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ASSEMBLY, No. 4295

STATE OF NEW JERSEY
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Sponsored by:

Assemblywoman SADAF F. JAFFER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

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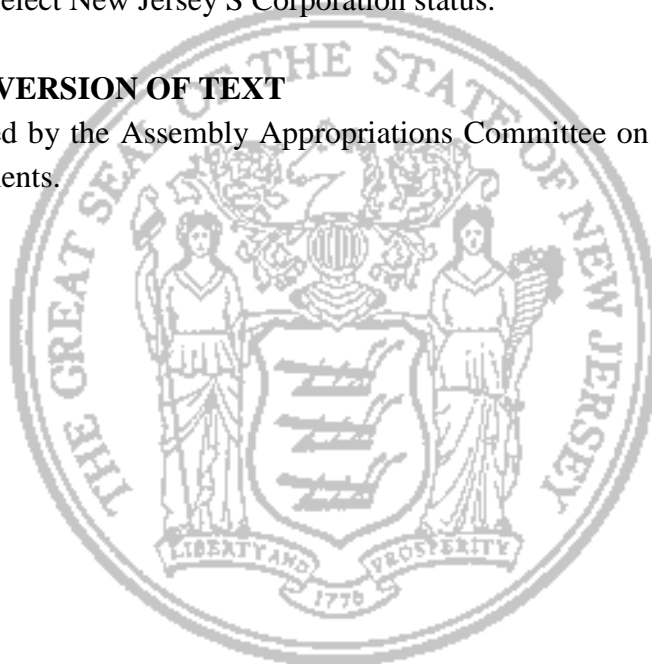
Assemblyman Tully

SYNOPSIS

Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 23, 2022, with amendments.



(Sponsorship Updated As Of: 6/29/2022)

1 AN ACT concerning new federal partnership tax audit regime,
2 ending COVID-related tax extensions, eliminating requirement
3 to affirmatively elect New Jersey S Corporation status, and
4 administering these changes under the gross income tax and the
5 corporation business tax, supplementing Title 54A of the New
6 Jersey Statutes and P.L.145, c.162, and amending various parts
7 of the statutory law.

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

11
12 1. N.J.S.54A:2-2 is amended to read as follows:

13 54A:2-2. a. A partnership as such shall not be subject to the
14 New Jersey Gross Income Tax. Individuals carrying on business as
15 partners shall be liable for the New Jersey Gross Income Tax only
16 in their separate or individual capacities, except as provided under
17 section b. of this section.

18 b. A partnership shall report any federal partnership audit
19 adjustments made by the Internal Revenue Service pursuant section
20 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s.6225(a)(1)) to
21 the Division of Taxation in the Department of the Treasury in
22 accordance with section 2 and subsection d. of section 9 of
23 P.L. ,c. (C.) (pending before the Legislature as this bill). The
24 partners of the reviewed year shall make payment of any New
25 Jersey Gross Income Tax liability that results from the federal
26 partnership audit adjustments reported on the Federal Adjustments
27 Report, unless the partnership makes the election to pay tax on the
28 partner's behalf.

29 (1) Failure of the partnership, partner, tiered partner, indirect
30 partner, or member to report or pay federal adjustments pursuant to
31 section 6225(a) and section 6225(c) of the Internal Revenue Code
32 shall not prevent the director from assessing the partnership,
33 partner, tiered partner, indirect partner, or member for taxes they
34 owe, using the best information available, in the event that the
35 partnership, partner, tiered partner, indirect partner, or member fails
36 to timely make any report or payment required by this section for
37 any reason.

38 c. The director may adopt rules and regulations that the
39 director deems necessary to effectuate the provisions of this section.

40 (cf: N.J.S.54A:2-2)

41

42 2. (New section) a. A taxpayer, as defined in N.J.S. 54A:1-2 or
43 subsection h. of section 4 of P.L.1945, c.162 (C.54:10A-4), whose
44 tax return filed with the Internal Revenue Service, or whose net
45 income reported, is changed or corrected by any official of the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted June 23, 2022.

1 United States government in any respect affecting a tax imposed by
2 chapter 2 of Title 54A of the New Jersey Statutes, including a
3 return or other similar report filed pursuant to section 6225(c)(2) of
4 the Internal Revenue Code (26 U.S.C. s.6225(c)(2)), shall within 90
5 days after the final federal adjustment and determination of the
6 change or correction, submit to the director the Federal Adjustments
7 Report.

8 b. Except for the distributive share of adjustments that have
9 been reported as required under subsection a. of this section,
10 partnerships and partners of the reviewed year shall, within 90 days
11 after the final determination date of the final federal adjustments
12 arising from a federal partnership level audit or an administrative
13 adjustment request, file the Federal Adjustments Report and make
14 payments as required under subsection b. of N.J.S.54A:5-4.

15 c. Upon the filing of a Federal Adjustments Report, the
16 director shall examine a taxpayer's return, determine any additional
17 tax or refund that may be due, and shall notify the taxpayer. Any
18 additional tax shall be paid within 15 days after the Federal
19 Adjustments Report is filed together with interest from the original
20 due date of the return for the taxable year to the date of payment of
21 the additional tax.

22

23 3. N.J.S.54A:5-4 is amended to read as follows:

24 54A:5-4. [A] a. Except as provided in subsections b. and c. of
25 this section, a partnership or association as such shall not be subject
26 to the tax imposed by this act, but the income or gain of a partner or
27 member of a partnership or association shall be subject to the tax
28 and the tax shall be imposed on [his] the partner's or member's
29 share, whether or not distributed, of the income or gain received by
30 the partnership or association for its taxable year ending within or
31 with the partner's or member's taxable year.

32 b. A partnership shall report and make payment of any New
33 Jersey gross income tax liability that results from the federal
34 partnership audit adjustments in accordance with section 2 of
35 P.L. , c. (C.) (pending before the Legislature as this bill)
36 and subsection d. of section 9 of P.L. ,c. (C.) (pending
37 before the Legislature as this bill).

38 c. Failure of the partnership, partner, indirect partner, tiered
39 partner, or member to report or pay federal adjustments that result
40 from the federal partnership audit adjustments shall not prevent the
41 director from assessing a partnership, partner, indirect partner,
42 tiered partner, or member for taxes they owe, using the best
43 information available, if the partnership, partner, indirect partner,
44 tiered partner, or member fails to timely make any report or
45 payment required by this section for any reason.

46 (cf: N.J.S.54A:5-4)

1 4. N.J.S.54A:8-7 is amended to read as follows:

2 54A:8-7. a. Report of change in federal taxable income or
3 credit. If the amount of a taxpayer's federal taxable income or
4 earned income tax credit reported on the taxpayer's federal income
5 tax return for any taxable year is changed or corrected by the United
6 States Internal Revenue Service or other competent authority, or as
7 the result of a renegotiation of a contract or subcontract with the
8 United States, the taxpayer shall report such change or correction
9 in federal taxable income or earned income tax credit within 90
10 days after the final determination of such change, correction, or
11 renegotiation, or as otherwise required by the director, and shall
12 concede the accuracy of such determination or state wherein it is
13 erroneous. Any taxpayer filing an amended federal income tax
14 return, including a return or other information filed pursuant to
15 section 6225(c) of the Internal Revenue Code (26 U.S.C. s.
16 6225(c)), shall also file within 90 days thereafter an amended return
17 under this act, and shall give such information as the director may
18 require. The director may by regulation prescribe such exceptions
19 to the requirements of this section as the director deems
20 appropriate.

21 b. A partnership shall report the Final Federal Adjustments
22 from a federal partnership audit or administrative adjustment
23 request pursuant to section 6225(a)(1) of the Internal Revenue Code
24 (26 U.S.C. s.6225(a)(1)) by filing the Federal Adjustments Report
25 as prescribed by the director within 90 days after the Final
26 Determination Date of the federal adjustments arising from a
27 partnership level audit.

28 c. The director may assess the federally audited partnership,
29 partners, or both, for taxes they owe, using the best information
30 available, even if the partnership or tiered partner fails to timely
31 make any report required by this section for any reason.

32 d. The director shall adopt rules and regulations the director
33 may deem necessary to effectuate the provisions of this section.

34 (cf: P.L.2000, c.80, s.6)

35

36 5. N.J.S.54A:9-4 is amended to read as follows:

37 54A:9-4. (a) General. Except as otherwise provided in this
38 section, any tax under this act shall be assessed within 3 years after
39 the return was filed (whether or not such return was filed on or after
40 the date prescribed).

41 (b) Time return deemed filed.

42 (1) Early return. for purposes of this section a return of income
43 tax, except withholding tax, filed before the last day prescribed by
44 law or by regulations promulgated pursuant to law for the filing
45 thereof, shall be deemed to be filed on such last day.

46 (2) Return of withholding tax. For purposes of this section, if a
47 return of withholding tax for any period ending with or within a
48 calendar year is filed before April 15 of the succeeding calendar

1 year, such return shall be deemed to be filed on April 15 of such
2 succeeding calendar year.

3 (c) Exceptions.

4 (1) Assessment at any time. The tax may be assessed at any
5 time if--

6 (A) No return is filed,

7 (B) A false or fraudulent return is filed with intent to evade tax,
8 or

9 (C) The taxpayer fails to comply with **[section]** N.J.S.54A:8-7,
10 in not reporting a change or correction increasing **[his]** the
11 taxpayer's Federal taxable income as reported on his Federal
12 income tax return, or in not reporting a change or correction which
13 is treated in the same manner as if it were a deficiency for Federal
14 income tax purposes, **[or]** in not filing an amended return, or, for
15 both partners and partnerships, in not reporting final federal
16 adjustments resulting from a partnership audit pursuant to section
17 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s. 6225(a)(1)).

