

ASSEMBLY, No. 3946

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 12, 2022

Sponsored by:

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

SYNOPSIS

Decouples State tax provisions from federal prohibition on cannabis business deductions, but only for businesses with less than \$15 million of gross receipts.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/29/2022)

A3946 QUIJANO, CALABRESE

2

1 AN ACT concerning business deductions incurred in carrying on a
2 cannabis business, amending P.L.1945, c.162 and P.L.1993,
3 c.173, and supplementing Title 54A of the New Jersey Statutes.

4

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

7

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

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

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

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

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

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

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 (but not by way of sole examples) for the purpose of supplying
2 deemed paid foreign tax credits or for the purpose of status as a
3 controlled foreign corporation. In calculating the net worth of a
4 taxpayer entitled to reduction for investment in subsidiaries, the
5 amount of liabilities of the taxpayer shall be reduced by such
6 proportion of the liabilities as corresponds to the ratio which the
7 excluded portion of the subsidiary values bears to the total assets of
8 the taxpayer.

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

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

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

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

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

42 (h) "Taxpayer" shall mean any corporation, any combined group
43 filing a mandatory or elective New Jersey combined return, and any
44 partnership required, or consenting, to report or to pay taxes,
45 interest or penalties under this act. "Taxpayer" shall not include a
46 partnership that is listed on a United States national stock exchange.

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

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

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

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

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

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

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

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

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

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

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

46 (F) (i) The amount by which depreciation reported to the United
47 States Treasury Department for property placed in service on and
48 after January 1, 1981, but prior to taxpayer fiscal or calendar

1 accounting years beginning on and after the effective date of
2 P.L.1993, c.172, for purposes of computing federal taxable income
3 in accordance with section 168 of the Internal Revenue Code in
4 effect after December 31, 1980, exceeds the amount of depreciation
5 determined in accordance with the Internal Revenue Code
6 provisions in effect prior to January 1, 1981, but only with respect
7 to a taxpayer's accounting period ending after December 31, 1981;
8 provided, however, that where a taxpayer's accounting period
9 begins in 1981 and ends in 1982, no modification shall be required
10 with respect to this paragraph (F) for the report filed for such period
11 with respect to property placed in service during that part of the
12 accounting period which occurs in 1981. The provisions of this
13 subparagraph shall not apply to assets placed in service prior to
14 January 1, 1998 of a gas, gas and electric, and electric public utility
15 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
16 seq.) prior to 1998.

17 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
18 (2) of this subsection, any amount, except with respect to qualified
19 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
20 the Internal Revenue Code as in effect immediately prior to January
21 1, 1984, which the taxpayer claimed as a deduction in computing
22 federal income tax pursuant to a qualified lease agreement under
23 paragraph (8) of that section.

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

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

45 (ii) The amount of treble damages paid to the Department of
46 Environmental Protection pursuant to subsection a. of section 7 of
47 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
48 department in removing, or arranging for the removal of, an

1 unauthorized discharge upon failure of the discharger to comply
2 with a directive from the department to remove, or arrange for the
3 removal of, the discharge.

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

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

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

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

1 transactions between related members included in a combined
2 group reported on a New Jersey combined return.

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

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

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

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

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

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

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

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

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

16 (iii) Entering into foreign exchange trading or hedging
17 transactions related to any of the transactions described in this
18 paragraph; or

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

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

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

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

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

1 (B) Entire net income shall exclude 50% of dividends which
2 were included in computing such taxable income for federal income
3 tax purposes, paid or deemed paid to the taxpayer by one or more
4 subsidiaries owned by the taxpayer to the extent of 50% or more
5 ownership of investment, such ownership of investment calculated
6 in the same manner as the 80% or more of ownership of investment
7 is calculated as described in subsection (d) of this section.

8 (C) To the extent a subsidiary received dividends from other
9 subsidiaries and included those dividends in its entire net income
10 for the purposes of determining its tax liability pursuant to section 5
11 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,
12 the taxpayer receiving those same dividends from the subsidiary
13 shall exclude those dividends from its entire net income based on
14 the subsidiary's allocation factor used by the subsidiary in
15 determining its tax liability pursuant to section 5 of P.L.1945, c.162
16 (C.54:10A-5). This subparagraph (C) shall not apply to privilege
17 periods ending on and after July 31, 2019.

