

[First Reprint]

SENATE, No. 2876

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 20, 2022

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Co-Sponsored by:

Senator Diegnan

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on October 31, 2022, with amendments.



(Sponsorship Updated As Of: 10/31/2022)

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

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

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

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

18 b. A partnership shall report any federal partnership audit
 19 adjustments made by the Internal Revenue Service pursuant section
 20 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s.6225(a)(1)) to
 21 the Division of Taxation in the Department of the Treasury in
 22 accordance with ¹~~section 2 and~~¹ subsection d. of section ¹~~9~~⁸
 23 of P.L. .c. (C.) (pending before the Legislature as this bill).
 24 The partners of the reviewed year shall make payment of any New
 25 Jersey Gross Income Tax liability that results from the federal
 26 partnership audit adjustments reported on the Federal Adjustments
 27 Report, unless the partnership makes the election to pay tax on the
 28 partner's behalf.

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

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

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

41
 42 ¹**[2. (New section) a. A taxpayer, as defined in N.J.S. 54A:1-2**
 43 **or subsection h. of section 4 of P.L.1945, c.162 (C.54:10A-4),**
 44 **whose tax return filed with the Internal Revenue Service, or whose**
 45 **net income reported, is changed or corrected by any official of the**

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹**Senate SBA committee amendments adopted October 31, 2022.**

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

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

15 c. Upon the filing of a Federal Adjustments Report, the director
16 shall examine a taxpayer's return, determine any additional tax or
17 refund that may be due, and shall notify the taxpayer. Any
18 additional tax shall be paid within 15 days after the Federal
19 Adjustments Report is filed together with interest from the original
20 due date of the return for the taxable year to the date of payment of
21 the additional tax.】¹

22

23 ¹【3.】 2.¹ N.J.S.54A:5-4 is amended to read as follows:

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

32 b. A partnership shall report and make payment of any New
33 Jersey gross income tax liability that results from the federal
34 partnership audit adjustments in accordance with ¹【section 2 of
35 P.L. , c. (C.) (pending before the Legislature as this bill)
36 and】¹ subsection d. of section ¹【9】 8¹ of P.L. ,c. (C.)
37 (pending before the Legislature as this bill).

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

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

47

48 ¹【4.】 3.¹ N.J.S.54A:8-7 is amended to read as follows:

1 54A:8-7. a. Report of change in federal taxable income or
2 credit. If the amount of a taxpayer's federal taxable income or
3 earned income tax credit reported on the taxpayer's federal income
4 tax return for any taxable year is changed or corrected by the United
5 States Internal Revenue Service or other competent authority, or as
6 the result of a renegotiation of a contract or subcontract with the
7 United States, the taxpayer shall report such change or correction
8 in federal taxable income or earned income tax credit within 90
9 days after the final determination of such change, correction, or
10 renegotiation, or as otherwise required by the director, and shall
11 concede the accuracy of such determination or state wherein it is
12 erroneous. Any taxpayer filing an amended federal income tax
13 return, including a return or other information filed pursuant to
14 section 6225(c) of the Internal Revenue Code (26 U.S.C. s.
15 6225(c)), shall also file within 90 days thereafter an amended return
16 under this act, and shall give such information as the director may
17 require. The director may by regulation prescribe such exceptions
18 to the requirements of this section as the director deems
19 appropriate.

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

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

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

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

34

35 ¹**[5.]** ^{4.}¹ N.J.S.54A:9-4 is amended to read as follows:

36 54A:9-4. (a) General. Except as otherwise provided in this
37 section, any tax under this act shall be assessed within 3 years after
38 the return was filed (whether or not such return was filed on or after
39 the date prescribed).

40 (b) Time return deemed filed.

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

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

1 (c) Exceptions.

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

4 (A) No return is filed,

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

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

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

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

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

44 (5) Request for prompt assessment. If a return is required for a
45 decedent or for **[his]** the decedent's estate during the period of
46 administration, the tax shall be assessed within 18 months after
47 written request therefor (made after the return is filed) by the
48 executor, administrator or other person representing the estate of

1 such decedent, but not more than 3 years after the return was filed,
2 except as otherwise provided in this subsection and subsection (d).

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

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

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

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

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

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

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

31

32 ¹**[6.] 5.**¹ N.J.S.54A:9-8 is amended to read as follows:

33 54A:9-8. (a) General. Claim for credit or refund of an
34 overpayment of income tax shall be filed by the taxpayer within 3
35 years from the time the return was filed or 2 years from the time the
36 tax was paid, whichever of such periods expires the later, or if no
37 return was filed, within 2 years from the time the tax was paid. If
38 the claim is filed within the 3-year period, the amount of the credit
39 or refund shall not exceed the portion of the tax paid within the 3
40 years immediately preceding the filing of the claim plus the period
41 of any extension of time for filing the return. If the claim is not
42 filed within the 3-year period, but is filed within the 2-year period,
43 the amount of the credit or refund shall not exceed the portion of
44 the tax paid during the 2 years immediately preceding the filing of
45 the claim. Except as otherwise provided in this section, if no claim
46 is filed, the amount of a credit or refund shall not exceed the
47 amount which would be allowable if a claim had been filed on the
48 date the credit or refund is allowed.

