3243

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED DECEMBER 3, 2018

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Provides for “throwback” rule in calculation of CBT allocation factor and makes net deferred tax impact deduction contingent on fiscal analysis.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the corporation business tax, amending
2 P.L.1945, c.162.

3

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

6

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

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (D) (i) Beginning with the January 1 next following the effective
34 date of P.L.2018, c.48 (C.54:10A-5.41 et al.), and ending on the
35 January 1 of the fifth year next following the effective date of
36 P.L.2018, c.48 (C.54:10A-5.41 et al.), the Department of the
37 Treasury shall annual estimate and publish the amount of revenue
38 the State would forego had the deduction provided by this
39 paragraph been available to be claimed by taxpayers for privilege
40 periods ending in the calendar year. In determining this amount,
41 and based on the increased net deferred tax liabilities, decreased net
42 deferred tax assets, and changes from net deferred tax assets to net
43 deferred tax liabilities of taxpayers, the Department of the Treasury
44 shall assume that each taxpayer, which would have been eligible to
45 claim the deduction had it been available in the privilege period,
46 claims the full amount as determined pursuant to this paragraph.
47 The information determined pursuant to this subparagraph shall

1 be annually published in the New Jersey Tax Expenditure Report,
2 or the successor thereto.

3 (ii) Beginning with the January 1 next following the effective
4 date of P.L.2018, c.48 (C.54:10A-5.41 et al.), and ending on the
5 January 1 of the fifth year next following the effective date of
6 P.L.2018, c.48 (C.54:10A-5.41 et al.), the Department of the
7 Treasury shall annual determine and publish the pro rata shares of
8 the aggregate amount of the deduction that would have been
9 claimed in the calendar year, as determined pursuant to
10 subsubparagraph (i) of this subparagraph, for each of the top five
11 and top 10 taxpayers that would have received the deduction. For
12 the same period, the Department of the Treasury shall also
13 determine and publish the number of taxpayers that would receive
14 top 50 percent and top 75 percent of the aggregate amount of the
15 deduction that would have been claimed in the calendar year. For
16 purposes of this subsubparagraph, “top five” and “top 10” mean the
17 taxpayers that would have received the largest amount of the
18 deduction, and in determining “top 50 percent” and “top 75
19 percent,” the taxpayers receiving the largest amount of the
20 deduction shall be included in the determination first.

21 (iii) No later than the January 1 of the fourth year following the
22 effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), the
23 Department of the Treasury shall conduct a general assessment of
24 the effect of combined reporting and market based sourcing in the
25 State, pursuant to P.L.2018, c.48 (C.54:10A-5.41 et al.), on the net
26 deferred tax liabilities and net deferred tax assets of companies that
27 owe and pay the tax imposed by the Corporation Business Tax Act
28 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.). This assessment shall
29 examine whether the provisions of sections 18 through 23 of
30 P.L.2018, c.48 (C.54:10A-4.6 to C.54:10A-4.11) have, in aggregate,
31 materially resulted in increased net deferred tax liabilities,
32 decreased net deferred tax assets, or changes from net deferred tax
33 assets to net deferred tax liabilities.

34 Subsequent to the publication of the assessment, but prior to
35 reaching a determination on the availability of the deduction
36 permitted pursuant to this paragraph, the Department of the
37 Treasury shall also hold at least one public hearing that provides
38 taxpayers, stakeholders, and members of the public an opportunity
39 to comment on whether the deduction should be made available.
40 The hearing may be held in any part of the State, and the director
41 shall determine the format of the hearing and the procedure for
42 submitting testimony, including but not limited to an option to
43 submit written testimony. Notice of the date, time, and location of
44 the hearing shall be published on the Internet website of the
45 Department of the Treasury, as well as in any newspaper or
46 publication deemed appropriate by the director.

1 Based on the assessment and all public hearings conducted
2 pursuant to this subparagraph, the State Treasurer shall
3 determine whether the deduction shall be generally available.