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

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

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

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

1 (C) Net operating loss. For purposes of this paragraph the term
2 "net operating loss" means the excess of the deductions over the
3 gross income used in computing entire net income without the net
4 operating loss deduction provided for in subparagraph (A) of this
5 paragraph and the exclusions in paragraphs (4) and (5) of this
6 subsection.

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

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

30 Provided, that this subparagraph (E) shall not restrict the
31 surrender or acquisition of corporation business tax benefit
32 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
33 7.42a) and shall not restrict the application of corporation business
34 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
35 (C.54:10A-4.2).

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

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

1 January 1, 1998. For gas, electric, and gas and electric public
2 utilities that were subject to, or would have been subject to tax if
3 doing business in this State, the provisions of P.L.1940, c.5
4 (C.54:30A-49 et seq.) prior to 1998, the New Jersey depreciation
5 allowance shall be computed as follows: All depreciable assets
6 placed in service prior to January 1, 1998 shall be considered a
7 single asset account. The New Jersey tax basis of this depreciable
8 asset account shall be an amount equal to the carryover adjusted
9 basis for federal income tax purposes on December 31, 1997 of all
10 depreciable assets in service on December 31, 1997, increased by
11 the excess, of the "net carrying value," defined to be adjusted book
12 basis of all assets and liabilities, excluding deferred income taxes,
13 recorded on the public utility's books of account on December 31,
14 1997, over the carryover adjusted basis for federal income tax
15 purposes on December 31, 1997 of all assets and liabilities owned
16 by the gas, electric, or gas and electric public utility as of December
17 31, 1997. "Books of account" for gas, gas and electric, and electric
18 public utilities means the uniform system of accounts as
19 promulgated by the Federal Energy Regulatory Commission and
20 adopted by the Board of Public Utilities. The following
21 adjustments to entire net income shall be made pursuant to this
22 section:

23 (A) Depreciation for property placed in service prior to January
24 1, 1998 shall be adjusted as follows:

25 (i) Depreciation for federal income tax purposes shall be
26 disallowed in full.

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

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

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

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

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

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

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

41 (12) (A) Notwithstanding the provisions of subsection (k) of
42 section 168 of the federal Internal Revenue Code of 1986, 26
43 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
44 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
45 law, for property acquired after September 10, 2001, the
46 depreciation deduction otherwise allowed pursuant to section 167 of
47 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
48 be determined pursuant to the provisions of the federal Internal

1 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
2 December 31, 2001.

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

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

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

20 (14) Notwithstanding the provisions of subsection (i) of section
21 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
22 for privilege periods beginning after December 31, 2008 and before
23 January 1, 2011, entire net income shall include the amount of
24 discharge of indebtedness income excluded for federal income tax
25 purposes pursuant to subsection (i) of section 108 of the federal
26 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
27 periods beginning on or after January 1, 2014 and before January 1,
28 2019, entire net income shall exclude the amount of discharge of
29 indebtedness income included for federal income tax purposes,
30 pursuant to subsection (i) of section 108 of the federal Internal
31 Revenue Code of 1986 (26 U.S.C. s.108).

32 (15) Entire net income shall exclude the gain or income derived
33 from the sale or assignment of a tax credit transfer certificate
34 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
35 10 of P.L.2014, c.63 (C.34:1B-251).

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

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

45 (C) Only publicly traded companies, including affiliated
46 corporations participating in the filing of a publicly traded
47 company's financial statements prepared in accordance with

1 generally accepted accounting principles, as of the effective date of
2 this paragraph, shall be eligible for this deduction.

3 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48
4 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to
5 the members' net deferred tax liability or an aggregate decrease to
6 the members' net deferred tax asset, or an aggregate change from a
7 net deferred tax asset to a net deferred tax liability, the combined
8 group shall be entitled to a deduction, as determined in this
9 paragraph.