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

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

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

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

- 1 (1) As to overpayments determined by a decision of the director
2 which has become final; and
- 3 (2) As to any amount collected in excess of an amount computed
4 in accordance with the decision of the director which has become
5 final; and
- 6 (3) As to any amount claimed as a result of a change or
7 correction described in subsection (c).
- 8 (f) Limit on amount of credit or refund. The amount of
9 overpayment determined under subsection (e) shall, when the
10 decision of the director has become final, be credited or refunded in
11 accordance with subsection (a) of section N.J.S. 54A:6-6 and shall
12 not exceed the amount of tax which the director determines as part
13 of **[he]** the director's decision was paid--
- 14 (1) After the mailing of the notice of deficiency; or
- 15 (2) Within the period which would be applicable under
16 subsections (a), (b) or (c), if on the date of the mailing of the notice
17 of a deficiency a claim had been filed (whether or not filed) stating
18 the grounds upon which the director finds that there is an
19 overpayment.
- 20 (g) Early return. For purposes of this section, any return filed
21 before the last day prescribed for the filing thereof shall be
22 considered as filed on such last day, determined without regard to
23 any extension of time granted the taxpayer.
- 24 (h) Prepaid income tax. For purposes of this section, any tax
25 paid by the taxpayer before the last day prescribed for its payment,
26 any income tax withheld from the taxpayer during any calendar
27 year, and any amount paid by the taxpayer as estimated income tax
28 for a taxable year shall be deemed to have been paid by **[him]** the
29 taxpayer on the fifteenth day of the fourth month following the
30 close of **[his]** the taxpayer's taxable year with respect to which
31 such amount constitutes a credit or payment.
- 32 (i) Return and payment of withholding tax. Notwithstanding
33 subsection (h), for purposes of this section with respect to any
34 withholding tax--
- 35 (1) If a return for any period ending with or within a calendar
36 year is filed before April 15 of the succeeding calendar year, such
37 return shall be considered filed on April 15 of such succeeding
38 calendar year; and
- 39 (2) If a tax with respect to remuneration paid during any period
40 ending with or within a calendar year is paid before April 15 of the
41 succeeding calendar year, such tax shall be considered paid on April
42 15 of such succeeding calendar year.
- 43 (j) Final federal adjustments resulting from a partnership audit
44 or administrative adjustments request. If a partnership files a
45 Federal Adjustments Report with final federal adjustments resulting
46 from a partnership audit or administrative adjustments request that
47 do not result in a federal imputed underpayment, and which are not
48 taken into account by the partnership in the federal adjustment year
49 partnership return, then the partners may claim a credit or refund of

1 the related State tax by filing an amended return or other schedule
2 as required by the director. The amount of such credit or refund
3 shall not exceed the amount of the reduction in New Jersey tax
4 attributable to such final federal adjustments. This subsection shall
5 not affect the time within in which or the amount for which a claim
6 for credit or refund may be filed apart from this subsection.

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

8
9 ¹~~7.~~ 6.¹ (New section) As used in sections ¹~~7~~ 6¹ through
10 ¹~~13~~ 12¹ of P.L. , c. (C.) (pending before the Legislature
11 as this bill):

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

15 “Allocation Factor” means the allocation factor as required on
16 the New Jersey Gross Income Tax Business Allocation Schedule
17 NJ-NR-A.

18 “Audited partnership” means a partnership subject to a
19 partnership level audit resulting in a federal adjustment.

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

24 ¹“Director” means the Director of the Division of Taxation in the
25 Department of the Treasury.¹

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

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

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

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

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

7 “Final determination date” means the following:

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

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

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

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

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

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

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

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

48 “Partnership level audit” means an examination by the Internal
49 Revenue Service at the partnership level pursuant to Subchapter C

1 of Title 26, Subtitle F, Chapter 63 of the federal Internal Revenue
2 Code, as enacted by the Bipartisan Budget Act of 2015, Pub.L.114-
3 74, which results in federal adjustments.

4 “Pass-through entity” means an entity not taxed as a C
5 corporation.

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

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

20 “Reviewed year” means the taxable year of a partnership that is
21 subject to a partnership level audit from which federal adjustments
22 arise.

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

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

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

38

39 **1[8.] 7.1** (New section) Reporting Adjustments to Federal
40 Taxable Income – General Rule. Except in the case of final federal
41 adjustments that are required to be reported by a partnership and its
42 partners using the procedures in section **1[9] 81** of P.L. , c.
43 (C.) (pending before the Legislature as this bill), and final
44 federal adjustments required to be reported for federal purposes in
45 the partnership return for the adjustment year, a taxpayer shall
46 report and pay any New Jersey Gross Income Tax or New Jersey
47 Corporation Business Tax due with respect to final federal
48 adjustments arising from an audit or other action by the Internal
49 Revenue Service or reported by the taxpayer on a timely filed

1 amended federal income tax return, including a return or other
2 similar report filed pursuant to section 6225(c)(2) of the federal
3 Internal Revenue Code (26 U.S.C. s.6225(c)(2)), or federal claim
4 for refund by filing a federal adjustments report with the Division
5 of Taxation for the reviewed year and, if applicable, paying the
6 additional New Jersey Gross Income Tax or New Jersey
7 Corporation Business Tax owed by the taxpayer no later than ¹[90]
8 180¹ days after the final determination date.

9
10 ¹[9.] 8.¹ (New section) Reporting Federal Adjustments –
11 Partnership Level Audit and Administrative Adjustment Request

12 a. Except for adjustments required to be reported for federal
13 purposes in the partnership return for the adjustment year, and the
14 distributive share of adjustments that have been reported as required
15 under section ¹[8] 7¹ of P.L. , c. (C.) (pending before the
16 Legislature as this bill), partnerships, and partners shall report final
17 federal adjustments arising from a partnership level audit or an
18 administrative adjustment request and make payments as required
19 under this section.

20 b. State Partnership Representative.

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

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

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

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

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

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

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

47 (c) file an amended New Jersey Form 1065 as required under
48 N.J.S.54A:8-7 and pay the amount required ¹[under section 2

1 of P.L. , c. (C.) (pending before the Legislature as this
2 bill)"]; and

3 (d) file an amended composite return for direct partners and pay
4 the additional amount ¹["under subsection c. of section 2 of
5 P.L. , c. (C.) (pending before the Legislature as this bill)"]¹
6 that would have been due had the final federal adjustments been
7 reported properly as required.

8 (2) No later than ¹["90"] 180¹ days after the final determination
9 date, each direct partner that is taxed under the "New Jersey Gross
10 Income Tax Act," N.J.S.54A:1-1 et seq., or Corporation Business
11 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), shall:

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

16 (b) Pay any additional amount of tax due as if final federal
17 adjustments had been properly reported, plus any penalty and
18 interest due under N.J.S.54A:9-5, ¹["N.J.S54A:9-6"] N.J.S.54A:9-6¹,
19 R.S.54:49-3, or R.S.54:49-4.

