

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 6110 & 6185

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED DECEMBER 13, 2021

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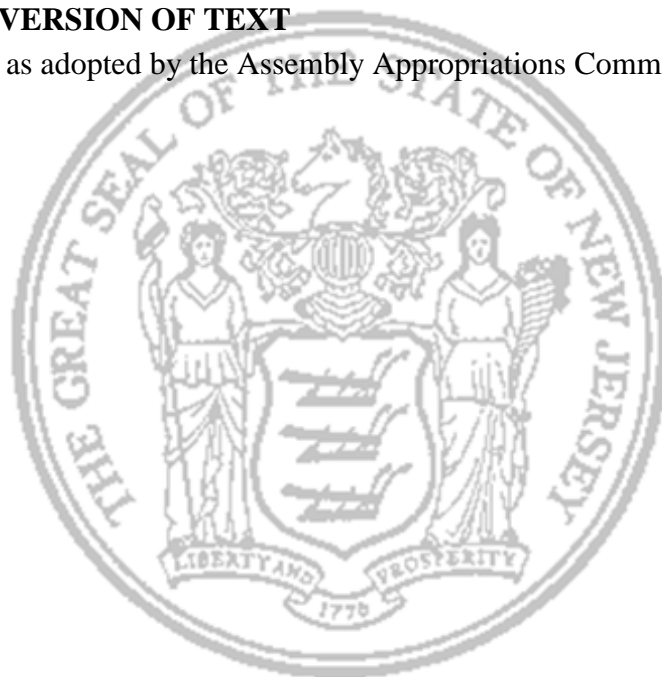
Assemblymen Wirths and Space

SYNOPSIS

Revises elective pass-through entity business alternative income tax.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Appropriations Committee.



1 AN ACT concerning the elective pass-through entity business
2 alternative income tax, amending P.L.2019, c.320 and P.L.2002,
3 c.40.
4

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

7
8 1. Section 2 of P.L.2019, c.320 (C.54A:12-2) is amended to
9 read as follows:

10 2. As used in P.L.2019, c.320 (C.54A:12-1 et al.):

11 “Direct share of the tax paid” means the portion of business
12 alternative income tax calculated on the sum of each member’s
13 share of distributive proceeds attributable to the pass-through entity.

14 "Director" means the Director of the Division of Taxation in the
15 Department of the Treasury.

16 "Distributive proceeds" means **【**the net income, dividends,
17 royalties, interest, rents, guaranteed payments, and gains of a pass-
18 through entity, derived from or connected with sources within the
19 State, and upon which tax is imposed and due on a member of the
20 pass-through entity pursuant to the "New Jersey Gross Income Tax
21 Act," N.J.S.54A:1-1 et seq., in a taxable year. For a nonresident,
22 this means New Jersey source income as set forth in N.J.S.54A:5-8**】**
23 (1) in the case of a pass-through entity classified as a partnership
24 for purposes of federal income tax law, the sum of (a) the
25 distributive share of partnership income derived from sources both
26 inside and outside New Jersey of all partners who are resident
27 individuals, estates, or trusts that the partnership is required to
28 report to the director under N.J.S.54A:5-4 plus (b) the distributive
29 share of partnership income derived from sources inside New Jersey
30 of all partners of the pass-through entity who are not resident
31 individuals, estates, or trusts that the partnership is required to
32 report to the director under section N.J.S.54A:5-4; and (2) in the
33 case of an electing S corporation, the pro rata share of S corporation
34 income allocated to this State as determined under section 12 of
35 P.L.1993, c.173 (C.54A:5-10). For purposes of determining
36 distributive proceeds, a pass-through entity shall apply the
37 allocation factors determined under N.J.S.54A:5-7.

38 "Limited liability company" means an entity organized pursuant
39 to the "Revised Uniform Limited Liability Company Act,"
40 P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law providing for the
41 formation of a limited liability company in this State, or formed as a
42 limited liability company under similar statutes of other states, that
43 is classified as a partnership or an S Corporation for purposes of
44 federal income tax law.

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 "Member" means a shareholder of an S corporation; a partner in
2 a general, limited, or limited liability partnership; or a member of a
3 limited liability company.

4 "Partnership" means a syndicate, group, pool, joint venture, or
5 other unincorporated organization, through or by means of which
6 any business, financial operation, or venture is carried on in this
7 State.

8 "Pass-through business alternative income tax" means the tax set
9 forth in subsection b. of section 3 of P.L.2019, c.320 (C.54A:12-3).

10 "Pass-through entity" means a partnership, an S corporation, or a
11 limited liability company, with at least one member who is liable
12 for tax on distributive proceeds pursuant to the "New Jersey Gross
13 Income Tax Act," N.J.S.54A:1-1 et seq., in a taxable year.

