

**ASSEMBLY, No. 3419**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED MARCH 7, 2022

**Sponsored by:**

**Assemblyman ERIK PETERSON**

**District 23 (Hunterdon, Somerset and Warren)**

**SYNOPSIS**

Establishes net operating loss carryback deduction under corporation business tax.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT establishing a net operating loss carryback deduction under  
2 the corporation business tax, amending 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, any combined group  
42 filing a mandatory or elective New Jersey combined return, and any  
43 partnership required, or consenting, to report or to pay taxes,  
44 interest or penalties under this act. "Taxpayer" shall not include a  
45 partnership that is listed on a United States national stock exchange.

46 (i) "Fiscal year" shall mean an accounting period ending on any  
47 day other than the last day of December on the basis of which the  
48 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 subsubparagraph (ii), the taxpayer shall  
36 use either their three-year average allocation factor for the  
37 taxpayer's 2014 through 2016 tax years reported on the taxpayer's  
38 tax returns or 3.5 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). This subparagraph (C) shall not apply to privilege  
13 periods ending on and after July 31, 2019.

14 (D) For privilege periods ending on and after July 31, 2019 but  
15 before July 31, 2020, to the extent a subsidiary received dividends  
16 from other subsidiaries and included those dividends in its entire net  
17 income for the purposes of determining its tax liability pursuant to  
18 section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those  
19 dividends, the taxpayer receiving those same dividends from the  
20 subsidiary shall exclude those dividends from its entire net income.

21 (E) For privilege periods ending on and after July 31, 2020, for  
22 purposes of this paragraph (5), the members of a combined group  
23 filing a New Jersey combined return shall be treated as one taxpayer  
24 with regard to dividends and deemed dividends that were received  
25 as part of the unitary business of the combined group.

26 (6) (A) Net operating loss deduction. For privilege periods  
27 ending before July 31, 2019, there shall be allowed as a deduction  
28 for the privilege period the net operating loss carryover to that  
29 period.

30 (B) Net operating loss carryover. A net operating loss for any  
31 privilege period ending after June 30, 1984 shall be a net operating  
32 loss carryover to each of the seven privilege periods following the  
33 period of the loss and a net operating loss for any privilege period  
34 ending after June 30, 2009 shall be a net operating loss carryover to  
35 each of the twenty privilege periods following the period of the  
36 loss. The entire amount of the net operating loss for any privilege  
37 period (the "loss period") shall be carried to the earliest of the  
38 privilege periods to which the loss may be carried. The portion of  
39 the loss which shall be carried to each of the other privilege periods  
40 shall be the excess, if any, of the amount of the loss over the sum of  
41 the entire net income, computed without the exclusions permitted in  
42 paragraphs (4) and (5) of this subsection or the net operating loss  
43 deduction provided by subparagraph (A) of this paragraph, for each  
44 of the prior privilege periods to which the loss may be carried.

45 (C) Net operating loss. For purposes of this paragraph the term  
46 "net operating loss" means the excess of the deductions over the  
47 gross income used in computing entire net income without the net  
48 operating loss deduction provided for in subparagraph (A) of this

1 paragraph and the exclusions in paragraphs (4) and (5) of this  
2 subsection.

3 (D) Change in ownership. Where there is a change in 50% or  
4 more of the ownership of a corporation because of redemption or  
5 sale of stock and the corporation changes the trade or business  
6 giving rise to the loss, no net operating loss sustained before the  
7 changes may be carried over to be deducted from income earned  
8 after such changes. In addition where the facts support the premise  
9 that the corporation was acquired under any circumstances for the  
10 primary purpose of the use of its net operating loss carryover, the  
11 director may disallow the carryover.

12 (E) Notwithstanding the provisions of this paragraph (6) of  
13 subsection (k) of this section to the contrary, for privilege periods  
14 beginning during calendar year 2002 and calendar year 2003, no  
15 deduction for any net operating loss carryover shall be allowed and  
16 for privilege periods beginning during calendar year 2004 and  
17 calendar year 2005, there shall be allowed as a deduction for the  
18 privilege period so much of the net operating loss carryover as  
19 reduces entire net income otherwise calculated by 50%. If and only  
20 to the extent that any net operating loss carryover deduction is  
21 disallowed by reason of this subparagraph (E), the date on which  
22 the amount of the disallowed net operating loss carryover deduction  
23 would otherwise expire shall be extended by a period equal to the  
24 period for which application of the net operating loss was  
25 disallowed by this subparagraph.