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

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

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

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

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

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

- 1 (d) For the total distributive shares of the remaining final federal
2 adjustments reported to tiered partners:
- 3 (i) determine the amount of such adjustments which is of a type
4 that it would be subject to sourcing to New Jersey under paragraph
5 (3) of subsection (a) of N.J.S.54A:5-8 and then determine the
6 portion of this amount that would be sourced to the state applying
7 these rules;
- 8 (ii) determine the amount of such adjustments which is of a type
9 that it would not be subject to sourcing to New Jersey by a
10 nonresident partner under subsection (c) of N.J.S.54A:5-8;
- 11 (iii) determine the portion of the amount determined in
12 subparagraph (ii) of this subparagraph that can be established,
13 under regulation issued by the division, to be properly allocable to
14 nonresident indirect partners or other partners not subject to tax on
15 the adjustments; or that can be excluded under procedures for
16 modified reporting and payment method allowed under
17 subparagraph (f) of this paragraph;
- 18 (e) multiply the total of the amounts determined in
19 subparagraphs (i) and (ii) of this subparagraph reduced by the
20 amount determined in subparagraph (iii) of this subparagraph by
21 the highest tax rate under N.J.S.54A:2-1;
- 22 (f) for the total distributive shares of the remaining final federal
23 adjustments reported to resident direct partners subject to tax under
24 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
25 multiply that amount by the highest tax rate under N.J.S.54A:2-1;
- 26 (g) add the amounts determined in subparagraphs (b), (c), (e),
27 and (f) of this paragraph, along with penalty and interest as
28 provided in N.J.S.54A:9-5, N.J.S.54A:9-6, R.S.54:49-3, or
29 R.S.54:49-4.
- 30 (3) Final federal adjustments subject to this election exclude:
- 31 (a) the distributive share of final audit adjustments that are
32 required to be included in the unitary business income of any direct
33 or indirect corporate partner, provided that the audited partnership
34 can reasonably determine this; and
- 35 (b) any final federal adjustments resulting from an
36 administrative adjustment request.
- 37 (4) An audited partnership not otherwise subject to any
38 reporting or payment obligation to New Jersey that makes an
39 election under this subsection consents to be subject to New Jersey
40 laws related to reporting, assessment, payment, and collection of
41 New Jersey tax calculated under the election.
- 42 e. Tiered Partners. The direct and indirect partners of an audited
43 partnership that are tiered partners, and all of the partners of those
44 tiered partners that are subject to tax under the “New Jersey Gross
45 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business
46 Tax Act (1945), P.L.1945,c.162 (C. 54:10A-1 et seq.), are subject to
47 the reporting and payment requirements of subsection c. of this
48 section and the tiered partners are entitled to make the elections
49 provided in subsections d. and f. of this section. The tiered partners

1 or their partners shall make required reports and payments no later
2 than 90 days after the time for filing and furnishing statements to
3 tiered partners and their partners as established under section 6226
4 of the federal Internal Revenue Code (26 U.S.C. s.6226) and the
5 regulations thereunder. The division may adopt regulations to
6 establish procedures and interim time periods for the reports and
7 payments required by tiered partners and their partners and for
8 making the elections under this section.

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

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

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

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

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

45
46 ¹**[10.] 9.**¹ (New section) Assessments of Additional New Jersey
47 Tax, Interest, and Penalties Arising from Adjustments to Federal
48 Taxable Income – Statute of Limitations

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

7 (1) Timely Reported Federal Adjustments. If a taxpayer files
8 with the division a Federal Adjustments Report or an amended New
9 Jersey Form 1065 or amended New Jersey Corporation Business
10 Tax return as required within the period specified in section ¹~~8~~ 7¹
11 or ¹~~9~~ 8¹ of P.L. , c. (C.) (pending before the Legislature
12 as this bill), the division may assess any amounts, including in-lieu-
13 of amounts, taxes, interest, and penalties arising from those federal
14 adjustments if the division issues a notice of the assessment to the
15 taxpayer no later than:

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

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

20 b. Untimely Reported Federal Adjustments. If the taxpayer fails
21 to file the Federal Adjustments Report within the period specified in
22 section ¹~~8~~ 7¹ or ¹~~9~~ 8¹ of P.L. , c. (C.) (pending before
23 the Legislature as this bill), as appropriate, or the Federal
24 Adjustments Report filed by the taxpayer omits final federal
25 adjustments or understates the correct amount of tax owed, the
26 division may assess amounts or additional amounts including in-
27 lieu-of amounts, taxes, interest, and penalties arising from the final
28 federal adjustments, if it mails a notice of the assessment to the
29 taxpayer by a date which is the latest of the following:

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

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

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

36

37 ¹~~11~~ 10¹ (New section) Estimated New Jersey Tax Payments
38 During the Course of a Federal Audit

39 A taxpayer may make estimated payments to the division,
40 following the process prescribed by the division, of the New Jersey
41 Gross Income Tax or Corporation Business Tax expected to result
42 from a pending Internal Revenue Service audit, prior to the due date
43 of the Federal Adjustments Report, without having to file the report
44 with the division. The estimated tax payments shall be credited
45 against any tax liability ultimately found to be due to New Jersey
46 (“Final New Jersey Tax Liability”) and will limit the accrual of
47 further statutory interest on that amount. If the estimated tax
48 payments exceed the final tax liability and statutory interest
49 ultimately determined to be due, the taxpayer is entitled to a refund

1 or credit for the excess, provided the taxpayer files a Federal
2 Adjustments Report or claim for refund or credit of tax no later than
3 one year following the final determination date.

4
5 **¹【12.】 11.**¹ (New section) Claims for Refund or Credits of Tax
6 Arising from Final Federal Adjustments Made by the IRS

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

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

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

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

23
24 **¹【13.】 12.**¹ (New section) Scope of Adjustments and Extensions
25 of Time.

26 a. Unless otherwise agreed in writing by the taxpayer and the
27 division, any adjustments by the division or by the taxpayer made
28 after the expiration of the N.J.S.54A:9-4, N.J.S.54A:9-8, R.S.54:49-
29 3, or R.S.54:49-14 are limited to changes to the taxpayer's tax
30 liability arising from federal adjustments.

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

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

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

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

43
44 **¹【14.】 13.**¹ Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is
45 amended to read as follows:

46 12. a. (1) A partnership that is not a qualified investment
47 partnership or an investment club and that is not listed on a United
48 States national stock exchange shall, on or before the 15th day of
49 the fourth month succeeding the close of each privilege period,

1 remit a payment of tax. The amount of tax shall be equal to the sum
2 of: all of the share of the entire net income of the partnership for
3 that privilege period of all nonresident noncorporate partners,
4 multiplied by an allocation factor determined, pursuant to section 6
5 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
6 of the partnership for that privilege period, and multiplied by .0637
7 plus all of the share of the entire net income of the partnership for
8 that privilege period of all nonresident corporate partners,
9 multiplied by an allocation factor determined, pursuant to section 6
10 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
11 of the partnership for that privilege period, and multiplied by .09.
12 Entire net income shall not include additional income that results
13 from any federal partnership audit adjustments made by the Internal
14 Revenue Service under section 6225(a)(1) of the federal Internal
15 Revenue Code (26 U.S.C. s.6225(a)(1)).