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

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

28 (i) the deferred tax impact determined in subparagraph (E) of
29 this paragraph shall be divided by the rate determined under section
30 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
31 c.48 (C.54:10A-5.41 et al.);

32 (ii) the resulting amount shall be further divided by the New
33 Jersey unitary business allocation factor that was used by the
34 combined group in the calculation of the deferred tax assets and
35 deferred tax liabilities as described in subparagraph (E) of this
36 paragraph;

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

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

1 (H) Any combined group intending to claim a deduction under
2 this paragraph shall file a statement with the director on or before
3 July 1 of the year subsequent to the first privilege period for which
4 a combined return is required. Such statement shall specify the
5 total amount of the deduction which the combined group claims on
6 such form and in such manner as prescribed by the director. No
7 deduction shall be allowed under this paragraph for any privilege
8 period except to the extent claimed on such timely filed statement
9 in accordance with this paragraph.

10 (17) (A) In the case of a taxpayer that is a cannabis licensee,
11 there shall be allowed as a deduction an amount equal to any
12 expenditure that is eligible to be claimed as a federal income tax
13 deduction but is disallowed because cannabis is a controlled
14 substance under federal law.

15 (B) Subparagraph (A) of this paragraph shall only apply to a
16 taxpayer with less than \$15,000,000 of gross receipts, as gross
17 receipts are calculated in accordance with the gross receipts test of
18 subsection (c) of section 448 of the Internal Revenue Code (26
19 U.S.C. s.448), but without regard to the \$25,000,000 maximum or
20 the adjustment for inflation of that subsection.

21 (C) For purposes of this paragraph, "licensee" means the same as
22 defined in section 3 of P.L. c. (C.) (pending before the
23 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of
24 2020).

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

28 (m) "Financial business corporation" shall mean any corporate
29 enterprise which is (1) in substantial competition with the business
30 of national banks and which (2) employs moneyed capital with the
31 object of making profit by its use as money, through discounting
32 and negotiating promissory notes, drafts, bills of exchange and
33 other evidences of debt; buying and selling exchange; making of or
34 dealing in secured or unsecured loans and discounts; dealing in
35 securities and shares of corporate stock by purchasing and selling
36 such securities and stock without recourse, solely upon the order
37 and for the account of customers; or investing and reinvesting in
38 marketable obligations evidencing indebtedness of any person,
39 copartnership, association or corporation in the form of bonds,
40 notes or debentures commonly known as investment securities; or
41 dealing in or underwriting obligations of the United States, any
42 state or any political subdivision thereof, or of a corporate
43 instrumentality of any of them. This shall include, without
44 limitation of the foregoing, business commonly known as industrial
45 banks, dealers in commercial paper and acceptances, sales finance,
46 personal finance, small loan and mortgage financing businesses, as
47 well as any other enterprise employing moneyed capital coming
48 into competition with the business of national banks; provided that

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

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

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

39 (p) "New Jersey S corporation" means a corporation that is an S
40 corporation; which has made a valid election pursuant to section 3
41 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
42 corporation continuously since the effective date of the valid
43 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
44 5.22).

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

47 (r) "Qualified investment partnership" means a partnership
48 under this act that has more than 10 members or partners with no

1 member or partner owning more than a 50% interest in the entity
2 and that derives at least 90% of its gross income from dividends,
3 interest, payments with respect to securities loans, and gains from
4 the sale or other disposition of stocks or securities or foreign
5 currencies or commodities or other similar income (including but
6 not limited to gains from swaps, options, futures or forward
7 contracts) derived with respect to its business of investing or
8 trading in those stocks, securities, currencies or commodities, but
9 "investment partnership" shall not include a "dealer in securities"
10 within the meaning of section 1236 of the federal Internal Revenue
11 Code of 1986, 26 U.S.C. s.1236.

12 (s) "Savings institution" means a state or federally chartered
13 building and loan association, savings and loan association, or
14 savings bank.

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

17 (u) "Prior net operating loss conversion carryover" means a net
18 operating loss incurred in a privilege period ending prior to July 31,
19 2019 and converted from a pre-allocation net operating loss to a
20 post-allocation net operating loss as follows:

21 (1) As used in this subsection:

22 "Base year" means the last privilege period ending prior to July
23 31, 2019.

24 "Base year BAF" means the taxpayer's business allocation factor
25 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
26 6 through C.54:10A-10) for purposes of calculating entire net
27 income for the base year, as such section was in effect for the last
28 privilege period ending prior to July 31, 2019.

