

ASSEMBLY, No. 5323

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED MARCH 20, 2023

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

SYNOPSIS

Revises various provisions concerning State tax law.

CURRENT VERSION OF TEXT

As introduced.



A5323 PINTOR MARIN

2

1 AN ACT concerning State taxation, supplementing Title 54 of the
2 Revised Statutes and Title 54A of the New Jersey Statutes, and
3 revising various parts of the statutory law.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to
9 read as follows:

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

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

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

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

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

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

Matter underlined thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (I) **【Interest】** With respect to privilege periods ending before
7 July 31, 2023, interest paid, accrued or incurred for the privilege
8 period to a related member, as defined in section 5 of P.L.2002,
9 c.40 (C.54:10A-4.4), except that a deduction shall be permitted to
10 the extent that the taxpayer establishes by clear and convincing
11 evidence, as determined by the director, that: (i) a principal purpose
12 of the transaction giving rise to the payment of the interest was not
13 to avoid taxes otherwise due under Title 54 of the Revised Statutes
14 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
15 pursuant to arm's length contracts at an arm's length rate of interest,
16 and (iii)(aa) the related member was subject to a tax on its net
17 income or receipts in this State or another state or possession of the
18 United States or in a foreign nation, (bb) a measure of the tax
19 includes the interest received from the related member, and (cc) the
20 rate of tax applied to the interest received by the related member is
21 equal to or greater than a rate three percentage points less than the
22 rate of tax applied to taxable interest by this State pursuant to
23 section 5 of P.L.1945, c.162 (C.54:10A-5).

24 **【A】** With respect to privilege periods ending before July 31,
25 2023, a deduction shall also be permitted if the taxpayer establishes
26 by clear and convincing evidence, as determined by the director,
27 that the disallowance of a deduction is unreasonable, or the
28 taxpayer and the director agree in writing to the application or use
29 of an alternative method of apportionment under section 8 of
30 P.L.1945, c.162 (C.54:10A-8); nothing in this subsection shall be
31 construed to limit or negate the director's authority to otherwise
32 enter into agreements and compromises otherwise allowed by law.

33 **【A】** With respect to privilege periods ending before July 31,
34 2023, a deduction shall also be permitted to the extent that the
35 taxpayer establishes by a preponderance of the evidence, as
36 determined by the director, that the interest is directly or indirectly
37 paid, accrued or incurred to (i) a related member in a foreign nation
38 which has in force a comprehensive income tax treaty with the
39 United States and the related member (aa) was subject to tax in the
40 foreign nation on a tax base that included the payment paid,
41 accrued, or incurred; and (bb) under which the related member's
42 income received from the transaction was taxed at an effective tax
43 rate equal to or greater than a rate of three percentage points less
44 than the rate of tax applied to taxable interest by the State of New
45 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
46 provided however that the taxpayer shall disclose on its return for
47 the privilege period the name of the related member, the amount of
48 the interest, the relevant foreign nation, and such other information

1 as the director may prescribe or (ii) to an independent lender and
2 the taxpayer guarantees the debt on which the interest is required.
3 The adjustments required by this subparagraph shall not apply to
4 transactions between related members included in a combined
5 group reported on a New Jersey combined return.

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

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

31 (K) (i) For privilege periods beginning after December 31, 2017
32 and ending before July 31, 2022, the interest deduction limitation in
33 subsection (j) of section 163 of the Internal Revenue Code
34 (26 U.S.C. s.163), shall apply on a pro-rata basis to interest paid to
35 both related and unrelated parties, regardless of whether the related
36 parties are subject to the add-back provision of either subparagraph
37 (I) of paragraph (2) of this subsection or in section 5 of P.L.2002,
38 c.40 (C.54:10A-4.4).

39 (ii) For privilege periods beginning after December 31, 2017
40 and ending on and after July 31, 2022, the interest deduction
41 limitation in subsection (j) of section 163 of the Internal Revenue
42 Code (26 U.S.C. s.163), shall apply to a combined group as though
43 the combined group filed a federal consolidated return; provided,
44 however, for the purposes of applying the limitation in subsection
45 (j) of section 163 of the Internal Revenue Code (26 U.S.C. s.163),
46 with regard to affiliates that were members of the federal
47 consolidated return but were not members of the combined group
48 included on the New Jersey combined return, the combined group

1 and the affiliates will also be treated as having filed one federal
2 consolidated return.

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

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

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

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

18 (i) Making, arranging for, placing or carrying loans to foreign
19 persons, provided, however, that in the case of a foreign person
20 which is an individual, or which is a foreign branch of a domestic
21 corporation (other than a bank), or which is a foreign corporation or
22 foreign partnership which is controlled by one or more domestic
23 corporations (other than banks), domestic partnerships or resident
24 individuals, all the proceeds of the loan are for use outside of the
25 United States;

26 (ii) Making or placing deposits with foreign persons which are
27 banks or foreign branches of banks (including foreign subsidiaries)
28 or foreign branches of the taxpayers or with other international
29 banking facilities;

30 (iii) Entering into foreign exchange trading or hedging
31 transactions related to any of the transactions described in this
32 paragraph; or

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

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

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

44 (ii) For privilege periods beginning after December 31, 2016
45 and before January 1, 2019, entire net income shall exclude 95% of
46 dividends which were included in computing such taxable income
47 for federal income tax purposes, paid or deemed paid, to the
48 taxpayer by one or more subsidiaries owned by the taxpayer to the

1 extent of the 80% or more ownership of investment described in
2 subsection (d) of this section. For the purposes of calculating the
3 tax liability owed for the paid or deemed paid dividends included in
4 entire net income by this subparagraph (ii), the taxpayer shall
5 use either their three-year average allocation factor for the
6 taxpayer's 2014 through 2016 tax years reported on the taxpayer's
7 tax returns or 3.5 percent, whichever is lower.

8 (iii) For privilege periods beginning on and after January 1, 2019
9 and ending before July 31, 2023, entire net income shall exclude
10 95% of dividends which were included in computing such taxable
11 income for federal income tax purposes, paid or deemed paid to the
12 taxpayer by one or more subsidiaries owned by the taxpayer to the
13 extent of the 80% or more ownership of investment described in
14 subsection (d) of this section.

15 (iv) For privilege periods ending on and after July 31, 2023,
16 entire net income shall exclude 100 percent of dividends and
17 deemed dividends that were included in computing such taxable
18 income for federal income tax purposes, paid or deemed paid to the
19 taxpayer by one or more subsidiaries owned by the taxpayer to the
20 extent of the 80 percent or more ownership of investment described
21 in subsection (d) of this section.

22 (B) Entire net income shall exclude 50% of dividends which
23 were included in computing such taxable income for federal income
24 tax purposes, paid or deemed paid to the taxpayer by one or more
25 subsidiaries owned by the taxpayer to the extent of 50% or more
26 ownership of investment, such ownership of investment calculated
27 in the same manner as the 80% or more of ownership of investment
28 is calculated as described in subsection (d) of this section.

29 (C) To the extent a subsidiary received dividends from other
30 subsidiaries and included those dividends in its entire net income
31 for the purposes of determining its tax liability pursuant to section 5
32 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,
33 the taxpayer receiving those same dividends from the subsidiary
34 shall exclude those dividends from its entire net income based on
35 the subsidiary's allocation factor used by the subsidiary in
36 determining its tax liability pursuant to section 5 of P.L.1945, c.162
37 (C.54:10A-5). This subparagraph (C) shall not apply to privilege
38 periods ending on and after July 31, 2019.

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

46 (E) For privilege periods ending on and after July 31, 2020, for
47 purposes of this paragraph (5), the members of a combined group
48 filing a New Jersey combined return shall be treated as one taxpayer

1 with regard to dividends and deemed dividends that were received
2 as part of the unitary business of the combined group.

3 (F) For privilege periods ending on and after July 31, 2023:

4 (i) The exclusion provided by this paragraph (5) shall be
5 deducted from entire net income after the State modifications that
6 increase federal entire net income but before the other State
7 modifications that reduce entire net income and before the
8 allocation of entire net income to this State.

9 (ii) In computing the total amount of the dividends and deemed
10 dividends excluded by this paragraph (5) for privilege periods
11 ending on and after July 31, 2023, the amount of dividends and
12 deemed dividends excluded shall be reduced by the amount of the
13 expenses and deductions that are attributable to those dividends and
14 deemed dividends. For purposes of this paragraph (5), expenses
15 and deductions related to dividends shall equal five percent of all
16 dividends and deemed dividends received by a taxpayer during an
17 income year.

18 (G) For privilege periods ending on and after July 31, 2023, for
19 the purposes of this paragraph (5) and for subsection d. of section
20 18 of P.L.2018, c.48 (C.54:10A-4.6), the income amounts required
21 to be included in federal taxable income pursuant to 26 U.S.C.
22 s.951A, shall be considered a dividend.

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

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

42 (C) Net operating loss. For purposes of this paragraph the term
43 "net operating loss" means the excess of the deductions over the
44 gross income used in computing entire net income without the net
45 operating loss deduction provided for in subparagraph (A) of this
46 paragraph and the exclusions in paragraphs (4) and (5) of this
47 subsection.

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

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

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

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

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

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

16 (A) Depreciation for property placed in service prior to January
17 1, 1998 shall be adjusted as follows:

18 (i) Depreciation for federal income tax purposes shall be
19 disallowed in full.

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

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

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

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

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

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

27 (11)No deduction shall be allowed for research and experimental
28 expenditures, to the extent that those research and experimental
29 expenditures are qualified research expenses or basic research
30 payments for which an amount of credit is claimed pursuant to
31 section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research
32 and experimental expenditures are also used to compute a federal
33 credit claimed pursuant to section 41 of the federal Internal
34 Revenue Code of 1986, 26 U.S.C. s.41; provided, however, for
35 privilege periods beginning on and after January 1, 2022, a
36 deduction for research and experimental expenditures shall be
37 allowed during the same privilege period for which a credit is
38 claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24),
39 notwithstanding the timing schedule required by the federal Internal
40 Revenue Code of 1986, 26 U.S.C. s.174, for the deduction of
41 specified research and experimental expenditures.

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

1 be determined pursuant to the provisions of the federal Internal
2 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
3 December 31, 2001.

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

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

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

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

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

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

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

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

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

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

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

27 (ii) For group privilege periods beginning on and after January
28 1, 2023, but before January 1, 2030, the combined group may
29 deduct one percent of the amount necessary to offset the increase in
30 the net deferred tax liability or decrease in the net deferred tax
31 asset, or aggregate change from a net deferred tax asset to a net
32 deferred tax liability, during a group privilege period. Such
33 increase in the net deferred tax liability or decrease in the net
34 deferred tax asset or the aggregate change from a net deferred tax
35 asset to a net deferred tax liability shall be computed based on the
36 change that would result from the imposition of the unitary
37 reporting requirements under sections 1 and 18 through 23 of
38 P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6 to C.54:10A-
39 4.11) but for the deduction provided under this paragraph as of the
40 effective date of this paragraph.