14 "Share of distributive proceeds" means the portion of distributive
15 proceeds attributable to a member of a pass-through entity in a
16 taxable year.

17 "Taxable year" means the same as in N.J.S.54A:1-2.

18 "Taxed at the business entity level" means taxed pursuant to an
19 election made under P.L.2019, c.320 (C.54A:12-1 et al.).

20 (cf: P.L.2019, c.320, s.2)

21
22 2. Section 3 of P.L.2019, c.320 (C.54A:12-3) is amended to
23 read as follows:

24 3. a. A pass-through entity with at least one member who is
25 liable pursuant to the "New Jersey Gross Income Tax Act,"
26 N.J.S.54A:1-1 et seq., for tax on that member's share of distributive
27 proceeds of the pass-through entity in a taxable year may elect to be
28 liable for, and pay, a pass-through business alternative income tax
29 in the taxable year.

30 b. Each pass-through entity that makes an election for a
31 taxable year pursuant to this section shall annually report to each of
32 its members, for the taxable year, the member's share of distributive
33 proceeds.

34 (1) The election to pay tax at the entity level is available if
35 consent is made by each member of the electing entity who is a
36 member at the time the election is filed or by any officer, manager,
37 or member of the electing entity who is authorized, under law or the
38 entity's organizational documents, to make the election and who
39 represents to having such authorization under penalties of perjury.
40 This election shall be made annually on or before the due date of
41 the entity's return as established by the director and on forms
42 prescribed by the director. This election shall not be made
43 retroactively. If the members decide to revoke an election, that
44 revocation shall occur on or before the due date of the entity's
45 return.

46 (2) The tax imposed on a pass-through entity pursuant to this
47 section shall be determined in accordance with the following table

1 with respect to the sum of each member's share of distributive
 2 proceeds attributable to the pass-through entity for the taxable year.

3 For taxable years beginning on or after January 1, 2020:

4	If the sum of each member's	
5	share of distributive proceeds	
6	attributable to the pass-through	
7	entity is:	The tax is:
8	Not over \$250,000.00.....	5.675% of the sum of
9	Over \$250,000.00 but not	
10	over \$1,000,000.00.....	\$14,187.50 plus 6.52% of the
11		excess over \$250,000.00
12	Over \$1,000,000.00 [but not	
13	over \$5,000,000.00].....	\$63,087.50 plus [9.12%]
14	<u>10.9%</u>	of the excess over
15	\$1,000,000.00	
16	[Over \$5,000,000.00	\$427,887.50 plus 10.9% of the
17		excess over \$5,000,000.00].

18 c. The amount of pass-through business alternative income tax
 19 due from a pass-through entity in a taxable year shall be exclusive
 20 of any amount of tax due and paid by the pass-through entity
 21 pursuant to the "Corporation Business Tax Act (1945)," P.L.1945,
 22 c.162 (C.54:10A-1 et seq.), during any privilege period, except as
 23 otherwise provided in P.L.2019, c.320 (C.54A:12-1 et al.).

24 (1) A pass-through entity which elects to pay the pass-through
 25 business entity income tax shall be included in a combined group,
 26 as defined in subsection (z) of section 4 of P.L.1945, c.162
 27 (C.54:10A-4), and file a New Jersey combined return pursuant to
 28 the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et
 29 seq.). A pass-through entity which elects to pay the pass-through
 30 business entity income tax shall be excluded from a combined
 31 group, as defined in subsection (z) of section 4 of P.L.1945, c.162
 32 (C.54:10A-4), and from filing a New Jersey combined return
 33 pursuant to the Corporation Business Tax Act, P.L.1945, c.162
 34 (C.54:10A-1 et seq.) if the pass-through entity meets the following:
 35 (a) all of the members of the pass-through entity are taxpayers
 36 otherwise liable for the tax under the "New Jersey Gross Income
 37 Tax Act," N.J.S.A.54A:1-1 et seq., and (b) no business entity taxed
 38 as a corporation under the Corporation Business Tax Act, P.L.1945,
 39 c.162 (C.54:10A-1 et seq.), has a direct, indirect, beneficial, or
 40 constructive ownership or control of the pass-through entity.

41 (2) Nothing shall prevent a group of pass-through entities under
 42 common ownership by an individual, estate, or trust, or a group of
 43 related individuals, estates, or trusts, from filing a composite or
 44 consolidated pass-through business entity income tax return. In
 45 determining whether the pass-through entities are under common
 46 ownership, the individual, estate, or trust, or a group of related
 47 individuals, estates, or trusts, must own more than 50 percent of the
 48 direct or indirect voting control of each pass-through entity;

1 provided, however, section 318 of the federal Internal Revenue
2 Code, 26 U.S.C. s.318, shall apply for determining voting control.