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

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

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

46 (B) The taxpayer shall continue to carry over its prior net
47 operating loss conversion carryover to offset its allocated entire net
48 income as provided in sections 6 through 10 of P.L.1945, c.162

1 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
2 and after July 31, 2019. Such carryover periods shall not exceed
3 the twenty privilege periods following the privilege period of the
4 initial loss. The entire amount of the prior net operating loss
5 conversion carryover for any privilege period shall be carried to the
6 earliest of the privilege periods to which the loss may be carried.
7 The portion of the prior net operating loss conversion carryover
8 which shall be carried to each of the other privilege periods shall be
9 the excess, if any, of the amount of the prior net operating loss
10 conversion carryover over the sum of the entire net income,
11 computed without the exclusions permitted in paragraphs (4) and
12 (5) of subsection (k) of this section allocated to this State.

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

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

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

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

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

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

1 (5) Change in ownership. Where there is a change in 50% or
2 more of the ownership of a corporation because of redemption or
3 sale of stock and the corporation changes the trade or business
4 giving rise to the loss, no net operating loss sustained before the
5 changes may be carried over to be deducted from income earned
6 after such changes. In addition, where the facts support the premise
7 that the corporation was acquired under any circumstances for the
8 primary purpose of the use of its net operating loss carryover, the
9 director may disallow the carryover; provided, however, this
10 paragraph shall not apply between members of a combined group
11 reported on a New Jersey combined return.

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

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

28 For purposes of this subsection:

29 "U.S. domestic corporations" means: (1) business entities
30 wherever incorporated or formed that are U.S. domestic
31 corporations, are deemed to be, or are treated as U.S. domestic
32 corporations under the provisions of the federal Internal Revenue
33 Code; or (2) any entities incorporated or formed under the laws of a
34 foreign nation that are required to file federal tax returns if such
35 entities have effectively connected income within the meaning of
36 the federal Internal Revenue Code; and

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

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

47 (1) more than 50% of the voting stock of which is owned or
48 controlled, directly or indirectly, by a single entity that is treated as

1 an association taxable as a corporation under the federal Internal
2 Revenue Code, and not exempt from federal income tax;

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

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

8 (4) 50% or less of whose gross receipts for the privilege period
9 consist of premiums from arrangements that constitute insurance for
10 federal income tax purposes.

11 A combinable captive insurance company shall not be exempt
12 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
13 insurance company that does not meet the definition of combinable
14 captive insurance company shall be excluded as provided in
15 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
16 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

17 For purposes of this definition:

18 "Affiliated group" shall have the same meaning as that term is
19 given by section 1504 of the federal Internal Revenue Code, 26
20 U.S.C. s.1504, except that the term "common parent corporation" as
21 used in section 1504 of the federal Internal Revenue Code, 26
22 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
23 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
24 to "at least 80%" in section 1504 of the federal Internal Revenue
25 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
26 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
27 be read without regard to the exclusions provided for in subsection
28 (b) of that section.

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

33 "Premiums" includes consideration for annuity contracts and
34 excludes any part of the consideration for insurance, reinsurance, or
35 annuity contracts that do not provide bona fide insurance,
36 reinsurance, or annuity benefits.

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

43 A combined group shall be treated, for privilege periods ending
44 on and after July 31, 2020, as one taxpayer for purposes of
45 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162
46 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for
47 the income derived from the unitary business; provided however,
48 with regard to the surtax imposed pursuant to section 1 of P.L.2018,

1 c.48 (C.54:10A-5.41) and for that purpose only, the portion of
2 income that is attributable to a member which is a public utility
3 exempt from the surtax shall not be included when computing the
4 surtax due.

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

12 (bb) "Group privilege period" means, if two or more members in
13 the combined group file in the same federal consolidated tax return,
14 the same income year as that used on the federal consolidated tax
15 return and, in all other cases, the privilege period of the managerial
16 member.

17 (cc) "Managerial member" means if the combined group has a
18 common parent corporation and that common parent corporation is
19 a taxable member, the managerial member shall be the common
20 parent corporation. In other cases, the combined group shall select
21 a taxable member as its managerial member or, in the discretion of
22 the director or upon failure of the combined group to select its
23 managerial member, the director shall designate a taxable member
24 of the combined group as managerial member.