41 (iii) For group privilege periods beginning on and after January
42 1, 2030, the combined group may deduct up to five percent of any
43 remaining unused amount of the deduction during the group
44 privilege period, until the group privilege period in which the total
45 deduction amount has been fully utilized. Such increase in the net
46 deferred tax liability or decrease in the net deferred tax asset or the
47 aggregate change from a net deferred tax asset to a net deferred tax
48 liability shall be computed based on the change that would result

1 from the imposition of the unitary reporting requirements under
2 sections 1 and 18 through 23 of P.L.2018, c.48
3 (C.54:10A-5.41 and C.54:10A-4.6 to C.54:10A-4.11) but for the
4 deduction provided under this paragraph as of the effective date of
5 this paragraph.

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

9 (i) the deferred tax impact determined in subparagraph (E) of
10 this paragraph shall be divided by the rate determined under section
11 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
12 c.48 (C.54:10A-5.41 et al.);

13 (ii) the resulting amount shall be further divided by the New
14 Jersey unitary business allocation factor that was used by the
15 combined group in the calculation of the deferred tax assets and
16 deferred tax liabilities as described in subparagraph (E) of this
17 paragraph;

18 (iii) the resulting amount represents the total net Deferred Tax
19 Deduction available over the **[ten-year]** period as described in
20 subparagraph (E) of this paragraph.

21 (G) The deduction calculated under this paragraph shall not be
22 adjusted as a result of any events happening subsequent to such
23 calculation, including, but not limited to, any disposition or
24 abandonment of assets. Such deduction shall be calculated without
25 regard to the federal tax effect and shall not alter the tax basis of
26 any asset. If the deduction under this section is greater than
27 combined group entire net income, any excess deduction shall be
28 carried forward and applied as a deduction to combined group entire
29 net income in future privilege periods until fully utilized.

30 (H) Any combined group intending to claim a deduction under
31 this paragraph shall file a statement with the director on or before
32 July 1 of the year subsequent to the first privilege period for which
33 a combined return is required. Such statement shall specify the total
34 amount of the deduction which the combined group claims on such
35 form and in such manner as prescribed by the director. No
36 deduction shall be allowed under this paragraph for any privilege
37 period except to the extent claimed on such timely filed statement
38 in accordance with this paragraph.

39 (17)For privilege periods ending on and after July 31, 2022:

40 (A) Notwithstanding subparagraph (A) of paragraph (2) of this
41 subsection or any other law or treaty to the contrary, for a
42 corporation that is incorporated or formed in a foreign nation with a
43 comprehensive tax treaty with the United States, and that is not a
44 member of a world-wide group combined return filed pursuant to
45 subsection b. of section 23 of P.L.2018, c.48 (C.54:10A-4.11),
46 entire net income shall not include an item of income or loss
47 excluded or exempted from federal taxable income under the terms
48 of the treaty, and no other deduction, exclusion, or elimination shall

1 be permitted for an item of income or loss excluded by this
2 paragraph.

3 (B) For a non-U.S. corporation that files a federal tax return and
4 is not a member of a combined group filing a New Jersey combined
5 return on a world-wide basis pursuant to subsection b. of section 23
6 of P.L.2018, c.48 (C.54:10A-4.11), the non-U.S. corporation shall
7 only include its income or loss included in federal taxable income,
8 which shall be limited to only the non-U.S. corporation's
9 effectively connected income or loss, as modified by the provisions
10 of the Corporation Business Tax Act (1945), P.L.1945, c.162
11 (C.54:10A-1 et seq.), and the items of expense and the allocation
12 factor receipts attributable to such items of income or loss.

13 (l) "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 States
14 enacts a law, or the board of governors of the Federal Reserve
15 System adopts a regulation which amends the present definition of
16 international banking facility or of such facilities' time deposits or
17 extensions of credit, the Commissioner of Banking and Insurance
18 shall forthwith adopt regulations defining such terms in the same
19 manner as such terms are set forth in the laws of the United States
20 or the regulations of the board of governors of the Federal Reserve
21 System. The regulations of the Commissioner of Banking and
22 Insurance shall thereafter provide the applicable definitions.

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

26 (p) "New Jersey S corporation" means a taxpayer that has made
27 a valid election to be an S corporation for federal tax purposes, and
28 that has not made a valid election pursuant to subsection d. of
29 section 20 of P.L.2022, c.133 (C.54:10A-5.22).

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

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

45 (s) "Savings institution" means a state or federally chartered
46 building and loan association, savings and loan association, or
47 savings bank.

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

3 (u) "Prior net operating loss conversion carryover" means a net
4 operating loss incurred in a privilege period ending prior to July 31,
5 2019 and converted from a pre-allocation net operating loss to a
6 post-allocation net operating loss as follows:

7 (1) As used in this subsection:

8 "Base year" means the last privilege period ending prior to July
9 31, 2019.

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

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

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

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

32 (B) The taxpayer shall continue to carry over its prior net
33 operating loss conversion carryover to offset its allocated entire net
34 income as provided in sections 6 through 10 of P.L.1945, c.162
35 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
36 and after July 31, 2019. Such carryover periods shall not exceed the
37 twenty privilege periods following the privilege period of the initial
38 loss. The entire amount of the prior net operating loss conversion
39 carryover for any privilege period shall be carried to the earliest of
40 the privilege periods to which the loss may be carried. The portion
41 of the prior net operating loss conversion carryover which shall be
42 carried to each of the other privilege periods shall be the excess, if
43 any, of the amount of the prior net operating loss conversion
44 carryover over the sum of the entire net income, computed without
45 the exclusions permitted in paragraphs (4) and (5) of subsection (k)
46 of this section allocated to this State. For privilege periods ending
47 on and after July 31, 2023, for the purpose of computing taxable net
48 income for a current privilege period, the amount of the prior net

1 operating loss conversion carryover shall be subtracted from entire
2 net income allocated to this State, after the application of
3 paragraphs (4) and (5) of subsection (k) of this section against
4 current privilege period income when the entire net income
5 allocated to this State for the privilege period is greater than zero.

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

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

13 (1) Net operating loss carryover. A net operating loss for any
14 privilege period ending on or after July 31, 2019, shall be a net
15 operating loss carryover to each of the twenty privilege periods
16 following the period of the loss. The entire amount of the net
17 operating loss for any privilege period shall be carried to the earliest
18 of the privilege periods to which the loss may be carried. **【The】** For
19 privilege periods ending before July 31, 2023, the portion of the
20 loss which shall be carried to each of the other privilege periods
21 shall be the excess, if any, of the amount of the loss over the sum of
22 the entire net income, computed without the exclusions permitted in
23 paragraphs (4) and (5) of subsection (k) of this section allocated to
24 this State. For privilege periods ending on and after July 31, 2023,
25 the portion of the loss that shall be carried to each of the other
26 privilege periods shall be the excess, if any, of the amount of the
27 loss over the sum of the entire net income, after the application of
28 paragraphs (4) and (5) of subsection (k) of this section allocated to
29 this State; provided, however, for the purpose of computing taxable
30 net income for the privilege period, the net operating loss carryover
31 shall only be subtracted from entire net income allocated to this
32 State when the entire net income allocated to this State is greater
33 than zero.

34 (2) Net operating loss. For purposes of this paragraph the term
35 "net operating loss" means the excess of the deductions over the
36 gross income used in computing entire net income, without regard
37 to any net operating loss carryover, and for privilege periods ending
38 before July 31, 2023, computed without the exclusions in
39 paragraphs (4) and (5) of subsection (k) of this section, and for
40 privilege periods ending on and after July 31, 2023, computed after
41 the application of paragraphs (4) and (5) of subsection (k) of this
42 section, allocated to this State pursuant to sections 6 through 10 of
43 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

44 (3) Reduction for discharge of indebtedness. A net operating
45 loss for any privilege period ending on or after July 31, 2019, and
46 any net operating loss carryover to such privilege period, shall be
47 reduced by the amount excluded from federal taxable income under
48 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of

1 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,
2 for the privilege period of the discharge of indebtedness.

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

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

17 (w) "Taxable net income" means entire net income allocated to
18 this State as calculated pursuant to sections 6 through 8 of
19 P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by
20 subtracting any prior net operating loss conversion carryforward
21 calculated pursuant to subsection (u) of this section, and any net
22 operating loss calculated pursuant to subsection (v) of this section;
23 provided, however, for privilege periods ending on and after July
24 31, 2023, when subtracting any net operating losses calculated
25 pursuant to subsection (v) of this section or the combined group net
26 operating losses calculated pursuant to subsection h. of section 18
27 of P.L.2018, c.48 (C.54:10A-4.6), the limitation set forth in
28 paragraph (2) of subsection (a) of Internal Revenue Code Section
29 172 (26 U.S.C. s.172(a)(2)) shall apply, except that July 31, 2023 is
30 substituted for the reference to January 1, 2018 in subparagraph (A)
31 of paragraph (2) of subsection a. of Internal Revenue Code Section
32 172 (26 U.S.C. s.172), and July 31, 2022 is substituted for the
33 reference to December 31, 2017 in subparagraph (B) of paragraph
34 (2) of subsection (a) of Internal Revenue Code Section 172
35 (26 U.S.C. s.172). For privilege periods ending on and after July
36 31, 2023, for a combined group, before subtracting the prior net
37 operating loss conversion carryforwards and subtracting the net
38 operating losses of the combined group when computing the total
39 taxable net income, the combined group shall first add together the
40 allocated entire net income from the unitary business of the
41 combined group and the portion of allocated entire net income of
42 members with activities independent of the group, and then subtract
43 the prior net operating loss conversion carryforwards and then the
44 net operating losses.

45 (x) "Affiliated group" means, for purposes of section 23 of
46 P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in
47 section 1504 of the federal Internal Revenue Code, 26 U.S.C.
48 s.1504, except such affiliated group shall include all U.S. domestic

1 corporations that are commonly owned, directly or indirectly, by
2 any member of such affiliated group, without regard to whether the
3 affiliated group includes (1) corporations included in more than one
4 federal consolidated return, (2) corporations engaged in one or more
5 unitary businesses, or (3) corporations that are not engaged in a
6 unitary business with any other member of the affiliated group.

7 For purposes of this subsection:

8 "U.S. domestic corporations" means: (1) business entities
9 wherever incorporated or formed that are U.S. domestic
10 corporations, are deemed to be, or are treated as U.S. domestic
11 corporations under the provisions of the federal Internal Revenue
12 Code; or (2) any entities incorporated or formed under the laws of a
13 foreign nation that are required to file federal tax returns if such
14 entities have effectively connected income within the meaning of
15 the federal Internal Revenue Code; and

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

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

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

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

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

35 (4) 50% or less of whose gross receipts for the privilege period
36 consist of premiums from arrangements that constitute insurance for
37 federal income tax purposes.