3 d. Pass-through entities whose members have made the
4 business alternative income tax election shall file an entity tax
5 return and make payments on or before the 15th day of the third
6 month following the close of each entity's taxable year for federal
7 income tax purposes. A pass-through entity shall make estimated
8 entity tax payments on or before the 15th day of each of the fourth
9 month, sixth month, and ninth month of the taxable year and on or
10 before the 15th day of the first month succeeding the close of the
11 taxable year.

12 e. A pass-through entity that overpays tax in one taxable year
13 shall be allowed to apply the overpayment of tax to the subsequent
14 taxable year's estimated entity tax payments.

15 (cf: P.L.2019, c.320, s.3)

16
17 3. Section 5 of P.L.2019, c.320 (C.54A:12-5) is amended to
18 read as follows:

19 5. a. **【**Except as otherwise provided in paragraph (3) of
20 subsection b. of section 3 of P.L.2019, c.320 (C.54A:12-3), a
21 taxpayer shall be allowed a refundable gross income tax credit ,
22 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
23 et seq., if the taxpayer is a member of a pass-through entity that
24 elects to owe and pay the pass-through business alternative income
25 tax determined pursuant to section 3 of P.L.2019, c.320 (C.54A:12-
26 3) for the taxable year.

27 For each pass-through entity of which the taxpayer is a member,
28 the amount of the credit shall equal the member's pro rata share of
29 the tax paid pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3),
30 which credit shall be applied against the gross income tax liability
31 of the member in the taxable year. **】** Each member of a pass-through
32 entity that elects to be liable for, and pay, the pass-through business
33 alternative income tax pursuant to section 3 of P.L.2019, c.320
34 (C.54A:12-3) for the taxable year shall be allowed a tax credit in
35 the amount equal to the member's direct share of the tax paid
36 pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3).

37 The credit allowed to each member of the pass-through entity
38 shall be applied for the taxable year as follows:

39 (1) a member who is a natural person shall be allowed a
40 refundable credit against the tax imposed under the "New Jersey
41 Gross Income Tax Act," N.J.S.54A:1-1 et seq.;

42 (2) a member that is an estate or trust shall be allowed a
43 refundable credit against the tax imposed under the "New Jersey
44 Gross Income Tax Act," N.J.S.54A:1-1 et seq., which credit may be
45 allocated to beneficiaries or may be used against the tax liability of
46 the estate or trust;

47 (3) a member that is a corporation, other than an S corporation,
48 shall be allowed a refundable credit against (a) the surtax imposed

1 under section 1 of P.L.2018, c.48 (C.54:10A-5.41) or (b) the tax
2 imposed under section 5 of P.L.1945, c.162 (C.54:10A-5);

3 (4) a member that is an S Corporation shall be allowed (a) a
4 refundable credit against the tax imposed under the "New Jersey
5 Gross Income Tax Act," N.J.S.54A:1-1 et seq., which credit shall be
6 allocated among the shareholders of the corporation or (b) a
7 refundable credit against the tax liability of the corporation, which
8 credit may be applied against: (i) the surtax imposed under section
9 1 of P.L.2018, c.48 (C.54:10A-5.41); (ii) the tax imposed under
10 section 5 of P.L.1945, c.162 (C.54:10A-5); (iii) the tax imposed
11 under subsection d. of section 4 of P.L.1993, c.173 (C.54:10A-
12 5.23); or (iv) the tax imposed under section 3 of P.L.2019, c.320
13 (C.54A:12-3); and

14 (5) a member that is an entity classified as a partnership for
15 federal tax purposes shall be allowed (a) a refundable credit against
16 the tax imposed under the "New Jersey Gross Income Tax Act,"
17 N.J.S.54A:1-1 et seq., which credit shall be allocated among the
18 partners of the partnership, or (b) a refundable credit against the tax
19 liability of the partnership, which credit may be applied against: (i)
20 the tax imposed pursuant to section 12 of P.L.2002, c.40
21 (C.54:10A-15.11); (ii) the fee imposed pursuant to N.J.S.54A:8-6;
22 or (iii) the tax imposed pursuant to section 3 of P.L.2019, c.320
23 (C.54A:12-3).

24 b. The credit allowed by this section shall be available after the
25 application of all other credits allowed by law and claimed by the
26 【taxpayer】 member, or as applicable, the beneficiary of a member
27 estate or trust, the shareholder of a member corporation, or the
28 partner of a member partnership, in the taxable year.

