

## CHAPTER 96

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

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

1. 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 percent 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 percent 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) With respect to privilege periods ending before July 31, 2023, 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).

With respect to privilege periods ending before July 31, 2023, 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.

With respect to privilege periods ending before July 31, 2023, 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) (i) For privilege periods beginning after December 31, 2017 and ending before July 31, 2022, 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).

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

(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 subparagraph (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 and ending before July 31, 2023, 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.

(iv) For privilege periods ending on and after July 31, 2023, entire net income shall exclude 100 percent of dividends and deemed dividends that 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 percent 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.

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

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

(ii) In computing the total amount of the dividends and deemed dividends excluded by this paragraph (5) for privilege periods ending on and after July 31, 2023, the amount of dividends and deemed dividends excluded shall be reduced by the amount of the expenses and deductions that are attributable to those dividends and deemed dividends. For purposes of this paragraph

(5), expenses and deductions related to dividends shall equal five percent of all dividends and deemed dividends received by a taxpayer during an income year.

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

(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; provided, however, for privilege periods beginning on and after January 1, 2022, a deduction for research and experimental expenditures shall be allowed during the same privilege period for which a credit is claimed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), notwithstanding the timing schedule required by the federal Internal Revenue Code of 1986, 26 U.S.C. s.174, for the deduction of specified research and experimental expenditures.

(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) (i) Beginning with the combined group's first privilege period 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, according to the schedule provided by subsubparagraphs (ii) and (iii) of this subparagraph (E). 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.

(ii) For group privilege periods beginning on and after January 1, 2023, but before January 1, 2030, the combined group may deduct one percent 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, during a group privilege period. 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.

(iii) For group privilege periods beginning on and after January 1, 2030, the combined group may deduct up to five percent of any remaining unused amount of the deduction during the group privilege period, until the group privilege period in which the total deduction amount has been fully utilized. 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 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.

(17) (A) In the case of a taxpayer that is a cannabis licensee, there shall be allowed as a deduction an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction but is disallowed because cannabis is a controlled substance under federal law, and income shall be determined without regard to section 280E of the Internal Revenue Code (26 U.S.C. s.280E) for cannabis licensees.

(B) In the case of a taxpayer that is a cannabis licensee, there shall be allowed as a deduction an amount equal to any expenditure that would qualify as a specified research or experimental expenditure pursuant to section 174 of the Internal Revenue Code but is disallowed as a deduction for federal tax purposes because cannabis is a controlled substance under federal law. Any expenditure that is claimed as a deduction pursuant to this subparagraph may also be claimed as a qualified research expense for purposes of the credit allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24).

(C) For purposes of this paragraph, "licensee" means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

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

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

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

(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. For privilege periods ending on and after July 31, 2023, for the purpose of computing taxable net income for a current privilege period, the amount of the prior net operating loss conversion carryover shall be subtracted from entire net income allocated to this State, after the application of paragraphs (4) and (5) of subsection (k) of this section against current privilege period income when the entire net income allocated to this State for the privilege period is greater than zero.

(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. For privilege periods ending before July 31, 2023, 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. For privilege periods ending on and after July 31, 2023, the portion of the loss that 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, after the application of paragraphs (4) and (5) of subsection (k) of this section allocated to this State; provided, however, for the purpose of computing taxable net income for the privilege period, the net operating loss carryover shall only be subtracted from entire net income allocated to this State when the entire net income allocated to this State is greater than zero.

(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 for privilege periods ending before July 31, 2023, computed without the exclusions in paragraphs (4) and (5) of subsection (k) of this section, and for privilege periods ending on and after July 31, 2023, computed after the application of 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; provided, however, for privilege periods ending on and after July 31, 2023, when subtracting any net operating losses calculated pursuant to subsection (v) of this section or the combined group net operating losses calculated pursuant to subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6), the limitation set forth in paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172(a)(2)) shall apply, except that August 1, 2023 is substituted for the reference to January 1, 2018 in subparagraph (A) of paragraph (2) of subsection a. of Internal Revenue Code Section 172 (26 U.S.C. s.172), and July 31, 2023 is substituted for the reference to December 31, 2017 in subparagraph (B) of paragraph (2) of subsection (a) of Internal Revenue Code Section 172 (26 U.S.C. s.172). For privilege periods ending on and after July 31, 2023, for a combined group, before subtracting the prior net operating loss conversion carryforwards and subtracting the net operating losses of the combined group when computing the total taxable net income, the combined group shall first add together the allocated entire net income from the unitary business of the combined group and the portion of allocated entire net income of members with activities independent of the group, and then subtract the prior net operating loss conversion carryforwards and then the net operating losses.