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

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

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

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

37 A New Jersey S corporation shall only be included as a taxable
38 member of a combined group filing a New Jersey combined return
39 if the New Jersey S Corporation elects to be included as a member
40 and taxed at the same rate as the other members of the combined
41 group. A New Jersey S corporation that does not elect to be
42 included shall be excluded as a member of the combined return and
43 shall file a separate return.

44 (gg) "Unitary business" means a single economic enterprise that
45 is made up either of separate parts of a single business entity or of a
46 group of business entities under common ownership that are
47 sufficiently interdependent, integrated, and interrelated through
48 their activities so as to provide a synergy and mutual benefit that

1 produces a sharing or exchange of value among them and a
2 significant flow of value among the separate parts. "Unitary
3 business" shall be construed to the broadest extent permitted under
4 the Constitution of the United States. A business conducted by a
5 partnership which is in a unitary business with the combined group
6 shall be treated as the business of the partners that are members of
7 the combined group, whether the partnership interest is held directly
8 or indirectly through a series of partnerships, to the extent of a
9 partner's distributive share of partnership income. The amount of
10 partnership income to be included in the partner's entire net income
11 shall be determined in accordance with subsection a. of section 3 of
12 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
13 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business
14 conducted directly or indirectly by one corporation is unitary with
15 that portion of a business conducted by another corporation through
16 its direct or indirect interest in a partnership.

17 (cf: P.L.2020, c.118, s.3)

18

19 2. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to
20 read as follows:

21 12. For the purposes of the "New Jersey Gross Income Tax Act,"
22 N.J.S.54A:1-1 et seq.:

23 "New Jersey S corporation" means a corporation that is an S
24 corporation; which has made a valid election pursuant to section 3
25 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
26 corporation continuously since the effective date of the valid
27 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
28 5.22).

29 "Pro rata share" means the portion of any items attributable to an
30 S corporation shareholder for a taxable year determined in the
31 manner provided in, and subject to any election made under
32 subsection (a) of section 1377 or subsection (e) of section 1362 of
33 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and
34 s.1362.

35 "Pro rata share of S corporation income" means the sum of the
36 shareholder's proportionate share of:

37 For a New Jersey S corporation, the S corporation income
38 allocated to this State of all New Jersey S corporations; and the S
39 corporation income not allocated to this State.

40 "S corporation" means a corporation included in the definition of
41 an "S corporation" pursuant to section 1361 of the federal Internal
42 Revenue Code of 1986, 26 U.S.C. s.1361.

43 "S corporation income" means the net of an S corporation's items
44 of income, loss or deduction taken into account by the shareholder
45 in the manner provided in section 1366 of the federal Internal
46 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

47 a. S corporation income shall be determined without the
48 exclusion, deduction or credit of:

- 1 (1) any dividend exclusion or deduction otherwise allowed
2 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,
3 c.162 (C.54:10A-4);
- 4 (2) taxes paid or accrued to the United States, a possession or
5 territory of the United States, a state including this State, a political
6 subdivision thereof, or the District of Columbia on or measured by
7 profits or income, or business presence or business activity, of the
8 corporation;
- 9 (3) any income taxes paid or accrued to the United States, a
10 possession or territory of the United States, a state including this
11 State, a political subdivision thereof, or the District of Columbia
12 paid or accrued by the S corporation on behalf of, or in satisfaction
13 of the liabilities of, shareholders of the corporation;
- 14 (4) interest income on obligations of any state other than this
15 State, or of a political subdivision thereof, or of the federal
16 government, except as deducted pursuant to subsection b. of this
17 section; or
- 18 (5) interest on indebtedness incurred or continued, expenses
19 paid and incurred to purchase, carry, manage or conserve, and
20 expenses of collection of the income or gain from obligations the
21 income or gain from which is deductible pursuant to subsection b.
22 of this definition; and
- 23 b. S corporation income shall be determined after deduction of:
- 24 (1) any gains or income derived from obligations which are
25 referred to in N.J.S.54A:6-14 or from securities which evidence
26 ownership in a qualified investment fund as defined in section 2 of
27 P.L.1987, c.310 (C.54A:6-14.1), and any interest excluded from
28 gross income pursuant to N.J.S.54A:6-14, or distributions excluded
29 from income pursuant to section 2 of P.L.1987, c.310 (C.54A:6-
30 14.1); and
- 31 (2) (a) in the case of a taxpayer that is a cannabis licensee, an
32 amount equal to any expenditure that is eligible to be claimed as a
33 federal income tax deduction but is disallowed because cannabis is
34 a controlled substance under federal law;
- 35 (b) subparagraph (a) of this paragraph shall only apply to a
36 taxpayer with less than \$15,000,000 of gross receipts, as gross
37 receipts are calculated in accordance with the gross receipts test of
38 subsection (c) of section 448 of the Internal Revenue Code (26
39 U.S.C. s.448), but without regard to the \$25,000,000 maximum or
40 the adjustment for inflation of that subsection;
- 41 (c) for purposes of this paragraph, "licensee" means the same as
42 defined in section 3 of P.L. c. (C.) (pending before the
43 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of
44 2020); and
- 45 c. The character of any S corporation item taken into account
46 by a shareholder of an S corporation shall be determined as if such
47 items were received or incurred by the S corporation and not its
48 shareholder.