29 c. For a 【taxpayer that applies the credit available pursuant to
30 this section to the tax due pursuant to N.J.S.54A:1-1,】 member, if
31 the credit exceeds the amount of tax otherwise due, that amount of
32 excess shall be an overpayment for the purposes of N.J.S.54A:9-7
33 or R.S.54:49-15, as appropriate; provided however, that subsection
34 (f) of N.J.S.54A:9-7 and section 7 of P.L.1992, c.175 (C.54:49-
35 15.1) shall not apply.

36 d. 【The credit allowed to any trust or estate pursuant to this
37 section may be allocated to beneficiaries or be used against the tax
38 liability of the estate or trust, in accordance with rules and
39 regulations adopted by the director.】 (Deleted by amendment,
40 P.L. , c.) (pending before the Legislature as this bill)

41 e. The director shall adopt regulations to allow the amount of
42 the credit that shall be determined to be an overpayment for the
43 purposes of N.J.S.54A:9-7 or R.S.54:49-15, as appropriate, to be
44 applied against the estimated tax for a successive year.

45 (cf: P.L.2019, c.320, s.5)

1 4. Section 11 of P.L.2019, c.320 (C.54:10A-5.43) is amended
2 to read as follows:

3 11. Where the pass-through entity, which pays the pass-through
4 business alternative income tax, is owned by both corporate
5 members and non-corporate members, the corporate member shall
6 be allowed a refundable tax credit against the surtax imposed
7 pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) or the tax
8 imposed under paragraph (1) of subsection c. of section 5 of
9 P.L.1945, c.162 (C.54:10A-5), if the corporate member is a member
10 of a pass-through entity that elects to owe and pay the pass-through
11 business alternative income tax determined pursuant to section 3 of
12 P.L.2019, c.320 (C.54A:12-3) for the taxable year; provided,
13 however, the credit shall not reduce the corporate member's tax
14 liability below the statutory minimum imposed under subsection e.
15 of section 5 of P.L.1945, c.162 (C.54:10A-5). **【Any excess credit
16 shall be carried over for a period of up to 20 privilege periods.】**

17 a. For each pass-through entity of which the corporate member
18 is a member, the amount of the credit shall equal the member's
19 share of the tax paid pursuant to section 3 of P.L.2019, c.320
20 (C.54A:12-3), which credit shall be applied against the surtax or
21 corporation business tax liability of the member during the
22 member's privilege period.

23 b. The credit allowed by this section shall be taken as
24 prescribed by the director. A taxpayer shall only claim a credit for
25 payment of the pass-through business alternative income tax made
26 by the entity that is applicable to the same tax year.

27 c. If the pass-through entity is unitary with both the corporate
28 member and the member's combined group filing a New Jersey
29 combined return for which the corporate member is included as a
30 member, within the meaning of subsection (dd) of section 4 of
31 P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48
32 (C.54:10A-4.11), the credit shall be shareable for the purposes of
33 subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
34 allowed to reduce the total surtax and total corporation business tax
35 liability of the combined group but not the below the aggregate
36 statutory minimum tax of the taxable members of the combined
37 group.

38 d. If the pass-through entity is unitary with the corporate
39 member, but not the member's combined group filing a New Jersey
40 combined return for which the corporate member is included as a
41 member, within the meaning of subsection (dd) of section 4 of
42 P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48
43 (C.54:10A-4.11), the credit shall not be shareable for the purposes
44 of subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) but
45 shall be allowed to reduce the total surtax and total corporation
46 business tax liability of the corporate member derived from the
47 corporate member's activities that are independent of the unitary
48 business of the member's combined group.

1 e. An exempt corporate member that is a corporation exempt
2 from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3)
3 shall be refunded the share of the tax paid by the pass-through
4 entity on the exempt corporate member's distributive proceeds of
5 the pass-through entity.

6 f. For the purposes of this section:

7 "Corporate member" means a member that is not an individual,
8 an estate, or a trust subject to taxation pursuant to the "New Jersey
9 Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
10 corporation exempt from the Corporation Business Tax Act
11 pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3). A corporate
12 member does not include another pass-through entity, including a
13 New Jersey S Corporation.

14 "Exempt corporate member" means a member that is not an
15 individual, an estate, or a trust subject to taxation pursuant to the
16 "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq. and
17 that is a corporation exempt from the Corporation Business Tax Act
18 pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3).

19 "Noncorporate member" means, an individual, an estate or a trust
20 subject to taxation pursuant to the "New Jersey Gross Income Tax
21 Act," N.J.S.A. 54A:1-1 et seq.