4 If the State Treasurer determines that the deduction shall be
5 available, then a combined group may qualify for and claim a
6 deduction pursuant to this paragraph; if the State Treasurer
7 determines that the deduction shall not be available, then no
8 taxpayer shall be allowed to claim a deduction pursuant to this
9 paragraph.

10 (iv) If the State Treasurer determines pursuant to this
11 subparagraph that the deduction shall be available, then a combined
12 group for which the provisions of sections 18 through 23 of
13 P.L.2018, c.48 (C.54:10A-4.6 to C.54:10A-4.11) [result] have
14 resulted in an aggregate increase to the members' net deferred tax
15 liability or an aggregate decrease to the members' net deferred tax
16 asset, or an aggregate change from a net deferred tax asset to a net
17 deferred tax liability, [the combined group] shall be [entitled]
18 allowed to claim a deduction, as determined in this paragraph.

19 (E) **[For]** Upon the State Treasurer's determination that the
20 deduction shall be available, for 10 years beginning with the
21 combined group's first privilege period beginning on or after
22 January 1 of the fifth year after the effective date of P.L.2018, c.48
23 (**[C.54:10A-54.1]** C.54:10A-5.41 et al.), a combined group shall be
24 **[entitled]** allowed to claim a deduction from combined group entire
25 net income equal to one-tenth of the amount necessary to offset the
26 increase in the net deferred tax liability or decrease in the net
27 deferred tax asset, or aggregate change from a net deferred tax asset
28 to a net deferred tax liability. Such increase in the net deferred tax
29 liability or decrease in the net deferred tax asset or the aggregate
30 change from a net deferred tax asset to a net deferred tax liability
31 shall be computed based on the change that would result from the
32 imposition of the unitary reporting requirements under sections 1
33 and 18 through 23 of P.L.2018, c.48 (**[C.54:10A-54.1]** et al.)
34 C.54:10A-4.6 to 54:10A-4.11) but for the deduction provided under
35 this paragraph as of the effective date of this paragraph.

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

39 (i) the deferred tax impact determined in subparagraph (E) of
40 this paragraph shall be divided by the rate determined under section
41 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
42 c.48 (**[C.54:10A-54.1]** C.54:10A-5.41 et al.);

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

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

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

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

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

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

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

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

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

36 (p) "New Jersey S corporation" means a corporation that is an S
37 corporation; which has made a valid election pursuant to section 3
38 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
39 corporation continuously since the effective date of the valid
40 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
41 5.22).

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

44 (r) "Qualified investment partnership" means a partnership
45 under this act that has more than 10 members or partners with no
46 member or partner owning more than a 50% interest in the entity
47 and that derives at least 90% of its gross income from dividends,
48 interest, payments with respect to securities loans, and gains from

1 the sale or other disposition of stocks or securities or foreign
2 currencies or commodities or other similar income (including but
3 not limited to gains from swaps, options, futures or forward
4 contracts) derived with respect to its business of investing or
5 trading in those stocks, securities, currencies or commodities, but
6 "investment partnership" shall not include a "dealer in securities"
7 within the meaning of section 1236 of the federal Internal Revenue
8 Code of 1986, 26 U.S.C. s.1236.

9 (s) "Savings institution" means a state or federally chartered
10 building and loan association, savings and loan association, or
11 savings bank.

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

14 (u) "Prior net operating loss conversion carryover" means a net
15 operating loss incurred in a privilege period ending prior to July 31,
16 2019 and converted from a pre-allocation net operating loss to a
17 post-allocation net operating loss as follows:

18 (1) As used in this subsection:

19 "Base year" means the last privilege period ending prior to July
20 31, 2019.

21 "Base year BAF" means the taxpayer's business allocation factor
22 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
23 6 through C.54:10A-10) for purposes of calculating entire net
24 income for the base year, as such section was in effect for the last
25 privilege period ending prior to July 31, 2019.

