CHAPTER 133
(CORRECTED COPY OF CORRECTED COPY)

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

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

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

Partners and partnerships.

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

b. A partnership shall report any federal partnership audit adjustments made by the Internal Revenue Service pursuant section 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s.6225(a)(1)) to the Division of Taxation in the Department of the Treasury in accordance with subsection d. of section 8 of P.L.2022, c.133 (C.54:50-49). The partners of the reviewed year shall make payment of any New Jersey Gross Income Tax liability that results from the federal partnership audit adjustments reported on the Federal Adjustments Report, unless the partnership makes the election to pay tax on the partner's behalf.

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

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

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

Taxability of partners.

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

b. A partnership shall report and make payment of any New Jersey gross income tax liability that results from the federal partnership audit adjustments in accordance with subsection d. of section 8 of P.L.2022, c.133 (C.54:50-49).

c. Failure of the partnership, partner, indirect partner, tiered partner, or member to report or pay federal adjustments that result from the federal partnership audit adjustments shall not prevent the director from assessing a partnership, partner, indirect partner, tiered partner, or member for taxes they owe, using the best information available, if the partnership, partner,

indirect partner, tiered partner, or member fails to timely make any report or payment required by this section for any reason.

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

Report of change in federal taxable income or credit.

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

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

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

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

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

Limitations on assessment.

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

(b) Time return deemed filed.

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

(2) Return of withholding tax. For purposes of this section, if a return of withholding tax for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be deemed to be filed on April 15 of such succeeding calendar year.

(c) Exceptions.

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

(A) No return is filed,

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

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

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

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

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

(5) Request for prompt assessment. If a return is required for a decedent or for the decedent's estate during the period of administration, the tax shall be assessed within 18 months after written request therefor (made after the return is filed) by the executor, administrator or other person representing the estate of such decedent, but not more than 3 years after the return was filed, except as otherwise provided in this subsection and subsection (d).

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

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

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

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

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

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

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

Limitations on credit or refund.

54A:9-8. (a) General. Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed, within 2 years from the time the tax was paid. If the claim is filed within the 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within the 3-year period, but is filed within the 2-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim. Except as otherwise provided in this section, if no claim is filed, the amount of a credit or refund shall not exceed the amount which would be allowable if a claim had been filed on the date the credit or refund is allowed.

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

(c) Notice of change or correction of Federal income. If a taxpayer is required by N.J.S.54A:8-7 to report a change or correction in Federal taxable income reported on the taxpayer’s Federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for Federal income tax purposes, or to file an amended return with the director, claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within 2 years from the time the notice of such change or correction or such amended return was required to be filed with the director. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such Federal change, correction or items amended on the taxpayer's amended Federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

(d) Failure to file claim within prescribed period. No credit or refund shall be allowed or made, except as provided in subsection (e) of this section or subsection (d) of N.J.S.54A:9-10, after the expiration of the applicable period of limitation specified in this act, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void

and any later refund erroneous. No period of limitations specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes under this act.

(e) Effect of petition to director. If a notice of deficiency for a taxable year has been mailed to the taxpayer under N.J.S.54A:9-2 and if the taxpayer files a timely petition with the director under N.J.S.54A:9-9, the director may determine that the taxpayer has made an overpayment for such year (whether or not the director also determines a deficiency for such year). No separate claim for credit or refund for such year shall be filed, and no credit or refund for such year shall be allowed or made, except--

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

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

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

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

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

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

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

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

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

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

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

(j) Final federal adjustments resulting from a partnership audit or administrative adjustments request. If a partnership files a Federal Adjustments Report with final federal adjustments resulting from a partnership audit or administrative adjustments request that do not result in a federal imputed underpayment, and which are not taken into account by the partnership in the federal adjustment year partnership return, then the partners may claim a credit or refund of the related State tax by filing an amended return or other schedule as required by the director. The amount of such credit or refund shall not exceed the amount of the reduction in New Jersey tax attributable to such final federal adjustments. This subsection

shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

C.54:50-47 Definitions.