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

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

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

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

48 c. For the purposes of this section:

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

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

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

30 "Partner" means an owner of an interest in the partnership, in
31 whatever manner that owner and ownership interest are designated.
32 (cf: P.L.2021, c.419, s.5)

33

34 ¹**[15.]** 14.¹ Section 18 of P.L.2000, c.161 (C.42:1A-18) is
35 amended to read as follows:

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

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

45 c. An obligation of a partnership incurred while the partnership
46 is a limited liability partnership, whether arising in contract, tort, or
47 otherwise, is solely the obligation of the partnership. A partner is
48 not personally liable, directly or indirectly, by way of contribution
49 or otherwise, for such an obligation solely by reason of being or so

1 acting as a partner. This subsection applies notwithstanding
2 anything inconsistent in the partnership agreement that existed
3 immediately before the vote required to become a limited liability
4 partnership under subsection b. of section 47 of **【this act】** the
5 “Uniform Partnership Act (1996),” P.L.2000, c.161 (C.42:1A-47).

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

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

10

11 ¹**【16.】** 15.¹ Section 92 of P.L.2012, c.50 (C.42:2C-92) is
12 amended to read as follows:

13 92. Tax Classification.

14 a. For all purposes of taxation under the laws of this State, a
15 limited liability company formed under this act or qualified to do
16 business in this State as a foreign limited liability company with
17 two or more members shall be classified as a partnership unless
18 classified otherwise for federal income tax purposes, in which case
19 the limited liability company shall be classified in the same manner
20 as it is classified for federal income tax purposes. For all purposes
21 of taxation under the laws of this State, a member or a transferee of
22 a member of a limited liability company formed under this act or
23 qualified to do business in this State as a foreign limited liability
24 company shall be treated as a partner in a partnership unless the
25 limited liability company is classified otherwise for federal income
26 tax purposes, in which case the member or transferee of a member
27 shall have the same status as the member or transferee of a member
28 has for federal income tax purposes.

29 b. For all purposes of taxation on income under the laws of this
30 State and only for those purposes, a limited liability company
31 formed under this act or qualified to do business in this State as a
32 foreign limited liability company with one member is disregarded
33 as an entity separate from its owner, unless classified otherwise for
34 federal tax purposes, in which case the limited liability company
35 will be classified in the same manner as it is classified for federal
36 income tax purposes. For all purposes of taxation on income under
37 the laws of this State and only for those purposes, the sole member
38 or a transferee of all of the limited liability company interest of the
39 sole member of a limited liability company formed under this act or
40 qualified to do business in this State as a foreign limited liability
41 company is treated as the direct owner of the underlying assets of
42 the limited liability company and of its operations, unless the
43 limited liability company is classified otherwise for federal income
44 tax purposes, in which case the member or transferee of a member
45 will have the same status as the member or transferee of a member
46 has for federal income tax purposes.

47 c. With respect to a limited liability company that is taxed as a
48 partnership for federal income tax purposes, the entity is also liable
49 for all obligations of the partnership as provided by

1 P.L. , c. (C.) (pending before the Legislature as this bill) in
2 addition to its liabilities in section 30 of P.L.2012, c.50 (C.42:2C-
3 30).

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

5
6 ¹**[17.] 16.** Section 1 of P.L.2020, c.19 is amended to read as
7 follows:

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

16 b. The provisions involving payment of interest upon any
17 overpayment of tax pursuant to N.J.S.54A:9-7 and section 7 of
18 P.L.1992, c.175 (C.54:49-15.1), are hereby extended ¹**[for six**
19 **months after the conclusion of the]** ¹ **[state of]** ¹**[public health**
20 **emergency declared by the Governor pursuant to Executive Order**
21 **No. 103 of 2020, or any extension thereof, or within six months**
22 **after the return is filed, whichever is later]** until the date of
23 enactment of P.L., c. (C.) (pending before the Legislature
24 as this bill)¹.

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

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

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

38
39 ¹**[18.] 17.** Section 2 of P.L.2020, c.19 is amended to read as
40 follows:

41 2. The statute of limitations to assess any tax pursuant to
42 N.J.S.54A:9-4 and R.S.54:49-6 is hereby extended ¹**[for 90 days**
43 **after the conclusion of the]** ¹ **[state of]** ¹**[public health**
44 **emergency declared by the Governor pursuant to Executive Order No. 103 of**
45 **2020, or any extension thereof]** until the date of enactment of
46 P.L. , c. (C.) (pending before the Legislature as this bill)¹.

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

1 **19.** 18.¹ (New section) Any assessment of tax that was allowed
2 as a result of the extension of the statute of limitations in section 2 of
3 P.L.2020, c.19, but that was assessed after the ¹**90th** day following
4 the conclusion of the public health emergency declared by the
5 Governor pursuant to Executive Order No. 103 of 2020] date of
6 enactment of P.L. , c. (C.) (pending before the Legislature as
7 this bill)¹, shall be voided. The Director of the Division of Taxation in
8 the Department of the Treasury shall return any amounts collected
9 from a taxpayer as a result of such assessment.

10
11 ¹**20.** 19.¹ Section 4 of P.L.1945, c.162 (C.54:10A-4) is
12 amended to read as follows:

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

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

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

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

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

1 deemed paid foreign tax credits or for the purpose of status as a
2 controlled foreign corporation. In calculating the net worth of a
3 taxpayer entitled to reduction for investment in subsidiaries, the
4 amount of liabilities of the taxpayer shall be reduced by such
5 proportion of the liabilities as corresponds to the ratio which the
6 excluded portion of the subsidiary values bears to the total assets of
7 the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (J) (i) Amounts deducted for federal tax purposes pursuant to
47 section 199 of the federal Internal Revenue Code of 1986, 26
48 U.S.C. s.199, except that this exclusion shall not apply to amounts
49 deducted pursuant to that section that are exclusively based upon

1 domestic production gross receipts of the taxpayer which are
2 derived only from any lease, rental, license, sale, exchange, or other
3 disposition of qualifying production property which the taxpayer
4 demonstrates to the satisfaction of the director was manufactured or
5 produced by the taxpayer in whole or in significant part within the
6 United States but not qualified production property that was grown
7 or extracted by the taxpayer. "Manufactured or produced" as used
8 in this paragraph shall be limited to performance of an operation or
9 series of operations the object of which is to place items of tangible
10 personal property in a form, composition, or character different
11 from that in which they were acquired. The change in form,
12 composition, or character shall be a substantial change, and result in
13 a transformation of property into a different or substantially more
14 usable product.