38 A combinable captive insurance company shall not be exempt
39 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
40 insurance company that does not meet the definition of combinable
41 captive insurance company shall be excluded as provided in
42 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
43 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

44 For purposes of this definition:

45 "Affiliated group" shall have the same meaning as that term is
46 given by section 1504 of the federal Internal Revenue Code, 26
47 U.S.C. s.1504, except that the term "common parent corporation" as
48 used in section 1504 of the federal Internal Revenue Code, 26

1 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
2 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
3 to "at least 80%" in section 1504 of the federal Internal Revenue
4 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
5 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
6 be read without regard to the exclusions provided for in subsection
7 (b) of that section.

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

12 "Premiums" includes consideration for annuity contracts and
13 excludes any part of the consideration for insurance, reinsurance, or
14 annuity contracts that do not provide bona fide insurance,
15 reinsurance, or annuity benefits.

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

22 A combined group shall be treated, for privilege periods ending
23 on and after July 31, 2020, as one taxpayer for purposes of
24 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162
25 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for
26 the income derived from the unitary business; provided however,
27 with regard to the surtax imposed pursuant to section 1 of P.L.2018,
28 c.48 (C.54:10A-5.41) and for that purpose only, the portion of
29 income that is attributable to a member which is a public utility
30 exempt from the surtax shall not be included when computing the
31 surtax due.

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

39 (bb) "Group privilege period" means, if two or more members in
40 the combined group file in the same federal consolidated tax return,
41 the same income year as that used on the federal consolidated tax
42 return and, in all other cases, the privilege period of the managerial
43 member.

44 (cc) "Managerial member" means if the combined group has a
45 common parent corporation and that common parent corporation is
46 a taxable member, the managerial member shall be the common
47 parent corporation. In other cases, the combined group shall select a
48 taxable member as its managerial member or, in the discretion of

1 the director or upon failure of the combined group to select its
2 managerial member, the director shall designate a taxable member
3 of the combined group as managerial member.

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

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

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

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

16 A New Jersey S corporation shall only be included as a taxable
17 member of a combined group filing a New Jersey combined return
18 if the New Jersey S Corporation elects to be included as a member
19 and taxed at the same rate as the other members of the combined
20 group. A New Jersey S corporation that does not elect to be
21 included shall be excluded as a member of the combined return and
22 shall file a separate return.

23 (gg)"Unitary business" means, for privilege periods ending
24 before July 31, 2023, a single economic enterprise that is made up
25 either of separate parts of a single business entity or of a group of
26 business entities under common ownership that are sufficiently
27 interdependent, integrated, and interrelated through their activities
28 so as to provide a synergy and mutual benefit that produces a
29 sharing or exchange of value among them and a significant flow of
30 value among the separate parts. For privilege periods ending on
31 and after July 31, 2023,"unitary business" means a single economic
32 enterprise that is made up either of separate parts of a single
33 business entity or of a group of business entities under common
34 ownership that are sufficiently interdependent, integrated, or
35 interrelated through their activities so as to provide a synergy and
36 mutual benefit that produces a sharing or exchange of value among
37 them and a significant flow of value among the separate parts.

38 "Unitary business" shall be construed to the broadest extent
39 permitted under the Constitution of the United States. A business
40 conducted by a partnership which is in a unitary business with the
41 combined group shall be treated as the business of the partners that
42 are members of the combined group, whether the partnership
43 interest is held directly or indirectly through a series of
44 partnerships, to the extent of a partner's distributive share of
45 partnership income. The amount of partnership income to be
46 included in the partner's entire net income shall be determined in
47 accordance with subsection a. of section 3 of P.L.2001, c.136
48 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136

1 (C.54:10A-15.7), as applicable. A business conducted directly or
2 indirectly by one corporation is unitary with that portion of a
3 business conducted by another corporation through its direct or
4 indirect interest in a partnership.

5 (hh) "Captive investment company" shall mean, for privilege
6 periods ending on and after July 31, 2023, an investment company
7 that is not regularly traded on an established securities market and
8 of which more than 50 percent of the voting stock is owned or
9 controlled, directly or indirectly, by a single corporation, other than
10 an investment company, that is not exempt from federal income tax.
11 For privilege periods ending on and after July 31, 2023, any voting
12 stock in an investment company that is held in a segregated asset
13 account of a life insurance corporation, as described in section 817
14 of the Internal Revenue Code, shall not be taken into account for
15 purposes of determining whether an investment company is a
16 captive regulated investment company.

17 For privilege periods ending on and after July 31, 2023, a captive
18 investment company shall be taxed in the same manner as a C
19 corporation, and subsection d. of section 5 of P.L. 1945, c. 162
20 (C. 54:10A-5) shall not apply. A captive investment company shall
21 not be permitted to claim any deductions or expenses that were
22 permitted for federal purposes, solely as a result of the entity being
23 an investment company, when computing federal taxable net
24 income. A captive investment company shall be a member of a
25 combined group and shall be included as a member on the
26 combined return.

27 (ii) "Captive real estate investment trust" shall mean, for
28 privilege periods ending on and after July 31, 2023, a real estate
29 investment trust that is not regularly traded on an established
30 securities market and of which more than 50 percent of the voting
31 stock is owned or controlled, directly or indirectly, by a single
32 entity that is treated as an association taxable as a corporation under
33 the Internal Revenue Code, is not exempt from federal income tax,
34 and is not a real estate investment trust. For privilege periods
35 ending on and after July 23, 2023, any voting stock in a real estate
36 investment trust that is held in a segregated asset account of a life
37 insurance corporation, as described in section 817 of the Internal
38 Revenue Code (26 U.S.C. s.817), shall not be taken into account for
39 purposes of determining whether a real estate investment trust is a
40 captive real estate investment trust. For purposes of this subsection,
41 an association taxable as a corporation shall not include any listed
42 Australian property trust or any qualified foreign entity.

43 For privilege periods ending on and after July 31, 2023, a captive
44 real estate investment trust shall be taxed in the same manner as a C
45 corporation, and subsection d. of section 5 of P.L.1945, c.162
46 (C.54:10A-5) shall not apply. A captive real estate investment trust
47 shall not be permitted to claim any deductions or expenses that were
48 permitted for federal purposes, solely as a result of the entity being

1 a real estate investment trust, when computing federal taxable net
2 income. A captive real estate investment trust shall be a member of
3 a combined group and shall be included as a member on the
4 combined return.

5 As used in this subsection:

6 "Australian property trust" means an Australian unit trust that is
7 registered as a managed investment scheme under the Australian
8 Corporations Act, and in which the principal class of units is listed
9 on a recognized stock exchange in Australia and is regularly traded
10 on an established securities market; or an entity organized as a trust,
11 provided that a listed Australian property trust owns or controls,
12 directly or indirectly, 75 percent or more of the voting power or
13 value of the beneficial interests of shares of the trust.

14 "Qualified foreign entity" means a corporation, trust, association,
15 or partnership that is organized outside the laws of the United States
16 and that satisfies the following criteria:

17 (1) At least 75 percent of the entity's total asset value at the
18 close of its taxable year is represented by real estate assets, as
19 defined at subparagraph (B) of paragraph (5) of subsection (c) of
20 section 856 of the Internal Revenue Code (26 U.S.C. s.856),
21 including shares or certificates of beneficial interest in any real
22 estate investment trust, cash and cash equivalents, and United States
23 Government securities;

24 (2) The entity is not subject to tax on amounts distributed to its
25 beneficial owners, or is exempt from entity-level taxation;

26 (3) The entity distributes, on an annual basis, at least 85 percent
27 of its taxable income, as computed in the jurisdiction in which it is
28 organized, to the holders of its shares or certificates of beneficial
29 interest;

30 (4) No more than 10 percent of the voting power or value in the
31 entity is held directly, indirectly, or constructively by a single entity
32 or individual, or the shares or certificates of beneficial interests of
33 the entity are regularly traded on an established securities market;
34 and

35 (5) The entity is organized in a country that has a tax treaty with
36 the United States.

37 (jj) "Captive regulated investment company" shall mean, for
38 privilege periods ending on and after July 31, 2023, a regulated
39 investment company that is not regularly traded on an established
40 securities market, and of which more than 50 percent of the voting
41 stock is owned or controlled, directly or indirectly, by a single
42 corporation, other than a regulated investment company, that is not
43 exempt from federal income tax. For privilege periods ending on
44 and after July 31, 2023, any voting stock in a regulated investment
45 company that is held in a segregated asset account of a life
46 insurance corporation, as described in section 817 of the Internal
47 Revenue Code (26 U.S.C. s.817), shall not be taken into account for

1 purposes of determining whether a regulated investment company is
2 a captive regulated investment company.

3 For privilege periods ending on and after July 31, 2023, a captive
4 regulated investment company shall be taxed in the same manner as
5 a C corporation and subsection d. of section 5 of P.L.1945, c.162
6 (C.54:10A-5) shall not apply. A captive real estate investment
7 company shall not be permitted to claim any deductions or expenses
8 that were permitted for federal purposes, solely as a result of the
9 entity being a regulated investment company, when computing
10 federal taxable net income. A captive regulated investment
11 company shall be a member of a combined group and shall be
12 included as a member on the combined return.

13 (kk) “World-wide basis” and “world-wide group” shall mean, for
14 privilege periods ending on and after July 31, 2022, for the
15 purposes of sections 18 through 23 of P.L.2018, c.48
16 (C.54:10A-4.6 through C.54:10A-4.11) and for the purposes of
17 combined reporting in general under the Corporation Business Tax
18 Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), that the combined
19 group shall include all of the members of the combined group,
20 wherever located or formed. For privilege periods ending on and
21 after July 31, 2022, the combined group shall include all of the
22 income and attributes of those members regardless of how or
23 whether those members file federal returns or report or include their
24 income in federal taxable income for federal purposes, and without
25 regard to any exemption or exclusion from federal taxable income
26 under the terms of a tax treaty; provided, however, any deductions
27 that are allowed under the federal Internal Revenue Code that are
28 also allowable under the Corporation Business Tax Act (1945),
29 P.L.1945, c.162 (C.54:10A-1 et seq.), that would apply to a U.S.
30 corporation, but that a non-U.S. corporation is prohibited from
31 claiming for federal corporation income tax purposes because the
32 corporation’s income was not included in federal taxable income for
33 any reason or because the corporation is a non-U.S. corporation,
34 shall be allowed for the non-U.S. corporation members of the
35 combined group for New Jersey corporation business tax purposes
36 as though those non-U.S. corporation members were U.S.
37 corporations.

38 (cf: P.L.2022, c.133, s.19)

39

40 2. Section 18 of P.L.2018, c.48 (C.54:10A-4.6) is amended to
41 read as follows:

42 18. A taxable member of a combined group shall determine its
43 entire net income from the unitary business as its share of the entire
44 net income of the combined group in accordance with a combined
45 unitary tax return made pursuant to this section and sections 19, 20,
46 and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and
47 C.54:10A-4.11). The entire net income from the unitary business of
48 a combined group is the sum of the entire net incomes of each

1 taxable member and each nontaxable member of the combined
2 group derived from the unitary business, which shall be determined
3 as follows:

4 a. For a member incorporated in the United States, the income
5 to be included in the entire net income of the combined group shall
6 be the member's entire net income otherwise determined pursuant to
7 the Corporation Business Tax Act (1945), P.L.1945, c.162
8 (C.54:10A-1 et seq.).