6. As used in sections 6 through 12 of P.L.2022, c.133 (C.54:50-47 through C.54:50-53):

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

"Allocation factor" means the allocation factor as required on the New Jersey Gross Income Tax Business Allocation Schedule NJ-NR-A.

"Audited partnership" means a partnership subject to a partnership-level audit resulting in a federal adjustment.

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

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

"Direct partner" means a partner that holds an interest directly in a partnership or pass-through entity.

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

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

"Federal Adjustments Report" includes methods or forms required by N.J.S.54A:8-7 or section 13 of P.L.1945, c.162 (C.54:10A-13) for use by a taxpayer to report final federal adjustments, including an amended New Jersey tax return, information return, or a uniform multistate report.

"Federal partnership representative" means the person the partnership designates for the taxable year as the partnership's representative, or the person the Internal Revenue Service has appointed to act as the federal partnership representative, pursuant to section 6223(a) of the federal Internal Revenue Code (26 U.S.C. s.6223(a)).

"Final determination date" means the following:

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

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

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

"Final federal adjustment" means a federal adjustment after the final determination date for that federal adjustment has passed.

"Indirect partner" means a partner in a partnership or pass-through entity that itself holds an interest directly, or through another indirect partner, in a partnership, or pass-through entity.

"Nonresident partner" means an individual, trust, or estate partner that is not a resident partner.

"Partner" means a person that holds an interest directly or indirectly in a partnership or other pass-through entity.

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

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

"Pass-through entity" means an entity not taxed as a C corporation.

"Reallocation adjustment" means a federal adjustment resulting from a partnership-level audit or an administrative adjustment request that changes the shares of one or more items of partnership income, gain, loss, expense, or credit allocated to direct partners. A positive reallocation adjustment means the portion of a reallocation adjustment that would increase federal income for one or more direct partners, and a negative reallocation adjustment means the portion of a reallocation adjustment that would decrease federal income for one or more direct partners pursuant to regulations promulgated under section 6225 of the federal Internal Revenue Code (26 U.S.C. s.6225)

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

"Reviewed year" means the taxable year of a partnership that is subject to a partnership-level audit from which federal adjustments arise.

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

"Tiered partner" means any partner that is a partnership or pass-through entity.

To the extent terms used in this section are not defined in this section or elsewhere in chapter 9 of Title 54A of the New Jersey Statutes, the definition of such terms shall conform as closely as possible to the terminology used in the amendments to the federal Internal Revenue Code

pertaining to the comprehensive partnership audit regime as contained in the Bipartisan Budget Act of 2015, Pub. L.114-74, as amended, and this section shall be so interpreted.

C.54:50-48 Adjustment reports, federal taxable income, general.

7. Reporting Adjustments to Federal Taxable Income – General Rule. Except in the case of final federal adjustments that are required to be reported by a partnership and its partners using the procedures in section 8 of P.L.2022, c.133 (C.54:50-49), and final federal adjustments required to be reported for federal purposes in the partnership return for the adjustment year, a taxpayer shall report and pay any New Jersey Gross Income Tax or New Jersey Corporation Business Tax due with respect to final federal adjustments arising from an audit or other action by the Internal Revenue Service or reported by the taxpayer on a timely filed amended federal income tax return, including a return or other similar report filed pursuant to section 6225(c)(2) of the federal Internal Revenue Code (26 U.S.C. s.6225(c)(2)), or federal claim for refund by filing a federal adjustments report with the Division of Taxation for the reviewed year and, if applicable, paying the additional New Jersey Gross Income Tax or New Jersey Corporation Business Tax owed by the taxpayer no later than 180 days after the final determination date.

C.54:50-49 Adjustment reports, partnership-level audit, administrative adjustment request.