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

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

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

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

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

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

44 (i) Making, arranging for, placing or carrying loans to foreign
45 persons, provided, however, that in the case of a foreign person
46 which is an individual, or which is a foreign branch of a domestic
47 corporation (other than a bank), or which is a foreign corporation or
48 foreign partnership which is controlled by one or more domestic
49 corporations (other than banks), domestic partnerships or resident

- 1 individuals, all the proceeds of the loan are for use outside of the
2 United States;
- 3 (ii) Making or placing deposits with foreign persons which are
4 banks or foreign branches of banks (including foreign subsidiaries)
5 or foreign branches of the taxpayers or with other international
6 banking facilities;
- 7 (iii) Entering into foreign exchange trading or hedging
8 transactions related to any of the transactions described in this
9 paragraph; or
- 10 (iv) Such other activities as an international banking facility
11 may, from time to time, be authorized to engage in;
- 12 (C) Applicable expenses shall be any expense or other
13 deductions attributable, directly or indirectly, to the eligible gross
14 income described in subparagraph (B) of this paragraph.
- 15 (5) (A) (i) Entire net income shall exclude 100% of dividends
16 which were included in computing such taxable income for federal
17 income tax purposes, paid to the taxpayer by one or more
18 subsidiaries owned by the taxpayer to the extent of the 80% or more
19 ownership of investment described in subsection (d) of this section
20 for privilege periods beginning on or before December 31, 2016.
- 21 (ii) For privilege periods beginning after December 31, 2016
22 and before January 1, 2019, entire net income shall exclude 95% of
23 dividends which were included in computing such taxable income
24 for federal income tax purposes, paid or deemed paid, to the
25 taxpayer by one or more subsidiaries owned by the taxpayer to the
26 extent of the 80% or more ownership of investment described in
27 subsection (d) of this section. For the purposes of calculating the
28 tax liability owed for the paid or deemed paid dividends included in
29 entire net income by this subparagraph (ii), the taxpayer shall
30 use either their three-year average allocation factor for the
31 taxpayer's 2014 through 2016 tax years reported on the taxpayer's
32 tax returns or 3.5 percent, whichever is lower.
- 33 (iii) For privilege periods beginning on and after January 1,
34 2019, entire net income shall exclude 95% of dividends which were
35 included in computing such taxable income for federal income tax
36 purposes, paid or deemed paid to the taxpayer by one or more
37 subsidiaries owned by the taxpayer to the extent of the 80% or more
38 ownership of investment described in subsection (d) of this section.
- 39 (B) Entire net income shall exclude 50% of dividends which
40 were included in computing such taxable income for federal income
41 tax purposes, paid or deemed paid to the taxpayer by one or more
42 subsidiaries owned by the taxpayer to the extent of 50% or more
43 ownership of investment, such ownership of investment calculated
44 in the same manner as the 80% or more of ownership of investment
45 is calculated as described in subsection (d) of this section.
- 46 (C) To the extent a subsidiary received dividends from other
47 subsidiaries and included those dividends in its entire net income
48 for the purposes of determining its tax liability pursuant to section 5
49 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,

1 the taxpayer receiving those same dividends from the subsidiary
2 shall exclude those dividends from its entire net income based on
3 the subsidiary's allocation factor used by the subsidiary in
4 determining its tax liability pursuant to section 5 of P.L.1945, c.162
5 (C.54:10A-5). This subparagraph (C) shall not apply to privilege
6 periods ending on and after July 31, 2019.

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

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

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

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

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

44 (D) Change in ownership. Where there is a change in 50% or
45 more of the ownership of a corporation because of redemption or
46 sale of stock and the corporation changes the trade or business
47 giving rise to the loss, no net operating loss sustained before the
48 changes may be carried over to be deducted from income earned
49 after such changes. In addition where the facts support the premise

1 that the corporation was acquired under any circumstances for the
2 primary purpose of the use of its net operating loss carryover, the
3 director may disallow the carryover.

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

18 Provided, that this subparagraph (E) shall not restrict the
19 surrender or acquisition of corporation business tax benefit
20 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
21 7.42a) and shall not restrict the application of corporation business
22 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
23 (C.54:10A-4.2).

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

31 (7) The entire net income of gas, electric and gas and electric
32 public utilities that were subject to, or would have been subject to
33 tax if doing business in this State, the provisions of P.L.1940, c.5
34 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
35 substituting the New Jersey depreciation allowance for federal tax
36 depreciation with respect to assets placed in service prior to January
37 1, 1998. For gas, electric, and gas and electric public utilities that
38 were subject to, or would have been subject to tax if doing business
39 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
40 prior to 1998, the New Jersey depreciation allowance shall be
41 computed as follows: All depreciable assets placed in service prior
42 to January 1, 1998 shall be considered a single asset account. The
43 New Jersey tax basis of this depreciable asset account shall be an
44 amount equal to the carryover adjusted basis for federal income tax
45 purposes on December 31, 1997 of all depreciable assets in service
46 on December 31, 1997, increased by the excess, of the "net carrying
47 value," defined to be adjusted book basis of all assets and liabilities,
48 excluding deferred income taxes, recorded on the public utility's
49 books of account on December 31, 1997, over the carryover

1 adjusted basis for federal income tax purposes on December 31,
2 1997 of all assets and liabilities owned by the gas, electric, or gas
3 and electric public utility as of December 31, 1997. "Books of
4 account" for gas, gas and electric, and electric public utilities means
5 the uniform system of accounts as promulgated by the Federal
6 Energy Regulatory Commission and adopted by the Board of Public
7 Utilities. The following adjustments to entire net income shall be
8 made pursuant to this section:

9 (A) Depreciation for property placed in service prior to January
10 1, 1998 shall be adjusted as follows:

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

13 (ii) A deduction shall be allowed for the New Jersey
14 depreciation allowance. The New Jersey depreciation allowance
15 shall be computed for the single asset account described above
16 based on the New Jersey tax basis as adjusted above as if all assets
17 in the single asset account were first placed in service on January 1,
18 1998. Depreciation shall be computed using the straight line method
19 over a thirty-year life. A full year's depreciation shall be allowed in
20 the initial tax year. No half-year convention shall apply. The
21 depreciable basis of the single account shall be reduced by the
22 adjusted federal tax basis of assets sold, retired, or otherwise
23 disposed of during any year on which gain or loss is recognized for
24 federal income tax purposes as described in subparagraph (B) of
25 this paragraph.

