

[First Reprint]

**SENATE, No. 3246**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED DECEMBER 3, 2018

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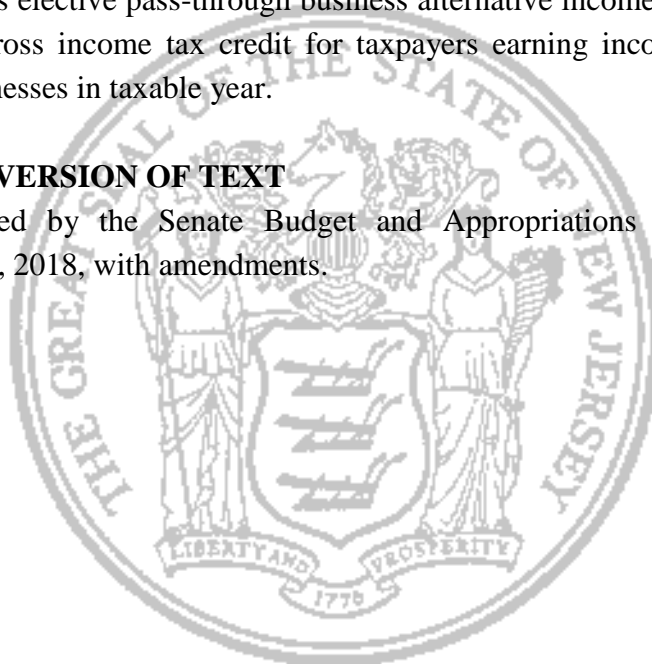
**Senators Bateman, Lagana, O'Scanlon and Greenstein**

**SYNOPSIS**

Establishes elective pass-through business alternative income tax and allows refundable gross income tax credit for taxpayers earning income from pass-through businesses in taxable year.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on December 10, 2018, with amendments.



**(Sponsorship Updated As Of: 1/16/2019)**

1 AN ACT establishing an elective pass-through business alternative  
2 income tax and allowing a refundable gross income tax credit for  
3 taxpayers earning income from pass-through businesses,  
4 supplementing Title 54A of the New Jersey Statutes and  
5 amending N.J.S.54A:4-1 and P.L.1993, c.173.

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

9  
10 1. (New section) This act shall be known and may be cited as  
11 the “Pass-Through Business Alternative Income Tax Act.”

12  
13 2. (New section) As used in P.L. , c. (C. ) (pending  
14 before the Legislature as this bill):

15 “Distributive proceeds” means the income, dividends, and gain  
16 of a pass-through entity, derived from or connected with sources  
17 within the State, and upon which tax is imposed and due on a  
18 member of the pass-through entity pursuant to the “New Jersey  
19 Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in a taxable year.

20 “Member” means a <sup>1</sup>**[natural person who is a]**<sup>1</sup> shareholder of a  
21 New Jersey S corporation; a partner in a general, limited, or limited  
22 liability partnership; or a member of a New Jersey limited liability  
23 company.

24 “New Jersey limited liability company” means an entity  
25 organized pursuant to the “Revised Uniform Limited Liability  
26 Company Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law  
27 providing for the formation of a limited liability company in this  
28 State that, pursuant to section 92 of P.L.2012, c.50 (C.42:2C-92), is  
29 classified as a partnership.

30 “New Jersey S corporation” means the same as that term is used  
31 in subsection (p) of section 4 of P.L.1945, c.162 (C.54:10A-4).

32 “Partnership” means a syndicate, group, pool, joint venture, or  
33 other unincorporated organization, through or by means of which  
34 any business, financial operation, or venture is carried on in this  
35 State <sup>1</sup>**[**, and which is not, within the meaning of P.L. ,  
36 c. (C. ) (pending before the Legislature as this bill), a trust or  
37 estate or a corporation<sup>1</sup>**]**.

38 “Pass-through entity” means a partnership, a New Jersey S  
39 corporation, or a New Jersey limited liability company, with at least  
40 one member who is liable for tax on distributive proceeds pursuant  
41 to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,  
42 in a taxable year.