8. Reporting Federal Adjustments – Partnership-Level Audit and Administrative Adjustment Request

a. Except for adjustments required to be reported for federal purposes in the partnership return for the adjustment year, and the distributive share of adjustments that have been reported as required under section 7 of P.L.2022, c.133 (C.54:50-48), partnerships and partners shall report final federal adjustments arising from a partnership-level audit or an administrative adjustment request and make payments as required under this section.

b. State Partnership Representative.

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

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

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

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

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

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

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

(c) file an amended New Jersey Form 1065 as required under N.J.S.54A:8-7 and pay the amount required; and

(d) file an amended composite return for direct partners and pay the additional amount that would have been due had the final federal adjustments been reported properly as required.

(2) No later than 180 days after the final determination date, each direct partner that is taxed under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) add the amounts determined in subparagraphs (b), (c), (e), and (f) of this paragraph, along with penalty and interest as provided in N.J.S.54A:9-5, N.J.S54A:9-6, R.S.54:49-3, or R.S.54:49-4.

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

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

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

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

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

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

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

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

(2) If properly reported and paid by the audited partnership or tiered partner, the amount determined in paragraph (2) of subsection d. of this section, or similarly under an optional election under subsection f. of this section will be treated as paid in lieu of taxes owed by its direct and indirect partners, to the extent applicable, on the same final federal adjustments. The direct partners or indirect partners may not take any deduction or credit for this amount or

claim a refund of the amount in this State. Nothing in this subsection shall preclude a direct resident partner from claiming a credit against taxes paid to this State pursuant to N.J.S.54A:4-1, any amounts paid by the audited partnership or tiered partner on the resident partner's behalf to another state or local tax jurisdiction in accordance with the provisions of N.J.S.54A:4-1.

h. Failure of Audited Partnership or Tiered Partner to Report or Pay. Nothing in this section prevents the division from assessing direct partners or indirect partners for taxes they owe, using the best information available, in the event that a partnership or tiered partner fails to timely make any report or payment required by this section for any reason.

C.54:50-50 Assessment, additional tax, interest, penalties.

9. Assessments of Additional New Jersey Tax, Interest, and Penalties Arising from Adjustments to Federal Taxable Income – Statute of Limitations

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

(1) Timely Reported Federal Adjustments. If a taxpayer files with the division a Federal Adjustments Report or an amended New Jersey Form 1065 or amended New Jersey Corporation Business Tax return as required within the period specified in section 7 or 8 of P.L.2022, c.133 (C.54:50-48 or C.54:50-49), the division may assess any amounts, including in-lieu-of amounts, taxes, interest, and penalties arising from those federal adjustments if the division issues a notice of the assessment to the taxpayer no later than:

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

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

b. Untimely Reported Federal Adjustments. If the taxpayer fails to file the Federal Adjustments Report within the period specified in section 7 or 8 of P.L.2022, c.133 (C.54:50-48 or C.54:50-49), as appropriate, or the Federal Adjustments Report filed by the taxpayer omits final federal adjustments or understates the correct amount of tax owed, the division may assess amounts or additional amounts including in-lieu-of amounts, taxes, interest, and penalties arising from the final federal adjustments, if it mails a notice of the assessment to the taxpayer by a date which is the latest of the following:

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

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

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

C.54:50-51 Estimated payments, pending audit.

10. Estimated New Jersey Tax Payments During the Course of a Federal Audit

A taxpayer may make estimated payments to the division, following the process prescribed by the division, of the New Jersey Gross Income Tax or Corporation Business Tax expected to result from a pending Internal Revenue Service audit, prior to the due date of the Federal Adjustments Report, without having to file the report with the division. The estimated tax payments shall be credited against any tax liability ultimately found to be due to New Jersey ("Final New Jersey Tax Liability") and will limit the accrual of further statutory interest on

that amount. If the estimated tax payments exceed the final tax liability and statutory interest ultimately determined to be due, the taxpayer is entitled to a refund or credit for the excess, provided the taxpayer files a Federal Adjustments Report or claim for refund or credit of tax no later than one year following the final determination date.