18 (2) Extension by agreement. Where, before the expiration of the
19 time prescribed in this section for the assessment of tax, both the
20 director and the taxpayer have consented in writing to its
21 assessment after such time, the tax may be assessed at any time
22 prior to the expiration of the period agreed upon. The period so
23 agreed upon may be extended by subsequent agreements in writing
24 made before the expiration of the period previously agreed upon.

25 (3) Report of changed or corrected Federal income. If the
26 taxpayer shall, pursuant to **[section 54A:8-7]** subsection a. of
27 N.J.S.54A:8-7, report a change or correction or file an amended
28 return increasing **[his]** the taxpayer's Federal taxable income or
29 report a change or correction which is treated in the same manner as
30 if it were a deficiency for Federal income tax purposes, the
31 assessment (if not deemed to have been made upon the filing of the
32 report or amended return) may be made at any time within 2 years
33 after such report or amended return was filed. The amount of such
34 assessment of tax shall not exceed the amount of the increase in
35 New Jersey tax attributable to such Federal change or correction.
36 The provisions of this paragraph shall not affect the time within
37 which or the amount for which an assessment may otherwise be
38 made.

39 (4) Recovery of erroneous refund. An erroneous refund shall be
40 considered an underpayment of tax on the date made, and an
41 assessment of a deficiency arising out of an erroneous refund may
42 be made at any time within 3 years from the making of the refund,
43 except that the assessment may be made within 5 years from the
44 making of the refund if it appears that any part of the refund was
45 induced by fraud or misrepresentation of a material fact.

46 (5) Request for prompt assessment. If a return is required for a
47 decedent or for **[his]** the decedent's estate during the period of

1 administration, the tax shall be assessed within 18 months after
2 written request therefor (made after the return is filed) by the
3 executor, administrator or other person representing the estate of
4 such decedent, but not more than 3 years after the return was filed,
5 except as otherwise provided in this subsection and subsection (d).

6 (6) Final federal adjustments resulting from a Federal
7 Partnership Audit. Tax may be assessed against the partnership,
8 direct or indirect partners, or both, within two years of the time that
9 a partnership files a Federal Adjustments Report as required by
10 N.J.S.54A:8-7 that includes Final Federal Adjustments from a
11 federal partnership audit or administrative adjustments request that
12 would result in additional New Jersey income tax for one or more
13 direct or indirect partners.

14 (d) Omission of income on return. The tax may be assessed at
15 any time within 6 years after the return was filed if--

16 (1) An individual omits from his New Jersey income an amount
17 properly includible therein which is in excess of 25% of the amount
18 of New Jersey income stated in the return; or

19 (2) An estate or trust omits income from its return in an amount
20 in excess of 25% of its income determined as if it were an
21 individual, computing his New Jersey income under this act.

22 For purposes of this subsection there shall not be taken into
23 account any amount which is omitted in the return if such amount is
24 disclosed in the return, or in a statement attached to the return, in a
25 manner adequate to apprise the director of the nature and amount of
26 such item.

27 (e) Suspension of running of period of limitation. The running
28 of the period of limitations on assessment or collection of tax or
29 other amount (or of a transferee's liability) shall, after the mailing of
30 a notice of deficiency, be suspended for the period during which the
31 director is prohibited under subsection (c) of section N.J.S.54A:9-2
32 from making the assessment or from collecting by levy.

33 (cf: N.J.S.54A:9-4)

34
35 6. N.J.S.54A:9-8 is amended to read as follows:

36 54A:9-8. (a) General. Claim for credit or refund of an
37 overpayment of income tax shall be filed by the taxpayer within 3
38 years from the time the return was filed or 2 years from the time the
39 tax was paid, whichever of such periods expires the later, or if no
40 return was filed, within 2 years from the time the tax was paid. If
41 the claim is filed within the 3-year period, the amount of the credit
42 or refund shall not exceed the portion of the tax paid within the 3
43 years immediately preceding the filing of the claim plus the period
44 of any extension of time for filing the return. If the claim is not
45 filed within the 3-year period, but is filed within the 2-year period,
46 the amount of the credit or refund shall not exceed the portion of
47 the tax paid during the 2 years immediately preceding the filing of
48 the claim. Except as otherwise provided in this section, if no claim

1 is filed, the amount of a credit or refund shall not exceed the
2 amount which would be allowable if a claim had been filed on the
3 date the credit or refund is allowed.

4 (b) Extension of time by agreement. If an agreement under the
5 provisions of paragraph (2) of subsection (c) of **[section]**
6 N.J.S.54A:9-4 (extending the period for assessment of income tax)
7 is made within the period prescribed in subsection (a) for the filing
8 of a claim for credit or refund, the period for filing a claim for
9 credit or refund, or for making credit or refund if no claim is filed,
10 shall not expire prior to 6 months after the expiration of the period
11 within which an assessment may be made pursuant to the agreement
12 or any extension thereof. The amount of such credit or refund shall
13 not exceed the portion of the tax paid after the execution of the
14 agreement and before the filing of the claim or the making of the
15 credit or refund, as the case may be, plus the portion of the tax paid
16 within the period which would be applicable under subsection (a) if
17 a claim had been filed on the date the agreement was executed.

18 (c) Notice of change or correction of Federal income. If a
19 taxpayer is required by **[section]** N.J.S.54A:8-7 to report a change
20 or correction in Federal taxable income reported on **[his]** the
21 taxpayer's Federal income tax return, or to report a change or
22 correction which is treated in the same manner as if it were an
23 overpayment for Federal income tax purposes, or to file an amended
24 return with the director, claim for credit or refund of any resulting
25 overpayment of tax shall be filed by the taxpayer within 2 years
26 from the time the notice of such change or correction or such
27 amended return was required to be filed with the director. The
28 amount of such credit or refund shall not exceed the amount of the
29 reduction in tax attributable to such Federal change, correction or
30 items amended on the taxpayer's amended Federal income tax
31 return. This subsection shall not affect the time within which or the
32 amount for which a claim for credit or refund may be filed apart
33 from this subsection.

34 (d) Failure to file claim within prescribed period. No credit or
35 refund shall be allowed or made, except as provided in subsection
36 (e) of this section or subsection (d) of **[section]** N.J.S.54A:9-10,
37 after the expiration of the applicable period of limitation specified
38 in this act, unless a claim for credit or refund is filed by the
39 taxpayer within such period. Any later credit shall be void and any
40 later refund erroneous. No period of limitations specified in any
41 other law shall apply to the recovery by a taxpayer of moneys paid
42 in respect of taxes under this act.

43 (e) Effect of petition to director. If a notice of deficiency for a
44 taxable year has been mailed to the taxpayer under **[section]**
45 N.J.S.54A:9-2 and if the taxpayer files a timely petition with the
46 director under **[section]** N.J.S.54A:9-9, **[he]** the director may
47 determine that the taxpayer has made an overpayment for such year

1 (whether or not **【he】** the director also determines a deficiency for
2 such year). No separate claim for credit or refund for such year
3 shall be filed, and no credit or refund for such year shall be allowed
4 or made, except--

5 (1) As to overpayments determined by a decision of the director
6 which has become final; and

7 (2) As to any amount collected in excess of an amount
8 computed in accordance with the decision of the director which has
9 become final; and

10 (3) As to any amount claimed as a result of a change or
11 correction described in subsection (c).

12 (f) Limit on amount of credit or refund. The amount of
13 overpayment determined under subsection (e) shall, when the
14 decision of the director has become final, be credited or refunded in
15 accordance with subsection (a) of section N.J.S. 54A:6-6 and shall
16 not exceed the amount of tax which the director determines as part
17 of **【he】** the director's decision was paid--

18 (1) After the mailing of the notice of deficiency; or

19 (2) Within the period which would be applicable under
20 subsections (a), (b) or (c), if on the date of the mailing of the notice
21 of a deficiency a claim had been filed (whether or not filed) stating
22 the grounds upon which the director finds that there is an
23 overpayment.

24 (g) Early return. For purposes of this section, any return filed
25 before the last day prescribed for the filing thereof shall be
26 considered as filed on such last day, determined without regard to
27 any extension of time granted the taxpayer.

28 (h) Prepaid income tax. For purposes of this section, any tax
29 paid by the taxpayer before the last day prescribed for its payment,
30 any income tax withheld from the taxpayer during any calendar
31 year, and any amount paid by the taxpayer as estimated income tax
32 for a taxable year shall be deemed to have been paid by **【him】** the
33 taxpayer on the fifteenth day of the fourth month following the
34 close of **【his】** the taxpayer's taxable year with respect to which
35 such amount constitutes a credit or payment.

36 (i) Return and payment of withholding tax. Notwithstanding
37 subsection (h), for purposes of this section with respect to any
38 withholding tax--

39 (1) If a return for any period ending with or within a calendar
40 year is filed before April 15 of the succeeding calendar year, such
41 return shall be considered filed on April 15 of such succeeding
42 calendar year; and

43 (2) If a tax with respect to remuneration paid during any period
44 ending with or within a calendar year is paid before April 15 of the
45 succeeding calendar year, such tax shall be considered paid on April
46 15 of such succeeding calendar year.

47 (j) Final federal adjustments resulting from a partnership audit
48 or administrative adjustments request. If a partnership files a

1 Federal Adjustments Report with final federal adjustments resulting
2 from a partnership audit or administrative adjustments request that
3 do not result in a federal imputed underpayment, and which are not
4 taken into account by the partnership in the federal adjustment year
5 partnership return, then the partners may claim a credit or refund of
6 the related State tax by filing an amended return or other schedule
7 as required by the director. The amount of such credit or refund
8 shall not exceed the amount of the reduction in New Jersey tax
9 attributable to such final federal adjustments. This subsection shall
10 not affect the time within in which or the amount for which a claim
11 for credit or refund may be filed apart from this subsection.

12 (cf: N.J.S.54A:9-8)

13

14 7. (New section) As used in sections 7 through 13 of
15 P.L. , c. (C.) (pending before the Legislature as this bill):

16 “Administrative adjustment request” means an administrative
17 adjustment request filed by a partnership under section 6227 of the
18 federal Internal Revenue Code (26 U.S.C. s.6227).