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

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

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

43 (B) The taxpayer shall continue to carry over its prior net
44 operating loss conversion carryover to offset its allocated entire net
45 income as provided in sections 6 through 10 of P.L.1945, c.162
46 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
47 and after July 31, 2019. Such carryover periods shall not exceed
48 the twenty privilege periods following the privilege period of the

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

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

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

17 (1) Net operating loss carryover. A net operating loss for any
18 privilege period ending on or after July 31, 2019 shall be a net
19 operating loss carryover to each of the twenty privilege periods
20 following the period of the loss. The entire amount of the net
21 operating loss for any privilege period shall be carried to the earliest
22 of the privilege periods to which the loss may be carried. The
23 portion of the loss which shall be carried to each of the other
24 privilege periods shall be the excess, if any, of the amount of the
25 loss over the sum of the entire net income, computed without the
26 exclusions permitted in paragraphs (4) and (5) of subsection (k) of
27 this section allocated to this State.

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

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

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

45 (5) Change in ownership. Where there is a change in 50% or
46 more of the ownership of a corporation because of redemption or
47 sale of stock and the corporation changes the trade or business
48 giving rise to the loss, no net operating loss sustained before the

1 changes may be carried over to be deducted from income earned
2 after such changes. In addition, where the facts support the premise
3 that the corporation was acquired under any circumstances for the
4 primary purpose of the use of its net operating loss carryover, the
5 director may disallow the carryover; provided, however, this
6 paragraph shall not apply between members of a combined group
7 reported on a New Jersey combined return.

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

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

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

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

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

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

35 (4) 50% or less of whose gross receipts for the privilege period
36 consist of premiums from arrangements that constitute insurance for
37 federal income tax purposes.

38 A combinable captive insurance company shall not be exempt
39 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
40 insurance company that does not meet the definition of combinable
41 captive insurance company shall be excluded as provided in
42 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
43 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

44 For purposes of this definition:

45 "Affiliated group" shall have the same meaning as that term is
46 given by section 1504 of the federal Internal Revenue Code, 26
47 U.S.C. s.1504, except that the term "common parent corporation" as
48 used in section 1504 of the federal Internal Revenue Code, 26

1 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
2 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
3 to "at least 80%" in section 1504 of the federal Internal Revenue
4 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
5 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
6 be read without regard to the exclusions provided for in subsection
7 (b) of that section.

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

12 "Premiums" includes consideration for annuity contracts and
13 excludes any part of the consideration for insurance, reinsurance, or
14 annuity contracts that do not provide bona fide insurance,
15 reinsurance, or annuity benefits.

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

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

29 (bb) "Group privilege period" means, if two or more members in
30 the combined group file in the same federal consolidated tax return,
31 the same income year as that used on the federal consolidated tax
32 return and, in all other cases, the privilege period of the managerial
33 member.

34 (cc) "Managerial member" means if the combined group has a
35 common parent corporation and that common parent corporation is
36 a taxable member, the managerial member shall be the common
37 parent corporation. In other cases, the combined group shall select
38 a taxable member as its managerial member or, in the discretion of
39 the director or upon failure of the combined group to select its
40 managerial member, the director shall designate a taxable member
41 of the combined group as managerial member.

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

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

1 or (ii) a New Jersey S Corporation which does not elect to be
2 included in the combined group.

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

6 (gg) "Unitary business" means a single economic enterprise that
7 is made up either of separate parts of a single business entity or of a
8 group of business entities under common ownership that are
9 sufficiently interdependent, integrated, and interrelated through
10 their activities so as to provide a synergy and mutual benefit that
11 produces a sharing or exchange of value among them and a
12 significant flow of value among the separate parts. "Unitary
13 business" shall be construed to the broadest extent permitted under
14 the Constitution of the United States. A business conducted by a
15 partnership which is in a unitary business with the combined group
16 shall be treated as the business of the partners that are members of
17 the combined group, whether the partnership interest is held directly
18 or indirectly through a series of partnerships, to the extent of a
19 partner's distributive share of partnership income. The amount of
20 partnership income to be included in the partner's entire net income
21 shall be determined in accordance with subsection a. of section 3 of
22 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
23 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business
24 conducted directly or indirectly by one corporation is unitary with
25 that portion of a business conducted by another corporation through
26 its direct or indirect interest in a partnership.