9 b. (1) For a member not incorporated in the United States, the
10 income to be included in the entire net income of the combined
11 group shall be determined from a profit and loss statement that shall
12 be prepared for each foreign branch or corporation in the currency
13 in which the books of account of the branch or corporation are
14 regularly maintained, adjusted to conform it to the accounting
15 principles generally accepted in the United States for the
16 presentation of those statements and further adjusted to take into
17 account any book-tax differences required by federal or State law.
18 The profit and loss statement of each foreign member of the
19 combined group and the allocation factors related thereto, whether
20 United States or foreign, shall be translated into or from the
21 currency in which the parent company maintains its books and
22 records on any reasonable basis consistently applied on a year-to-
23 year or entity-by-entity basis. Income shall be expressed in United
24 States dollars. In lieu of these procedures and subject to the
25 determination of the director that the income to be reported
26 reasonably approximates income as determined under the
27 Corporation Business Tax Act (1945), P.L.1945, c.162
28 (C.54:10A-1 et seq.), income may be determined on any reasonable
29 basis consistently applied on a year-to-year or entity-by-entity
30 basis.

31 (2) For privilege periods ending on and after July 31, 2022:

32 (a) Notwithstanding any law or treaty to the contrary, and
33 regardless of the combined return filing method other than a world-
34 wide group combined return, for a member that is incorporated or
35 formed in a foreign nation with a comprehensive tax treaty with the
36 United States, entire net income shall not include an item of income
37 or loss excluded or exempted from federal taxable income under the
38 terms of the treaty, and no other deduction, exclusion, or
39 elimination will be permitted for an item of income or loss excluded
40 or exempted by this paragraph.

41 (b) For a corporation that is not incorporated in the United
42 States, and that is a member of a water's-edge group or affiliated
43 group for purposes of filing a combined return, the member shall
44 only include in entire net income the following: in the case of a
45 member that files a federal tax return, the member shall only
46 include the member's effectively connected income or loss reported
47 for federal purposes, as modified by the provisions of the
48 Corporation Business Tax Act (1945), P.L.1945, c.162

1 (C.54:10A-1 et seq.); and in the case of a member that does not file
2 a federal tax return but that has United States source income or loss,
3 the member shall only include that United States source income or
4 loss, as modified by the provisions of the Corporation Business Tax
5 Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to the extent that
6 United States source income or loss would otherwise be effectively
7 connected income or loss if the member would have been
8 conducting a business that is effectively connected to the United
9 States. For the purpose of determining what income or loss to
10 include in entire net income pursuant to this paragraph, the member
11 shall take into account only the items of expense and allocation
12 factor receipts attributable to that income or loss.

13 c. (1) **【If】** (a) For privilege periods ending before July 31,
14 2023, if a member of a combined group receives income from the
15 unitary business from a partnership, the combined group's entire net
16 income shall include the member's direct and indirect distributive
17 share of the partnership's unitary business income.

18 (b) For privilege periods ending on and after July 31, 2023, if a
19 member of a combined group receives income from the unitary
20 business from a partnership, the combined group's entire net
21 income shall include the member's direct and indirect distributive
22 share of the partnership's unitary business income, and the unitary
23 partnership shall not be liable for the portion of the payment
24 imposed pursuant to section 12 of P.L.2002, c.40 (C.54:10A-15.11)
25 that is directly, or indirectly in the case of a tiered partnership,
26 attributable to that member.

27 (2) The distributive share of income received by a limited
28 partner from a qualified investment partnership shall not be
29 considered to be derived from a unitary business unless the general
30 partner of such investment partnership and such limited partner
31 have common ownership. To the extent that the limited partner is
32 otherwise carrying on or doing business in New Jersey, it shall
33 allocate its distributive share of income from a qualified investment
34 partnership in accordance with subsection a. of section 3 of
35 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
36 P.L.2001, c.136 (C.54:10A-15.7) as applicable. If the limited
37 partner is not otherwise carrying on or doing business in New
38 Jersey, its distributive share of income from an investment
39 partnership is not subject to tax under this chapter.

40 d. All dividends paid by one member to another member of the
41 combined group shall be eliminated from the income of the
42 recipient.

43 e. Except as otherwise provided by regulation, business income
44 from an intercompany transaction among members of the same
45 combined group shall be deferred in a manner similar to the deferral
46 under 26 C.F.R. s.1.1502-13, as determined by the director. Upon
47 the occurrence of either of the events set forth in paragraphs (1) and
48 (2) of this subsection, deferred income resulting from an

1 intercompany transaction among members of a combined group
2 shall be restored to the income of the seller and shall be included in
3 the net income of the combined group as if the seller had earned the
4 income immediately before the event:

5 (1) The object of a deferred intercompany transaction is: (a)
6 resold by the buyer to an entity that is not a member of the
7 combined group, (b) resold by the buyer to an entity that is a
8 member of the combined group for use outside the unitary business
9 in which the buyer and seller are engaged, or (c) converted by the
10 buyer to a use outside the unitary business in which the buyer and
11 seller are engaged; or

12 (2) The buyer and seller cease to be members of the same
13 combined group, regardless of whether the buyer and seller remain
14 sufficiently interdependent, integrated, and interrelated through
15 their activities so as to provide a synergy and mutual benefit that
16 produces a sharing or exchange of value between them.

17 In the case of an event set forth in paragraph (2) of this
18 subsection, no portion of the income or loss shall be included in
19 entire net income of the combined group, but shall be included in
20 the entire net income of the respective member.

21 f. A charitable expense incurred by a member of a combined
22 group shall, to the extent allowable as a deduction pursuant to
23 section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170,
24 be subtracted first from the combined group's entire net income,
25 subject to the income limitations of that section applied to the entire
26 net income of the group. A charitable deduction disallowed under
27 section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170,
28 but allowed as a carryover deduction in a subsequent privilege
29 period, shall be treated as originally incurred in the subsequent year
30 by the same member and the provisions of this section shall apply
31 in the subsequent privilege period in determining the allowable
32 deduction for that privilege period.

33 g. A prior net operating loss conversion carryover incurred by a
34 member of a combined group shall be deducted from the entire net
35 income or loss allocated to this state pursuant to section 19 of
36 P.L.2018, c.48 (C.54:10A-4.7) as follows:

37 (1) **【Such】** For privilege periods ending before July 31, 2023, a
38 prior net operating loss conversion carryover deduction shall be
39 allowed to offset only the entire net income allocated to this state of
40 the corporation that created the prior net operating loss; the prior
41 net operating loss conversion carryover cannot be shared with other
42 members of the combined group. For privilege periods ending on
43 and after July 31, 2023, the remaining balance of prior net operating
44 loss conversion carryover deductions of the members of the
45 combined group shall be pooled together and shall be allowed to
46 offset the entire net income allocated to this State of either: the
47 combined group for which the corporation is a member; or the
48 corporation that created the prior net operating loss conversion

1 carryover, provided that the corporation departs the combined group
2 before the corporation's respective prior net operating loss
3 conversion carryover has been completely used.

4 (2) The prior net operating loss conversion carryover deduction
5 computed under subsection (u) of section 4 of P.L.1945, c.162
6 (C.54:10A-4) shall be applied against the entire net income
7 allocated to this state **【of the corporation that created the prior net**
8 **operating loss】** before the net operating loss carryover computed
9 under subsection h. of this section.

10 **【The】** (3) For privilege periods ending before July 31, 2023, the
11 director shall provide regulations establishing rules on how each
12 such corporation shall apply its prior net operating loss conversion
13 carryover against its share of entire net income allocated as if filing
14 on a separate entity basis. For privilege periods ending on and after
15 July 31, 2023, the director shall provide regulations establishing
16 rules on pooling members' prior net operating loss conversion
17 carryovers and tracing members' prior net operating loss conversion
18 carryovers in the event a member departs the combined group
19 before the member's prior net operating loss conversion carryovers
20 are completely used.

21 **【A】** (4) For privilege periods ending before the members of a
22 combined group pool their prior net operating loss conversion
23 carryovers for usage by the combined group, a member of 【a】 the
24 combined group may sell prior net operating loss conversion
25 carryover to other members of the combined group, if otherwise
26 applicable and allowable under section 2 of P.L.1997, c.334
27 (C.54:10A-4.2) and section 1 of P.L.1997, c.334 (C.34:1B-7.42a);
28 provided, however, such sale of prior net operating loss conversion
29 carryover must be made at arm's length price at the same rate as
30 though the sale was to an unrelated taxpayer.

31 h. A net operating loss carryover incurred by a combined group
32 or by a member of 【a】 the combined group shall be deducted from
33 entire net income or loss allocated to this State pursuant to section
34 19 of P.L.2018, c.48 (C.54:10A-4.7) as follows:

35 (1) (a) For privilege periods beginning on or after the first day
36 of the initial privilege period for which a combined unitary tax
37 return is required under this section and sections 19, 20, and 23 of
38 P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11),
39 but ending before July 31, 2023, if the computation of a combined
40 group's entire net income allocated to this state results in a net
41 operating loss, a taxable member of such group may carry over the
42 net operating loss allocated to this state, as calculated under this
43 section and sections 19 and 23 of P.L.2018, c.48
44 (C.54:10A-4.7 and C.54:10A-4.11), and shall be deductible from
45 entire net income derived from the unitary business in a future
46 privilege period to the extent that the carryover and deduction is

1 otherwise consistent with subsection (v) of section 4 of P.L.1945,
2 c.162 (C.54:10A-4).

3 (b) For privilege periods ending on and after July 31, 2023, if
4 the computation of a combined group's entire net income allocated
5 to this State results in a net operating loss, a combined group may
6 carry over the net operating loss allocated to this state, as calculated
7 under this section and sections 19 and 23 of P.L.2018, c.48
8 (C.54:10A-4.7 and C.54:10A-4.11), and shall be deductible from
9 entire net income derived from the unitary business in a future
10 privilege period to the extent that the carryover and deduction is
11 otherwise consistent with subsection (v) of section 4 of P.L.1945,
12 c.162 (C.54:10A-4).

13 (2) (a) Where a taxable member of a combined group has a net
14 operating loss carryover derived from a loss incurred by a combined
15 group in a privilege period beginning on or after the first day of the
16 initial privilege period for which a combined unitary tax return is
17 required under this section and sections 19, 20, and 23 of P.L.2018,
18 c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), but ending
19 before July 31, 2023, then the taxable member may share the net
20 operating loss carryover with other taxable members of the
21 combined group if such other taxable members were members of
22 the combined group in the privilege period that the loss was
23 incurred. Any amount of net operating loss carryover that is
24 deducted by another taxable member of the combined group shall
25 reduce the amount of net operating loss carryover that may be
26 carried over by the taxable member that originally incurred the loss.