19 “Allocation Factor” means the allocation factor as required on
20 the New Jersey Gross Income Tax Business Allocation Schedule
21 NJ-NR-A.

22 “Audited partnership” means a partnership subject to a
23 partnership level audit resulting in a federal adjustment.

24 “Corporate partner” means a partner that is a corporation subject
25 to tax pursuant to section 2 of P.L. 1945, c. 162 (C.54:10A-2) or is
26 subject to the requirements of section 12 of P.L.2002, c.40
27 (C.54:10A-15.11).

28 “Direct partner” means a partner that holds an interest directly in
29 a partnership or pass-through entity.

30 “Exempt partner” means a partner that is exempt from taxation
31 under section 3 of P.L.1945, c.162 (C.54:10A-3).

32 “Federal adjustment” means a change to an item or amount
33 determined under the federal Internal Revenue Code that is used by
34 a taxpayer to compute tax owed under the “New Jersey Gross
35 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business
36 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), whether that
37 change results from action by the Internal Revenue Service,
38 including a partnership level audit, or the filing of an amended
39 federal return, federal refund claim, or an administrative adjustment
40 request by the taxpayer. A federal adjustment is positive to the
41 extent that it increases State taxable income as determined under
42 N.J.S.54A:5-1 or subsection (k) of section 4 of P.L.1945, c.162
43 (C.54:10A-4) and is negative to the extent that it decreases State
44 taxable income as determined under N.J.S.54A:5-1 or subsection
45 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

46 “Federal Adjustments Report” includes methods or forms
47 required by N.J.S.54A:8-7 or section 13 of P.L.1945, c.162
48 (C.54:10A-13) for use by a taxpayer to report final federal

1 adjustments, including an amended New Jersey tax return,
2 information return, or a uniform multistate report.

3 “Federal partnership representative” means the person the
4 partnership designates for the taxable year as the partnership’s
5 representative, or the person the Internal Revenue Service has
6 appointed to act as the federal partnership representative, pursuant
7 to section 6223(a) of the federal Internal Revenue Code (26 U.S.C.
8 s.6223(a)).

9 “Final determination date” means the following:

10 a. Except as provided in b. and c. below, if the federal
11 adjustment arises from an Internal Revenue Service audit or other
12 action by the Internal Revenue Service, the final determination date
13 is the first day on which no federal adjustments arising from that
14 audit or other action remain to be finally determined, whether by
15 Internal Revenue Service decision with respect to which all rights
16 of appeal have been waived or exhausted, by agreement, or, if
17 appealed or contested, by a final decision with respect to which all
18 rights of appeal have been waived or exhausted. For agreements
19 required to be signed by the Internal Revenue Service and the
20 taxpayer, the final determination date is the date on which the last
21 party signed the agreement.

22 b. For federal adjustments arising from an Internal Revenue
23 Service audit or other action by the Internal Revenue Service, if the
24 taxpayer filed as a member of a composite return Form NJ-1080(c)
25 or as a member of a combined group filing a combined return for
26 corporation business tax purposes, the final determination date
27 means the first day on which no related federal adjustments arising
28 from that audit remain to be finally determined, as described in a.
29 above for the entire group.

30 c. If the federal adjustment results from filing an amended
31 federal return, a federal refund claim, or an administrative
32 adjustment request, or if it is a federal adjustment reported on an
33 amended federal return or other similar report filed pursuant to
34 6225(c) of the federal Internal Revenue Code (26 U.S.C. s.6225(c)),
35 the final determination date means the day on which the amended
36 return, refund claim, administrative adjustment request, or other
37 similar report was filed.

38 “Final federal adjustment” means a federal adjustment after the
39 final determination date for that federal adjustment has passed.

40 “Indirect partner” means a partner in a partnership or pass-
41 through entity that itself holds an interest directly, or through
42 another indirect partner, in a partnership, or pass-through entity.

43 “Nonresident partner” means an individual, trust, or estate
44 partner that is not a resident partner.

45 “Partner” means a person that holds an interest directly or
46 indirectly in a partnership or other pass-through entity.

1 “Partnership” means an entity subject to taxation under
2 subchapter K of the federal Internal Revenue Code or is otherwise
3 taxed as a partnership for federal income tax purposes.

4 “Partnership level audit” means an examination by the Internal
5 Revenue Service at the partnership level pursuant to Subchapter C
6 of Title 26, Subtitle F, Chapter 63 of the federal Internal Revenue
7 Code, as enacted by the Bipartisan Budget Act of 2015, Pub.L.114-
8 74, which results in federal adjustments.

9 “Pass-through entity” means an entity not taxed as a C
10 corporation.

11 “Reallocation adjustment” means a federal adjustment resulting
12 from a partnership level audit or an administrative adjustment
13 request that changes the shares of one or more items of partnership
14 income, gain, loss, expense, or credit allocated to direct partners. A
15 positive reallocation adjustment means the portion of a reallocation
16 adjustment that would increase federal income for one or more
17 direct partners, and a negative reallocation adjustment means the
18 portion of a reallocation adjustment that would decrease federal
19 income for one or more direct partners pursuant to regulations
20 promulgated under section 6225 of the federal Internal Revenue
21 Code (26 U.S.C. s.6225)

22 “Resident partner” means an individual, trust, or estate partner
23 that is a resident of New Jersey under subsections (m) and (o) of
24 N.J.S.54A:1-2 for the relevant tax period.

25 “Reviewed year” means the taxable year of a partnership that is
26 subject to a partnership level audit from which federal adjustments
27 arise.

28 “Taxpayer” means the same as defined under subsection (l) of
29 N.J.S.54A:1-2 or subsection (h) of section 4 of P.L.1945,
30 c.162(C.54:10A-4) and, unless the context clearly indicates
31 otherwise, includes a partnership subject to a partnership level audit
32 or a partnership that has made an administrative adjustment request,
33 as well as a tiered partner of that partnership.

34 “Tiered partner” means any partner that is a partnership or pass-
35 through entity.

36 To the extent terms used in this section are not defined in this
37 section or elsewhere in chapter 9 of Title 54A of the New Jersey
38 Statutes, the definition of such terms shall conform as closely as
39 possible to the terminology used in the amendments to the federal
40 Internal Revenue Code pertaining to the comprehensive partnership
41 audit regime as contained in the Bipartisan Budget Act of 2015,
42 Pub. L.114-74, as amended, and this section shall be so interpreted.

43
44 8. (New section) Reporting Adjustments to Federal Taxable
45 Income – General Rule. Except in the case of final federal
46 adjustments that are required to be reported by a partnership and its
47 partners using the procedures in section 9 of P.L. , c. (C.)
48 (pending before the Legislature as this bill), and final federal

1 adjustments required to be reported for federal purposes in the
2 partnership return for the adjustment year, a taxpayer shall report
3 and pay any New Jersey Gross Income Tax or New Jersey
4 Corporation Business Tax due with respect to final federal
5 adjustments arising from an audit or other action by the Internal
6 Revenue Service or reported by the taxpayer on a timely filed
7 amended federal income tax return, including a return or other
8 similar report filed pursuant to section 6225(c)(2) of the federal
9 Internal Revenue Code (26 U.S.C. s.6225(c)(2)), or federal claim
10 for refund by filing a federal adjustments report with the Division
11 of Taxation for the reviewed year and, if applicable, paying the
12 additional New Jersey Gross Income Tax or New Jersey
13 Corporation Business Tax owed by the taxpayer no later than 90
14 days after the final determination date.

15

16 9. (New section) Reporting Federal Adjustments – Partnership
17 Level Audit and Administrative Adjustment Request

18 a. Except for adjustments required to be reported for federal
19 purposes in the partnership return for the adjustment year, and the
20 distributive share of adjustments that have been reported as required
21 under section 8 of P.L. , c. (C.) (pending before the
22 Legislature as this bill), partnerships, and partners shall report final
23 federal adjustments arising from a partnership level audit or an
24 administrative adjustment request and make payments as required
25 under this section.

26 b. State Partnership Representative.

27 (1) With respect to an action required or permitted to be taken
28 by a partnership under this section and a proceeding under
29 R.S.54:49-18 with respect to that action, the State partnership
30 representative for the reviewed year shall have the sole authority to
31 act on behalf of the partnership, and the partnership's direct
32 partners and indirect partners shall be bound by those actions.

33 (2) The State partnership representative for the reviewed year is
34 the partnership's federal partnership representative unless the
35 partnership designates in writing another person as its State
36 partnership representative.

37 (3) The division may establish reasonable qualifications for and
38 procedures for designating a person, other than the federal
39 partnership representative, to be the State partnership
40 representative.

41 c. Reporting and Payment Requirements for Partnerships
42 Subject to a Final Federal Adjustment and their Direct Partners.
43 Final federal adjustments subject to the requirements of this section,
44 except for those subject to a properly made election under
45 subsection d. of this section shall be reported as follows:

46 (1) No later than 90 days after the final determination date, the
47 partnership shall:

1 (a) file a completed federal adjustments report, including
2 information as required by the director, with the division;

3 (b) notify each of its direct partners of their distributive share of
4 the final federal adjustments including information as required by
5 the director;

6 (c) file an amended New Jersey Form 1065 as required under
7 N.J.S.54A:8-7 and pay the amount required under section 2 of
8 P.L. , c. (C.) (pending before the Legislature as this bill);
9 and

10 (d) file an amended composite return for direct partners and pay
11 the additional amount under subsection c. of section 2 of
12 P.L. , c. (C.) (pending before the Legislature as this bill) that
13 would have been due had the final federal adjustments been
14 reported properly as required.