43 “Pro rata share of distributive proceeds” means the portion of  
44 distributive proceeds attributable to a member of a pass-through

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SBA committee amendments adopted December 10, 2018.

1 entity in a taxable year.

2 "Taxable year" means the same as that term is used in section 12  
3 of P.L.1993, c.173 (C.54A:5-10).

4  
5 3. (New section) a. A pass-through entity with at least one  
6 member who is liable pursuant to the "New Jersey Gross Income  
7 Tax Act," N.J.S.54A:1-1 et seq., for tax on that member's pro rata  
8 share of distributive proceeds of the pass-through entity in a taxable  
9 year may elect <sup>1</sup>to<sup>1</sup> be liable for, and pay, a pass-through business  
10 alternative income tax in the taxable year.

11 b. (1) Each pass-through entity that makes an election for a  
12 taxable year pursuant to this section shall report to each of its  
13 members, for the taxable year, the member's pro rata share of  
14 distributive proceeds.

15 (2) The tax imposed on a pass-through entity pursuant to this  
16 section shall be equal to the sum of <sup>1</sup>[:]<sup>1</sup> each member's pro rata  
17 share of distributive proceeds attributable to the pass-through entity  
18 for the taxable year, multiplied by <sup>1</sup>:

19 5.525%, if the distributive proceeds of the pass-through entity  
20 are less than \$250,000 in the taxable year;

21 6.37%, if the distributive proceeds of the pass-through entity are  
22 less than \$1,000,000, but greater than or equal to \$250,000, in the  
23 taxable year;

24 8.97%, if the distributive proceeds of the pass through entity are  
25 less than \$3,000,000, but greater than or equal to \$1,000,000, in the  
26 taxable year; or<sup>1</sup>

27 10.75% <sup>1</sup>, if the distributive proceeds of the pass through entity  
28 are greater than or equal to \$3,000,000 in the taxable year<sup>1</sup> .

29 (3) If a member's <sup>1</sup>[proportionate share of]<sup>1</sup> New Jersey gross  
30 income tax liability for the taxable year <sup>1</sup>that is attributable to the  
31 member's pro rate share of distributive proceeds from the pass-  
32 through entity<sup>1</sup>, after the application of any credits, deductions, or  
33 exemptions, is an amount equal to or less than \$1, then that  
34 member's pro rata share of distributive proceeds shall be  
35 disregarded for purposes of determining the tax pursuant to this  
36 section; provided, however, that the member shall not be eligible to  
37 claim a credit pursuant to section 5 of P.L. , c. (C. )  
38 (pending before the Legislature as this bill) for the taxable year.

39 c. The amount of pass-through business alternative income tax  
40 due from a pass-through entity in a taxable year shall be exclusive  
41 of any amount of tax due and paid by the pass-through entity  
42 pursuant to the "Corporation Business Tax Act (1945)," P.L.1945,  
43 c.162 (C.54:10A-1 et seq.), during any privilege period, except as  
44 otherwise provided in P.L. , c. (C. ) (pending before the  
45 Legislature as this bill).

46 d. The director shall set the schedule and procedures for the  
47 payment of <sup>1</sup>the<sup>1</sup> pass-through business alternative income tax.

1 4. (New section) a. For the purpose of administration of  
2 P.L. , c. (C. ) (pending before the Legislature as this bill),  
3 the director shall have those powers as the director deems necessary  
4 to apply to a pass-through entity subject to P.L. , c. (C. )  
5 (pending before the Legislature as this bill), for the reporting,  
6 payment, collection, administration, and enforcement of the tax  
7 imposed pursuant to P.L. , c. (C. ) (pending before the  
8 Legislature as this bill), as may be applicable to the collection,  
9 administration, and enforcement of the New Jersey gross income  
10 tax provided in the “New Jersey Gross Income Tax Act,”  
11 N.J.S.54A:1-1 et seq., except as otherwise provided by subsection  
12 b. of this section.

