

ASSEMBLY, No. 4495

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2018

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN
District 29 (Essex)

SYNOPSIS

Amends provisions regarding tax base and operative dates relative to CBT and combined reporting; provides CBT deduction in amount of certain foreign-related income; clarifies tax treatment of certain tax credits awarded by EDA.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the corporation business tax and the definition
2 of gross income under the gross income tax, supplementing
3 P.L.1945, c.162 and amending various parts of the statutory law.

4

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

7

8 1. (New section) For privilege periods beginning on and after
9 January 1, 2018, a taxpayer shall be allowed as a deduction for
10 computing entire net income pursuant to section 4 of P.L.1945,
11 c.162 (C.54:10A-4), in the amount of the full value of the deduction
12 that the taxpayer was allowed for federal income tax purposes and
13 for which the taxpayer had taken for federal income tax purposes
14 pursuant to section 250 of the federal Internal Revenue Code (26
15 U.S.C. s.250); provided, however, such deduction shall only be
16 allowable in computing entire net income pursuant to section 4 of
17 P.L.1945, c.162 (C.54:10A-4) to the extent the corresponding
18 amounts of income, that the deduction was attributable to and taken
19 against for federal income tax purposes, have not been excluded or
20 exempted pursuant to any provision of the Corporation Business
21 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).

22

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

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

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

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

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

39 (d) "Net worth" shall mean the aggregate of the values disclosed
40 by the books of the corporation for (1) issued and outstanding
41 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
42 undivided profits, and (4) surplus reserves which can reasonably be
43 expected to accrue to holders or owners of equitable shares, not
44 including reasonable valuation reserves, such as reserves for
45 depreciation or obsolescence or depletion. Notwithstanding 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.

1 foregoing, net worth shall not include any deduction for the amount
2 of the excess depreciation described in paragraph (2) (F) of
3 subsection (k) of this section. The foregoing aggregate of values
4 shall be reduced by ~~【100%】~~ 50% of the amount disclosed by the
5 books of the corporation for investment in the capital stock of one
6 or more subsidiaries, which investment is defined as ownership (1)
7 of at least 80% of the total combined voting power of all classes of
8 stock of the subsidiary entitled to vote and (2) of at least 80% of the
9 total number of shares of all other classes of stock except nonvoting
10 stock which is limited and preferred as to dividends. In the case of
11 investment in an entity organized under the laws of a foreign
12 country, the foregoing requisite degree of ownership shall effect a
13 like reduction of such investment from the net worth of the
14 taxpayer, if the foreign entity is considered a corporation for any
15 purpose under the United States federal income tax laws, such as
16 (but not by way of sole examples) for the purpose of supplying
17 deemed paid foreign tax credits or for the purpose of status as a
18 controlled foreign corporation. In calculating the net worth of a
19 taxpayer entitled to reduction for investment in subsidiaries, the
20 amount of liabilities of the taxpayer shall be reduced by such
21 proportion of the liabilities as corresponds to the ratio which the
22 excluded portion of the subsidiary values bears to the total assets of
23 the taxpayer.

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

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

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

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

1 securities or consisting of cash on deposit during the period covered
2 by its report; or (3) is a banking corporation, a savings institution,
3 or a financial business corporation as defined in the Corporation
4 Business Tax Act.

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

9 (h) "Taxpayer" shall mean any corporation, and any partnership
10 required, or consenting, to report or to pay taxes, interest or
11 penalties under this act. "Taxpayer" shall not include a partnership
12 that is listed on a United States national stock exchange.

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

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

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

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

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

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

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

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

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

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

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

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

30 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
31 (2) of this subsection, any amount, except with respect to qualified
32 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
33 the Internal Revenue Code as in effect immediately prior to January
34 1, 1984, which the taxpayer claimed as a deduction in computing
35 federal income tax pursuant to a qualified lease agreement under
36 paragraph (8) of that section.