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

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

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

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

47 (10) Entire net income shall exclude all income of an alien
48 corporation the activities of which are limited in this State to
49 investing or trading in stocks and securities for its own account,

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

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

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

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

41 (13) (A) Notwithstanding the provisions of section 179 of the
42 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
43 property placed in service on or after January 1, 2004, the costs that
44 a taxpayer may otherwise elect to treat as an expense which is not
45 chargeable to a capital account shall be determined pursuant to the
46 provisions of the federal Internal Revenue Code of 1986
47 (26 U.S.C. s.1 et seq.) in effect on December 31, 2002.

48 (B) The director shall prescribe the rules and regulations
49 necessary to carry out the provisions of this paragraph, including,

1 among others, those for determining the adjusted basis of the
2 acquired property for the purposes of the Corporation Business Tax
3 Act (1945), P.L.1945, c.162.

4 (14) Notwithstanding the provisions of subsection (i) of section
5 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
6 for privilege periods beginning after December 31, 2008 and before
7 January 1, 2011, entire net income shall include the amount of
8 discharge of indebtedness income excluded for federal income tax
9 purposes pursuant to subsection (i) of section 108 of the federal
10 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
11 periods beginning on or after January 1, 2014 and before January 1,
12 2019, entire net income shall exclude the amount of discharge of
13 indebtedness income included for federal income tax purposes,
14 pursuant to subsection (i) of section 108 of the federal Internal
15 Revenue Code of 1986 (26 U.S.C. s.108).

16 (15) Entire net income shall exclude the gain or income derived
17 from the sale or assignment of a tax credit transfer certificate
18 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
19 10 of P.L.2014, c.63 (C.34:1B-251).

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

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

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

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

41 (E) For 10 years beginning with the combined group's first
42 privilege period beginning on or after January 1 of the fifth year
43 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a
44 combined group shall be entitled to a deduction from combined
45 group entire net income equal to one-tenth of the amount necessary
46 to offset the increase in the net deferred tax liability or decrease in
47 the net deferred tax asset, or aggregate change from a net deferred
48 tax asset to a net deferred tax liability. Such increase in the net
49 deferred tax liability or decrease in the net deferred tax asset or the

1 aggregate change from a net deferred tax asset to a net deferred tax
2 liability shall be computed based on the change that would result
3 from the imposition of the unitary reporting requirements under
4 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and
5 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided
6 under this paragraph as of the effective date of this paragraph.

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

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

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

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

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

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

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

43 (M) "Financial business corporation" shall mean any corporate
44 enterprise which is (1) in substantial competition with the business
45 of national banks and which (2) employs moneyed capital with the
46 object of making profit by its use as money, through discounting
47 and negotiating promissory notes, drafts, bills of exchange and
48 other evidences of debt; buying and selling exchange; making of or
49 dealing in secured or unsecured loans and discounts; dealing in

1 securities and shares of corporate stock by purchasing and selling
2 such securities and stock without recourse, solely upon the order
3 and for the account of customers; or investing and reinvesting in
4 marketable obligations evidencing indebtedness of any person,
5 copartnership, association or corporation in the form of bonds,
6 notes or debentures commonly known as investment securities; or
7 dealing in or underwriting obligations of the United States, any
8 state or any political subdivision thereof, or of a corporate
9 instrumentality of any of them. This shall include, without
10 limitation of the foregoing, business commonly known as industrial
11 banks, dealers in commercial paper and acceptances, sales finance,
12 personal finance, small loan and mortgage financing businesses, as
13 well as any other enterprise employing moneyed capital coming
14 into competition with the business of national banks; provided that
15 the holding of bonds, notes, or other evidences of indebtedness by
16 individual persons not employed or engaged in the banking or
17 investment business and representing merely personal investments
18 not made in competition with the business of national banks, shall
19 not be deemed financial business. Nor shall "financial business"
20 include national banks, production credit associations organized
21 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
22 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
23 insurance companies duly authorized to transact business in this
24 State, security brokers or dealers or investment companies or
25 bankers not employing moneyed capital coming into competition
26 with the business of national banks, real estate investment trusts, or
27 any of the following entities organized under the laws of this State:
28 credit unions, savings banks, savings and loan and building and
29 loan associations, pawnbrokers, and State banks and trust
30 companies.

31 (n) "International banking facility" shall mean a set of asset and
32 liability accounts segregated on the books and records of a
33 depository institution, United States branch or agency of a foreign
34 bank, or an Edge or Agreement Corporation that includes only
35 international banking facility time deposits and international
36 banking facility extensions of credit as such terms are defined in
37 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
38 board of governors of the Federal Reserve System, 12 CFR Part
39 204, effective December 3, 1981. In the event that the United
40 States enacts a law, or the board of governors of the Federal
41 Reserve System adopts a regulation which amends the present
42 definition of international banking facility or of such facilities' time
43 deposits or extensions of credit, the Commissioner of Banking and
44 Insurance shall forthwith adopt regulations defining such terms in
45 the same manner as such terms are set forth in the laws of the
46 United States or the regulations of the board of governors of the
47 Federal Reserve System. The regulations of the Commissioner of
48 Banking and Insurance shall thereafter provide the applicable
49 definitions.

1 (o) "S corporation" means a corporation **[**included in the
2 definition of**]** that has elected to be an "S corporation" pursuant to
3 section 1361 of the federal Internal Revenue Code of 1986,
4 26 U.S.C. s.1361 , for the taxable year.