13 b. Taxes collected under the provisions of P.L. ,  
14 c. (C. ) (pending before the Legislature as this bill) shall be  
15 deposited by the State Treasurer in the General Fund.  
16

17 5. (New section) a. Except as otherwise provided in paragraph  
18 (3) of subsection b. of section 3 of P.L. , c. (C. ) (pending  
19 before the Legislature as this bill), a taxpayer shall be allowed a  
20 refundable gross income tax credit, pursuant to the “New Jersey  
21 Gross Income Tax Act,” N.J.S.54A:1-1 et seq., if the taxpayer is a  
22 member of a pass-through entity that elects to owe and pay the  
23 pass-through business alternative income tax determined pursuant  
24 to section 3 of P.L. , c. (C. ) (pending before the Legislature  
25 as this bill) for the taxable year.

26 For each pass-through entity of which the taxpayer is a member,  
27 the amount of the credit shall equal the member’s pro rata share of  
28 the tax paid pursuant to section 3 of P.L. , c. (C. ) (pending  
29 before the Legislature as this bill) <sup>1</sup>【multiplied by 89.25%】<sup>1</sup>, which  
30 credit shall be applied against the gross income tax liability of the  
31 member in the taxable year.

32 b. The <sup>1</sup>【order of priority in which the】<sup>1</sup> credit allowed by this  
33 section <sup>1</sup>【and any】 shall be available after the application of all<sup>1</sup>  
34 other credits allowed by law <sup>1</sup>【may be taken shall be as prescribed】  
35 and claimed<sup>1</sup> by the <sup>1</sup>【director】 taxpayer in the taxable year<sup>1</sup>.

36 c. For a taxpayer that applies the credit available pursuant to  
37 this section to the tax due pursuant to N.J.S.54A:1-1, if the credit  
38 exceeds the amount of tax otherwise due, that amount of excess  
39 shall be an overpayment for the purposes of N.J.S.54A:9-7;  
40 provided however, that subsection (f) of N.J.S.54A:9-7 shall not  
41 apply.

42 <sup>1</sup>d. The credit allowed to any trust or estate pursuant to this  
43 section may be allocated to beneficiaries or be used against the tax  
44 liability of the estate or trust, in accordance with rules and  
45 regulations adopted by the director.<sup>1</sup>

1       6. Section 3 of P.L.1993, c.173 (C.54:10A-5.22) is amended to  
2 read as follows:

3       3. a. A corporation may elect, in accordance with the  
4 provisions of this section, to be a New Jersey S corporation. In  
5 order for an election to be valid, the corporation and each of its  
6 shareholders on the day on which the election is made (hereinafter  
7 "initial shareholders") must consent to such election and the  
8 jurisdictional requirements of becoming a New Jersey S  
9 corporation. The form of the election and consent to jurisdictional  
10 requirements and the place for filing shall be as prescribed by the  
11 Director of the Division of Taxation.

12       b. Each initial shareholder and the corporation shall consent to  
13 the following jurisdictional requirements:

14       (1) That this State shall have the right and jurisdiction to tax and  
15 collect the tax on each shareholder's S corporation income as  
16 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) and,  
17 if applicable, the pass-through business alternative income tax  
18 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
19 this bill);

20       (2) That New Jersey's right and jurisdiction to tax the income as  
21 set forth in paragraph (1) of this subsection shall not be affected by  
22 a change of a shareholder's residency, except as provided by the  
23 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

24       (3) If shareholders that are not initial shareholders of the  
25 corporation, while the corporation is a New Jersey S corporation,  
26 fail to consent to New Jersey's jurisdiction to tax S corporation  
27 income to such shareholders, this State shall have the right and  
28 jurisdiction to collect a payment of tax each year directly from the  
29 corporation equal to the S corporation income allocated to this  
30 State, as defined pursuant to section 12 of P.L.1993, c.173  
31 (C.54A:5-10), of the nonconsenting shareholders for the accounting  
32 or privilege period multiplied by the maximum tax bracket rate  
33 provided under N.J.S.54A:2-1 for the accounting or privilege  
34 period. In such case, the corporation shall have the right, but not  
35 the obligation, to recover payments made by the corporation  
36 pursuant to this paragraph from each nonconsenting shareholder.