15 (2) No later than 90 days after the final determination date, each
16 direct partner that is taxed under the “New Jersey Gross Income
17 Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business Tax Act
18 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), shall:

19 (a) file a Federal Adjustments Report reporting their distributive
20 share of the adjustments reported to them under subparagraph (b) of
21 paragraph (1) of subsection c. of this section as required under this
22 section or N.J.S.54A:8-7; and

23 (b) Pay any additional amount of tax due as if final federal
24 adjustments had been properly reported, plus any penalty and
25 interest due under N.J.S.54A:9-5, N.J.S54A:9-6, R.S.54:49-3, or
26 R.S.54:49-4.

27 d. Election – Partnership Pays. Subject to the limitations in
28 paragraph (3) of this subsection, an audited partnership making an
29 election under this section shall:

30 (1) no later than 90 days after the final determination date, file a
31 completed Federal Adjustments Report, including information as
32 required by the director, and notify the division that it is making the
33 election under this section;

34 (2) no later than 180 days after the final determination date, pay
35 an amount, determined as follows, in lieu of taxes owed by its direct
36 and indirect partners:

37 (a) exclude from final federal adjustments the distributive share
38 of these adjustments reported to a direct exempt partner not subject
39 to tax under section 3 of P.L.1945, c.162 (C.54:10A-3).

40 (b) for the total distributive shares of the remaining final federal
41 adjustments reported to direct corporate partners subject to tax
42 under section 2 of P.L.1945, c.162 (C.54:10A-2), apportion and
43 allocate such adjustments as provided under sections 6 through 10
44 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), section 19
45 of P.L. 2018, c. 48 (C.54:10A-4.7) and subsection a of sections 3
46 through 4 of P.L. 2001, c. 136 (C.54:10A-15.6. through C.54:10A-
47 15.7) and multiply the resulting amount by the highest tax rate
48 under section 5 of P.L.1945, c.162 (C.54:10A-5);

1 (c) for the total distributive shares of the remaining final federal
2 adjustments reported to nonresident direct partners subject to tax
3 under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
4 seq., determine the amount of such adjustments which is New
5 Jersey source income under paragraph (3) of subsection (a) of
6 N.J.S.54A:5-8 and multiply the resulting amount by the highest tax
7 rate under N.J.S.54A:2-1;

8 (d) For the total distributive shares of the remaining final federal
9 adjustments reported to tiered partners:

10 (i) determine the amount of such adjustments which is of a type
11 that it would be subject to sourcing to New Jersey under paragraph
12 (3) of subsection (a) of N.J.S.54A:5-8 and then determine the
13 portion of this amount that would be sourced to the state applying
14 these rules;

15 (ii) determine the amount of such adjustments which is of a type
16 that it would not be subject to sourcing to New Jersey by a
17 nonresident partner under subsection (c) of N.J.S.54A:5-8;

18 (iii) determine the portion of the amount determined in
19 subparagraph (ii) of this subparagraph that can be established,
20 under regulation issued by the division, to be properly allocable to
21 nonresident indirect partners or other partners not subject to tax on
22 the adjustments; or that can be excluded under procedures for
23 modified reporting and payment method allowed under
24 subparagraph (f) of this paragraph;

25 (e) multiply the total of the amounts determined in
26 subparagraphs (i) and (ii) of this subparagraph reduced by the
27 amount determined in subparagraph (iii) of this subparagraph by
28 the highest tax rate under N.J.S.54A:2-1;

29 (f) for the total distributive shares of the remaining final federal
30 adjustments reported to resident direct partners subject to tax under
31 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
32 multiply that amount by the highest tax rate under N.J.S.54A:2-1;

33 (g) add the amounts determined in subparagraphs (b), (c), (e),
34 and (f) of this paragraph, along with penalty and interest as
35 provided in N.J.S.54A:9-5, N.J.S.54A:9-6, R.S.54:49-3, or
36 R.S.54:49-4.

37 (3) Final federal adjustments subject to this election exclude:

38 (a) the distributive share of final audit adjustments that are
39 required to be included in the unitary business income of any direct
40 or indirect corporate partner, provided that the audited partnership
41 can reasonably determine this; and

42 (b) any final federal adjustments resulting from an administrative
43 adjustment request.

44 (4) An audited partnership not otherwise subject to any reporting
45 or payment obligation to New Jersey that makes an election under
46 this subsection consents to be subject to New Jersey laws related to
47 reporting, assessment, payment, and collection of New Jersey tax
48 calculated under the election.

1 e. Tiered Partners. The direct and indirect partners of an audited
2 partnership that are tiered partners, and all of the partners of those
3 tiered partners that are subject to tax under the “New Jersey Gross
4 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business
5 Tax Act (1945), P.L.1945,c.162 (C. 54:10A-1 et seq.), are subject to
6 the reporting and payment requirements of subsection c. of this
7 section and the tiered partners are entitled to make the elections
8 provided in subsections d. and f. of this section. The tiered partners
9 or their partners shall make required reports and payments no later
10 than 90 days after the time for filing and furnishing statements to
11 tiered partners and their partners as established under section 6226
12 of the federal Internal Revenue Code (26 U.S.C. s.6226) and the
13 regulations thereunder. The division may adopt regulations to
14 establish procedures and interim time periods for the reports and
15 payments required by tiered partners and their partners and for
16 making the elections under this section.

17 f. Modified Reporting and Payment Method. Under procedures
18 adopted by and subject to the approval of the division, an audited
19 partnership or tiered partner may enter into an agreement with the
20 division to utilize an alternative reporting and payment method,
21 including applicable time requirements or any other provision of
22 this section, if the audited partnership or tiered partner demonstrates
23 that the requested method will reasonably provide for the reporting
24 and payment of taxes, penalties, and interest due under the
25 provisions of this section. Application for approval of an alternative
26 reporting and payment method must be made by the audited
27 partnership or tiered partner within the time for election as provided
28 in subsection d. or e. of this section, as appropriate.

29 g. Effect of Election by Audited Partnership or Tiered Partner
30 and Payment of Amount Due.

31 (1) The elections made pursuant to subsections d. and f. of this
32 section are irrevocable, unless the division, in its discretion,
33 determines otherwise.

34 (2) If properly reported and paid by the audited partnership or
35 tiered partner, the amount determined in paragraph (2) of subsection
36 d. of this section, or similarly under an optional election under
37 subsection f. of this section will be treated as paid in lieu of taxes
38 owed by its direct and indirect partners, to the extent applicable, on
39 the same final federal adjustments. The direct partners or indirect
40 partners may not take any deduction or credit for this amount or
41 claim a refund of the amount in this State. Nothing in this
42 subsection shall preclude a direct resident partner from claiming a
43 credit against taxes paid to this State pursuant to N.J.S.54A:4-1, any
44 amounts paid by the audited partnership or tiered partner on the
45 resident partner’s behalf to another state or local tax jurisdiction in
46 accordance with the provisions of N.J.S.54A:4-1.

47 h. Failure of Audited Partnership or Tiered Partner to Report or
48 Pay. Nothing in this section prevents the division from assessing

1 direct partners or indirect partners for taxes they owe, using the best
2 information available, in the event that a partnership or tiered
3 partner fails to timely make any report or payment required by this
4 section for any reason.

5

6 10. (New section) Assessments of Additional New Jersey Tax,
7 Interest, and Penalties Arising from Adjustments to Federal Taxable
8 Income – Statute of Limitations

9 a. The division shall assess additional tax, interest, and penalties
10 arising from final federal adjustments arising from an audit by the
11 Internal Revenue Service, including a partnership level audit, or
12 reported by the taxpayer on an amended federal income tax return
13 or as part of an administrative adjustment request by the following
14 dates:

15 (1) Timely Reported Federal Adjustments. If a taxpayer files
16 with the division a Federal Adjustments Report or an amended New
17 Jersey Form 1065 or amended New Jersey Corporation Business
18 Tax return as required within the period specified in section 8 or 9
19 of P.L. , c. (C.) (pending before the Legislature as this bill),
20 the division may assess any amounts, including in-lieu-of amounts,
21 taxes, interest, and penalties arising from those federal adjustments
22 if the division issues a notice of the assessment to the taxpayer no
23 later than:

24 (a) The expiration of the limitations period specified in
25 N.J.S.54A:9-4 and N.J.S.54:49-6; or

26 (b) The expiration of the one-year period following the date of
27 filing with the division of the federal adjustments report.

28 b. Untimely Reported Federal Adjustments. If the taxpayer fails
29 to file the Federal Adjustments Report within the period specified in
30 section 8 or 9 of P.L. , c. (C.) (pending before the
31 Legislature as this bill), as appropriate, or the Federal Adjustments
32 Report filed by the taxpayer omits final federal adjustments or
33 understates the correct amount of tax owed, the division may assess
34 amounts or additional amounts including in-lieu-of amounts, taxes,
35 interest, and penalties arising from the final federal adjustments, if
36 it mails a notice of the assessment to the taxpayer by a date which is
37 the latest of the following:

38 (1) The expiration of the limitations period specified in
39 N.J.S.54A:9-4 and N.J.S.54:49-6; or

40 (2) The expiration of the two-year period following the date the
41 Federal Adjustments Report was filed with the division; or

42 (3) Absent fraud, the expiration of the six-year period following
43 the final determination date.

44

45 11. (New section) Estimated New Jersey Tax Payments During
46 the Course of a Federal Audit

47 A taxpayer may make estimated payments to the division,
48 following the process prescribed by the division, of the New Jersey

1 Gross Income Tax or Corporation Business Tax expected to result
2 from a pending Internal Revenue Service audit, prior to the due date
3 of the Federal Adjustments Report, without having to file the report
4 with the division. The estimated tax payments shall be credited
5 against any tax liability ultimately found to be due to New Jersey
6 (“Final New Jersey Tax Liability”) and will limit the accrual of
7 further statutory interest on that amount. If the estimated tax
8 payments exceed the final tax liability and statutory interest
9 ultimately determined to be due, the taxpayer is entitled to a refund
10 or credit for the excess, provided the taxpayer files a Federal
11 Adjustments Report or claim for refund or credit of tax no later than
12 one year following the final determination date.