5 (p) "New Jersey S corporation" means a **[**corporation that is an
6 S corporation; which has made a valid election pursuant to section 3
7 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
8 corporation continuously since the effective date of the valid
9 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
10 5.22)**]** taxpayer that has made a valid election to be an S
11 corporation for federal tax purposes ¹, and that has not made a valid
12 election pursuant to subsection d. of section 20 of P.L. _____, c.
13 (C. _____) (pending before the Legislature as this bill)¹.

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

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

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

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

34 (u) "Prior net operating loss conversion carryover" means a net
35 operating loss incurred in a privilege period ending prior to July 31,
36 2019 and converted from a pre-allocation net operating loss to a
37 post-allocation net operating loss as follows:

38 (1) As used in this subsection:

39 "Base year" means the last privilege period ending prior to July
40 31, 2019.

41 "Base year BAF" means the taxpayer's business allocation factor
42 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
43 6 through C.54:10A-10) for purposes of calculating entire net
44 income for the base year, as such section was in effect for the last
45 privilege period ending prior to July 31, 2019.

46 "UNOL" means the unabsorbed portion of net operating loss as
47 calculated under paragraph (6) of subsection (k) of this section as
48 such paragraph was in effect for the last privilege period ending

1 prior to July 31, 2019, that was not deductible in previous privilege
2 periods and was eligible for carryover on the last day of the base
3 year subject to the limitations for deduction under such subsection,
4 including any net operating loss sustained by the taxpayer during
5 the base year.

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

8 (A) The taxpayer shall first calculate the tax value of its UNOL
9 for the base year and for each preceding privilege period for which
10 there is a UNOL. The value of the UNOL for each privilege period
11 is equal to the product of (I) the amount of the taxpayer's UNOL for
12 a privilege period, and (II) the taxpayer's base year BAF. This result
13 shall equal the taxpayer's prior net operating loss conversion
14 carryover.

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

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

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

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

48 (2) Net operating loss. For purposes of this paragraph the term
49 "net operating loss" means the excess of the deductions over the

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

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

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

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

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

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

43 For purposes of this subsection:

44 "U.S. domestic corporations" means: (1) business entities
45 wherever incorporated or formed that are U.S. domestic
46 corporations, are deemed to be, or are treated as U.S. domestic
47 corporations under the provisions of the federal Internal Revenue
48 Code; or (2) any entities incorporated or formed under the laws of a
49 foreign nation that are required to file federal tax returns if such

1 entities have effectively connected income within the meaning of
2 the federal Internal Revenue Code; and

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

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

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

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

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

22 (4) 50% or less of whose gross receipts for the privilege period
23 consist of premiums from arrangements that constitute insurance for
24 federal income tax purposes.

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

31 For purposes of this definition:

32 "Affiliated group" shall have the same meaning as that term is
33 given by section 1504 of the federal Internal Revenue Code, 26
34 U.S.C. s.1504, except that the term "common parent corporation" as
35 used in section 1504 of the federal Internal Revenue Code, 26
36 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
37 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
38 to "at least 80%" in section 1504 of the federal Internal Revenue
39 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
40 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
41 be read without regard to the exclusions provided for in subsection
42 (b) of that section.

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

47 "Premiums" includes consideration for annuity contracts and
48 excludes any part of the consideration for insurance, reinsurance, or

1 annuity contracts that do not provide bona fide insurance,
2 reinsurance, or annuity benefits.

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

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

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

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

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

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

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

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

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

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

11 (gg) "Unitary business" means a single economic enterprise that
12 is made up either of separate parts of a single business entity or of a
13 group of business entities under common ownership that are
14 sufficiently interdependent, integrated, and interrelated through
15 their activities so as to provide a synergy and mutual benefit that
16 produces a sharing or exchange of value among them and a
17 significant flow of value among the separate parts. "Unitary
18 business" shall be construed to the broadest extent permitted under
19 the Constitution of the United States. A business conducted by a
20 partnership which is in a unitary business with the combined group
21 shall be treated as the business of the partners that are members of
22 the combined group, whether the partnership interest is held directly
23 or indirectly through a series of partnerships, to the extent of a
24 partner's distributive share of partnership income. The amount of
25 partnership income to be included in the partner's entire net income
26 shall be determined in accordance with subsection a. of section 3 of
27 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
28 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business
29 conducted directly or indirectly by one corporation is unitary with
30 that portion of a business conducted by another corporation through
31 its direct or indirect interest in a partnership.

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

33
34 ¹**[21.] 20.**¹ Section 3 of P.L.1993, c.173 (C.54:10A-5.22) is
35 amended to read as follows:

36 3. a. **[A corporation may elect, in accordance with the**
37 **provisions of this section, to be a New Jersey S corporation. In**
38 **order for an election to be valid, the corporation and each of its**
39 **shareholders on the day on which the election is made (hereinafter**
40 **"initial shareholders") must consent to such election and the**
41 **jurisdictional requirements of becoming a New Jersey S**
42 **corporation. The form of the election and consent to jurisdictional**
43 **requirements and the place for filing shall be as prescribed by the**
44 **Director of the Division of Taxation.]** (Deleted by amendment
45 P.L. , c.) (pending before the Legislature as this bill)

46 b. **[Each initial shareholder and the corporation]** A New Jersey
47 S Corporation and each shareholder shall consent to the following
48 jurisdictional requirements:

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

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

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

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

37 d. **【**A corporation may revoke an election pursuant to this
38 section on or before the last day of the first accounting or privilege
39 period to which the election would otherwise apply.**】** ¹**【**Deleted by
40 amendment P.L. , c.) (pending before the Legislature as this
41 bill)】 Notwithstanding any law or regulation to the contrary, any S
42 corporation may elect not to be taxed as a New Jersey S corporation.
43 This election shall have the consent of 100 percent of the shareholders
44 of the S corporation on the date on which the election is made. An
45 election to opt out under this subsection may be made for any taxable
46 year at any time during the preceding taxable year or at any time on or
47 before the due date or extended due date of the S corporation's tax
48 return. An election to opt out made pursuant to this subsection shall be