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

41 (G) (i) The amount of any civil, civil administrative, or criminal
42 penalty or fine, including a penalty or fine under an administrative
43 consent order, assessed and collected for a violation of a State or
44 federal environmental law, an administrative consent order, or an
45 environmental ordinance or resolution of a local governmental
46 entity, and any interest earned on the penalty or fine, and any
47 economic benefits having accrued to the violator as a result of a
48 violation, which benefits are assessed and recovered in a civil, civil

1 administrative, or criminal action, or pursuant to an administrative
2 consent order. The provisions of this paragraph shall not apply to a
3 penalty or fine assessed or collected for a violation of a State or
4 federal environmental law, or local environmental ordinance or
5 resolution, if the penalty or fine was for a violation that resulted
6 from fire, riot, sabotage, flood, storm event, natural cause, or other
7 act of God beyond the reasonable control of the violator, or caused
8 by an act or omission of a person who was outside the reasonable
9 control of the violator.

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

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

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

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

44 A deduction shall also be permitted to the extent that the
45 taxpayer establishes by a preponderance of the evidence, as
46 determined by the director, that the interest is directly or indirectly
47 paid, accrued or incurred to (i) a related member in a foreign nation
48 which has in force a comprehensive income tax treaty with the

1 United States and the related member (aa) was subject to tax in the
2 foreign nation on a tax base that included the payment paid,
3 accrued, or incurred; and (bb) under which the related member's
4 income received from the transaction was taxed at an effective tax
5 rate equal to or greater than a rate of three percentage points less
6 than the rate of tax applied to taxable interest by the State of New
7 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
8 provided however that the taxpayer shall disclose on its return for
9 the privilege period the name of the related member, the amount of
10 the interest, the relevant foreign nation, and such other information
11 as the director may prescribe or (ii) to an independent lender and
12 the taxpayer guarantees the debt on which the interest is required.
13 Transactions between members of a combined group are
14 eliminated in the computation of the entire net income of the
15 members of the combined group; therefore, this subparagraph only
16 applies to interest paid, accrued or incurred by a taxable member of
17 a combined group to related parties that are not members of the
18 combined group.] The adjustments required by this subparagraph
19 shall not apply to transactions between related members included in
20 a combined group reported on a New Jersey combined return.

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

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

46 (K) For privilege periods beginning after December 31, 2017,
47 the interest deduction limitation in subsection (j) of section 163 of
48 the Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-

1 rata basis to interest paid to both related and unrelated parties,
2 regardless of whether the related parties are subject to the add-back
3 provision of either subparagraph (I) of paragraph (2) of this
4 subsection or in section 5 of P.L.2002, c.40 (C.54:10A-4.4).

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

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

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

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

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

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

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

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

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

40 (5) (A) (i) Entire net income shall exclude 100% of dividends
41 which were included in computing such taxable income for federal
42 income tax purposes, paid to the taxpayer by one or more
43 subsidiaries owned by the taxpayer to the extent of the 80% or more
44 ownership of investment described in subsection (d) of this section
45 for privilege periods ending beginning on or before December 31,
46 2016.

47 (ii) For the privilege period periods beginning after
48 December 31, 2016 and before January 1, 2019, entire net income

1 shall exclude 95% of dividends which were included in computing
2 such taxable income for federal income tax purposes, paid or
3 deemed paid, to the taxpayer by one or more subsidiaries owned by
4 the taxpayer to the extent of the 80% or more ownership of
5 investment described in subsection (d) of this section. For the
6 purposes of calculating the tax liability owed for the paid or deemed
7 paid dividends included in entire net income by this subsection, the
8 taxpayer shall use either their three-year average allocation factor
9 for the taxpayer's 2015 2014 through 2017 2016 tax years
10 reported on the taxpayer's tax returns or 3.5 percent, whichever is
11 lower.

12 (iii) For privilege periods beginning on and after January 1,
13 2018 2019, entire net income shall exclude 95% of dividends
14 which were included in computing such taxable income for federal
15 income tax purposes, paid or deemed paid to the taxpayer by one or
16 more subsidiaries owned by the taxpayer to the extent of the 80% or
17 more ownership of investment described in subsection (d) of this
18 section.

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

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

35 (6) (A) Net operating loss deduction. For privilege periods
36 ending before the effective date of P.L.2018, c.48 July 31, 2019,
37 there shall be allowed as a deduction for the privilege period the net
38 operating loss carryover to that period.