13

14 12. (New section) Claims for Refund or Credits of Tax Arising
15 from Final Federal Adjustments Made by the IRS

16 a. Except for final federal adjustments required to be reported
17 for federal purposes in the partnership return for the adjustment
18 year, a taxpayer may file a claim for refund or credit of tax arising
19 from federal adjustments made by the Internal Revenue Service on
20 or before the later of:

21 (1) The expiration of the last day for filing a claim for refund or
22 credit of New Jersey tax, including any extensions; or

23 (2) One year from the date a Federal Adjustments Report
24 prescribed in section 7 or 8 of P.L. , c. (C.) (pending
25 before the Legislature as this bill), as applicable, was due to the
26 division, including any extensions pursuant to this section.

27 b. The Federal Adjustments Report shall serve as the means for
28 the taxpayer to report additional tax due, report a claim for refund
29 or credit of tax, and make other adjustments, including to its net
30 operating losses, resulting from adjustments to the taxpayer’s
31 federal taxable income.

32

33 13. (New section) Scope of Adjustments and Extensions of
34 Time.

35 a. Unless otherwise agreed in writing by the taxpayer and the
36 division, any adjustments by the division or by the taxpayer made
37 after the expiration of the N.J.S.54A:9-4, N.J.S.54A:9-8, R.S.54:49-
38 3, or R.S.54:49-14 are limited to changes to the taxpayer’s tax
39 liability arising from federal adjustments.

40 b. The time periods provided for in this section may be
41 extended:

42 (1) Automatically, upon written notice to the division, by 60
43 days for an audited partnership or tiered partner which has 10,000
44 or more direct partners; or

45 (2) By written agreement between the taxpayer and the division
46 as set forth by the director.

47 c. Any extension granted for filing the Federal Adjustments
48 Report extends the last day prescribed by law for assessing any

1 additional tax arising from the adjustments to federal taxable
2 income and the period for filing a claim for refund or credit of
3 taxes.

4

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

7 12. a. (1) A partnership that is not a qualified investment
8 partnership or an investment club and that is not listed on a United
9 States national stock exchange shall, on or before the 15th day of
10 the fourth month succeeding the close of each privilege period,
11 remit a payment of tax. The amount of tax shall be equal to the sum
12 of: all of the share of the entire net income of the partnership for
13 that privilege period of all nonresident noncorporate partners,
14 multiplied by an allocation factor determined, pursuant to section 6
15 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
16 of the partnership for that privilege period, and multiplied by .0637
17 plus all of the share of the entire net income of the partnership for
18 that privilege period of all nonresident corporate partners,
19 multiplied by an allocation factor determined, pursuant to section 6
20 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
21 of the partnership for that privilege period, and multiplied by .09.
22 Entire net income shall not include additional income that results
23 from any federal partnership audit adjustments made by the Internal
24 Revenue Service under section 6225(a)(1) of the federal Internal
25 Revenue Code (26 U.S.C. s.6225(a)(1)).

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

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

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

41 b. An amount of tax paid by a partnership pursuant to
42 paragraph (1) of subsection a. of this section and an installment
43 payment paid pursuant to subparagraph (a) of paragraph (2) of
44 subsection a. of this section shall be credited to the partnership
45 accounts of its nonresident partners in proportion to each
46 nonresident partner's share of allocated entire net income and the
47 multiplier rate for that partner class under subsection a. of this
48 section, and each amount of tax so credited shall be deemed to have

1 been paid by the respective partner in respect of the privilege period
2 or taxable year of the partner. Provided, however, that only a
3 nonresident partner who files a New Jersey tax return and reports
4 income that is subject to tax in this State may apply the tax paid by
5 the partnership and credited to the nonresident partner's partnership
6 account against the partner's tax liability; and provided further that
7 a partnership that pays tax pursuant to this section shall not be
8 entitled to claim a refund of payments credited to any of its
9 nonresident partners.

10 c. For the purposes of this section:

11 "Investment club" means an entity: that is classified as a
12 partnership for federal income tax purposes; all of the owners of
13 which are individuals; all of the assets of which are securities, cash,
14 or cash equivalents; the market value of the total assets of which do
15 not exceed, as measured on the last day of its privilege period, an
16 amount equal to the lesser of \$250,000 or \$35,000 per owner of the
17 entity; and which is not required to register itself or its membership
18 interests with the federal Securities and Exchange Commission;
19 provided that beginning with privilege periods commencing on or
20 after January 1, 2003 the director shall prescribe the total asset
21 value amounts which shall apply by increasing the \$250,000 total
22 asset amount and the per owner \$35,000 amount hereinabove by an
23 inflation adjustment factor, which amounts shall be rounded to the
24 next highest multiple of \$100. The inflation adjustment factor shall
25 be equal to the factor calculated by dividing the consumer price
26 index for urban wage earners and clerical workers for the nation, as
27 prepared by the United States Department of Labor for September
28 of the calendar year prior to the calendar year in which the privilege
29 period begins, by that index for September of 2001;

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

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

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

42 (cf: P.L.2021, c.419, s.5)

43

44 15. Section 18 of P.L.2000, c.161 (C.42:1A-18) is amended to
45 read as follows:

46 18. a. Except as otherwise provided in subsections b. and c. of
47 this section, all partners are liable jointly and severally for all
48 obligations of the partnership unless otherwise agreed by the

1 claimant or provided by law. In addition, the entity is also liable for
2 all obligations of the partnership as provided by P.L.2019, c.320
3 (C.54A:12-1 et al.).

4 b. A person admitted as a partner into an existing partnership is
5 not personally liable for any partnership obligation incurred before
6 the person's admission as a partner.

7 c. An obligation of a partnership incurred while the partnership
8 is a limited liability partnership, whether arising in contract, tort, or
9 otherwise, is solely the obligation of the partnership. A partner is
10 not personally liable, directly or indirectly, by way of contribution
11 or otherwise, for such an obligation solely by reason of being or so
12 acting as a partner. This subsection applies notwithstanding
13 anything inconsistent in the partnership agreement that existed
14 immediately before the vote required to become a limited liability
15 partnership under subsection b. of section 47 of **[this act]** the
16 “Uniform Partnership Act (1996),” P.L.2000, c.161 (C.42:1A-47).

17 d. In addition, the entity is also liable for all obligations of the
18 partnership as provided by P.L. , c. (C.) (pending before
19 the Legislature as this bill).

20 (cf: P.L.2019, c.320, s.10)

21

22 16. Section 92 of L.2012, c.50 (C.42:2C-92) is amended to read
23 as follows:

24 92. Tax Classification.

25 a. For all purposes of taxation under the laws of this State, a
26 limited liability company formed under this act or qualified to do
27 business in this State as a foreign limited liability company with
28 two or more members shall be classified as a partnership unless
29 classified otherwise for federal income tax purposes, in which case
30 the limited liability company shall be classified in the same manner
31 as it is classified for federal income tax purposes. For all purposes
32 of taxation under the laws of this State, a member or a transferee of
33 a member of a limited liability company formed under this act or
34 qualified to do business in this State as a foreign limited liability
35 company shall be treated as a partner in a partnership unless the
36 limited liability company is classified otherwise for federal income
37 tax purposes, in which case the member or transferee of a member
38 shall have the same status as the member or transferee of a member
39 has for federal income tax purposes.

40 b. For all purposes of taxation on income under the laws of this
41 State and only for those purposes, a limited liability company
42 formed under this act or qualified to do business in this State as a
43 foreign limited liability company with one member is disregarded
44 as an entity separate from its owner, unless classified otherwise for
45 federal tax purposes, in which case the limited liability company
46 will be classified in the same manner as it is classified for federal
47 income tax purposes. For all purposes of taxation on income under
48 the laws of this State and only for those purposes, the sole member

1 or a transferee of all of the limited liability company interest of the
2 sole member of a limited liability company formed under this act or
3 qualified to do business in this State as a foreign limited liability
4 company is treated as the direct owner of the underlying assets of
5 the limited liability company and of its operations, unless the
6 limited liability company is classified otherwise for federal income
7 tax purposes, in which case the member or transferee of a member
8 will have the same status as the member or transferee of a member
9 has for federal income tax purposes.

10 c. With respect to a limited liability company that is taxed as a
11 partnership for federal income tax purposes, the entity is also liable
12 for all obligations of the partnership as provided by
13 P.L. , c. (C.) (pending before the Legislature as this bill) in
14 addition to its liabilities in section 30 of P.L.2012, c.50 (C.42:2C-
15 30).

16 (cf: P.L.2012, c.50, s.92)

17
18 17. Section 1 of P.L.2020, c.19 is amended to read as follows:

19 1. a. A taxpayer required to make and file an annual or
20 quarterly return or report pursuant to the “New Jersey Gross Income
21 Tax Act,” N.J.S.54A:1-1 et seq., or the “Corporation Business Tax
22 Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), on an original
23 due date of April 15, 2020, shall be granted by the Director of the
24 Division of Taxation in the Department of the Treasury an
25 automatic extension of time to file those returns or reports and to
26 pay the tax due until July 15, 2020.

27 b. The provisions involving payment of interest upon any
28 overpayment of tax pursuant to N.J.S.54A:9-7 and section 7 of
29 P.L.1992, c.175 (C.54:49-15.1), are hereby extended for six months
30 after the conclusion of the **[state of]** public health emergency
31 declared by the Governor pursuant to Executive Order No. 103 of
32 2020, or any extension thereof, or within six months after the return
33 is filed, whichever is later.

34 c. A taxpayer granted an automatic extension pursuant to
35 subsection a. of this section shall not be subject to penalties or
36 interest if the return or report is filed and the tax due is paid on or
37 before July 15, 2020, or by such other date that may be permitted by
38 the director in accordance with regulations in effect on the effective
39 date of P.L.2020, c.19.