(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, for privilege periods ending before July 31, 2023, 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. For privilege periods ending on and after July 31, 2023, "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, or 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.

(hh) "Captive investment company" shall mean, for privilege periods ending on and after July 31, 2023, an investment company that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than an investment company, that is not exempt from federal income tax. For purposes of this subsection, a captive investment company shall not include any captive investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed \$15 billion.

For privilege periods ending on and after July 31, 2023, any voting stock in an investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code, shall not be taken into account for purposes of determining whether an investment company is a captive regulated investment company.

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

(ii) "Captive real estate investment trust" shall mean, for privilege periods ending on and after July 31, 2023, a real estate investment trust that is not regularly traded on an established securities market and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single entity that is treated as an association taxable as a corporation under the Internal Revenue Code, is not exempt from federal income tax, and is not a real estate investment trust. For purposes of this subsection, a captive real estate investment trust shall not include any captive real estate investment trust of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed \$15 billion.

For privilege periods ending on and after July 23, 2023, any voting stock in a real estate investment trust that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code (26 U.S.C. s.817), shall not be taken into account for purposes of determining whether a real estate investment trust is a captive real estate investment trust. For purposes of this subsection, an association taxable as a corporation shall not include any listed Australian property trust or any qualified foreign entity.

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

As used in this subsection:

"Australian property trust" means an Australian unit trust that is registered as a managed investment scheme under the Australian Corporations Act, and in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market; or an entity organized as a trust, provided that a listed Australian

property trust owns or controls, directly or indirectly, 75 percent or more of the voting power or value of the beneficial interests of shares of the trust.

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

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

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

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

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

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

(jj) "Captive regulated investment company" shall mean, for privilege periods ending on and after July 31, 2023, a regulated investment company that is not regularly traded on an established securities market, and of which more than 50 percent of the voting stock is owned or controlled, directly or indirectly, by a single corporation, other than a regulated investment company, that is not exempt from federal income tax. For purposes of this subsection, a captive regulated investment company shall not include any captive regulated investment company of which at least 50 percent of the shares, by vote or value, is owned or controlled, directly or indirectly, by a state or federally chartered bank, savings bank, or savings and loan association with assets that do not exceed \$15 billion.

For privilege periods ending on and after July 31, 2023, any voting stock in a regulated investment company that is held in a segregated asset account of a life insurance corporation, as described in section 817 of the Internal Revenue Code (26 U.S.C. s.817), shall not be taken into account for purposes of determining whether a regulated investment company is a captive regulated investment company.

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

(kk) "World-wide basis" and "world-wide group" shall mean, for privilege periods ending on and after July 31, 2022, for the purposes of sections 18 through 23 of P.L.2018, c.48 (C.54:10A-4.6 through C.54:10A-4.11) and for the purposes of combined reporting in general under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), that the combined group shall include all of the members of the combined group, wherever located or formed. For privilege periods ending on and after July 31, 2022, the combined group shall include all of the income and attributes of those members regardless of how or whether those members file federal returns or report or include their income in federal taxable income for federal purposes, and without regard to any exemption or exclusion from federal taxable

income under the terms of a tax treaty; provided, however, any deductions that are allowed under the federal Internal Revenue Code that are also allowable under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), that would apply to a U.S. corporation, but that a non-U.S. corporation is prohibited from claiming for federal corporation income tax purposes because the corporation's income was not included in federal taxable income for any reason or because the corporation is a non-U.S. corporation, shall be allowed for the non-U.S. corporation members of the combined group for New Jersey corporation business tax purposes as though those non-U.S. corporation members were U.S. corporations.

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

C.54:10A-4.6 Determination, entire net income, member, combined group.

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

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

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

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

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

(b) For a corporation that is not incorporated in the United States, and that is a member of a water's-edge group or affiliated group for purposes of filing a combined return, the member shall only include in entire net income the following: in the case of a member that files a federal

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

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

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

(2) The distributive share of income received by a limited partner from a qualified investment partnership shall not be considered to be derived from a unitary business unless the general partner of such investment partnership and such limited partner have common ownership. To the extent that the limited partner is otherwise carrying on or doing business in New Jersey, it shall allocate its distributive share of income from a qualified investment partnership 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. If the limited partner is not otherwise carrying on or doing business in New Jersey, its distributive share of income from an investment partnership is not subject to tax under this chapter.