C.54:50-52 Tax refund, credit claims, federal adjustments.

11. Claims for Refund or Credits of Tax Arising from Final Federal Adjustments Made by the IRS

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

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

(2) One year from the date a Federal Adjustments Report prescribed in section 7 or 8 of P.L.2022, c.133 (C.54:50-48 or C.54:50-49), as applicable, was due to the division, including any extensions pursuant to this section.

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

C.54:50-53 Adjustments after expiration, time extension.

12. Scope of Adjustments and Extensions of Time.

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

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

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

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

c. Any extension granted for filing the Federal Adjustments Report extends the last day prescribed by law for assessing any additional tax arising from the adjustments to federal taxable income and the period for filing a claim for refund or credit of taxes.

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

C.54:10A-15.11 Tax payment by certain partnerships; definitions.

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

section 6 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions of the partnership for that privilege period, and multiplied by .09. Entire net income shall not include additional income that results from any federal partnership audit adjustments made by the Internal Revenue Service under section 6225(a)(1) of the federal Internal Revenue Code (26 U.S.C. s.6225(a)(1)).

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

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

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

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

c. For the purposes of this section:

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

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

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

that is not a corporation exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular place of business in this State other than a statutory office; and

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

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

C.42:1A-18 Partnership obligations; liability of partners.

18. a. Except as otherwise provided in subsections b. and c. of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law. In addition, the entity is also liable for all obligations of the partnership as provided by P.L.2019, c.320 (C.54A:12-1 et al.).

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

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

d. In addition, the entity is also liable for all obligations of the partnership as provided by P.L.2022, c.133 (C.54:50-47 et al.).

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

C.42:2C-92 Tax Classification.

92. Tax Classification.

a. For all purposes of taxation under the laws of this State, a limited liability company formed under this act or qualified to do business in this State as a foreign limited liability company with two or more members shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified in the same manner as it is classified for federal income tax purposes. For all purposes of taxation under the laws of this State, a member or a transferee of a member of a limited liability company formed under this act or qualified to do business in this State as a foreign limited liability company shall be treated as a partner in a partnership unless the limited liability company is classified otherwise for federal income tax purposes, in which case the member or transferee of a member shall have the same status as the member or transferee of a member has for federal income tax purposes.

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

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

c. With respect to a limited liability company that is taxed as a partnership for federal income tax purposes, the entity is also liable for all obligations of the partnership as provided by P.L.2022, c.133 (C.54:50-47 et al.) in addition to its liabilities in section 30 of P.L.2012, c.50 (C.42:2C-30).

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

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

b. The provisions involving payment of interest upon any overpayment of tax pursuant to N.J.S.54A:9-7 and section 7 of P.L.1992, c.175 (C.54:49-15.1), are hereby extended until the date of enactment of P.L.2022, c.133 (C.54:50-47 et al.).

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

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

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

2. The statute of limitations to assess any tax pursuant to N.J.S.54A:9-4 and R.S.54:49-6 is hereby extended until the date of enactment of P.L.2022, c.133 (C.54:50-47 et al.).

18. Any assessment of tax that was allowed as a result of the extension of the statute of limitations in section 2 of P.L.2020, c.19, but that was assessed after the date of enactment of P.L.2022, c.133 (C.54:50-47 et al.), shall be voided. The Director of the Division of Taxation in the Department of the Treasury shall return any amounts collected from a taxpayer as a result of such assessment.

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

C.54:10A-4 Definitions.

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

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

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

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

(d) "Net worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock, (2) paid-in or capital surplus, (3) earned surplus and undivided profits, and (4) surplus reserves which can reasonably be expected to accrue to holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion. Notwithstanding the foregoing, net worth shall not include any deduction for the amount of the excess depreciation described in paragraph (2) (F) of subsection (k) of this section. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of all classes of stock of the subsidiary entitled to vote and (2) of at least 80% of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from the net worth of the taxpayer, if the foreign entity is considered a corporation for any purpose under the United States federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.

