P.L. 2021, CHAPTER 419, ***approved January 18, 2022***
Senate, No. 4068 ***(Second Reprint)***

AN ACT concerning the elective pass-through [2]entity[2] business alternative income tax, amending [2]**[**Title 54A of the New Jersey Statutes**]** P.L.2019, c.320 and P.L.2002, c.40[2].

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

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

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

"Direct share of the tax paid" means the portion of [2]**[**pass-through**]**[2] business alternative income tax calculated on the [2]sum of each member's share of[2] distributive proceeds [2]**[**that is also included in the gross income of a member of the electing pass-through entity pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq**]** attributable to the pass-through entity[2].

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

"Distributive proceeds" means [2]**[**[1](1)[1] all items of income, gain, loss, or deduction of a pass-through entity to the extent the amounts are included in the New Jersey gross income [1]of a resident member[1] as set forth in N.J.S.54A:5-1 **[**the net income, dividends, royalties, interest, rents, guaranteed payments, and gains of a pass-through entity, derived from or connected with sources within the State, and upon which tax is imposed and due on a member of the pass-through entity pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in a taxable year**]** [1], and (2) with regard to all other members the net income, dividends, royalties, interest, rents, guaranteed payments, and gains of a pass-through entity, derived from or connected with sources within the State, and upon which tax is imposed and due on such members of the pass-through entity pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in a taxable year[1]. For a nonresident, this means New Jersey source income as set forth in N.J.S.54A:5-8.**]** (1) in the case of a pass-through entity classified as a partnership for purposes of federal income tax law, the sum of (a) the distributive share of partnership income derived from sources both inside and outside New Jersey of all partners who are resident individuals, estates, or trusts that the partnership is required to report to the director under N.J.S.54A:5-4 plus (b) the distributive share of partnership income derived from sources inside New Jersey of all partners of the pass-through entity

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:
[1]Senate floor amendments adopted December 2, 2021.
[2]Senate SBA committee amendments adopted January 6, 2022.

who are not resident individuals, estates, or trusts that the partnership is required to report to the director under section N.J.S.54A:5-4; and (2) in the case of an electing S corporation, the pro rata share of S corporation income allocated to this State as determined under section 12 of P.L.1993, c.173 (C.54A:5-10). For purposes of determining distributive proceeds, a pass-through entity shall apply the allocation factors determined under N.J.S.54A:5-7[2].

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

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

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

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

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

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

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

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

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

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

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

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

(1) The election to pay tax at the entity level is available if consent is made by each member of the electing entity who is a

member at the time the election is filed or by any officer, manager, or member of the electing entity who is authorized, under law or the entity's organizational documents, to make the election and who represents to having such authorization under penalties of perjury. This election shall be made annually on or before the due date of the entity's return as established by the director and on forms prescribed by the director. This election shall not be made retroactively. If the members decide to revoke an election, that revocation shall occur on or before the due date of the entity's return.

(2) The tax imposed on a pass-through entity pursuant to this section shall be determined in accordance with the following table with respect to the sum of each member's share of distributive proceeds attributable to the pass-through entity for the taxable year.

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

If the sum of each member's share of distributive proceeds attributable to the pass-through entity is:	The tax is:
Not over $250,000.00.....	5.675% of the sum of distributive proceeds
Over $250,000.00 but not over $1,000,000.00.....	$14,187.50 plus 6.52% of the excess over $250,000.00
Over $1,000,000.00 **[**but not over $5,000,000.00**]**.....	$63,087.50 plus **[**9.12%**]** <u>10.9%</u> of the excess over $1,000,000.00
[Over $5,000,000.00	$427,887.50 plus 10.9% of the excess over $5,000,000.00**]**.

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

(1) A pass-through entity which elects to pay the pass-through business entity income tax shall be included in a combined group, as defined in subsection (z) of section 4 of P.L.1945, c.162 (C.54:10A-4), and file a New Jersey combined return pursuant to the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et seq.). A pass-through entity which elects to pay the pass-through business entity income tax shall be excluded from a combined group, as defined in subsection (z) of section 4 of P.L.1945, c.162 (C.54:10A-4), and from filing a New Jersey combined return pursuant to the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et seq.) if the pass-through entity meets the following: (a) all of the members of the pass-through entity are taxpayers otherwise liable for the tax under the "New Jersey Gross Income

Tax Act," N.J.S.A.54A:1-1 et seq., and (b) no business entity taxed as a corporation under the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et seq.), has a direct, indirect, beneficial, or constructive ownership or control of the pass-through entity.