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

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

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

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

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

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

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

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

28 (A) Depreciation for property placed in service prior to January
29 1, 1998 shall be adjusted as follows:

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

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

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

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

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

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

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

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

46 (12) (A) Notwithstanding the provisions of subsection (k) of
47 section 168 of the federal Internal Revenue Code of 1986, 26
48 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal

1 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
2 law, for property acquired after September 10, 2001, the
3 depreciation deduction otherwise allowed pursuant to section 167 of
4 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
5 be determined pursuant to the provisions of the federal Internal
6 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
7 December 31, 2001.

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

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

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

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

37 (15) Entire net income shall exclude the gain or income derived
38 from the sale or assignment of a tax credit transfer certificate
39 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
40 10 of P.L.2014, c.63 (C.34:1B-251).

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

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

1 combined group, as computed in accordance with generally
2 accepted accounting principles.

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

8 (D) If the provisions of sections 18 through ~~22~~ 23 of P.L.2018,
9 c.48 (C.54:10A-4.6 to ~~C.54:10A-4.10~~ C.54:10A-4.11) result in an
10 aggregate increase to the members' net deferred tax liability or an
11 aggregate decrease to the members' net deferred tax asset, or an
12 aggregate change from a net deferred tax asset to a net deferred tax
13 liability, the combined group shall be entitled to a deduction, as
14 determined in this paragraph.

15 (E) For 10 years beginning with the combined group's first
16 privilege period beginning on or after January 1 of the fifth year
17 after the effective date of P.L.2018, c.48 (C.54:10A-54.1 et al.)
18 ~~[becomes effective]~~, a combined group shall be entitled to a
19 deduction from combined group entire net income equal to one-
20 tenth of the amount necessary to offset the increase in the net
21 deferred tax liability or decrease in the net deferred tax asset, or
22 aggregate change from a net deferred tax asset to a net deferred tax
23 liability. Such increase in the net deferred tax liability or decrease
24 in the net deferred tax asset or the aggregate change from a net
25 deferred tax asset to a net deferred tax liability shall be computed
26 based on the change that would result from the imposition of the
27 unitary reporting requirements under sections 1 ~~through 17-21~~
28 and 18 through 23 of P.L.2018, c.48 (C.54:10A-54.1 et al.) but for
29 the deduction provided under this paragraph as of the effective date
30 of this paragraph.

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

34 (i) the deferred tax impact determined in subparagraph (E) of this
35 paragraph shall be divided by the rate determined under section 5 of
36 P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018, c.48
37 (C.54:10A-54.1 et al.);

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

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

46 (G) The deduction calculated under this paragraph shall not be
47 adjusted as a result of any events happening subsequent to such
48 calculation, including, but not limited to, any disposition or

1 abandonment of assets. Such deduction shall be calculated without
2 regard to the federal tax effect and shall not alter the tax basis of
3 any asset. If the deduction under this section is greater than
4 combined group entire net income, any excess deduction shall be
5 carried forward and applied as a deduction to combined group entire
6 net income in future privilege periods until fully utilized.

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

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

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

1 State, security brokers or dealers or investment companies or
2 bankers not employing moneyed capital coming into competition
3 with the business of national banks, real estate investment trusts, or
4 any of the following entities organized under the laws of this State:
5 credit unions, savings banks, savings and loan and building and
6 loan associations, pawnbrokers, and State banks and trust
7 companies.

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

27 (o) "S corporation" means a corporation included in the
28 definition of an "S corporation" pursuant to section 1361 of the
29 federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

30 (p) "New Jersey S corporation" means a corporation that is an S
31 corporation; which has made a valid election pursuant to section 3
32 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
33 corporation continuously since the effective date of the valid
34 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
35 5.22).

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

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

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

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

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

8 (u) "Prior net operating loss conversion carryover" means a net
9 operating loss incurred in a privilege period ending prior to 【the
10 effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.)】 July 31,

11 2019 and converted from a pre-allocation net operating loss to a
12 post-allocation net operating loss as follows:

13 (1) As used in this subsection:

14 "Base year" means the last privilege period ending prior to 【the
15 effective date of P.L.2018, c.48 (C.54:10A-54.1 et al.)】 July 31,

16 2019.