26 Provided, that this subparagraph (E) shall not restrict the  
27 surrender or acquisition of corporation business tax benefit  
28 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-  
29 7.42a) and shall not restrict the application of corporation business  
30 tax benefit certificates pursuant to section 2 of P.L.1997, c.334  
31 (C.54:10A-4.2).

32 (F) Reduction for discharge of indebtedness. A net operating  
33 loss for any privilege period ending after June 30, 2014, and any net  
34 operating loss carryover to such privilege period, shall be reduced  
35 by the amount excluded from federal taxable income under  
36 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
37 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),  
38 for the privilege period of the discharge of indebtedness.

39 (7) The entire net income of gas, electric and gas and electric  
40 public utilities that were subject to, or would have been subject to  
41 tax if doing business in this State, the provisions of P.L.1940, c.5  
42 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by  
43 substituting the New Jersey depreciation allowance for federal tax  
44 depreciation with respect to assets placed in service prior to January  
45 1, 1998. For gas, electric, and gas and electric public utilities that  
46 were subject to, or would have been subject to tax if doing business  
47 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)  
48 prior to 1998, the New Jersey depreciation allowance shall be

1 computed as follows: All depreciable assets placed in service prior  
2 to January 1, 1998 shall be considered a single asset account. The  
3 New Jersey tax basis of this depreciable asset account shall be an  
4 amount equal to the carryover adjusted basis for federal income tax  
5 purposes on December 31, 1997 of all depreciable assets in service  
6 on December 31, 1997, increased by the excess, of the "net carrying  
7 value," defined to be adjusted book basis of all assets and liabilities,  
8 excluding deferred income taxes, recorded on the public utility's  
9 books of account on December 31, 1997, over the carryover  
10 adjusted basis for federal income tax purposes on December 31,  
11 1997 of all assets and liabilities owned by the gas, electric, or gas  
12 and electric public utility as of December 31, 1997. "Books of  
13 account" for gas, gas and electric, and electric public utilities means  
14 the uniform system of accounts as promulgated by the Federal  
15 Energy Regulatory Commission and adopted by the Board of Public  
16 Utilities. The following adjustments to entire net income shall be  
17 made pursuant to this section:

18 (A) Depreciation for property placed in service prior to January  
19 1, 1998 shall be adjusted as follows:

20 (i) Depreciation for federal income tax purposes shall be  
21 disallowed in full.

22 (ii) A deduction shall be allowed for the New Jersey  
23 depreciation allowance. The New Jersey depreciation allowance  
24 shall be computed for the single asset account described above  
25 based on the New Jersey tax basis as adjusted above as if all assets  
26 in the single asset account were first placed in service on January 1,  
27 1998. Depreciation shall be computed using the straight line method  
28 over a thirty-year life. A full year's depreciation shall be allowed in  
29 the initial tax year. No half-year convention shall apply. The  
30 depreciable basis of the single account shall be reduced by the  
31 adjusted federal tax basis of assets sold, retired, or otherwise  
32 disposed of during any year on which gain or loss is recognized for  
33 federal income tax purposes as described in subparagraph (B) of  
34 this paragraph.

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

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

44 (8) In the case of taxpayers that are gas, electric, gas and  
45 electric, or telecommunications public utilities as defined pursuant  
46 to subsection (q) of this section, the director shall have authority to  
47 promulgate rules and issue guidance correcting distortions and

1 adjusting timing differences resulting from the adoption of  
2 P.L.1997, c.162 (C.54:10A-5.25 et al.).

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

9 (10) Entire net income shall exclude all income of an alien  
10 corporation the activities of which are limited in this State to  
11 investing or trading in stocks and securities for its own account,  
12 investing or trading in commodities for its own account, or any  
13 combination of those activities, within the meaning of section 864  
14 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in  
15 effect on December 31, 1998. Notwithstanding the previous  
16 sentence, if an alien corporation undertakes one or more infrequent,  
17 extraordinary or non-recurring activities, including but not limited  
18 to the sale of tangible property, only the income from such  
19 infrequent, extraordinary or non-recurring activity shall be subject  
20 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et  
21 seq.), and that amount of income subject to tax shall be determined  
22 without regard to the allocation to that specific transaction of any  
23 general business expense of the taxpayer and shall be specifically  
24 assigned to this State for taxation by this State without regard to  
25 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this  
26 paragraph, "alien corporation" means a corporation organized under  
27 the laws of a jurisdiction other than the United States or its political  
28 subdivisions.