40 d. Notwithstanding any provision of the “Administrative
41 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the
42 contrary, the director may adopt immediately upon filing with the
43 Office of Administrative Law such rules and regulations as the
44 director determines to be necessary and appropriate to effectuate the
45 purposes of this section.

46 (cf: P.L.2020, c.19, s.1)

47
48 18. Section 2 of P.L.2020, c.19 is amended to read as follows:

1 2. The statute of limitations to assess any tax pursuant to
2 N.J.S.54A:9-4 and R.S.54:49-6 is hereby extended for 90 days after
3 the conclusion of the **【state of】** public health emergency declared
4 by the Governor pursuant to Executive Order No. 103 of 2020, or
5 any extension thereof.

6 (cf: P.L.2020, c.19, s.2)

7
8 19. (New section) Any assessment of tax that was allowed as a
9 result of the extension of the statute of limitations in section 2 of
10 P.L.2020, c.19, but that was assessed after the 90th day following
11 the conclusion of the public health emergency declared by the
12 Governor pursuant to Executive Order No. 103 of 2020, shall be
13 voided. The Director of the Division of Taxation in the Department
14 of the Treasury shall return any amounts collected from a taxpayer
15 as a result of such assessment.

16
17 20. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to
18 read as follows:

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

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

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

26 (c) "Corporation" shall mean any corporation, joint-stock
27 company or association and any business conducted by a trustee or
28 trustees wherein interest or ownership is evidenced by a certificate
29 of interest or ownership or similar written instrument, any other
30 entity classified as a corporation for federal income tax purposes,
31 and any state or federally chartered building and loan association or
32 savings and loan association.

33 (d) "Net worth" shall mean the aggregate of the values disclosed
34 by the books of the corporation for (1) issued and outstanding
35 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
36 undivided profits, and (4) surplus reserves which can reasonably be
37 expected to accrue to holders or owners of equitable shares, not
38 including reasonable valuation reserves, such as reserves for
39 depreciation or obsolescence or depletion. Notwithstanding the
40 foregoing, net worth shall not include any deduction for the amount
41 of the excess depreciation described in paragraph (2) (F) of
42 subsection (k) of this section. The foregoing aggregate of values
43 shall be reduced by 50% of the amount disclosed by the books of
44 the corporation for investment in the capital stock of one or more
45 subsidiaries, which investment is defined as ownership (1) of at
46 least 80% of the total combined voting power of all classes of stock
47 of the subsidiary entitled to vote and (2) of at least 80% of the total
48 number of shares of all other classes of stock except nonvoting

1 stock which is limited and preferred as to dividends. In the case of
2 investment in an entity organized under the laws of a foreign
3 country, the foregoing requisite degree of ownership shall effect a
4 like reduction of such investment from the net worth of the
5 taxpayer, if the foreign entity is considered a corporation for any
6 purpose under the United States federal income tax laws, such as
7 (but not by way of sole examples) for the purpose of supplying
8 deemed paid foreign tax credits or for the purpose of status as a
9 controlled foreign corporation. In calculating the net worth of a
10 taxpayer entitled to reduction for investment in subsidiaries, the
11 amount of liabilities of the taxpayer shall be reduced by such
12 proportion of the liabilities as corresponds to the ratio which the
13 excluded portion of the subsidiary values bears to the total assets of
14 the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
23 (2) of this subsection, any amount, except with respect to qualified
24 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
25 the Internal Revenue Code as in effect immediately prior to January
26 1, 1984, which the taxpayer claimed as a deduction in computing
27 federal income tax pursuant to a qualified lease agreement under
28 paragraph (8) of that section.

29 The director shall promulgate rules and regulations necessary to
30 carry out the provisions of this section, which rules shall provide,
31 among others, the manner in which the remaining life of property
32 shall be reported.

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

1 by an act or omission of a person who was outside the reasonable
2 control of the violator.

3 (ii) The amount of treble damages paid to the Department of
4 Environmental Protection pursuant to subsection a. of section 7 of
5 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
6 department in removing, or arranging for the removal of, an
7 unauthorized discharge upon failure of the discharger to comply
8 with a directive from the department to remove, or arrange for the
9 removal of, the discharge.

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

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

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

37 A deduction shall also be permitted to the extent that the
38 taxpayer establishes by a preponderance of the evidence, as
39 determined by the director, that the interest is directly or indirectly
40 paid, accrued or incurred to (i) a related member in a foreign nation
41 which has in force a comprehensive income tax treaty with the
42 United States and the related member (aa) was subject to tax in the
43 foreign nation on a tax base that included the payment paid,
44 accrued, or incurred; and (bb) under which the related member's
45 income received from the transaction was taxed at an effective tax
46 rate equal to or greater than a rate of three percentage points less
47 than the rate of tax applied to taxable interest by the State of New
48 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),

1 provided however that the taxpayer shall disclose on its return for
2 the privilege period the name of the related member, the amount of
3 the interest, the relevant foreign nation, and such other information
4 as the director may prescribe or (ii) to an independent lender and
5 the taxpayer guarantees the debt on which the interest is
6 required. The adjustments required by this subparagraph shall not
7 apply to transactions between related members included in a
8 combined group reported on a New Jersey combined return.

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

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

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

41 (3) The director may, whenever necessary to properly reflect the
42 entire net income of any taxpayer, determine the year or period in
43 which any item of income or deduction shall be included, without
44 being limited to the method of accounting employed by the
45 taxpayer.

46 (4) There shall be allowed as a deduction from entire net income
47 of a banking corporation, to the extent not deductible in

1 determining federal taxable income, the eligible net income of an
2 international banking facility determined as follows:

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

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

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

17 (ii) Making or placing deposits with foreign persons which are
18 banks or foreign branches of banks (including foreign subsidiaries)
19 or foreign branches of the taxpayers or with other international
20 banking facilities;

21 (iii) Entering into foreign exchange trading or hedging
22 transactions related to any of the transactions described in this
23 paragraph; or

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

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

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

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

47 (iii) For privilege periods beginning on and after January 1,
48 2019, entire net income shall exclude 95% of dividends which were

1 included in computing such taxable income for federal income tax
2 purposes, paid or deemed paid to the taxpayer by one or more
3 subsidiaries owned by the taxpayer to the extent of the 80% or more
4 ownership of investment described in subsection (d) of this section.

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

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

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

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

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

38 (B) Net operating loss carryover. A net operating loss for any
39 privilege period ending after June 30, 1984 shall be a net operating
40 loss carryover to each of the seven privilege periods following the
41 period of the loss and a net operating loss for any privilege period
42 ending after June 30, 2009 shall be a net operating loss carryover to
43 each of the twenty privilege periods following the period of the
44 loss. The entire amount of the net operating loss for any privilege
45 period (the "loss period") shall be carried to the earliest of the
46 privilege periods to which the loss may be carried. The portion of
47 the loss which shall be carried to each of the other privilege periods
48 shall be the excess, if any, of the amount of the loss over the sum of

1 the entire net income, computed without the exclusions permitted in
2 paragraphs (4) and (5) of this subsection or the net operating loss
3 deduction provided by subparagraph (A) of this paragraph, for each
4 of the prior privilege periods to which the loss may be carried.

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

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

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

34 Provided, that this subparagraph (E) shall not restrict the
35 surrender or acquisition of corporation business tax benefit
36 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
37 7.42a) and shall not restrict the application of corporation business
38 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
39 (C.54:10A-4.2).

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

47 (7) The entire net income of gas, electric and gas and electric
48 public utilities that were subject to, or would have been subject to

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

26 (A) Depreciation for property placed in service prior to January
27 1, 1998 shall be adjusted as follows:

28 (i) Depreciation for federal income tax purposes shall be
29 disallowed in full.

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

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

47 (C) The Director of the Division of Taxation shall promulgate
48 regulations describing the methodology for allocating the single

1 asset account in the event that a portion of the utility's operations
2 are separated, spun-off, transferred to a separate company or
3 otherwise desegregated.

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

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

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

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

44 (12) (A) Notwithstanding the provisions of subsection (k) of
45 section 168 of the federal Internal Revenue Code of 1986, 26
46 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
47 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
48 law, for property acquired after September 10, 2001, the

1 depreciation deduction otherwise allowed pursuant to section 167 of
2 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
3 be determined pursuant to the provisions of the federal Internal
4 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
5 December 31, 2001.

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

11 (13) (A) Notwithstanding the provisions of section 179 of the
12 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
13 property placed in service on or after January 1, 2004, the costs that
14 a taxpayer may otherwise elect to treat as an expense which is not
15 chargeable to a capital account shall be determined pursuant to the
16 provisions of the federal Internal Revenue Code of 1986
17 (26 U.S.C. s.1 et seq.) in effect on December 31, 2002.

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

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

35 (15) Entire net income shall exclude the gain or income derived
36 from the sale or assignment of a tax credit transfer certificate
37 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
38 10 of P.L.2014, c.63 (C.34:1B-251).

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

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

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

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

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

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

31 (i) the deferred tax impact determined in subparagraph (E) of
32 this paragraph shall be divided by the rate determined under section
33 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
34 c.48 (C.54:10A-5.41 et al.);

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

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

43 (G) The deduction calculated under this paragraph shall not be
44 adjusted as a result of any events happening subsequent to such
45 calculation, including, but not limited to, any disposition or
46 abandonment of assets. Such deduction shall be calculated without
47 regard to the federal tax effect and shall not alter the tax basis of
48 any asset. If the deduction under this section is greater than

1 combined group entire net income, any excess deduction shall be
2 carried forward and applied as a deduction to combined group entire
3 net income in future privilege periods until fully utilized.

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

13 (I) "Real estate investment trust" shall mean any corporation,
14 trust or association qualifying and electing to be taxed as a real
15 estate investment trust under federal law.

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

1 any of the following entities organized under the laws of this State:
2 credit unions, savings banks, savings and loan and building and
3 loan associations, pawnbrokers, and State banks and trust
4 companies.