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

28

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

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

43 for privilege periods beginning on or after January 1, 2012 but
44 before January 1, 2013, 15% of the property fraction plus 70% of
45 the sales fraction plus 15% of the payroll fraction, for privilege
46 periods beginning on or after January 1, 2013 but before January 1,
47 2014, 5% of the property fraction plus 90% of the sales fraction
48 plus 5% of the payroll fraction, and for privilege periods beginning

1 on or after January 1, 2014, 100% of the sales fraction, except as
2 the director may determine pursuant to section 8 of P.L.1945, c.162
3 (C.54:10A-8), that is:

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

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

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

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

23 (3) (Deleted by amendment.)

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

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

46 (6) all other business receipts (excluding dividends excluded
47 from entire net income by paragraph (1) of subsection (k) of section
48 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State,

1 (7) sales of its tangible personal property shipped from a
2 location within this State to a state, possession, or territory of the
3 United States or the District of Columbia, or to any foreign country,
4 in which the taxpayer is not subject to a tax on or measured by
5 profits or income, business presence, or business activity,

6 divided by the total amount of the taxpayer's receipts, similarly
7 computed, arising during such period from all sales of its tangible
8 personal property, services, rentals, royalties and all other business
9 receipts, whether within or without the State.

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

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

30 (D) (1) For the purposes of paragraph (4) of subsection (B) of
31 this section, services performed within the State shall be deemed to
32 include, but shall not be limited to, investment management
33 services performed by the taxpayer as a partner provided to a
34 partnership, S corporation, or other entity.

35 (2) As used in this subsection:

36 "Investment management services" means providing a substantial
37 quantity of any of the following services to a partnership, S
38 corporation, or other entity as a partner thereto:

39 (a) advising as to the advisability of investing in, purchasing, or
40 selling a specified asset;

41 (b) managing, acquiring, or disposing of a specified asset;

42 (c) arranging financing with respect to acquiring specified
43 assets; or

44 (d) any activity in support of the services described in
45 subparagraphs (a) through (c) of this paragraph.

46 A partner shall not be deemed to be providing investment
47 management services under this subsection if the partnership
48 interest is held directly or indirectly by a corporation, or any capital

1 interest in the partnership, which provides the taxpayer with a right
2 to share in partnership capital commensurate with the amount of
3 capital contributed, determined at the time of receipt of such
4 partnership interest, or the value of partnership interest subject to
5 tax under section 83 of the Internal Revenue Code (26 U.S.C. s.83),
6 upon the receipt or vesting of such interest.

7 "Specified asset" means certain securities, real estate held for
8 rental or investment, interests in partnerships, commodities, or
9 options or derivatives contracts, except if at least 80 percent of the
10 average fair market value of the specified assets of the partnership,
11 S corporation, or other entity during the taxable year consists of real
12 estate.

13 (3) This subsection shall remain inoperative until enactment into
14 law by the states of Connecticut, New York, and Massachusetts of
15 legislation having an identical effect with this subsection,
16 subsection d. of N.J.S.54A:5-8, and sections 7 and 9 of P.L.2018,
17 c.45 (C.54A:5-16 and C.54:10A-6.4), as shall be determined by the
18 Director of the Division of Taxation in the Department of the
19 Treasury.

20 (cf: P.L.2018, c.48, s.7)

21

22 3. This act shall take effect immediately, but section 2 shall
23 apply to privilege periods beginning on or after January 1, 2019.

24

25

26

STATEMENT

27

28 This bill revises aspects of assessments and reporting under the
29 corporation business tax ("CBT"). In particular, the bill
30 implements the "throwback rule" to capture certain profits that are
31 not taxed by any state and mandates a fiscal evaluation be
32 performed before a CBT deduction relative to net deferred tax
33 impact becomes available to taxpayers.