27 (b) Where a combined group has a net operating loss carryover
28 derived from a loss incurred by the combined group in a privilege
29 period ending on or after July 31, 2023, then the combined group
30 may use the net operating loss carryover. Any amount of net
31 operating loss carryover that is deducted by the combined group
32 shall reduce the amount of net operating loss carryover that may be
33 carried over by the combined group.

34 (3) Where a taxable member of a combined group has a net
35 operating loss carryover derived from a loss incurred in a privilege
36 period during which the taxable member was not a member of such
37 combined group, the carryover shall remain available to be
38 deducted by that taxable member or other group members that, in
39 the year the loss was incurred, were part of the same combined
40 group as such taxable member. Such carryover shall not be
41 deductible by any other members of the combined group for
42 privilege periods ending before July 31, 2023. For privilege periods
43 ending on and after July 31, 2023, such carryover may (a) be pooled
44 with the combined group net operating loss carryover for use by the
45 combined group or (b) be used by the taxable member that
46 generated the carryover for that member's activities that are
47 independent of the unitary business of the combined group;
48 provided, however, the combined group and the members of the

1 combined group shall use tracing protocols for all net operating loss
2 carryovers, as may be prescribed by regulations promulgated by the
3 director.

4 (4) A net operating loss carryover or, for privilege periods
5 ending on and after July 31, 2023, a combined group net operating
6 loss carryover, shall not include any net operating loss incurred
7 during any privilege period beginning prior to the first day of the
8 initial privilege period for which a combined unitary tax return is
9 required under this section and sections 19 and 23 of P.L.2018, c.48
10 (C.54:10A-4.7 and C.54:10A-4.11).

11 (5) Where a taxable member of a combined group has a net
12 operating loss carryover derived from a loss incurred by a combined
13 group in a privilege period beginning on or after the first day of the
14 initial privilege period for which a combined unitary tax return is
15 required under this section and sections 19, 20, and 23 of P.L.2018,
16 c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), and the
17 taxable member departs the combined group and continues to be a
18 taxpayer for the purposes of the Corporation Business Tax Act
19 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the taxable member
20 shall be entitled to take its respective portion of the combined group
21 net operating loss carryover and the combined group shall not be
22 entitled to use such portion of the net operating loss carryover.

23 (6) For privilege periods ending on and after July 31, 2023, each
24 taxable member of a combined group shall track that member's
25 proportionate share of any combined group net operating loss
26 carryovers used.

27 i. Tax credits earned by a member of a combined group shall
28 be utilized as follows:

29 (1) If a taxable member of a combined group earns a tax credit
30 in a privilege period beginning on or after the first day of the initial
31 privilege period for which a combined unitary tax return is required
32 under this section and sections 19, 20, and 23 of P.L.2018, c.48
33 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable
34 member may share the credit with other taxable members of the
35 combined group. Any amount of credit that is utilized by another
36 taxable member of the combined group shall reduce the amount of
37 credit carryover that may be carried over by the taxable member
38 that originally earned the credit. If a taxable member of a combined
39 group has a tax credit carryover derived from a privilege period
40 beginning on or after the first day of the initial privilege period for
41 which a combined unitary tax return is required under this section
42 and sections 19, 20, and 23 of P.L.2018, c.48
43 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable
44 member may share the carryover credit with other taxable members
45 of the combined group.

46 (2) If a taxable member of a combined group has a tax credit
47 carryover derived from a privilege period beginning prior to the
48 first day of the initial privilege period for which a combined unitary

1 tax return is required under this section and sections 19, 20, and 23
2 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-
3 4.11), then the taxable member may share the carryover credit with
4 other taxable members of the combined group.

5 (3) If a taxable member of a combined group has a tax credit
6 carryover derived from a privilege period during which the taxable
7 member was not a member of such combined group, the credit
8 carryover shall remain available to be utilized by such taxable
9 member or other group members.

10 (4) To the extent a taxable member has more than one
11 corporation business tax credit that it may utilize in a privilege
12 period, whether such credits were earned by said member or are
13 available to said member in accordance with paragraphs (1), (2) and
14 (3) of this subsection, the order of priority of the application of the
15 credits shall be as prescribed by the director.

16 j. An expense of a member of the combined group that is
17 directly or indirectly attributable to the income of any member of
18 the combined group, which income this State is prohibited from
19 taxing pursuant to the laws or Constitution of the United States,
20 shall be disallowed as a deduction for purposes of determining the
21 combined group's entire net income.

22 k. Nothing in this section shall apply to:

23 (1) A corporation or combined group which is licensed, in
24 whole or in part, as an insurance company under the laws of this
25 State or of another state, including corporations which are surplus
26 lines insurers declared eligible by the Commissioner of Banking
27 and Insurance pursuant to section 11 of P.L.1960, c.32
28 (C.17:22-6.45) to insure risks within this State that is not a
29 combinable captive insurance company. Notwithstanding a
30 provision, if any, to the contrary in this section, the income of an
31 insurance company that is not a combinable captive insurance
32 company, the allocation or apportionment of income related thereto
33 and the apportionment factors of an insurance company that is not a
34 combinable captive insurance company shall not be included in a
35 combined unitary tax return filed under this section and sections 19,
36 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and
37 C.54:10A-4.11). In addition, the dividend exclusion provisions of
38 paragraph (5) of subsection (k) of section 4 of P.L.1945, c.162
39 (C.54:10A-4) relating to dividends paid by insurance companies to
40 non-insurance companies included in the unitary group shall not be
41 affected by P.L.2018, c.48 (C.54:10A-5.41 et al.).

42 (2) A corporation that is regulated, in whole or in part, by the
43 Federal Energy Regulatory Commission, the New Jersey Board of
44 Public Utilities, or similar regulatory body of another state, with
45 respect to rates charged to customers for electric or gas services and
46 water and wastewater services.

47 l. (Deleted by amendment, P.L.2020, c.118)

1 m. To the extent consistent with the Corporation Business Tax
2 Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the federal rules
3 and regulations governing consolidated return net operating losses
4 and net operating loss carryovers shall apply to the New Jersey net
5 operating loss carryover provisions under subsection h. of this
6 section as though the combined group filed a federal consolidated
7 return, regardless of how the members of the combined group filed
8 for federal purposes.

9 n. The principles and provisions set forth in federal regulations
10 promulgated pursuant to section 1502 of the Internal Revenue Code
11 (26 U.S.C. s.1502), shall apply to the extent consistent with the
12 Corporation Business Tax Act (1945), New Jersey combined group
13 membership principles, New Jersey combined unitary return
14 principles, and regulations set forth by the director.

15 o. For purposes of the deduction allowed in paragraph (4) of
16 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a
17 combined group shall be treated as one taxpayer; provided,
18 however, a combined group shall only be eligible for the deduction
19 if at least one of the taxable members is a banking corporation and
20 the taxable member has an international banking facility. The
21 income of the combined group shall not be eligible for the
22 deduction allowed in paragraph (4) of subsection (k) of section 4 of
23 P.L.1945, c.162 (C.54:10A-4) if such income was already
24 eliminated pursuant to other subsections of this section.

25 p. This section shall apply to world-wide group elective
26 combined returns and affiliated group elective combined returns in
27 accordance with section 23 of P.L.2018, c.48 (C.54:10A-4.11). An
28 election to file an affiliated group combined return shall be an
29 election to treat all of the member's attributes and income as though
30 they were from one unitary business.

31 q. The director shall promulgate rules and regulations
32 necessary to carry out the provisions of this section.
33 (cf: P.L.2020, c.118, s.6)

34
35 3. Section 19 of P.L.2018, c.48 (C.54:10A-4.7) is amended to
36 read as follows:

37 19. A taxable member of a combined group shall determine its
38 allocation factor for determining its share of the entire net income
39 of the combined group, as determined pursuant to the provisions of
40 section 18 of P.L.2018, c.48 (C.54:10A-4.6), pursuant to sections 6
41 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8);
42 provided however:

43 a. **I**n computing its denominator for the sales fraction, the
44 taxable member shall use the combined group's denominator for
45 that fraction. In computing the numerator of its sales fraction, each
46 taxable member shall be treated as a separate taxpayer and that
47 taxable member's numerator will include only that taxable member's

1 receipts assignable to this State.】 (Deleted by amendment, P.L. ,
2 c. (pending before the Legislature as this bill)

3 b. All business income of a combined group engaged in the
4 transportation of freight by air or ground shall be apportioned to
5 this State by multiplying the income by a fraction, the numerator of
6 which is the ton miles traveled by the combined group's mobile
7 assets in this State by type of mobile asset and the denominator of
8 which is the total ton miles traveled by the combined group's
9 mobile assets everywhere. This section applies, if 50 per cent or
10 more of the combined group's entire net income is derived from the
11 transportation of freight by air or ground.

12 c. In determining the numerator and denominator of the
13 allocation factors of taxable members, transactions between or
14 among members of the combined group shall be eliminated.

15 d. The director shall promulgate rules and regulations
16 necessary to carry out the provisions of this section.

17 e. In computing the numerator and denominator of the
18 allocation factor of the combined group, the combined group, as one
19 taxpayer, shall take into account all unitary receipts of all members
20 of the combined group.

21 (cf: P.L.2018, c.48, s.19)

22

23 4. Section 22 of P.L.2018, c.48 (C.54:10A-4.10) is amended to
24 read as follows:

25 22. a. Determination of Managerial Member. If the combined
26 group has a common parent corporation within the meaning of the
27 Corporation Business Tax Act (1945), P.L.1945, c.162
28 (C.54:10A-1 et seq.), and that common parent corporation is a
29 taxable member of the corporate group, the managerial member
30 shall be the common parent corporation. In other cases, the
31 combined group shall select a taxable member as its managerial
32 member or, in the discretion of the director or upon failure of the
33 combined group to select its managerial member, the director shall
34 designate a taxable member of the combined group as managerial
35 member. Once the election of the managerial member is made, the
36 election shall be binding for **【10】** the current privilege period and
37 five successive privilege periods, except as otherwise provided for
38 by the director.

39 b. A combined group shall file a mandatory combined return
40 under this section in the form and manner prescribed by the
41 director. The managerial member of the combined group shall file
42 the mandatory combined return on behalf of the taxable members of
43 the combined group. The managerial member shall be required to
44 file taxable member returns; file taxable member extensions for
45 filing tax returns and other documents with the director; pay taxable
46 member liabilities; receive taxable member findings, assessments,
47 and notices; make and receive taxable member claims, or file
48 taxable member protests and appeals; and shall be the responsible

1 party liable for filing and paying the tax on behalf of the combined
2 group.

3 c. The privilege period for the combined group is the privilege
4 period of the managerial member. If a member of a combined group
5 has a different fiscal or calendar accounting period from the
6 combined group's privilege period, that member with a different
7 period shall report amounts from its return for its fiscal or calendar
8 accounting year that ends during the group privilege period.