1 "S corporation income allocated to this State" means that portion
2 of the S corporation income that is allocated to this State by the
3 allocation factor of the corporation for the fiscal or calendar
4 accounting period pursuant to sections 6 through 10 of P.L.1945,
5 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax
6 imposed pursuant to paragraph (3) of subsection (c) of section 5 of
7 P.L.1945, c.162 (C. 54:10A-5).

8 "S corporation income not allocated to this State" means S
9 corporation income less S corporation income allocated to this
10 State.

11 (cf: P.L.1993, c.173, s.12)

12
13 3. (New section) New Jersey gross income under subsections b.
14 and k. of N.J.S.54A:5-1 shall be determined without regard to
15 section 280E of the Internal Revenue Code (26 U.S.C. 280E).

16
17 4. (New section) Notwithstanding the provisions of the
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
19 1 et seq.), to the contrary, the director may adopt, immediately,
20 upon filing with the Office of Administrative Law, regulations that
21 the director deems necessary to implement the provisions of P.L. ,
22 c. (C.) (pending before the Legislature as this bill), which
23 regulations shall be effective for a period not to exceed 360 days
24 from the date of the filing. The director may thereafter amend,
25 adopt, or readopt the regulations in accordance with the
26 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

27
28 5. This act shall take effect immediately or upon the enactment
29 into law of P.L. , c. (C.) (pending before the Legislature as
30 Assembly Bill No. 21 and Senate Bill No. 21 of 2020), whichever
31 occurs later.

32 33 34 STATEMENT

35
36 This bill decouples the corporation business tax from the federal
37 income tax provision that prohibits deductions and credits for
38 cannabis businesses. The bill also decouples S corporation income
39 under the gross income tax from the federal provision. In both
40 instances, the bill only decouples from the federal provision for
41 taxpayers with less than \$15 million of gross receipts.

42 Under the State's corporation business tax, and for S corporation
43 income under the gross income tax, the starting point for calculating
44 income that is taxable is that which is taxable under the federal
45 income tax. Federal law (26 U.S.C. s.280E) prohibits deductions
46 and credits for businesses trafficking in federally defined schedule I
47 and II controlled substances, which includes cannabis. Deductions
48 for business expenses are therefore not available to cannabis

1 businesses, which results in a higher federal income tax liability
2 than other businesses with similar amounts of income. Because the
3 corporation business tax is currently linked by State law to federal
4 law in this respect, cannabis businesses subject to the corporation
5 business tax would also have a higher tax liability than other
6 businesses with similar amounts of income. The same is true for S
7 corporation income under the gross income tax. In contrast, other
8 forms of business income under the gross income tax are not linked
9 to the federal provision by State law, but this bill nevertheless
10 includes a provision to state explicitly that the federal provision
11 does not apply.

12 As a result of enactment of this bill, a business with less than \$15
13 million of gross receipts and subject to the corporation business tax
14 will be allowed to deduct from income all ordinary and necessary
15 business expenses incurred in carrying on a licensed cannabis
16 business. The deduction will also be allowed when calculating S
17 corporation income from S corporations with less than \$15 million
18 of gross receipts, and will continue to be allowed for other forms of
19 business income under the gross income tax regardless of total
20 gross receipts.