29 (11) No deduction shall be allowed for research and  
30 experimental expenditures, to the extent that those research and  
31 experimental expenditures are qualified research expenses or basic  
32 research payments for which an amount of credit is claimed  
33 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless  
34 those research and experimental expenditures are also used to  
35 compute a federal credit claimed pursuant to section 41 of the  
36 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

37 (12) (A) Notwithstanding the provisions of subsection (k) of  
38 section 168 of the federal Internal Revenue Code of 1986, 26  
39 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal  
40 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal  
41 law, for property acquired after September 10, 2001, the  
42 depreciation deduction otherwise allowed pursuant to section 167 of  
43 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall  
44 be determined pursuant to the provisions of the federal Internal  
45 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on  
46 December 31, 2001.

47 (B) The director shall prescribe the rules and regulations  
48 necessary to carry out the provisions of this paragraph, including,

1 among others, those for determining the adjusted basis of the  
2 acquired property for the purposes of the Corporation Business Tax  
3 Act (1945), P.L.1945, c.162.

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

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

16 (14) Notwithstanding the provisions of subsection (i) of section  
17 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),  
18 for privilege periods beginning after December 31, 2008 and before  
19 January 1, 2011, entire net income shall include the amount of  
20 discharge of indebtedness income excluded for federal income tax  
21 purposes pursuant to subsection (i) of section 108 of the federal  
22 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege  
23 periods beginning on or after January 1, 2014 and before January 1,  
24 2019, entire net income shall exclude the amount of discharge of  
25 indebtedness income included for federal income tax purposes,  
26 pursuant to subsection (i) of section 108 of the federal Internal  
27 Revenue Code of 1986 (26 U.S.C. s.108).

28 (15) Entire net income shall exclude the gain or income derived  
29 from the sale or assignment of a tax credit transfer certificate  
30 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section  
31 10 of P.L.2014, c.63 (C.34:1B-251).

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

34 (B) For purposes of this paragraph, "net deferred tax liability"  
35 means deferred tax liabilities that exceed the deferred tax assets of  
36 the combined group, as computed in accordance with generally  
37 accepted accounting principles, and "net deferred tax asset" means  
38 that deferred tax assets exceed the deferred tax liabilities of the  
39 combined group, as computed in accordance with generally  
40 accepted accounting principles.

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

46 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48  
47 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to  
48 the members' net deferred tax liability or an aggregate decrease to

1 the members' net deferred tax asset, or an aggregate change from a  
2 net deferred tax asset to a net deferred tax liability, the combined  
3 group shall be entitled to a deduction, as determined in this  
4 paragraph.

5 (E) For 10 years beginning with the combined group's first  
6 privilege period beginning on or after January 1 of the fifth year  
7 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a  
8 combined group shall be entitled to a deduction from combined  
9 group entire net income equal to one-tenth of the amount necessary  
10 to offset the increase in the net deferred tax liability or decrease in  
11 the net deferred tax asset, or aggregate change from a net deferred  
12 tax asset to a net deferred tax liability. Such increase in the net  
13 deferred tax liability or decrease in the net deferred tax asset or the  
14 aggregate change from a net deferred tax asset to a net deferred tax  
15 liability shall be computed based on the change that would result  
16 from the imposition of the unitary reporting requirements under  
17 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and  
18 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided  
19 under this paragraph as of the effective date of this paragraph.