37       c. A corporation may make an election to become a New Jersey  
38 S corporation with respect to an accounting or privilege period for  
39 which the corporation is or will be an S corporation. The election  
40 for an accounting or privilege period, along with the consents to  
41 jurisdictional requirements, shall be filed within one calendar  
42 month of the time at which a federal S corporation election would  
43 be required if such accounting or privilege period were a "taxable  
44 year" for which a federal S corporation election were to be made  
45 pursuant to section 1362 of the federal Internal Revenue Code of  
46 1986, 26 U.S.C. s.1362. Such elections may only be revoked  
47 pursuant to subsection d. of this section. Such election shall  
48 terminate immediately upon the corporation's failure to satisfy the

1 definition of a New Jersey S corporation pursuant to paragraph (p)  
2 of section 4 of P.L.1945, c.162 (C.54:10A-4).

3 d. A corporation may revoke an election pursuant to this section  
4 on or before the last day of the first accounting or privilege period  
5 to which the election would otherwise apply.

6 (cf: P.L.1993, c.173, s.3)

7

8 7. Section 4 of P.L.1993, c.173 (C.54:10A-5.23) is amended to  
9 read as follows:

10 4. a. With respect to each of its shareholders that is not an  
11 initial shareholder, a New Jersey S corporation shall satisfy the  
12 requirements of either paragraph b. or c. of this section.

13 b. Deliver a consent to the jurisdictional requirements as set  
14 forth in subsection b. of section 3 of P.L.1993, c.173 (C.54:10A-  
15 5.22).

16 c. Make payments to the Director of the Division of Taxation  
17 on behalf of each nonconsenting shareholder in an amount equal to  
18 the shareholder's pro rata share of S corporation income allocated to  
19 this State, as defined pursuant to section 12 of P.L.1993, c.173  
20 (C.54A:5-10), reflected on the corporation's return for the  
21 accounting or privilege period, multiplied by the maximum tax  
22 bracket rate provided under N.J.S.54A:2-1 in effect at the end of the  
23 accounting or privilege period. The payments shall be made no  
24 later than the time for filing of the return for the accounting or  
25 privilege period. The director may, by regulation, require that  
26 amounts estimated to be equal to the liability expected to be due  
27 pursuant to this subsection be withheld from any distribution made  
28 to a nonconsenting shareholder.

29 d. If a shareholder that is not an initial shareholder of a New  
30 Jersey S corporation fails to deliver a consent to the jurisdictional  
31 requirements set forth in subsection b. of section 3 of P.L.1993,  
32 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to  
33 withhold payments pursuant to subsection c. of this section, then  
34 this State shall have the right and jurisdiction to collect a tax each  
35 year directly from the corporation equal to the pro rata share of the  
36 S corporation income allocated to this State, as defined pursuant to  
37 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting  
38 shareholder times the maximum tax bracket rate provided under  
39 N.J.S.54A:2-1 for the appropriate accounting or privilege period.  
40 In such case, the corporation shall have the right, but not the  
41 obligation, to recover payments made by the corporation pursuant to  
42 this subsection from each nonconsenting shareholder. The  
43 corporation shall not be liable for the pass-through business  
44 alternative income tax pursuant to P.L. , c. (C. ) (pending  
45 before the Legislature as this bill) relative to collections made in a  
46 taxable year for such nonconsenting members.

47 (cf: P.L.1993, c.173, s.4)

1 8. N.J.S.54A:4-1 is amended to read as follows:

2 54A:4-1. Resident credit for tax of another state. (a) A resident  
3 taxpayer shall be allowed a credit against the tax otherwise due  
4 under this act for the amount of any income tax or wage tax  
5 imposed for the taxable year by another state of the United States or  
6 political subdivision of such state, or by the District of Columbia,  
7 with respect to income which is also subject to tax under this act,  
8 except as provided by subsections (c) and (d) of this section.

9 (b) The credit provided under this section shall not exceed the  
10 proportion of the tax otherwise due under this act that the amount of  
11 the taxpayer's income subject to tax by the other jurisdiction bears  
12 to his entire New Jersey income.