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

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

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

(f) "Investment company" shall mean any corporation whose business during the period covered by its report consisted, to the extent of at least 90% thereof of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities for its own account, but this shall not include any corporation which: (1) is a merchant or a dealer of stocks, bonds and other securities, regularly engaged in buying the same and selling the same to customers; or (2) had less than 90% of its average gross assets in New Jersey, at cost, invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities or consisting of cash on deposit during the period covered by its

report; or (3) is a banking corporation, a savings institution, or a financial business corporation as defined in the Corporation Business Tax Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) (i) The amount by which depreciation reported to the United States Treasury Department for property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on and after the effective date of P.L.1993, c.172, for purposes of computing federal taxable income in accordance with section 168 of the Internal Revenue Code in effect after December 31, 1980, exceeds the amount of depreciation determined in accordance with the Internal Revenue Code provisions in effect prior to January

1, 1981, but only with respect to a taxpayer's accounting period ending after December 31, 1981; provided, however, that where a taxpayer's accounting period begins in 1981 and ends in 1982, no modification shall be required with respect to this paragraph (F) for the report filed for such period with respect to property placed in service during that part of the accounting period which occurs in 1981. The provisions of this subparagraph shall not apply to assets placed in service prior to January 1, 1998 of a gas, gas and electric, and electric public utility that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998.

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

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

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

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

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

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

A deduction shall also be permitted if the taxpayer establishes by clear and convincing evidence, as determined by the director, that the disallowance of a deduction is unreasonable,

or the taxpayer and the director agree in writing to the application or use of an alternative method of apportionment under section 8 of P.L.1945, c.162 (C.54:10A-8); nothing in this subsection shall be construed to limit or negate the director's authority to otherwise enter into agreements and compromises otherwise allowed by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) To the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income based on the subsidiary's allocation factor used by the subsidiary in

determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). This subparagraph (C) shall not apply to privilege periods ending on and after July 31, 2019.

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

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

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

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

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

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

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

Provided, that this subparagraph (E) shall not restrict the surrender or acquisition of corporation business tax benefit certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-

7.42a) and shall not restrict the application of corporation business tax benefit certificates pursuant to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

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

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

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

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

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

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

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

(8) In the case of taxpayers that are gas, electric, gas and electric, or telecommunications public utilities as defined pursuant to subsection (q) of this section, the director shall have

authority to promulgate rules and issue guidance correcting distortions and adjusting timing differences resulting from the adoption of P.L.1997, c.162 (C.54:10A-5.25 et al.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) "International banking facility" shall mean a set of asset and liability accounts segregated on the books and records of a depository institution, United States branch or agency of a foreign bank, or an Edge or Agreement Corporation that includes only international banking facility time deposits and international banking facility extensions of credit as such

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

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

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

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

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

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

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

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

(1) As used in this subsection:

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

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

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

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

(A) The taxpayer shall first calculate the tax value of its UNOL for the base year and for each preceding privilege period for which there is a UNOL. The value of the UNOL for each privilege period is equal to the product of (I) the amount of the taxpayer's UNOL for a privilege

period, and (II) the taxpayer's base year BAF. This result shall equal the taxpayer's prior net operating loss conversion carryover.

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

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

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

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

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

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

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

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

(w) "Taxable net income" means entire net income allocated to this State as calculated pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as

modified by subtracting any prior net operating loss conversion carryforward calculated pursuant to subsection (u) of this section, and any net operating loss calculated pursuant to subsection (v) of this section.

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

For purposes of this subsection:

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

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

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

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

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

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

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

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

For purposes of this definition:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C.54:10A-5.22 Election as a New Jersey S corporation.