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

23 (i) the deferred tax impact determined in subparagraph (E) of  
24 this paragraph shall be divided by the rate determined under section  
25 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,  
26 c.48 (C.54:10A-5.41 et al.);

27 (ii) the resulting amount shall be further divided by the New  
28 Jersey unitary business allocation factor that was used by the  
29 combined group in the calculation of the deferred tax assets and  
30 deferred tax liabilities as described in subparagraph (E) of this  
31 paragraph;

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

35 (G) The deduction calculated under this paragraph shall not be  
36 adjusted as a result of any events happening subsequent to such  
37 calculation, including, but not limited to, any disposition or  
38 abandonment of assets. Such deduction shall be calculated without  
39 regard to the federal tax effect and shall not alter the tax basis of  
40 any asset. If the deduction under this section is greater than  
41 combined group entire net income, any excess deduction shall be  
42 carried forward and applied as a deduction to combined group entire  
43 net income in future privilege periods until fully utilized.

44 (H) Any combined group intending to claim a deduction under  
45 this paragraph shall file a statement with the director on or before  
46 July 1 of the year subsequent to the first privilege period for which  
47 a combined return is required. Such statement shall specify the  
48 total amount of the deduction which the combined group claims on

1 such form and in such manner as prescribed by the director. No  
2 deduction shall be allowed under this paragraph for any privilege  
3 period except to the extent claimed on such timely filed statement  
4 in accordance with this paragraph.

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

8 (m) "Financial business corporation" shall mean any corporate  
9 enterprise which is (1) in substantial competition with the business  
10 of national banks and which (2) employs moneyed capital with the  
11 object of making profit by its use as money, through discounting  
12 and negotiating promissory notes, drafts, bills of exchange and  
13 other evidences of debt; buying and selling exchange; making of or  
14 dealing in secured or unsecured loans and discounts; dealing in  
15 securities and shares of corporate stock by purchasing and selling  
16 such securities and stock without recourse, solely upon the order  
17 and for the account of customers; or investing and reinvesting in  
18 marketable obligations evidencing indebtedness of any person,  
19 copartnership, association or corporation in the form of bonds,  
20 notes or debentures commonly known as investment securities; or  
21 dealing in or underwriting obligations of the United States, any  
22 state or any political subdivision thereof, or of a corporate  
23 instrumentality of any of them. This shall include, without  
24 limitation of the foregoing, business commonly known as industrial  
25 banks, dealers in commercial paper and acceptances, sales finance,  
26 personal finance, small loan and mortgage financing businesses, as  
27 well as any other enterprise employing moneyed capital coming  
28 into competition with the business of national banks; provided that  
29 the holding of bonds, notes, or other evidences of indebtedness by  
30 individual persons not employed or engaged in the banking or  
31 investment business and representing merely personal investments  
32 not made in competition with the business of national banks, shall  
33 not be deemed financial business. Nor shall "financial business"  
34 include national banks, production credit associations organized  
35 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,  
36 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
37 insurance companies duly authorized to transact business in this  
38 State, security brokers or dealers or investment companies or  
39 bankers not employing moneyed capital coming into competition  
40 with the business of national banks, real estate investment trusts, or  
41 any of the following entities organized under the laws of this State:  
42 credit unions, savings banks, savings and loan and building and  
43 loan associations, pawnbrokers, and State banks and trust  
44 companies.

45 (n) "International banking facility" shall mean a set of asset and  
46 liability accounts segregated on the books and records of a  
47 depository institution, United States branch or agency of a foreign  
48 bank, or an Edge or Agreement Corporation that includes only

1 international banking facility time deposits and international  
2 banking facility extensions of credit as such terms are defined in  
3 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the  
4 board of governors of the Federal Reserve System, 12 CFR Part  
5 204, effective December 3, 1981. In the event that the United  
6 States enacts a law, or the board of governors of the Federal  
7 Reserve System adopts a regulation which amends the present  
8 definition of international banking facility or of such facilities' time  
9 deposits or extensions of credit, the Commissioner of Banking and  
10 Insurance shall forthwith adopt regulations defining such terms in  
11 the same manner as such terms are set forth in the laws of the  
12 United States or the regulations of the board of governors of the  
13 Federal Reserve System. The regulations of the Commissioner of  
14 Banking and Insurance shall thereafter provide the applicable  
15 definitions.

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

19 (p) "New Jersey S corporation" means a corporation that is an S  
20 corporation; which has made a valid election pursuant to section 3  
21 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
22 corporation continuously since the effective date of the valid  
23 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-  
24 5.22).