5 (n) "International banking facility" shall mean a set of asset and
6 liability accounts segregated on the books and records of a
7 depository institution, United States branch or agency of a foreign
8 bank, or an Edge or Agreement Corporation that includes only
9 international banking facility time deposits and international
10 banking facility extensions of credit as such terms are defined in
11 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
12 board of governors of the Federal Reserve System, 12 CFR Part
13 204, effective December 3, 1981. In the event that the United
14 States enacts a law, or the board of governors of the Federal
15 Reserve System adopts a regulation which amends the present
16 definition of international banking facility or of such facilities' time
17 deposits or extensions of credit, the Commissioner of Banking and
18 Insurance shall forthwith adopt regulations defining such terms in
19 the same manner as such terms are set forth in the laws of the
20 United States or the regulations of the board of governors of the
21 Federal Reserve System. The regulations of the Commissioner of
22 Banking and Insurance shall thereafter provide the applicable
23 definitions.

24 (o) "S corporation" means a corporation **【**included in the
25 definition of**】** that has elected to be an "S corporation" pursuant to
26 section 1361 of the federal Internal Revenue Code of 1986,
27 26 U.S.C. s.1361 , for the taxable year.

28 (p) "New Jersey S corporation" means a **【**corporation that is an
29 S corporation; which has made a valid election pursuant to section 3
30 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
31 corporation continuously since the effective date of the valid
32 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
33 5.22)**】** taxpayer that has made a valid election to be an S
34 corporation for federal tax purposes.

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

37 (r) "Qualified investment partnership" means a partnership
38 under this act that has more than 10 members or partners with no
39 member or partner owning more than a 50% interest in the entity
40 and that derives at least 90% of its gross income from dividends,
41 interest, payments with respect to securities loans, and gains from
42 the sale or other disposition of stocks or securities or foreign
43 currencies or commodities or other similar income (including but
44 not limited to gains from swaps, options, futures or forward
45 contracts) derived with respect to its business of investing or
46 trading in those stocks, securities, currencies or commodities, but
47 "investment partnership" shall not include a "dealer in securities"

1 within the meaning of section 1236 of the federal Internal Revenue
2 Code of 1986, 26 U.S.C. s.1236.

3 (s) "Savings institution" means a state or federally chartered
4 building and loan association, savings and loan association, or
5 savings bank.

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

8 (u) "Prior net operating loss conversion carryover" means a net
9 operating loss incurred in a privilege period ending prior to July 31,
10 2019 and converted from a pre-allocation net operating loss to a
11 post-allocation net operating loss as follows:

12 (1) As used in this subsection:

13 "Base year" means the last privilege period ending prior to July
14 31, 2019.

15 "Base year BAF" means the taxpayer's business allocation factor
16 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
17 6 through C.54:10A-10) for purposes of calculating entire net
18 income for the base year, as such section was in effect for the last
19 privilege period ending prior to July 31, 2019.

20 "UNOL" means the unabsorbed portion of net operating loss as
21 calculated under paragraph (6) of subsection (k) of this section as
22 such paragraph was in effect for the last privilege period ending
23 prior to July 31, 2019, that was not deductible in previous privilege
24 periods and was eligible for carryover on the last day of the base
25 year subject to the limitations for deduction under such subsection,
26 including any net operating loss sustained by the taxpayer during
27 the base year.

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

30 (A) The taxpayer shall first calculate the tax value of its UNOL
31 for the base year and for each preceding privilege period for which
32 there is a UNOL. The value of the UNOL for each privilege period
33 is equal to the product of (I) the amount of the taxpayer's UNOL for
34 a privilege period, and (II) the taxpayer's base year BAF. This result
35 shall equal the taxpayer's prior net operating loss conversion
36 carryover.

37 (B) The taxpayer shall continue to carry over its prior net
38 operating loss conversion carryover to offset its allocated entire net
39 income as provided in sections 6 through 10 of P.L.1945, c.162
40 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
41 and after July 31, 2019. Such carryover periods shall not exceed
42 the twenty privilege periods following the privilege period of the
43 initial loss. The entire amount of the prior net operating loss
44 conversion carryover for any privilege period shall be carried to the
45 earliest of the privilege periods to which the loss may be
46 carried. The portion of the prior net operating loss conversion
47 carryover which shall be carried to each of the other privilege
48 periods shall be the excess, if any, of the amount of the prior net

1 operating loss conversion carryover over the sum of the entire net
2 income, computed without the exclusions permitted in paragraphs
3 (4) and (5) of subsection (k) of this section allocated to this State.

4 (C) The prior net operating loss conversion carryover computed
5 under this subsection shall be applied against the entire net income
6 allocated to this State before the net operating loss carryover
7 computed under subsection (v) of this section.

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

11 (1) Net operating loss carryover. A net operating loss for any
12 privilege period ending on or after July 31, 2019, shall be a net
13 operating loss carryover to each of the twenty privilege periods
14 following the period of the loss. The entire amount of the net
15 operating loss for any privilege period shall be carried to the earliest
16 of the privilege periods to which the loss may be carried. The
17 portion of the loss which shall be carried to each of the other
18 privilege periods shall be the excess, if any, of the amount of the
19 loss over the sum of the entire net income, computed without the
20 exclusions permitted in paragraphs (4) and (5) of subsection (k) of
21 this section allocated to this State.

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

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

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

39 (5) Change in ownership. Where there is a change in 50% or
40 more of the ownership of a corporation because of redemption or
41 sale of stock and the corporation changes the trade or business
42 giving rise to the loss, no net operating loss sustained before the
43 changes may be carried over to be deducted from income earned
44 after such changes. In addition, where the facts support the premise
45 that the corporation was acquired under any circumstances for the
46 primary purpose of the use of its net operating loss carryover, the
47 director may disallow the carryover; provided, however, this

1 paragraph shall not apply between members of a combined group
2 reported on a New Jersey combined return.

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

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

19 For purposes of this subsection:

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

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

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

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

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

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

1 (4) 50% or less of whose gross receipts for the privilege period
2 consist of premiums from arrangements that constitute insurance for
3 federal income tax purposes.

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

10 For purposes of this definition:

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

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

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

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

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

46 (aa) "Common ownership" means that more than 50% of the
47 voting control of each member of a combined group is directly or
48 indirectly owned by a common owner or owners, either corporate or

1 non-corporate, whether or not the owner or owners are members of
2 the combined group. Whether voting control is indirectly owned
3 shall be determined in accordance with section 318 of the federal
4 Internal Revenue Code, 26 U.S.C. s.318.

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

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

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

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

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

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

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

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

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

11

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

14 3. a. **【A corporation may elect, in accordance with the**
15 **provisions of this section, to be a New Jersey S corporation. In**
16 **order for an election to be valid, the corporation and each of its**
17 **shareholders on the day on which the election is made (hereinafter**
18 **"initial shareholders") must consent to such election and the**
19 **jurisdictional requirements of becoming a New Jersey S**
20 **corporation. The form of the election and consent to jurisdictional**
21 **requirements and the place for filing shall be as prescribed by the**
22 **Director of the Division of Taxation.】** (Deleted by amendment
23 P.L. , c.) (pending before the Legislature as this bill)

24 b. **【Each initial shareholder and the corporation】** A New Jersey
25 S Corporation and each shareholder shall consent to the following
26 jurisdictional requirements:

27 (1) That this State shall have the right and jurisdiction to tax and
28 collect the tax on each shareholder's S corporation income as
29 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) and,
30 if applicable, the pass-through business alternative income tax
31 pursuant to P.L.2019, c.320 (C.54A:12-1 et al.);

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

36 (3) If shareholders that are not initial shareholders of the
37 corporation, while the corporation is a New Jersey S corporation,
38 fail to consent to New Jersey's jurisdiction to tax S corporation
39 income to such shareholders, this State shall have the right and
40 jurisdiction to collect a payment of tax each year directly from the
41 corporation equal to the S corporation income allocated to this
42 State, as defined pursuant to section 12 of P.L.1993, c.173
43 (C.54A:5-10), of the nonconsenting shareholders for the accounting
44 or privilege period multiplied by the maximum tax bracket rate
45 provided under N.J.S.54A:2-1 for the accounting or privilege
46 period. In such case, the corporation shall have the right, but not
47 the obligation, to recover payments made by the corporation
48 pursuant to this paragraph from each nonconsenting shareholder.

1 c. **【A corporation may make an election to become a New**
2 **Jersey S corporation with respect to an accounting or privilege**
3 **period for which the corporation is or will be an S corporation. The**
4 **election for an accounting or privilege period, along with the】** The
5 consents to jurisdictional requirements **【,】** shall be filed within one
6 calendar month of the time at which a federal S corporation election
7 would be required if such accounting or privilege period were a
8 "taxable year" for which a federal S corporation election were to be
9 made pursuant to section 1362 of the federal Internal Revenue Code
10 of 1986, 26 U.S.C. s.1362. Such elections may only be ¹opted out
11 of or¹ revoked pursuant to subsection d. of this section. **【Such**
12 election shall terminate immediately upon the corporation's failure
13 to satisfy the definition of a New Jersey S corporation pursuant to
14 paragraph (p) of section 4 of P.L.1945, c.162 (C.54:10A-4).】

15 d. **【A corporation may revoke an election pursuant to this**
16 **section on or before the last day of the first accounting or privilege**
17 **period to which the election would otherwise apply.】** ¹**【Deleted by**
18 **amendment P.L. , c.) (pending before the Legislature as this**
19 **bill)】** Notwithstanding any law or regulation to the contrary, any S
20 corporation may elect not to be taxed as a New Jersey S
21 corporation. This election shall have the consent of 100 percent of
22 the shareholders of the S corporation. An election under this
23 subsection may be made for any taxable year at any time during the
24 preceding taxable year or at any time on or before the due date or
25 extended due date of the S corporation's tax return. An election
26 made pursuant to this subsection shall be effective for the taxable
27 year for which the election is made and for each succeeding taxable
28 year until revoked. An election under this subsection may be
29 revoked if shareholders holding more than 50 percent of the shares
30 of stock of the S corporation on the day on which the revocation is
31 made consent to the revocation and such revocation shall be
32 effective on the first day of the taxable year if made on or before
33 the fifteenth day of the third month thereof; if the revocation is
34 made after such date, the revocation shall be effective for the
35 following taxable year, unless the shareholders revoke the
36 revocation before December 31 of the current year. An election or
37 revocation made pursuant to this subsection shall be made in a form
38 and manner prescribed by the director. Any S corporation doing
39 business in New Jersey or registered to do business in New Jersey
40 that does not make this election will be taxed as a New Jersey S
41 corporation.¹

42 e. A corporation shall report any change in its shareholders or
43 their share of ownership to the Director of the Division of Taxation
44 in a form and manner determined by the director.