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

e. Except as otherwise provided by regulation, business income from an intercompany transaction among members of the same combined group shall be deferred in a manner similar to the deferral under 26 C.F.R. s.1.1502-13, as determined by the director. Upon the occurrence of either of the events set forth in paragraphs (1) and (2) of this subsection, deferred income resulting from an intercompany transaction among members of a combined group shall be restored to the income of the seller and shall be included in the net income of the combined group as if the seller had earned the income immediately before the event:

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

(2) The buyer and seller cease to be members of the same combined group, regardless of whether the buyer and seller remain 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 between them.

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

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

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

(1) For privilege periods ending before July 31, 2023, a prior net operating loss conversion carryover deduction shall be allowed to offset only the entire net income allocated to this State of the corporation that created the prior net operating loss; the prior net operating loss conversion carryover cannot be shared with other members of the combined group. For privilege periods ending on and after July 31, 2023, the remaining balance of prior net operating loss conversion carryover deductions of the members of the combined group shall be pooled together and shall be allowed to offset the entire net income allocated to this State of either: the combined group for which the corporation is a member; or the corporation that created the prior net operating loss conversion carryover, provided that the corporation departs the combined group before the corporation's respective prior net operating loss conversion carryover has been completely used.

(2) The prior net operating loss conversion carryover deduction computed under subsection (u) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be applied against the entire net income allocated to this State before the net operating loss carryover computed under subsection h. of this section.

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

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

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

(1) (a) For privilege periods beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), but ending before July 31, 2023, if the computation of a combined group's entire net income allocated to this State results in a net operating loss, a taxable member of such group may carry over the net operating loss allocated to this State, as calculated under this section and sections 19 and 23 of P.L.2018, c.48 (C.54:10A-4.7 and C.54:10A-4.11), and shall be deductible from entire net income derived from the unitary business in a future privilege period to the extent that the carryover and deduction is otherwise consistent with subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4).

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

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

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

(3) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred in a privilege period during which the taxable member was not a member of such combined group, the carryover shall remain available to be deducted by that taxable member or other group members that, in the year the loss was incurred, were part of the same combined group as such taxable member. Such carryover shall not be deductible by any other members of the combined group for privilege periods ending before July 31, 2023. For privilege periods ending on and after July 31, 2023, such carryover may (a) be pooled with the combined group net operating loss carryover for use by the combined group or (b) be used by the taxable member that generated the carryover for that member's activities that are independent of the unitary business of the combined group; provided, however, the combined group and the members of the combined group shall use tracing protocols for all net operating loss carryovers, as may be prescribed by regulations promulgated by the director.

(4) A net operating loss carryover or, for privilege periods ending on and after July 31, 2023, a combined group net operating loss carryover, shall not include any net operating loss incurred during any privilege period beginning prior to the first day of the initial privilege

period for which a combined unitary tax return is required under this section and sections 19 and 23 of P.L.2018, c.48 (C.54:10A-4.7 and C.54:10A-4.11).

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

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

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

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

(2) If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable member may share the carryover credit with other taxable members of the combined group.

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

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

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

k. Nothing in this section shall apply to:

(1) A corporation or combined group which is licensed, in whole or in part, as an insurance company under the laws of this State or of another state, including corporations which are surplus lines insurers declared eligible by the Commissioner of Banking and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks within this State that is



not a combinable captive insurance company. Notwithstanding a provision, if any, to the contrary in this section, the income of an insurance company that is not a combinable captive insurance company, the allocation or apportionment of income related thereto and the apportionment factors of an insurance company that is not a combinable captive insurance company shall not be included in a combined unitary tax return filed under this section and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11). In addition, the dividend exclusion provisions of paragraph (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating to dividends paid by insurance companies to non-insurance companies included in the unitary group shall not be affected by P.L.2018, c.48 (C.54:10A-5.41 et al.).

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

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

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

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

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

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

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

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

C.54:10A-4.7 Allocation factor, taxable members, combined group.

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

a. (Deleted by amendment, P.L.2023, c.96)

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

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

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

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

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

C.54:10A-4.10 Determination, managerial member.

22. a. Determination of Managerial Member. If the combined group has a common parent corporation within the meaning of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), and that common parent corporation is a taxable member of the corporate group, 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. Once the election of the managerial member is made, the election shall be binding for the current privilege period and five successive privilege periods, except as otherwise provided for by the director.