34

"Throwback Rule"

35 The bill amends the CBT to allow for the taxation of corporate
36 income that is not presently taxed by the State.

37 States may impose a tax on a corporation's income to the extent
38 that the income is attributable to that state. In the case of a multi-
39 state corporation, the proportion of the corporation's income that is
40 taxable by a single state is determined by an allocation factor. The
41 allocation factor is calculated by taking certain factors (such as
42 payroll, sales, or property) and then dividing the corporation's
43 factors located within the state by the corporation's total factors.
44 The corporation's income is then multiplied by the allocation factor
45 to determine the proportion of the corporation's income that is
46 attributable to, and therefore taxable by, the state.
47

1 Currently, the State imposes the CBT on that proportion of a
2 taxpayer's income that is attributable to this State; specifically, the
3 sales factor. However, the current allocation factor calculation does
4 not take into account "nowhere income." "Nowhere income" arises
5 when a sale is made and the product is shipped from this State to a
6 state where the taxpayer is not subject to tax. This results in a sales
7 transaction from which the taxpayer's profits are not taxed by any
8 state. The bill, accordingly, ensures that "nowhere income" is
9 captured and taxed by requiring a sale that is untaxed in any state to
10 be included as a sale in this State for the purpose of calculating the
11 allocation factor.

12 The bill's method of accounting for "nowhere income" is
13 referred to as the "throwback rule," which has been adopted by
14 roughly half the states that impose a tax on corporate income. Thus
15 this bill brings the State in line with the majority approach to
16 capturing "nowhere income."

17

18 *Net Deferred Tax Impact Deduction*

19 Chapter 48 of P.L.2018 created a CBT deduction relative to the
20 impact of net deferred tax arising from the imposition of combined
21 reporting. The "impact of net deferred tax" means the difference
22 between deferred tax liabilities and deferred tax assets of a
23 combined group. Specifically, commencing five years after the
24 effective date of chapter 48, a combined group is entitled to a
25 deduction, over 10 years, in an amount equal to one-tenth of the
26 amount by which a combined group: (i) incurred an increase in
27 deferred tax liability; (ii) incurred a decrease in deferred tax assets;
28 or (iii) incurred an aggregate change from net deferred tax asset to
29 net deferred tax liability; this deduction is only available to
30 publicly-traded corporations.

31 The bill changes this provision to require the State Treasurer, by
32 the January 1 of the fourth year next following the effective date of
33 chapter 48, to undertake a general assessment the effect of
34 combined reporting on the valuations of publicly traded companies
35 that owe and pay CBT. This assessment will examine whether the
36 combined reporting provisions of chapter 48 have, in aggregate,
37 materially resulted in increased net deferred tax liabilities,
38 decreased net deferred tax assets, or changes from net deferred tax
39 assets to net deferred tax liabilities. The Department of the
40 Treasury is also required to hold a public hearing, to permit
41 members of the public and stakeholders an opportunity to provide
42 testimony regarding the impact of the deduction. Based on this
43 assessment, the State Treasurer must determine as to whether the
44 net deferred tax impact deduction should remain available to be
45 claimed by taxpayers for the 10 privilege periods commencing on
46 the January 1 of the fifth year following the effective date of
47 chapter 48.

S3243 SINGLETON

1 Beginning on January 1, 2019, and continuing annually until
2 January 1, 2024, the Department of the Treasury is required to
3 estimate and publish the amount of revenue the State would lose if
4 the deduction had been available during that calendar year. This
5 information must be included in the annual State Tax Expenditure
6 Report. Additionally, during this same period, the Department of
7 the Treasury is required to annually determine the total amount of
8 the deduction that would have been claimed by the top five and top
9 10 taxpayers, had the deduction been available, as well as the
10 number of taxpayers that would comprise the top 50 percent and 75
11 percent of the total deduction (starting with the taxpayers that
12 receive the largest deductions). The purpose of publishing this
13 information is to advise policymakers and the public of the entities
14 to whom the benefits of the deduction would accrue.

15 The purpose of this assessment is to provide the Department of
16 the Treasury an opportunity to analyze the extent to which the
17 implementation of combined reporting in the State adversely affects
18 the value of publicly-traded businesses that owe and pay CBT and,
19 accordingly, determine whether the net deferred tax impact
20 deduction remains warranted.