(2) Nothing shall prevent a group of pass-through entities under common ownership by an individual, estate, or trust, or a group of related individuals, estates, or trusts, from filing a composite or consolidated pass-through business entity income tax return. In determining whether the pass-through entities are under common ownership, the individual, estate, or trust, or a group of related individuals, estates, or trusts, must own more than 50 percent of the direct or indirect voting control of each pass-through entity; provided, however, section 318 of the federal Internal Revenue Code, 26 U.S.C. s.318, shall apply for determining voting control.

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

e. A pass-through entity that overpays tax in one taxable year shall be allowed to apply the overpayment of tax to the subsequent taxable year's estimated entity tax payments. [2]

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

[2]**[**2.**]** 3.[2] Section 5 of P.L.2019, c.320 (C.54A:12-5) is amended to read as follows:

5. a. [2]**[**Except as otherwise provided in paragraph (3) of subsection b. of section 3 of P.L.2019, c.320 (C.54A:12-3), a taxpayer shall be allowed a refundable gross income tax credit, pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., if the taxpayer is a member of a pass-through entity that elects to owe and pay the pass-through business alternative income tax determined pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3) for the taxable year.

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

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

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

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

(3) a member that is a corporation, other than an S corporation, shall be allowed a refundable credit against (a) the surtax imposed under section 1 of P.L.2018, c.48 (C.54:10A-5.41) or (b) the tax imposed under section 5 of P.L.1945, c.162 (C.54:10A-5);

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

(5) a member that is an entity classified as a partnership for federal tax purposes shall be allowed (a) a refundable credit against the tax imposed under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., which credit shall be allocated among the partners of the partnership, or (b) a refundable credit against the tax liability of the partnership, which credit may be applied against: (i) the tax imposed pursuant to section 12 of P.L.2002, c.40 (C.54:10A-15.11); (ii) the fee imposed pursuant to N.J.S.54A:8-6; or (iii) the tax imposed pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3).[2]

b. The credit allowed by this section shall be available after the application of all other credits allowed by law and claimed by the [2]**[**taxpayer**]** member, or as applicable, the beneficiary of a member estate or trust, the shareholder of a member corporation, or the partner of a member partnership,[2] in the taxable year.

c. For a [2]**[**taxpayer that applies the credit available pursuant to this section to the tax due pursuant to N.J.S.54A:1-1,**]** member,[2] if the credit exceeds the amount of tax otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.54A:9-7 [2]or R.S.54:49-15, as appropriate[2]; provided however, that subsection (f) of N.J.S.54A:9-7 [2]and section 7 of P.L.1992, c.175 (C.54:49-15.1)[2] shall not apply.

d. [2]**[**The credit allowed to any trust or estate pursuant to this section may be allocated to beneficiaries or be used against the tax liability of the estate or trust, in accordance with rules and regulations adopted by the director.**]** (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

e. The director shall adopt regulations to allow the amount of the credit that shall be determined to be an overpayment for the purposes of N.J.S.54A:9-7 or R.S.54:49-15, as appropriate, to be applied against the estimated tax for a successive year.[2]

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

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

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

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

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

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

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

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

f. For the purposes of this section:

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

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

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

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

(cf: P.L.2019, c.320, s.11)[2]

[2]5. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to read as follows:

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

that privilege period of all nonresident corporate partners, multiplied by an allocation factor determined, pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09.

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

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

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

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

c. For the purposes of this section:

"Investment club" means an entity: that is classified as a partnership for federal income tax purposes; all of the owners of which are individuals; all of the assets of which are securities, cash, or cash equivalents; the market value of the total assets of which do not exceed, as measured on the last day of its privilege period, an amount equal to the lesser of $250,000 or $35,000 per owner of the entity; and which is not required to register itself or its membership interests with the federal Securities and Exchange Commission; provided that beginning with privilege periods commencing on or after January 1, 2003 the director shall prescribe the total asset value amounts which shall apply by increasing the $250,000 total asset amount and the per owner $35,000 amount hereinabove by an

inflation adjustment factor, which amounts shall be rounded to the next highest multiple of $100. The inflation adjustment factor shall be equal to the factor calculated by dividing the consumer price index for urban wage earners and clerical workers for the nation, as prepared by the United States Department of Labor for September of the calendar year prior to the calendar year in which the privilege period begins, by that index for September of 2001;

"Nonresident noncorporate partner" means, an individual, an estate or a trust subject to taxation pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident taxpayer or a resident estate or trust under that act;

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

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

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

[2][3.] 6.[2] This act shall take effect [2][immediately and apply retroactively to taxable years beginning on and after][2] January 1, [1][2020] [2][2021[1]] 2022[2].

Revises elective pass-through entity business alternative income tax.