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

27 (r) "Qualified investment partnership" means a partnership  
28 under this act that has more than 10 members or partners with no  
29 member or partner owning more than a 50% interest in the entity  
30 and that derives at least 90% of its gross income from dividends,  
31 interest, payments with respect to securities loans, and gains from  
32 the sale or other disposition of stocks or securities or foreign  
33 currencies or commodities or other similar income (including but  
34 not limited to gains from swaps, options, futures or forward  
35 contracts) derived with respect to its business of investing or  
36 trading in those stocks, securities, currencies or commodities, but  
37 "investment partnership" shall not include a "dealer in securities"  
38 within the meaning of section 1236 of the federal Internal Revenue  
39 Code of 1986, 26 U.S.C. s.1236.

40 (s) "Savings institution" means a state or federally chartered  
41 building and loan association, savings and loan association, or  
42 savings bank.

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

45 (u) "Prior net operating loss conversion carryover" means a net  
46 operating loss incurred in a privilege period ending prior to July 31,  
47 2019 and converted from a pre-allocation net operating loss to a  
48 post-allocation net operating loss as follows:



1 (1) As used in this subsection:

2 "Base year" means the last privilege period ending prior to July  
3 31, 2019.

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

9 "UNOL" means the unabsorbed portion of net operating loss as  
10 calculated under paragraph (6) of subsection (k) of this section as  
11 such paragraph was in effect for the last privilege period ending  
12 prior to July 31, 2019, that was not deductible in previous privilege  
13 periods and was eligible for carryover on the last day of the base  
14 year subject to the limitations for deduction under such subsection,  
15 including any net operating loss sustained by the taxpayer during  
16 the base year.

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

19 (A) The taxpayer shall first calculate the tax value of its UNOL  
20 for the base year and for each preceding privilege period for which  
21 there is a UNOL. The value of the UNOL for each privilege period  
22 is equal to the product of (I) the amount of the taxpayer's UNOL for  
23 a privilege period, and (II) the taxpayer's base year BAF. This result  
24 shall equal the taxpayer's prior net operating loss conversion  
25 carryover.

26 (B) The taxpayer shall continue to carry over its prior net  
27 operating loss conversion carryover to offset its allocated entire net  
28 income as provided in sections 6 through 10 of P.L.1945, c.162  
29 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on  
30 and after July 31, 2019. Such carryover periods shall not exceed  
31 the twenty privilege periods following the privilege period of the  
32 initial loss. The entire amount of the prior net operating loss  
33 conversion carryover for any privilege period shall be carried to the  
34 earliest of the privilege periods to which the loss may be carried.  
35 The portion of the prior net operating loss conversion carryover  
36 which shall be carried to each of the other privilege periods shall be  
37 the excess, if any, of the amount of the prior net operating loss  
38 conversion carryover over the sum of the entire net income,  
39 computed without the exclusions permitted in paragraphs (4) and  
40 (5) of subsection (k) of this section allocated to this State.

41 (C) The prior net operating loss conversion carryover computed  
42 under this subsection shall be applied against the entire net income  
43 allocated to this State before the net operating loss carryover  
44 computed under subsection (v) of this section.

45 (v) "Net operating loss deduction" means the amount allowed as  
46 a deduction for the net operating loss carryover or net operating loss  
47 carryback to the privilege period, calculated as follows:

1       (1) Net operating loss carryover and net operating loss  
2 carryback. A net operating loss for any privilege period ending on  
3 or after July 31, 2019, shall be a net operating loss carryover to  
4 each of the twenty privilege periods following the period of the loss  
5 and a net operating loss for any privilege period ending after June  
6 30, 2022 shall be, at the election of the taxpayer, either a net  
7 operating loss to each of the twenty privilege periods following the  
8 period of the loss or a net operating loss carryback to each of the  
9 two privilege periods preceding the period of the loss. The entire  
10 amount of the net operating loss for any privilege period shall be  
11 carried to the earliest of the privilege periods to which the loss may  
12 be carried in accordance with the taxpayer's election of a net  
13 operating loss carryover or a net operating loss carryback. The  
14 portion of the loss which shall be carried to each of the other  
15 privilege periods shall be the excess, if any, of the amount of the  
16 loss over the sum of the entire net income, computed without the  
17 exclusions permitted in paragraphs (4) and (5) of subsection (k) of  
18 this section allocated to this State.