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

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

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

e. If a combined group is eligible to elect the managerial member of the combined group, notice of the election shall be submitted in writing to the director not later than the due date or, if an extension of time to file has been requested and granted, not later than the extended due date of the mandatory combined return for the initial privilege period for which a return is required. The managerial member shall be the designated agent and the responsible person for

filing the combined return and paying the tax for the combined group. If another taxable member is subsequently designated as the managerial member, the subsequent designation shall be subject to the approval of the director.

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

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

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

i. Any notice shall be sent to the managerial member of the combined group at the last known address of the managerial member as indicated on either the last filing required or made under this Chapter or a subsequent electronic or written notice provided by the managerial member under rules prescribed by the director.

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

- (1) make any deficiency assessment against either the managerial member or a taxable member of the combined group;
- (2) refund or credit any overpayment to either the managerial member or a taxable member of the combined group;
- (3) require any payment to be made by electronic funds transfer; and
- (4) require the mandatory combined return to be filed electronically.

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

C.54:10A-4.11 Determination, combined group, world-wide, affiliated group basis.

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

- (1) each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States, excluding such a member if eighty per cent or more of both its property and payroll during the privilege period are located outside the United States, the District of Columbia, and any territory or possession of the United States;
- (2) each member incorporated or formed under the laws of a foreign nation, if twenty per cent or more of both its property and payroll during the privilege period are located in the United States, the District of Columbia, or any territory or possession of the United States;
- (3) any member that earns more than 20% of its income, directly or indirectly, from intangible property or related service activities that are deductible against the income of other members of the combined group;

(4) (Deleted by amendment, P.L.2023, c.96)

(5) any member, wherever incorporated or formed, that is not included in paragraphs (1) through (3) of this subsection, if that member has effectively connected income or loss within the meaning of the federal Internal Revenue Code, as modified by the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.). For any member that is included pursuant to this paragraph, the member shall be included in the combined group only to the extent of its effectively connected income or loss, taking into account items of expense and allocation factors associated with the effectively connected income or loss.

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

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

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

C.54:10A-4.16 Corporation, receipts, sources within New Jersey, substantial nexus, Corporation Business Tax Act.

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

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

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

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

C.54:49-3a Privilege periods; no penalties, interest; tax underpayment, additional tax liability.

7. For privilege periods ending on and after July 31, 2023, but before January 1, 2024, no penalties or interest shall accrue for the underpayment of tax due with respect to any provision of P.L.2023, c.96 (C.54:10A-4.16 et al.) that creates an additional tax liability; provided, however, for privilege periods ending on and after July 31, 2023, the additional estimated payments shall be made no later than the second next estimated payment due following the enactment of P.L.2023, c.96 (C.54:10A-4.16 et al.) or the second estimated payment due after January 1, 2024, whichever due date is later.

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

C.54:10A-15 Annual tax payable; manner of payment.

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

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

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

(c) With respect to all or any part of each of its privilege periods ending after June 30, 1967, every taxpayer shall annually pay a franchise tax on a report which shall be filed on or before the fifteenth day of the fourth month after the close of such privilege period, or part thereof, and the full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the return; provided, however, that for privilege periods ending on and after July 31, 2020, but before July 31, 2023, the due date of the New Jersey return shall be 30 days after the original due date for filing the taxpayer's federal corporate income tax return for such privilege period, or part thereof, and for privilege periods ending on and after July 31, 2023, the due date of the New Jersey return shall be (1) the fifteenth day of the month immediately following the month of the original due date for filing the taxpayer's federal corporate income tax return for such privilege period, or part thereof, or (2) in the case of a taxpayer that received an extension to file for federal tax purposes, the fifteenth day of the

month immediately following the month of the extended due date for filing the taxpayer's federal corporate income tax return for such privilege period, or part thereof. The full amount of the tax hereunder shall be due and payable on or before the date prescribed herein for the filing of the return.

(d) With respect to its fiscal or calendar accounting years ending after February 29, 1968 and prior to March 1, 1969, every taxpayer shall pay as a partial payment of franchise tax in addition to the tax payable under subsection (c) of this section, an amount equal to one-quarter of the tax payable under said subsection (c). With respect to each of its fiscal or calendar accounting years ending after February 28, 1969, every taxpayer shall annually pay as a partial payment of franchise tax in addition to the tax payable under subsection (c) of this section, an amount equal to one-half of the tax payable under said subsection (c). In the calculation of the tax pertaining to each succeeding accounting period, due in accordance with subsection (c) hereof, every taxpayer shall be entitled to a credit in the amount of the tax paid under this subsection (d) as a partial payment and shall be entitled to the return of any amount so paid which shall be found in excess of the total amount payable in accordance with said subsection (c) and this subsection (d).