45 (cf: P.L.2019, c.320, s.6)

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

3 4. a. **【With respect to each of its shareholders that is not an**
4 **initial shareholder,】** Each shareholder of a New Jersey S
5 corporation shall satisfy the requirements of **【either】** paragraph b.
6 **【or c.】** of this section.

7 b. Deliver a consent to the jurisdictional requirements as set
8 forth in **【subsection b. of】** section 3 of P.L.1993, c.173 (C.54:10A-
9 5.22) , in a form and manner determined by the director.

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

24 d. If a shareholder that is not an initial shareholder of a New
25 Jersey S corporation fails to deliver a consent to the jurisdictional
26 requirements set forth in **【subsection b. of】** section 3 of P.L.1993,
27 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to
28 withhold payments pursuant to subsection c. of this section, then
29 this State shall have the right and jurisdiction to collect a tax each
30 year directly from the corporation equal to the pro rata share of the
31 S corporation income allocated to this State, as defined pursuant to
32 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting
33 shareholder times the maximum tax bracket rate provided under
34 N.J.S.54A:2-1 for the appropriate accounting or privilege
35 period. In such case, the corporation shall have the right, but not
36 the obligation, to recover payments made by the corporation
37 pursuant to this subsection from each nonconsenting
38 shareholder. The corporation shall not be liable for the pass-
39 through business alternative income tax pursuant to P.L.2019, c.320
40 (C.54A:12-1 et al.) relative to collections made in a taxable year for
41 such nonconsenting members.

42 (cf: P.L.2019, c.320, s.7)

43

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

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

1 "New Jersey S corporation" means a [corporation that is an S
2 corporation ; which has made a valid election pursuant to section 3
3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
4 corporation continuously since the effective date of the valid
5 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
6 5.22)] taxpayer that has made a valid election to be an S
7 corporation for federal tax purposes for the taxable year.

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

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

16 For a New Jersey S corporation, the S corporation income
17 allocated to this State of all New Jersey S corporations; and the S
18 corporation income not allocated to this State.

19 "S corporation" means a corporation [included in the definition
20 of] that has elected to be an "S corporation" pursuant to section
21 1361 of the federal Internal Revenue Code [of 1986], 26 U.S.C.
22 s.1361, for the taxable year.

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

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

29 (1) any dividend exclusion or deduction otherwise allowed
30 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,
31 c.162 (C.54:10A-4);

32 (2) taxes paid or accrued to the United States, a possession or
33 territory of the United States, a state including this State, a political
34 subdivision thereof, or the District of Columbia on or measured by
35 profits or income, or business presence or business activity, of the
36 corporation;

37 (3) any income taxes paid or accrued to the United States, a
38 possession or territory of the United States, a state including this
39 State, a political subdivision thereof, or the District of Columbia
40 paid or accrued by the S corporation on behalf of, or in satisfaction
41 of the liabilities of, shareholders of the corporation;

42 (4) interest income on obligations of any state other than this
43 State, or of a political subdivision thereof, or of the federal
44 government, except as deducted pursuant to subsection b. of this
45 section; or

46 (5) interest on indebtedness incurred or continued, expenses
47 paid and incurred to purchase, carry, manage or conserve, and

1 expenses of collection of the income or gain from obligations the
2 income or gain from which is deductible pursuant to subsection b.
3 of this definition; and

4 b. S corporation income shall be determined after deduction of
5 any gains or income derived from obligations which are referred to
6 in N.J.S.54A:6-14 or from securities which evidence ownership in a
7 qualified investment fund as defined in section 2 of P.L.1987, c.310
8 (C.54A:6-14.1), and any interest excluded from gross income
9 pursuant to N.J.S.54A:6-14, or distributions excluded from income
10 pursuant to section 2 of P.L.1987, c.310 (C.54A:6-14.1); and

11 c. The character of any S corporation item taken into account
12 by a shareholder of an S corporation shall be determined as if such
13 items were received or incurred by the S corporation and not its
14 shareholder.

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

22 "S corporation income not allocated to this State" means S
23 corporation income less S corporation income allocated to this
24 State.

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

26

27 24. Section 13 of P.L.1993, c.173 (C.54A:5-11) is amended to
28 read as follows:

29 13. a. A resident shareholder of S corporation stock held by the
30 shareholder on the first day of the first taxable year following
31 enactment of this section shall have an initial basis in the stock of
32 that S corporation and any indebtedness of the S corporation equal
33 to the basis of the stock determined as though the stock was stock
34 of a corporation not an S corporation plus any indebtedness of the S
35 corporation to the shareholder and shall be determined as of the first
36 day of the first taxable year following enactment of this section

37 b. A resident shareholder of S corporation stock to which
38 subsection a. of this section does not apply shall have an initial
39 basis in the stock of the S corporation and any indebtedness of the S
40 corporation as determined pursuant to the federal Internal Revenue
41 Code of 1986, determined as of the date that is the latest to occur
42 of: the date on which the shareholder last became a resident of this
43 State; the date on which the shareholder acquired the stock of the
44 corporation; or the effective date of the corporation's most recent S
45 election under the federal Internal Revenue Code of 1986.

46 c. The initial basis of a resident shareholder in the stock and
47 indebtedness of an S corporation shall be adjusted after the date
48 specified in subsections a. or b. of this section in the manner

1 required by section 1011 of the federal Internal Revenue Code of
2 1986, 26 U.S.C. s.1011, except that such adjustments shall be
3 limited to that portion of S corporation income allocated to this
4 State and S corporation income not allocated to this State that is
5 included in the shareholder's pro rata share of S corporation income
6 and except that, with respect to any taxable period during which the
7 shareholder is a resident of this State:

8 (1) any modification made pursuant to the definition of S
9 corporation income pursuant to section 12 of P.L.1993, c.173
10 (C.54A:5-10) other than those for income exempt from taxation by
11 this State pursuant to paragraph (5) of subsection a. and subsection
12 b. of that definition shall be taken into account; and

13 (2) any adjustments made pursuant to section 1367 of the
14 federal Internal Revenue Code of 1986, 26 U.S.C. s.1367, for a
15 taxable period during which this State did not measure the income
16 of a shareholder of an S corporation by reference to the S
17 corporation's income shall not be taken into account.

18 d. A nonresident shareholder of S corporation stock shall have
19 an initial basis in the stock of the S corporation and any
20 indebtedness of the S corporation of zero as of the date that is the
21 latest to occur of: the date on which the shareholder last became a
22 nonresident of this State; the date on which the shareholder
23 acquired the stock of the corporation; or the effective date of the
24 corporation's most recent S election under the federal Internal
25 Revenue Code of 1986 **】**; or the effective date of the corporation's
26 most recent election pursuant to section 3 of P.L.1993, c.173
27 (C.54:10A-5.22)**】**.

28 e. The initial basis of a nonresident shareholder in the stock
29 and indebtedness of an S corporation shall be adjusted after the date
30 specified in subsection d. of this section as provided in section 1367
31 of the of the federal Internal Revenue Code of 1986, 26 U.S.C.
32 s.1367, except that such adjustments shall be limited to that portion
33 of S corporation income allocated to this State that is included in
34 the shareholder's pro rata share of S corporation income. In
35 computing S corporation income allocated to this State any
36 modification made pursuant to the definition of S corporation
37 income pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) for
38 income exempt from taxation by this State pursuant to paragraph (5)
39 of subsection a. and subsection b. of that definition shall not be
40 taken into account.

41 f. The basis in the hands of a resident shareholder of an S
42 corporation in stock of the S corporation shall be reduced by the
43 amount of any cash distribution which is not taxable to the
44 shareholder as a result of the application of section 16 of P.L.1993,
45 c.173 (C.54A:5-14).

46 g. For purposes of this section, any person acquiring stock or
47 indebtedness of an S corporation by gift shall be considered to have

1 acquired the stock or indebtedness at the time the donor acquired
2 the stock or indebtedness.

3 (cf: P.L.1993, c.173, s.13)

4

5 25. (New section) The Directors of the Divisions of Revenue
6 and Enterprise Services and Taxation, when determining whether to
7 grant retroactive election of S corporation status, shall liberally
8 construe regulatory requirements in favor of the corporation and
9 shall have the discretion to authorize retroactive S corporation
10 status in circumstances in which a taxpayer may not be capable of
11 meeting all regulatory requirements for such retroactive election
12 through no fault of the taxpayer.

13

14 26. Sections 1 through 19 of this act shall take effect
15 immediately, and sections 1 through 16 shall apply to any
16 adjustments to a taxpayer's federal taxable income on or after
17 January 1, 2020 and sections 17 through 19 shall apply retroactively
18 to the effective date of P.L.2020, c.19. Sections 20 through 25 of
19 this act shall take effect on the 60th day after the date of enactment
20 and the Directors of the Divisions of Taxation and Revenue and
21 Enterprise Services shall take such anticipatory administrative
22 action in advance as is necessary to effectuate the purposes of this
23 bill.