1 effective for the taxable year for which the election is made and for
2 each succeeding taxable year until revoked. An election to opt out
3 made pursuant this subsection may be revoked if shareholders holding
4 more than 50 percent of the shares of stock of the S corporation on the
5 date on which the revocation is made consent to the revocation and
6 such revocation shall be effective on the first day of the taxable year if
7 made on or before the fifteenth day of the third month thereof; if the
8 revocation is made after such date, the revocation shall be effective for
9 the following taxable year, unless the shareholders revoke the
10 revocation before December 31 of the current year. An election to opt
11 out or revocation made pursuant to this subsection shall be made in a
12 form and manner prescribed by the director. Any S corporation doing
13 business in New Jersey, or having or exercising its franchise in New
14 Jersey, or deriving receipts, engaging in contracts, or employing or
15 owning capital or property in New Jersey, or registered to do business
16 in New Jersey, that does not make this election to opt out will be taxed
17 as a New Jersey S corporation.¹

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

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

22

23 ¹**[22.] 21.**¹ Section 4 of P.L.1993, c.173 (C.54:10A-5.23) is
24 amended to read as follows:

25 4. a. **[With respect to each of its shareholders that is not an**
26 **initial shareholder,]** Each shareholder of a New Jersey S
27 corporation shall satisfy the requirements of [either] paragraph b.
28 **[or c.]** of this section.

29 b. Deliver a consent to the jurisdictional requirements as set
30 forth in **[subsection b. of]** section 3 of P.L.1993, c.173 (C.54:10A-
31 5.22) , in a form and manner determined by the director.

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

46 d. If a shareholder that is not an initial shareholder of a New
47 Jersey S corporation fails to deliver a consent to the jurisdictional
48 requirements set forth in **[subsection b. of]** section 3 of P.L.1993,

1 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to
2 withhold payments pursuant to subsection c. of this section, then
3 this State shall have the right and jurisdiction to collect a tax each
4 year directly from the corporation equal to the pro rata share of the
5 S corporation income allocated to this State, as defined pursuant to
6 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting
7 shareholder times the maximum tax bracket rate provided under
8 N.J.S.54A:2-1 for the appropriate accounting or privilege
9 period. In such case, the corporation shall have the right, but not
10 the obligation, to recover payments made by the corporation
11 pursuant to this subsection from each nonconsenting
12 shareholder. The corporation shall not be liable for the pass-
13 through business alternative income tax pursuant to P.L.2019, c.320
14 (C.54A:12-1 et al.) relative to collections made in a taxable year for
15 such nonconsenting members.
16 (cf: P.L.2019, c.320, s.7)

17

18 ¹**[23.] 22.**¹ Section 12 of P.L.1993, c.173 (C.54A:5-10) is
19 amended to read as follows:

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

22 "New Jersey S corporation" means a **[**corporation that is an S
23 corporation ; which has made a valid election pursuant to section 3
24 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
25 corporation continuously since the effective date of the valid
26 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
27 5.22)] **[taxpayer] corporation¹ that has made a valid election to be**
28 **an S corporation for federal tax purposes for the taxable year ¹, and**
29 **that has not made a valid election pursuant to subsection d. of**
30 **section 20 of P.L. , c. (C.) (pending before the Legislature**
31 **as this bill)¹.**

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

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

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

43 "S corporation" means a corporation **[**included in the definition
44 **of] that has elected to be** an "S corporation" pursuant to section
45 1361 of the federal Internal Revenue Code **[of 1986]**, 26 U.S.C.
46 s.1361, **for the taxable year.**

47 "S corporation income" means the net of an S corporation's items
48 of income, loss or deduction taken into account by the shareholder

1 in the manner provided in section 1366 of the federal Internal
2 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

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

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

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

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

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

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

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

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

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

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

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

1 ¹**[24.] 23.**¹ Section 13 of P.L.1993, c.173 (C.54A:5-11) is
2 amended to read as follows:

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

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

20 c. The initial basis of a resident shareholder in the stock and
21 indebtedness of an S corporation shall be adjusted after the date
22 specified in subsections a. or b. of this section in the manner
23 required by section 1011 of the federal Internal Revenue Code of
24 1986, 26 U.S.C. s.1011, except that such adjustments shall be
25 limited to that portion of S corporation income allocated to this
26 State and S corporation income not allocated to this State that is
27 included in the shareholder's pro rata share of S corporation income
28 and except that, with respect to any taxable period during which the
29 shareholder is a resident of this State:

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

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

40 d. A nonresident shareholder of S corporation stock shall have
41 an initial basis in the stock of the S corporation and any
42 indebtedness of the S corporation of zero as of the date that is the
43 latest to occur of: the date on which the shareholder last became a
44 nonresident of this State; the date on which the shareholder
45 acquired the stock of the corporation; or the effective date of the
46 corporation's most recent S election under the federal Internal
47 Revenue Code of 1986 **【**; or the effective date of the corporation's
48 most recent election pursuant to section 3 of P.L.1993, c.173
49 (C.54:10A-5.22)**】**.

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

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

19 g. For purposes of this section, any person acquiring stock or
20 indebtedness of an S corporation by gift shall be considered to have
21 acquired the stock or indebtedness at the time the donor acquired
22 the stock or indebtedness.
23 (cf: P.L.1993, c.173, s.13)

24

25 ¹~~25.~~ 24.¹ (New section) The Directors of the Divisions of
26 Revenue and Enterprise Services and Taxation, when determining
27 whether to grant retroactive election of S corporation status, shall
28 liberally construe regulatory requirements in favor of the
29 corporation and shall have the discretion to authorize retroactive S
30 corporation status in circumstances in which a taxpayer may not be
31 capable of meeting all regulatory requirements for such retroactive
32 election through no fault of the taxpayer.

33

34 ¹~~26.~~ 25.¹ Sections 1 through ¹~~19~~ 18 and section 25¹ of this
35 act shall take effect immediately, and sections 1 through 16 shall apply
36 to any adjustments to a taxpayer's federal taxable income on or after
37 January 1, 2020 ¹~~and sections 17 through 19 shall apply retroactively~~
38 ~~to the effective date of P.L.2020, c.19~~¹. Sections ¹~~20~~ 19¹ through
39 ¹~~25~~ 24¹ of this act shall take effect ¹~~on the 60th day~~ immediately
40 but shall apply for taxable years and privilege periods beginning¹ after
41 the date of enactment and the Directors of the Divisions of Taxation
42 and Revenue and Enterprise Services shall take such anticipatory
43 administrative action in advance as is necessary to effectuate the
44 purposes of this ¹~~bill~~ act¹.