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

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

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

36       (5) Change in ownership. Where there is a change in 50% or  
37 more of the ownership of a corporation because of redemption or  
38 sale of stock and the corporation changes the trade or business  
39 giving rise to the loss, no net operating loss sustained before the  
40 changes may be carried over to be deducted from income earned  
41 after such changes. In addition, where the facts support the premise  
42 that the corporation was acquired under any circumstances for the  
43 primary purpose of the use of its net operating loss carryover or net  
44 operating loss carryback, the director may disallow the carryover or  
45 the carryback; provided, however, this paragraph shall not apply  
46 between members of a combined group reported on a New Jersey  
47 combined return.

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

7 (x) "Affiliated group" means, for purposes of section 23 of  
8 P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in  
9 section 1504 of the federal Internal Revenue Code, 26 U.S.C.  
10 s.1504, except such affiliated group shall include all U.S. domestic  
11 corporations that are commonly owned, directly or indirectly, by  
12 any member of such affiliated group, without regard to whether the  
13 affiliated group includes (1) corporations included in more than one  
14 federal consolidated return, (2) corporations engaged in one or more  
15 unitary businesses, or (3) corporations that are not engaged in a  
16 unitary business with any other member of the affiliated group.

17 For purposes of this subsection:

18 "U.S. domestic corporations" means: (1) business entities  
19 wherever incorporated or formed that are U.S. domestic  
20 corporations, are deemed to be, or are treated as U.S. domestic  
21 corporations under the provisions of the federal Internal Revenue  
22 Code; or (2) any entities incorporated or formed under the laws of a  
23 foreign nation that are required to file federal tax returns if such  
24 entities have effectively connected income within the meaning of  
25 the federal Internal Revenue Code; and

26 "Commonly owned" means that more than 50 percent of the  
27 voting control of each member of an affiliated group is directly or  
28 indirectly owned by a common owner or owners, either corporate or  
29 non-corporate, whether or not the owner or owners are members of  
30 the affiliated group. Whether voting control is indirectly owned  
31 shall be determined in accordance with section 318 of the federal  
32 Internal Revenue Code (26 U.S.C. s.318).

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

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

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

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

45 (4) 50% or less of whose gross receipts for the privilege period  
46 consist of premiums from arrangements that constitute insurance for  
47 federal income tax purposes.

1 A combinable captive insurance company shall not be exempt  
2 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive  
3 insurance company that does not meet the definition of combinable  
4 captive insurance company shall be excluded as provided in  
5 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and  
6 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

7 For purposes of this definition:

8 "Affiliated group" shall have the same meaning as that term is  
9 given by section 1504 of the federal Internal Revenue Code, 26  
10 U.S.C. s.1504, except that the term "common parent corporation" as  
11 used in section 1504 of the federal Internal Revenue Code, 26  
12 U.S.C. s.1504, shall mean any person, as defined in section 7701 of  
13 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references  
14 to "at least 80%" in section 1504 of the federal Internal Revenue  
15 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section  
16 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall  
17 be read without regard to the exclusions provided for in subsection  
18 (b) of that section.

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

23 "Premiums" includes consideration for annuity contracts and  
24 excludes any part of the consideration for insurance, reinsurance, or  
25 annuity contracts that do not provide bona fide insurance,  
26 reinsurance, or annuity benefits.

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

33 A combined group shall be treated, for privilege periods ending  
34 on and after July 31, 2020, as one taxpayer for purposes of  
35 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162  
36 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for  
37 the income derived from the unitary business; provided however,  
38 with regard to the surtax imposed pursuant to section 1 of P.L.2018,  
39 c.48 (C.54:10A-5.41) and for that purpose only, the portion of  
40 income that is attributable to a member which is a public utility  
41 exempt from the surtax shall not be included when computing the  
42 surtax due.

43 (aa) "Common ownership" means that more than 50% of the  
44 voting control of each member of a combined group is directly or  
45 indirectly owned by a common owner or owners, either corporate or  
46 non-corporate, whether or not the owner or owners are members of  
47 the combined group. Whether voting control is indirectly owned

1 shall be determined in accordance with section 318 of the federal  
2 Internal Revenue Code, 26 U.S.C. s.318.