9 d. Each taxable member of a combined group shall be jointly
10 and severally liable for the tax due from any taxable member
11 pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), whether or not
12 that tax has been self-assessed, and for any interest, penalties, or
13 additions to tax due.

14 e. If a combined group is eligible to elect the managerial
15 member of the combined group, notice of the election shall be
16 submitted in writing to the director not later than the due date or, if
17 an extension of time to file has been requested and granted, not later
18 than the extended due date of the mandatory combined return for
19 the initial privilege period for which a return is required. The
20 managerial member shall be the designated agent and the
21 responsible person for filing the combined return and paying the tax
22 for the combined group. If another taxable member is subsequently
23 designated as the managerial member, the subsequent designation
24 shall be subject to the approval of the director.

25 f. The director is authorized to promulgate regulations with
26 regard to installment payments, estimated payments, overpayments,
27 refunds and any other filing or payment matters related to combined
28 groups filing combined returns.

29 g. For privilege periods ending on and after July 31, 2019, a
30 combined group must file a mandatory combined return. However,
31 if privilege periods of the members of the combined group differ,
32 the first mandatory combined return for the combined group shall
33 be required for the privilege period of the managerial member.

34 h. The members of a combined group shall notify the director
35 of a change in the combined group where a member dissolves, a
36 merger of any kind occurs, a member withdraws from the group, a
37 member ceases doing business, a member of the group is acquired
38 by a third party not in the group, or additional members enter the
39 group which are required to be included. Such notice shall be
40 submitted in written form, as determined by the director, not later
41 than the due date, or, if an extension of time to file has been
42 requested and granted, not later than the extended due date of the
43 combined unitary tax return for the privilege period in which a
44 change in the combined group occurs.

45 i. Any notice shall be sent to the managerial member of the
46 combined group at the last known address of the managerial
47 member as indicated on either the last filing required or made under

1 this Chapter or a subsequent electronic or written notice provided
2 by the managerial member under rules prescribed by the director.

3 j. The director may, at the director's sole discretion:

4 (1) make any deficiency assessment against either the
5 managerial member or a taxable member of the combined group;

6 (2) refund or credit any overpayment to either the managerial
7 member or a taxable member of the combined group;

8 (3) require any payment to be made by electronic funds transfer;
9 and

10 (4) require the mandatory combined return to be filed
11 electronically.

12 (cf: P.L.2020, c.118, s.8)

13

14 5. Section 23 of P.L.2018, c.48 (C.54:10A-4.11) is amended to
15 read as follows:

16 23. a. The managerial member of a combined group may elect
17 to have the combined group determined on a world-wide basis or an
18 affiliated group basis. If no such election is made, the combined
19 group shall be determined on a water's-edge basis and will take into
20 account the incomes and allocation factors of only the following
21 members of the combined group:

22 (1) each member incorporated in the United States, or formed
23 under the laws of the United States, any state, the District of
24 Columbia, or any territory or possession of the United States,
25 excluding such a member if eighty per cent or more of both its
26 property and payroll during the privilege period are located outside
27 the United States, the District of Columbia, and any territory or
28 possession of the United States;

29 (2) each member **【, wherever】** incorporated or formed under the
30 laws of a foreign nation, if twenty per cent or more of both its
31 property and payroll during the privilege period are located in the
32 United States, the District of Columbia, or any territory or
33 possession of the United States;

34 (3) any member that earns more than 20% of its income, directly
35 or indirectly, from intangible property or related service activities
36 that are deductible against the income of other members of the
37 combined group;

38 (4) **【each member that has income as defined under the**
39 **Corporation Business Tax Act (1945), P.L.1945, c.162**
40 **(C.54:10A-1 et seq.) and has sufficient nexus in New Jersey**
41 **pursuant to section 2 of P.L.1945, c.162 (C.54:10A-2).】** (Deleted by
42 amendment, P.L. , c. (pending before the Legislature as this bill)

43 (5) any member, wherever incorporated or formed, that is not
44 included in paragraphs (1) through (3) of this subsection, if that
45 member has effectively connected income or loss within the
46 meaning of the federal Internal Revenue Code, as modified by the
47 provisions of the Corporation Business Tax Act (1945), P.L.1945,
48 c.162 (C.54:10A-1 et seq.). For any member that is included

1 pursuant to this paragraph, the member shall be included in the
2 combined group only to the extent of its effectively connected
3 income or loss, taking into account items of expense and allocation
4 factors associated with the effectively connected income or loss.

5 b. A world-wide election or an affiliated group election is
6 effective only if made on a timely filed, original return for a
7 privilege period by the managerial member of the combined group.
8 Such election is binding for, and applicable to, the privilege period
9 for which it is made and for the five immediately succeeding
10 privilege periods. Provided however, the election can be revoked
11 prior to the expiration of the binding period by written request to
12 the Director of Taxation for reasonable cause including but not
13 limited to a substantial change in ownership, members of the
14 combined group or principal business, or changes in tax law,
15 regulation or policy.

16 c. If the managerial member elects to determine the members
17 of a combined group on an affiliated group basis, the taxable
18 members shall take into account the entire net income or loss and
19 allocation factors of all of the members of its affiliated group,
20 regardless of whether such members are engaged in a unitary
21 business, that are subject to tax or would be subject to tax under this
22 chapter, if doing business in this State.

23 d. The director shall promulgate rules and regulations
24 necessary to carry out the provisions of this section.

25 (cf: P.L.2018, c.48, s.23)

26

27 6. (New section) a. Notwithstanding the provisions of the
28 Corporation Business Tax Act (1945), P.L.1945, c.162
29 (C.54:10A-1 et seq.) or any other law, rule, or regulation to the
30 contrary, for the purposes of section 2 of P.L.1945, c.162
31 (C.54:10A-2), a corporation deriving receipts from sources within
32 this State shall be deemed to have substantial nexus and is subject
33 to the taxes imposed under the Corporation Business Tax Act
34 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) if the corporation
35 meets either of the following criteria:

36 (1) The corporation derives receipts from sources within this
37 State, pursuant to sections 6 through 10 of P.L.1945, c.162
38 (C.54:10A-6 through C.45:10A-10), in excess of \$100,000 during
39 the corporation's fiscal or calendar year; or

40 (2) The corporation has 200 or more separate transactions
41 delivered to customers in this State during the corporation's fiscal
42 or calendar year. For the purposes of this paragraph, for any
43 transaction that is a service transaction, "delivered to a customer"
44 shall mean where the benefit is received within the meaning of
45 paragraph (4) of subsection (B) of section 6 of P.L.1945, c.162
46 (C.54:10A-6).

47 b. This section shall not preclude a corporation from having
48 nexus with this State if the corporation's exercise of its franchise in

1 this State is otherwise sufficient to give this State jurisdiction to
2 impose taxes pursuant to the Corporation Business Tax Act (1945),
3 P.L.1945, c.162 (C.54:10A-1 et seq.), as consistent with the
4 provisions of the United States Constitution, the New Jersey
5 Constitution, and the statutes of the United States and of the State
6 of New Jersey. This section shall not preclude a corporation from
7 owing the statutory minimum tax provided in subsection (e) of
8 section 5 of P.L.1945, c.162 (C.54:10A-5) if a corporation has
9 nexus with this State and is otherwise protected from tax based on
10 income pursuant to 15 U.S.C. ss.381-384.

11

12 7. (New section) For privilege periods ending on and after July
13 31, 2023, but before January 1, 2024, no penalties or interest shall
14 accrue for the underpayment of tax due with respect to any
15 provision of P.L. , c. (C.) (pending before the Legislature
16 as this bill) that creates an additional tax liability; provided,
17 however, for privilege periods ending on and after July 31, 2023,
18 the additional estimated payments shall be made no later than the
19 second next estimated payment due following the enactment of
20 P.L. , c. (C.) (pending before the Legislature as this bill) or
21 the second estimated payment due after January 1, 2024, whichever
22 due date is later.

23

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

26 10. a. Whenever it shall appear to the director that any taxpayer
27 fails to maintain its records in accordance with sound accounting
28 principles or conducts its business or maintains its records in such
29 manner as either directly or indirectly to distort its true entire net
30 income or its true entire net worth under this act or the proportion
31 thereof properly allocable to this State, or whenever any taxpayer
32 maintains a place of business outside this State, or whenever any
33 agreement, understanding or arrangement exists between a taxpayer
34 and any other corporation or any person or firm, for the purpose of
35 evading tax under this act, or whereby the activity, business,
36 receipts, expenses, assets, liabilities, income or net worth of the
37 taxpayer are improperly or inaccurately reflected, the director is
38 authorized and empowered, in the director's discretion and in such
39 manner as the director may determine, to adjust and redetermine
40 such items, and to adjust items of gross receipts, tangible or
41 intangible property and payrolls within and without the State and
42 the allocation of entire net income or entire net worth or to make
43 any other adjustments in any tax report or tax returns as may be
44 necessary to make a fair and reasonable determination of the
45 amount of tax payable under this act.

46 b. Where (1) any taxpayer conducts its activity or business
47 under any agreement, arrangement or understanding in such manner
48 as either directly or indirectly to benefit its members or

1 stockholders, or any of them, or any person or persons directly or
2 indirectly interested in such activity or business, by entering into
3 any transaction at more or less than a fair price which, but for such
4 agreement, arrangement or understanding, might have been paid or
5 received therefor, or (2) any taxpayer, a substantial portion of
6 whose capital stock is owned either directly or indirectly by or
7 through another corporation, enters into any transaction with such
8 other corporation on such terms as to create an improper loss or net
9 income, the director may include in the entire net income of the
10 taxpayer the fair profits which, but for such agreement, arrangement
11 or understanding, the taxpayer might have derived from such
12 transaction. The director may require any person or corporation to
13 submit such information under oath or affirmation, or to permit
14 such examination of its books, papers and documents, as may be
15 necessary to enable the director to determine the existence, nature
16 or extent of an agreement, understanding or arrangement to which
17 this section relates, whether or not such person or corporation is
18 subject to the tax imposed by this act.

19 c. (Deleted by amendment, P.L.2018, c.48)

20 d. The director may combine or de-combine taxpayers under
21 any of the following circumstances:

22 (1) If the director determines that a combined group's income or
23 loss does not properly reflect the unitary business activities of the
24 combined group, the director may require the combined return of
25 the combined group to include the income, as well as the associated
26 allocation factor or factors, of any taxpayer who is not otherwise
27 included in the combined group on the combined return, but who is
28 a member of a unitary business with the combined group, in order
29 to correct the improper reflection of the allocation of income of the
30 entire unitary business. The director may require a combined return
31 to include the income and associated allocation factor or factors of
32 taxpayers that are not corporations, such as disregarded entities,
33 limited liability companies that are not corporations for tax
34 purposes, and partnerships.