22 "Pass-through entity member" means a member that itself is a
23 pass-through entity, including a New Jersey S Corporation.

24 (cf: P.L.2019, c.320, s.11)

25
26 5. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended
27 to read as follows:

28 12. a. (1) A partnership that is not a qualified investment
29 partnership or an investment club and that is not listed on a United
30 States national stock exchange shall, on or before the 15th day of
31 the fourth month succeeding the close of each privilege period,
32 remit a payment of tax. The amount of tax shall be equal to the sum
33 of: all of the share of the entire net income of the partnership for
34 that privilege period of all nonresident noncorporate partners,
35 multiplied by an allocation factor determined, pursuant to section 6
36 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
37 of the partnership for that privilege period, and multiplied by .0637
38 plus all of the share of the entire net income of the partnership for
39 that privilege period of all nonresident corporate partners,
40 multiplied by an allocation factor determined, pursuant to section 6
41 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
42 of the partnership for that privilege period, and multiplied by .09.

43 (2) (a) A partnership that is subject to the tax payment
44 requirements of paragraph (1) of this subsection shall make
45 installment payments of 25% of that tax on or before the 15th day
46 of each of the fourth month, sixth month and ninth month of the
47 privilege period and on or before the 15th day of the first month
48 succeeding the close of the privilege period.

1 (b) A partnership required to make an installment payment
2 pursuant to subparagraph (a) of this paragraph shall be deemed to
3 make an installment payment subject to the provisions of section 5
4 of P.L.1981, c.184 (C.54:10A-15.4) and shall be liable for any
5 additions to tax provided thereunder.

6 (3) A partnership shall not be required to remit a payment of tax
7 pursuant to paragraph (1) of this subsection for any nonresident that
8 reasonably expects to be refunded the payment on account of a tax
9 credit pursuant to section 5 of P.L.2019, c.320 (C.54A:12-5).

10 b. An amount of tax paid by a partnership pursuant to
11 paragraph (1) of subsection a. of this section and an installment
12 payment paid pursuant to subparagraph (a) of paragraph (2) of
13 subsection a. of this section shall be credited to the partnership
14 accounts of its nonresident partners in proportion to each
15 nonresident partner's share of allocated entire net income and the
16 multiplier rate for that partner class under subsection a. of this
17 section, and each amount of tax so credited shall be deemed to have
18 been paid by the respective partner in respect of the privilege period
19 or taxable year of the partner. Provided, however, that only a
20 nonresident partner who files a New Jersey tax return and reports
21 income that is subject to tax in this State may apply the tax paid by
22 the partnership and credited to the nonresident partner's partnership
23 account against the partner's tax liability; and provided further that
24 a partnership that pays tax pursuant to this section shall not be
25 entitled to claim a refund of payments credited to any of its
26 nonresident partners.

27 c. For the purposes of this section:

28 "Investment club" means an entity: that is classified as a
29 partnership for federal income tax purposes; all of the owners of
30 which are individuals; all of the assets of which are securities, cash,
31 or cash equivalents; the market value of the total assets of which do
32 not exceed, as measured on the last day of its privilege period, an
33 amount equal to the lesser of \$250,000 or \$35,000 per owner of the
34 entity; and which is not required to register itself or its membership
35 interests with the federal Securities and Exchange Commission;
36 provided that beginning with privilege periods commencing on or
37 after January 1, 2003 the director shall prescribe the total asset
38 value amounts which shall apply by increasing the \$250,000 total
39 asset amount and the per owner \$35,000 amount hereinabove by an
40 inflation adjustment factor, which amounts shall be rounded to the
41 next highest multiple of \$100. The inflation adjustment factor shall
42 be equal to the factor calculated by dividing the consumer price
43 index for urban wage earners and clerical workers for the nation, as
44 prepared by the United States Department of Labor for September
45 of the calendar year prior to the calendar year in which the privilege
46 period begins, by that index for September of 2001;

47 "Nonresident noncorporate partner" means, an individual, an
48 estate or a trust subject to taxation pursuant to the "New Jersey

1 Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
2 taxpayer or a resident estate or trust under that act;

3 "Nonresident corporate partner" means a partner that is not an
4 individual, an estate or a trust subject to taxation pursuant to the
5 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is
6 not a corporation exempt from tax pursuant to section 3 of
7 P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular
8 place of business in this State other than a statutory office; and

9 "Partner" means an owner of an interest in the partnership, in
10 whatever manner that owner and ownership interest are designated.

11 (cf: P.L.2014, c.13, s.2)

12

13 6. This act shall take effect immediately and apply
14 retroactively to January 1, 2021.