3 (bb) "Group privilege period" means, if two or more members in  
4 the combined group file in the same federal consolidated tax return,  
5 the same income year as that used on the federal consolidated tax  
6 return and, in all other cases, the privilege period of the managerial  
7 member.

8 (cc) "Managerial member" means if the combined group has a  
9 common parent corporation and that common parent corporation is  
10 a taxable member, the managerial member shall be the common  
11 parent corporation. In other cases, the combined group shall select  
12 a taxable member as its managerial member or, in the discretion of  
13 the director or upon failure of the combined group to select its  
14 managerial member, the director shall designate a taxable member  
15 of the combined group as managerial member.

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

18 A corporation exempt pursuant to section 3 of P.L.1945, c.162  
19 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-1  
20 et seq.) shall not be a member of a combined group.

21 (ee) "Nontaxable member" means a member that is: (i) not  
22 subject to tax pursuant to the Corporation Business Tax Act (1945),  
23 P.L.1945, c.162 (C.54:10A-1 et seq.); or (ii) (deleted by  
24 amendment, P.L.2020, c.118 (C.54:10A-5.46 et al.).

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

28 A New Jersey S corporation shall only be included as a taxable  
29 member of a combined group filing a New Jersey combined return  
30 if the New Jersey S Corporation elects to be included as a member  
31 and taxed at the same rate as the other members of the combined  
32 group. A New Jersey S corporation that does not elect to be  
33 included shall be excluded as a member of the combined return and  
34 shall file a separate return.

35 (gg) "Unitary business" means a single economic enterprise that  
36 is made up either of separate parts of a single business entity or of a  
37 group of business entities under common ownership that are  
38 sufficiently interdependent, integrated, and interrelated through  
39 their activities so as to provide a synergy and mutual benefit that  
40 produces a sharing or exchange of value among them and a  
41 significant flow of value among the separate parts. "Unitary  
42 business" shall be construed to the broadest extent permitted under  
43 the Constitution of the United States. A business conducted by a  
44 partnership which is in a unitary business with the combined group  
45 shall be treated as the business of the partners that are members of  
46 the combined group, whether the partnership interest is held directly  
47 or indirectly through a series of partnerships, to the extent of a  
48 partner's distributive share of partnership income. The amount of

1 partnership income to be included in the partner's entire net income  
2 shall be determined in accordance with subsection a. of section 3 of  
3 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of  
4 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business  
5 conducted directly or indirectly by one corporation is unitary with  
6 that portion of a business conducted by another corporation through  
7 its direct or indirect interest in a partnership.  
8 (cf: P.L.2020, c.118, s.3)

9  
10 2. This act shall take effect immediately and shall apply to net  
11 operating losses accruing for privilege periods ending after June 30,  
12 2022.

### 13 14 15 STATEMENT

16  
17 This bill establishes a two-year carryback deduction for net  
18 operating losses incurred by corporation business taxpayers. A net  
19 operating loss carryback deduction allows corporate taxpayers to  
20 file amended income tax returns for past tax years in which they  
21 were profitable, use current tax year business losses to offset those  
22 profits, and receive refunds of taxes paid in past tax years. Along  
23 with carryforward net operating loss deductions (which allow  
24 corporations to deduct from taxable income in future years net  
25 operating losses sustained in preceding tax years), carryback net  
26 operating loss deductions enable businesses to average their income  
27 over a time period that more closely corresponds to their investment  
28 horizon.

29 The federal government and 17 states authorize businesses to  
30 carry back and forward net operating losses. The standard federal  
31 carryback period and that of most states is two years. New Jersey,  
32 on the other hand, only allows for a 20-year carryforward of net  
33 operating losses. The inclusion of a carryback provision in its  
34 corporation business tax code would make New Jersey not just  
35 more competitive relative to other states, but it would also  
36 counteract the growth-stunting perception within the business  
37 community that the State is more interested in penalizing and  
38 thwarting than in rewarding and encouraging the creation and  
39 growth of businesses.

40 Even though the enactment of this legislation would not turn  
41 New Jersey into the state with the business-friendliest system of  
42 taxation, it would nonetheless make New Jersey more welcoming to  
43 businesses and thus encourage them to invest and create  
44 employment in the Garden State.