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

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

- (1) 25% thereof paid on or before the fifteenth day of the fourth month thereof;
- (2) 25% thereof paid on or before the fifteenth day of the sixth month thereof;
- (3) 25% thereof paid on or before the fifteenth day of the ninth month thereof; and
- (4) the balance thereof paid on or before the fifteenth day of the twelfth month thereof.

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

- (1) 25% thereof paid on or before the fifteenth day of the fourth month thereof;
- (2) 50% thereof paid on or before the fifteenth day of the sixth month thereof; and
- (3) the balance thereof paid on or before the fifteenth day of the twelfth month thereof.

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

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

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

C.54:10A-15.2 Tax liability under \$500; installment payment.

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

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

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

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

C.54:10A-15.4 Underpayment; amount added to tax; interest.

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

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

(1) The lesser of the amount of the installment payment which would be required to be paid if all installment payments and all payments of tax made pursuant to subsection a. of section 12 of P.L.2002, c.40 (C.54:10A-15.11) and credited to the taxpayer pursuant to subsection b. of section 12 of P.L.2002, c.40 were equal to 90% of the tax shown on the return for the fiscal or calendar accounting year, or if no return was filed, 90% of the tax for that year, or 100% of the tax shown on the tax return of the taxpayer for the preceding taxable year over

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. R.S.54:49-4 is amended to read as follows:

Late filing penalty.

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

b. In addition to any other penalty for failing to file a return within the time prescribed or underpayment provided in this section or pursuant to any other provision of law, if a taxpayer or tax preparer fails to use electronic methods to file a return as may be required pursuant to the provisions of subsection b. of section 13 of P.L.1992, c.175 (C.54:49-3.1), section 4 of P.L.2006, c.36 (C.54A:8-6.1) or the law imposing the tax, or if a taxpayer fails to use electronic methods to pay tax as may be required pursuant to the provisions of subsection b. of section 13 of P.L.1992, c.175 (C.54:49-3.1), or the law imposing the tax, the taxpayer shall be liable for a penalty of \$50 for each return or payment for which the taxpayer failed to file or pay electronically as may be applicable, and the tax preparer shall be liable for a penalty of \$50 for each return for which the tax preparer failed to file electronically as may be applicable. The director may exercise discretion to abate all or any portion of the penalty in circumstances the director determines appropriate, including but not limited to circumstances in which a taxpayer or tax preparer demonstrates to the director's satisfaction that the failure to file or pay electronically was due to reasonable cause.



## 12. R.S.54:49-6 is amended to read as follows:

Examination of return, report; assessment of additional tax.

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

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

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

C.54A:5-19 Income sourced, Corporation Business Tax Act, New Jersey Gross Income Tax Act, business conducted partly within, without State.

13. a. For the purposes of the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., for taxable years beginning on and after January 1, 2023, notwithstanding any provision in 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.) to the contrary, a taxpayer that is subject to the provisions of N.J.S.54A:1-1 et seq. and engages in a trade or business, regardless of business form, or is a partner in a partnership or shareholder of an S corporation, which trade, business, partnership, or S corporation conducts business operations partly within and partly without this State and, as a result thereof or for other reasons that portion of the income from sources within the State cannot readily or accurately be ascertained, the income from the trade, business, partnership, or S corporation shall be sourced in a manner consistent with the provisions of sections 6 through 10 of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10). Income that is representative of the taxpayer’s salary, wages, tips, fees, commissions, bonuses, and other remuneration shall be sourced pursuant to the provisions of N.J.S.54A:1-1 et seq.

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

Repealer.

14. The following sections are repealed:

Section 5 of P.L.2002, c.40 (C.54:10A-4.4); and

Section 1 of P.L.2018, c.131 (C.54:10A-4.15).

15. This act shall take effect immediately, and sections 3 through 6, 9 through 10, and 14 shall apply to privilege periods and taxable years ending on and after July 31, 2023, and sections 11 and 12 shall apply to privilege periods ending on and after July 31, 2022.

Approved July 3, 2023.