3. a. (Deleted by amendment P.L.2022, c.133)

b. A New Jersey S Corporation and each shareholder shall consent to the following jurisdictional requirements:

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

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

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

c. The consents to jurisdictional requirements shall be filed within one calendar month of the time at which a federal S corporation election would be required if such accounting or privilege period were a "taxable year" for which a federal S corporation election were to be made pursuant to section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1362. Such elections may only be opted out of or revoked pursuant to subsection d. of this section.

d. Notwithstanding any law or regulation to the contrary, any S corporation may elect not to be taxed as a New Jersey S corporation. This election shall have the consent of 100 percent of the shareholders of the S corporation on the date on which the election is made. An election to opt out under this subsection may be made for any taxable year at any time during the preceding taxable year or at any time on or before the due date or extended due date of the S corporation’s tax return. An election to opt out made pursuant to this subsection shall be effective for the taxable year for which the election is made and for each succeeding taxable year until revoked. An election to opt out made pursuant to this subsection may be revoked if shareholders holding more than 50 percent of the shares of stock of the S corporation on the

date on which the revocation is made consent to the revocation and such revocation shall be effective on the first day of the taxable year if made on or before the fifteenth day of the third month thereof; if the revocation is made after such date, the revocation shall be effective for the following taxable year, unless the shareholders revoke the revocation before December 31 of the current year. An election to opt out or revocation made pursuant to this subsection shall be made in a form and manner prescribed by the director. Any S corporation doing business in New Jersey, or having or exercising its franchise in New Jersey, or deriving receipts, engaging in contracts, or employing or owning capital or property in New Jersey, or registered to do business in New Jersey, that does not make this election to opt out will be taxed as a New Jersey S corporation.

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

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

C.54:10A-5.23 Requirements for New Jersey S corporation.

4. a. Each shareholder of a New Jersey S corporation shall satisfy the requirements of paragraph b. of this section.

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

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

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

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

C.54A:5-10 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

(5) interest on indebtedness incurred or continued, expenses paid and incurred to purchase, carry, manage or conserve, and expenses of collection of the income or gain from obligations the income or gain from which is deductible pursuant to subsection b. of this definition; and

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

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

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

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

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

C.54A:5-11 Initial basis of shareholder of S corporation stock.

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

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

c. The initial basis of a resident shareholder in the stock and indebtedness of an S corporation shall be adjusted after the date specified in subsections a. or b. of this section in the manner required by section 1011 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1011, except that such adjustments shall be limited to that portion of S corporation income allocated to this State and S corporation income not allocated to this State that is included in the shareholder's pro rata share of S corporation income and except that, with respect to any taxable period during which the shareholder is a resident of this State:

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

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

d. A nonresident shareholder of S corporation stock shall have an initial basis in the stock of the S corporation and any indebtedness of the S corporation of zero as of the date that is the latest to occur of: the date on which the shareholder last became a nonresident of this State; the date on which the shareholder acquired the stock of the corporation; or the effective date of the corporation's most recent S election under the federal Internal Revenue Code of 1986.

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

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

g. For purposes of this section, any person acquiring stock or indebtedness of an S corporation by gift shall be considered to have acquired the stock or indebtedness at the time the donor acquired the stock or indebtedness.

C.54:10A-5.22a Regulatory requirements, granting retroactive election, authorization.

24. The Directors of the Divisions of Revenue and Enterprise Services and Taxation, when determining whether to grant retroactive election of S corporation status, shall liberally construe regulatory requirements in favor of the corporation and shall have the discretion to authorize retroactive S corporation status in circumstances in which a taxpayer may not be capable of meeting all regulatory requirements for such retroactive election through no fault of the taxpayer.

25. Sections 1 through 18 and section 25 of this act shall take effect immediately, and sections 1 through 16 shall apply to any adjustments to a taxpayer's federal taxable income on or after January 1, 2020. Sections 19 through 24 of this act shall take effect immediately but shall apply for taxable years and privilege periods beginning after the date of enactment and the Directors of the Divisions of Taxation and Revenue and Enterprise Services shall take such anticipatory administrative action in advance as is necessary to effectuate the purposes of this act.

Approved December 22, 2022.