35 (2) If the director determines that a combined group's income or
36 loss does not reflect a proper allocation of income or represents the
37 evasion of proper taxation, the director may require that a combined
38 return include or exclude the income and associated allocation
39 factor or factors of taxpayers that may or may not have been
40 included as members on the combined return. The director may
41 require that a combined return include or exclude the income and
42 associated allocation factor or factors of taxpayers that are not
43 corporations, such as disregarded entities, limited liability
44 companies that are not corporations for tax purposes, and
45 partnerships.

46 (3) If the director determines that the reported income or loss of
47 a member of a combined group engaged in a unitary business with
48 any taxpayer not otherwise included in the combined group on the

1 combined return represents an avoidance or evasion of proper
2 taxation by the taxpayer or the combined group member, the
3 director may require all, or any part, of the income or loss, and
4 associated allocation factor or factors, of the taxpayer to be include
5 in or excluded from the combined return for the unitary business or
6 may require that use of a different allocation factor or factors.

7 (4) If, upon the director's audit of a combined return and review
8 of any facts and circumstances that the director deems relevant to
9 the completion of the audit, the director determines that any
10 member of the combined group for which the combined return was
11 filed was not engaged in unitary business activities with the
12 combined group, or the director determines that the principal
13 purpose of including that member was to shelter income, dilute the
14 allocation factor of the combined group, improperly increase the
15 combined group net operating losses, or share tax credits that were
16 not related to any function of the combined group, the director may
17 de-combine the return and require any member of the combined
18 group to file a separate return, and the director may prohibit the
19 member's inclusion on the combined return.

20 e. Notwithstanding any provision in the Corporation Business
21 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) enacted to
22 prevent tax avoidance or evasion or to clearly reflect the income of
23 any taxpayer, the director may require a combined return to include
24 or exclude the income or loss, and associated allocation factor or
25 factors, of any taxpayer that is not a corporation. If a taxpayer
26 disagrees with the director's determination to include or exclude the
27 taxpayer's income or loss, or any associated allocation factor or
28 factors, on the combined return, the taxpayer has the burden of
29 proving by cogent evidence that is definite, positive, and certain in
30 quality and quantity to overcome the director's presumption of
31 correctness.

32 (cf: P.L.2018, c.48, s.9)

33
34 9. Section 15 of P.L.1945, c.162 (C.54:10A-15) is amended to
35 read as follows:

36 15. The tax imposed by this act shall be due and payable
37 annually hereafter, commencing with the calendar year 1959, in the
38 manner provided under subsection (a), (b) or (c) of this section,
39 whichever shall be applicable.

40 (a) Every taxpayer shall annually pay a franchise tax, with
41 respect to all or any part of each of its fiscal or calendar accounting
42 years beginning after January 1, 1959, to be computed as herein
43 provided, for such fiscal or calendar accounting year or part thereof,
44 on a report which shall be filed on or before April 15 next
45 succeeding the close of each such accounting year, or, if any such
46 fiscal year ends after the last day of December and prior to July 1,
47 on or before the fifteenth day of the fourth month after the close of
48 such fiscal year, and the full amount of the tax hereunder shall be

1 due and payable on or before the date prescribed herein for the
2 filing of the return.

3 (b) Every taxpayer shall pay a like franchise tax with respect to
4 all or any part of the period beginning January 1, 1959 and
5 extending through any subsequent part of its first fiscal or calendar
6 accounting year ending after said date. Such tax shall be computed
7 as herein provided, for each and every fiscal or calendar accounting
8 year or part thereof begun not earlier than July 2, 1957 and ending
9 not later than December 31, 1959 on the basis of which a franchise
10 tax has not accrued under this act prior to January 1, 1959. The tax
11 imposed pursuant to this subsection shall be deemed a single tax for
12 such period but shall be computed separately with respect to each
13 such fiscal or calendar accounting year or part thereof on the basis
14 of which a franchise tax has not previously accrued as aforesaid, on
15 a report which shall be filed on or before April 15, next succeeding
16 the close of each such accounting year, or, if any such fiscal year
17 ends after the last day of December and prior to July 1, on or before
18 the fifteenth day of the fourth month after the close of such fiscal
19 year, and the full amount of the tax hereunder shall be due and
20 payable on or before the date prescribed herein for the filing of the
21 report.

22 (c) With respect to all or any part of each of its privilege periods
23 ending after June 30, 1967, every taxpayer shall annually pay a
24 franchise tax on a report which shall be filed on or before the
25 fifteenth day of the fourth month after the close of such privilege
26 period, or part thereof, and the full amount of the tax hereunder
27 shall be due and payable on or before the date prescribed herein for
28 the filing of the return; provided, however, that for privilege periods
29 ending on and after July 31, 2020, but before July 31, 2023, the due
30 date of the New Jersey return shall be 30 days after the original due
31 date for filing the taxpayer's federal corporate income tax return for
32 such privilege period, or part thereof, and **[the]** for privilege
33 periods ending on and after July 31, 2023, the due date of the New
34 Jersey return shall be (1) the fifteenth day of the month immediately
35 following the month of the original due date for filing the
36 taxpayer's federal corporate income tax return for such privilege
37 period, or part thereof, or (2) in the case of a taxpayer that received
38 an extension to file for federal tax purposes, the fifteenth day of the
39 month immediately following the month of the extended due date
40 for filing the taxpayer's federal corporate income tax return for such
41 privilege period, or part thereof. The full amount of the tax
42 hereunder shall be due and payable on or before the date prescribed
43 herein for the filing of the return.

44 (d) With respect to its fiscal or calendar accounting years ending
45 after February 29, 1968 and prior to March 1, 1969, every taxpayer
46 shall pay as a partial payment of franchise tax in addition to the tax
47 payable under subsection (c) of this section, an amount equal to
48 one-quarter of the tax payable under said subsection (c). With

1 respect to each of its fiscal or calendar accounting years ending
2 after February 28, 1969, every taxpayer shall annually pay as a
3 partial payment of franchise tax in addition to the tax payable under
4 subsection (c) of this section, an amount equal to one-half of the tax
5 payable under said subsection (c). In the calculation of the tax
6 pertaining to each succeeding accounting period, due in accordance
7 with subsection (c) hereof, every taxpayer shall be entitled to a
8 credit in the amount of the tax paid under this subsection (d) as a
9 partial payment and shall be entitled to the return of any amount so
10 paid which shall be found in excess of the total amount payable in
11 accordance with said subsection (c) and this subsection (d).

12 (e) With respect to its fiscal or calendar accounting years ending
13 on or after June 30, 1974, every taxpayer shall annually pay as a
14 partial payment of franchise tax in addition to the tax payable under
15 subsection (c) of this section, an amount equal to 60% of the tax
16 payable under said subsection (c). In the calculation of the tax
17 pertaining to each succeeding accounting period, due in accordance
18 with subsection (c) hereof, every taxpayer shall be entitled to a
19 credit in the amount of the tax paid under this subsection (e) as a
20 partial payment and shall be entitled to the return of any amount so
21 paid which shall be found to be in excess of the total amount
22 payable in accordance with said subsection (c) and this subsection
23 (e).

24 (f) With respect to its privilege periods ending on or after
25 December 31, 1984, in addition to the tax payable under subsection
26 (c) of this section, every taxpayer, except a taxpayer with gross
27 receipts of \$50,000,000 or more for the prior privilege period,
28 which shall make installment payments pursuant to subsection (g)
29 of this section, shall make installment payments of its franchise tax
30 at the following times and in the following amounts of its estimated
31 tax for its current fiscal or calendar accounting year:

32 (1) 25% thereof paid on or before the fifteenth day of the fourth
33 month thereof;

34 (2) 25% thereof paid on or before the fifteenth day of the sixth
35 month thereof;

36 (3) 25% thereof paid on or before the fifteenth day of the ninth
37 month thereof; and

38 (4) the balance thereof paid on or before the fifteenth day of the
39 twelfth month thereof.

40 (g) With respect to its privilege periods beginning on or after
41 January 1, 2003, in addition to the tax payable under subsection (c)
42 of this section, every taxpayer with gross receipts of \$50,000,000 or
43 more for the prior privilege period shall make installment payments
44 of its franchise tax at the following times and in the following
45 amounts of its estimated tax for its current privilege period:

46 (1) 25% thereof paid on or before the fifteenth day of the fourth
47 month thereof;

1 (2) 50% thereof paid on or before the fifteenth day of the sixth
2 month thereof; and

3 (3) the balance thereof paid on or before the fifteenth day of the
4 twelfth month thereof.

5 (h) In the calculation of the tax due in accordance with
6 subsection (c) hereof, a taxpayer shall be entitled to a credit in the
7 amount of the tax paid under subsection (f) or subsection (g) of this
8 section as a partial payment and shall be entitled to the return of any
9 amount so paid which is in excess of the total amount payable in
10 accordance with subsection (c) and this subsection.

11 (i) For the purpose of this act, every taxpayer shall use the same
12 calendar or fiscal year upon which it reports to the United States
13 Treasury Department for Federal Income Tax purposes.

14 (cf: P.L.2020, c.118, s.12)

15

16 10. Section 3 of P.L.1981, c.184 (C.54:10A-15.2) is amended to
17 read as follows:

18 3. a. With respect to its fiscal or calendar accounting years
19 ending on or after December 31, 1980 ~~【and thereafter】~~, but before
20 July 31, 2023, any taxpayer with a tax liability of less than \$500.00
21 under subsection (c) of section 15 of P.L.1945, c.162
22 (C.54:10A-15) shall not be required to make any installment
23 payments other than an installment payment of ~~【60%】~~ 60 percent,
24 and ~~【50%】~~ 50 percent with respect to accounting years ending on
25 or after December 31, 1981, which is required to be paid at the time
26 of the annual return.

27 b. With respect to its fiscal or calendar accounting years ending
28 on or after July 31, 2023, any taxpayer with a tax liability of less
29 than \$1,500 under subsection (c) of section 15 of P.L.1945, c.162
30 (C.54:10A-15) shall not be required to make any installment
31 payments other than an installment payment of 50 percent, which
32 shall be paid at the time of the annual return.

33 c. For the purposes of subsection b. of this section, for a
34 combined group, the provisions of subsection b. shall apply by
35 taxable member in aggregate for the combined group.

36 (cf: P.L.1981, c.184, s.3)

37

38 11. Section 5 of P.L.1981, c.184 (C.54:10A-15.4) is amended as
39 follows:

40 5. a. In case of any underpayment of an installment payment
41 by a taxpayer, there shall be added to the tax for the fiscal or
42 calendar accounting year an amount determined by applying the
43 rate established in this section to the amount of the underpayment
44 for the period of the underpayment.