13 (c) No credit shall be allowed against the tax otherwise due  
14 under this act for the amount of any income tax or wage tax  
15 imposed for the taxable year on S corporation income allocated to  
16 this State.

17 (d) No credit shall be allowed for the amount of any taxes paid  
18 or accrued for the taxable year on or measured by profits or income  
19 imposed on or paid on behalf of a person other than the taxpayer,  
20 whether or not the taxpayer may be held liable for the tax.

21 (e) Readjustment of the tax of another state or political  
22 subdivision thereof--if the taxpayer is allowed credit under this  
23 section for more or less of the tax of another state or political  
24 subdivision thereof than he is finally required to pay, the taxpayer  
25 shall send notice of the difference to the director who shall  
26 redetermine the tax for any years affected regardless of any  
27 otherwise applicable statute of limitations.

28 (f) A resident taxpayer shall be allowed a credit against the tax  
29 otherwise due under this act for the amount of any tax that the  
30 director determines is substantially similar to the tax imposed  
31 pursuant to section <sup>1</sup>[2] <sup>3</sup> of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill), for the taxable year, by another state of  
33 the United States or political subdivision of such state, or by the  
34 District of Columbia, with respect to the direct and indirect  
35 distributive proceeds from a pass-through entity, which distributive  
36 proceeds are also subject to tax under this act.

37 For purposes of this subsection, "distributive proceeds" and  
38 "pass-through entity" mean the same as those terms are used in  
39 section 2 of P.L. , c. (C. ) (pending before the Legislature  
40 as this bill).

41 (cf: P.L.1993, c.173, s.7)

42  
43 9. Section 11 of P.L.1993, c.173 (C.54A:5-9) is amended to  
44 read as follows:

45 11. **[An]** Except as otherwise provided by P.L. , c. (C. )  
46 (pending before the Legislature as this bill), an S corporation as  
47 such shall not be subject to the tax imposed by the "New Jersey  
48 Gross Income Tax Act," N.J.S.54A:1-1 et seq., but the S

1 corporation income, dividends, and gain of a shareholder of an S  
2 corporation shall be subject to the tax, and the tax shall be imposed  
3 on the shareholder's pro rata share, whether or not distributed, of the  
4 S corporation income for its taxable year ending within or with the  
5 shareholder's taxable year.

6 (cf: P.L.1993, c.173, s.11)

7

8 10. Section 15 of P.L.1993, c.173 (C.54A:5-13) is amended to  
9 read as follows:

10 15. For purposes of **[this act]** the "New Jersey Gross Income  
11 Tax Act," N.J.S.54A:1-1 et seq., if a shareholder of an S  
12 corporation is both a resident and a nonresident of this State during  
13 any taxable year, the shareholder's pro rata share of the S  
14 corporation income allocated to this State and S corporation income  
15 not allocated to this State for the taxable period shall be further  
16 prorated between the shareholder's periods of residence and  
17 nonresidence during the taxable period, in accordance with the  
18 number of days in each period. Any prorated amount of S  
19 corporation income determined pursuant to this section shall also  
20 apply to determinations of income for purposes of the assessment of  
21 the pass-through business alternative income tax, pursuant to  
22 P.L. , c. (C. ) (pending before the Legislature as this bill).  
23 (cf: P.L.1993, c.173 s.15)

24

25 11. (New section) The director shall adopt, pursuant to the  
26 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
27 seq.), and immediately upon filing with the Office of  
28 Administrative Law, rules and regulations necessary to effectuate  
29 the purposes of P.L. , c. (C. ) (pending before the  
30 Legislature as this bill), which shall be effective for a period not to  
31 exceed 360 days following enactment of P.L. , c. (C. )  
32 (pending before the Legislature as this bill) and may thereafter be  
33 amended, adopted, or readopted by the director in accordance with  
34 the requirements of P.L.1968, c.410.

35

36 12. This act shall take effect immediately and shall <sup>1</sup>**[apply]** be  
37 retroactive<sup>1</sup> to taxable years of pass-through entities beginning on  
38 or after January 1, <sup>1</sup>**[2019]** 2018<sup>1</sup>.