45 b. For purposes of subsection a., the amount of underpayment
46 shall be the excess of:

47 (1) The lesser of the amount of the installment payment which
48 would be required to be paid if all installment payments and all

1 payments of tax made pursuant to subsection a. of section 12 of
2 P.L.2002, c.40 (C.54:10A-15.11) and credited to the taxpayer
3 pursuant to subsection b. of section 12 of P.L.2002, c.40 were equal
4 to 90% of the tax shown on the return for the fiscal or calendar
5 accounting year, or if no return was filed, 90% of the tax for that
6 year, or 100% of the tax shown on the tax return of the taxpayer for
7 the preceding taxable year over

8 (2) The amount, if any, of the installment payment paid on or
9 before the last date prescribed for payment.

10 c. For purposes of subsection a., the period of the
11 underpayment shall run from the date the installment payment was
12 required to be paid to whichever of the following dates is the
13 earlier:

14 (1) The fifteenth day of the **fourth** fifth month after the close
15 of the fiscal or calendar accounting year.

16 (2) With respect to any portion of the underpayment, the date on
17 which that portion is paid.

18 For purposes of this subsection, a payment of any installment
19 payment shall be considered a payment of any previous
20 underpayment only to the extent that payment exceeds the amount
21 of the installment payment determined under subsection b. (1) for
22 that installment payment.

23 d. Notwithstanding the provisions of the preceding subsections,
24 the addition to the tax with respect to any underpayment of any
25 installment payment shall not be imposed if the total amount of all
26 installment payments made on or before the last date prescribed for
27 the payment of that installment equals or exceeds the amount which
28 would have been required to be paid on or before that date if the
29 total amount of all installment payments were the lesser of (1) or (2)
30 as follows:

31 (1) An amount equal to the tax computed at the rates applicable
32 to the current fiscal or calendar accounting year but otherwise on
33 the basis of the facts shown on the return of the taxpayer for, and
34 the law applicable to, the preceding fiscal or calendar accounting
35 year; or

36 (2) An amount equal to 90% of the tax for the current fiscal or
37 calendar accounting year computed by placing on an annualized
38 basis the taxable entire net income and entire net worth:

39 (a) For the first three months of the current fiscal or calendar
40 accounting year, in the case of the installment payment required to
41 be paid in the fourth month,

42 (b) For the first three months or for the first five months of the
43 current fiscal or calendar accounting year, in the case of the
44 installment payment required to be paid in the sixth month,

45 (c) For the first six months or for the first eight months of the
46 current fiscal or calendar accounting year, in the case of the
47 installment payment required to be paid in the ninth month,

1 (d) For the first nine months or for the first 11 months of the
2 current fiscal or calendar accounting year, in the case of the
3 installment payment required to be paid in the 12th month, and

4 (e) For the last three months of the preceding taxable year, in
5 the case of the installment payment required to be paid in the first
6 month of the current fiscal or calendar accounting year.

7 e. Any taxpayer who shall fail to pay, or shall underpay by
8 more than 10% of the amount due, any installment payment
9 required pursuant to this act, shall pay, in addition to the tax,
10 interest on the amount of underpayment as provided in the State
11 Tax Uniform Procedure Law, R.S.54:48-1 et seq.; provided,
12 however, a taxpayer may petition the Director of the Division of
13 Taxation to waive this interest if the taxpayer demonstrates undue
14 hardship, good cause, or any other reason as may be provided for
15 waiving penalties and interest under the State Tax Uniform
16 Procedure Law, R.S.54:48-1 et seq.

17 (cf: P.L.2005, c.288, s.2)

18
19 12. R.S.54:49-4 is amended to read as follows:

20 54:49-4. a. In addition thereto any taxpayer failing to file a
21 return with the director within the time prescribed under the act
22 imposing such tax shall be liable to a late filing penalty of \$100 for
23 each month or fraction thereof that such return is delinquent, plus a
24 penalty of 5% per month or fraction thereof of the underpayment
25 not to exceed 25% of such underpayment, except that if no return
26 has been filed within 30 days of the date on which the first notice of
27 delinquency in filing the return was sent to the taxpayer, the penalty
28 shall accrue at 5% per month or fraction thereof of the total tax
29 liability not to exceed 25% of such tax liability. Unless any part of
30 any underpayment of tax required to be shown on a return or report
31 is shown to be due to reasonable cause, there shall be added to the
32 tax **[an amount]** a penalty equal to 5% of the underpayment.

33 b. In addition to any other penalty for failing to file a return
34 within the time prescribed or underpayment provided in this section
35 or pursuant to any other provision of law, if a taxpayer or tax
36 preparer fails to use electronic methods to file a return as may be
37 required pursuant to the provisions of subsection b. of section 13 of
38 P.L.1992, c.175 (C.54:49-3.1), section 4 of P.L.2006, c.36
39 (C.54A:8-6.1) or the law imposing the tax, or if a taxpayer fails to
40 use electronic methods to pay tax as may be required pursuant to
41 the provisions of subsection b. of section 13 of P.L.1992, c.175
42 (C.54:49-3.1), or the law imposing the tax, the taxpayer shall be
43 liable for a penalty of \$50 for each return or payment for which the
44 taxpayer failed to file or pay electronically as may be applicable,
45 and the tax preparer shall be liable for a penalty of \$50 for each
46 return for which the tax preparer failed to file electronically as may
47 be applicable. The director may exercise discretion to abate all or
48 any portion of the penalty in **[any]** circumstances the director

1 determines appropriate, including but not limited to circumstances
2 in which a taxpayer or tax preparer demonstrates to the director's
3 satisfaction that the failure to file or pay electronically was due to
4 reasonable cause.

5 (cf: P.L.2006, c.36, s.3)

6

7 13. R.S.54:49-6 is amended to read as follows:

8 54:49-6. a. After a return or report is filed under the provisions
9 of any State tax law, the director shall cause the same to be
10 examined and may make such further audit or investigation as **[he]**
11 the director may deem necessary, and if therefrom **[he]** the director
12 shall determine that there is a deficiency with respect to the
13 payment of any tax due under such law, **[he]** the director shall
14 assess the additional taxes, penalties, if any, pursuant to any State
15 tax law or pursuant to this subtitle, and interest at the rate of three
16 percentage points above the prime rate due the State from such
17 taxpayer assessed for each month or fraction thereof, compounded
18 annually at the end of each year, from the date the tax was
19 originally due until the date of actual payment, give notice of such
20 assessment to the taxpayer, and make demand upon **[him]** the
21 taxpayer for payment.

22 b. No assessment of additional tax shall be made after the
23 expiration of more than four years from the date of the filing of a
24 return; provided, that in the case of a false or fraudulent return with
25 intent to evade tax, or failure to file a return, the tax may be
26 assessed at any time. If a shorter time for the assessment of
27 additional tax is fixed by the law imposing the tax, the shorter time
28 shall govern. If, before the expiration of the period prescribed
29 herein for the assessment of additional tax, a taxpayer consents in
30 writing that such period may be extended, the amount of such
31 additional tax due may be determined at any time within such
32 extended period. The period so extended may be further extended
33 by subsequent consents in writing made before the expiration of the
34 extended period. For purposes of this subsection, a return filed
35 before the last day prescribed by law or by regulations promulgated
36 pursuant to law for the filing thereof, shall be considered as filed on
37 such last day.

38 c. For privilege periods ending on and after July 31, 2022, for
39 purposes of this section, adjustments may be made, by the director
40 or the taxpayer, to net operating losses in privilege periods closed
41 for purposes of the statute of limitations on assessments in order to
42 determine the correct tax liability in privilege periods that remain
43 open to assessment; provided, however, no such adjustments for
44 those privilege periods closed, for the purposes of subsection b. of
45 this section, shall be made after the time limit described in section 5
46 of P.L.1947, c.51 (C.54:10A-31).

47 (cf: P.L.1993, c.331, s.3)

1 calculation of entire net income for non-U.S. corporations that are
2 members of a water's-edge group or affiliated group; the "captive"
3 versions of investment companies, real estate investment trusts, and
4 regulated investment companies; and the ability of the Director of
5 the Division of Taxation to require combined returns to include or
6 exclude the income of certain taxpayers in certain circumstances.

7 The bill also modifies the treatment of certain deductions and
8 carryovers allowed, and certain addbacks required, under the
9 Corporation Business Tax Act (1945), namely: the deductions
10 allowed for net operating losses and prior net operating loss
11 conversion carryovers, the international banking facility deduction,
12 the net deferred liability deduction, the interest deduction limitation
13 and required addback of interest expenses deducted and paid to
14 related members, the deduction for research and experimental
15 expenditures, and the dividend exclusion.

16 The bill modifies the treatment of global intangible low-taxed
17 income (GILTI) and foreign-derived intangible income (FDII)
18 under the Corporation Business Tax Act (1945) by repealing the
19 deduction currently allowed for GILTI and FDII and by treating
20 GILTI as a dividend subject to the dividend exclusion rules for
21 privilege periods ending on and after July 31, 2023.

22 The bill adds language clarifying the treatment of the income of
23 non-U.S. corporations that are not members of a world-wide group
24 or a water's-edge group for purposes of the Corporation Business
25 Tax Act (1945).

26 The bill modifies certain statutory requirements concerning
27 installment payments due under the Corporation Business Tax Act
28 (1945), and changes certain provisions concerning the
29 underpayment of an installment payment.

30 The bill changes the due date for filing a return under the
31 Corporation Business Tax Act (1945) to: (1) the fifteenth day of the
32 month immediately following the month of the original due date for
33 filing the taxpayer's federal corporate income tax return for the
34 privilege period; or (2) in the case of a taxpayer that received a
35 filing extension for federal tax purposes, the fifteenth day of the
36 month immediately following the month of the extended due date
37 for filing the federal return.

38 Finally, the bill creates a new section of law under the
39 Corporation Business Tax Act (1945) providing certain criteria for
40 determining whether a corporation has "substantial nexus" with the
41 State and will accordingly be subject to taxation under the act.

42

43 *Changes to the "New Jersey Gross Income Tax Act"*

44

45 The bill adds a new section of law to the "New Jersey Gross
46 Income Tax Act" to provide uniform sourcing rules for that act and
47 the Corporation Business Tax Act (1945). Specifically, the bill
48 provides that for taxable years beginning on and after January 1,

1 2023, a gross income taxpayer's income from a trade, business,
2 partnership, or S corporation will be sourced in a manner consistent
3 with the Corporation Business Tax Act (1945) in certain
4 circumstances. The bill requires any income from salary, wages,
5 tips, fees, commissions, bonuses, and other similar forms of
6 remuneration to be sourced pursuant to the provisions of the "New
7 Jersey Gross Income Tax Act."

8

9 *Changes to the State Uniform Tax Procedure Law*

10

11 The bill modifies certain provisions of the State Uniform Tax
12 Procedure Law. First, the bill modifies certain statutory language
13 concerning the late filing penalty and the penalty imposed for
14 failing to file a return electronically. The bill also adds language
15 allowing the director or a taxpayer to make adjustments to net
16 operating losses in privilege periods closed due to the statute of
17 limitations on the assessment of additional taxes. Finally, the bill
18 adds language providing a phase-in for the accrual of any penalties
19 or interest for the underpayment of tax due with respect to any
20 provision of the bill that creates an additional tax liability.