17 "Base year BAF" means the taxpayer's business allocation factor
18 as provided in sections 6 through 【8】 10 of P.L.1945, c.162
19 (C.54:10A-6 through 【54:10A-8】 C.54:10A-10) for purposes of
20 calculating entire net income for the base year, as such section was
21 in effect for the last privilege period ending prior to 【the effective
22 date of P.L.2018, c.48 (C.54:10A-54.1 et al.)】 July 31, 2019.

23 "UNOL" means the unabsorbed portion of net operating loss as
24 calculated under paragraph (6) of subsection (k) of this section as
25 such paragraph was in effect for the last privilege period ending
26 prior to 【the effective date of P.L.2018, c.48 (C.54:10A-54.1 et
27 al.)】 July 31, 2019, that was not deductible in previous privilege
28 periods and was eligible for carryover on the last day of the base
29 year subject to the limitations for deduction under such subsection,
30 including any net operating loss sustained by the taxpayer during
31 the base year.

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

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

41 (B) The taxpayer shall continue to carry over its prior net
42 operating loss conversion carryover to offset its allocated entire net
43 income as provided in sections 6 through 【8】 10 of P.L.1945, c.162
44 (C.54:10A-6 through 【54:10A-8】 C.54:10A-10) for privilege
45 periods 【beginning】 ending on and after 【the effective date of
46 P.L.2018, c.48 (C.54:10A-54.1 et al.)】 July 31, 2019. Such
47 carryover periods shall not exceed the twenty privilege periods

1 following the privilege period of the initial loss. The entire amount
2 of the prior net operating loss conversion carryover for any
3 privilege period shall be carried to the earliest of the privilege
4 periods to which the loss may be carried. The portion of the prior
5 net operating loss conversion carryover which shall be carried to
6 each of the other privilege periods shall be the excess, if any, of the
7 amount of the prior net operating loss conversion carryover over the
8 sum of the entire net income, computed without the exclusion
9 exclusions permitted in paragraph (4) and (5) of
10 subsection (k) of this section allocated to this State.

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

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

18 (1) Net operating loss carryover. A net operating loss for any
19 privilege period beginning ending on or after the effective date
20 of this act July 31, 2019, shall be a net operating loss carryover to
21 each of the twenty privilege periods following the period of the
22 loss. The entire amount of the net operating loss for any privilege
23 period shall be carried to the earliest of the privilege periods to
24 which the loss may be carried. The portion of the loss which shall
25 be carried to each of the other privilege periods shall be the excess,
26 if any, of the amount of the loss over the sum of the entire net
27 income, computed without the exclusion exclusions permitted in
28 paragraph (4) and (5) of subsection (k) of this section
29 allocated to this State.

30 (2) Net operating loss. For purposes of this paragraph the term
31 "net operating loss" means the excess of the deductions over the
32 gross income used in computing entire net income, without regard
33 to any net operating loss carryover, and computed without the
34 exclusion exclusions in paragraph (4) and (5) of
35 subsection (k) of this section, allocated to this State pursuant to
36 sections 6 through 8 10 of P.L.1945, c.162 (C.54:10A-6 through
37 54:10A-8 C.54:10A-10).

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

46 (4) A net operating loss carryover shall not include any net
47 operating loss incurred during any privilege period beginning

1 ending prior to 【the effective date of P.L.2018, c.48 (C.54:10A-54.1

2 et al.)】 July 31, 2019.

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

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

20 (x) "Affiliated group" means an affiliated group as defined in
21 section 1504 of the federal Internal Revenue Code, 26 U.S.C.
22 s.1504, except such affiliated group shall include all domestic
23 corporations that are commonly owned, directly or indirectly, by
24 any member of such affiliated group, without regard to whether the
25 affiliated group includes (1) corporations included in more than one
26 federal consolidated return, (2) corporations engaged in one or more
27 unitary businesses, or (3) corporations that are not engaged in a
28 unitary business with any other member of the affiliated group.

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

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

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

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

41 (4) 50% or less of whose gross receipts for the privilege period
42 consist of premiums from arrangements that constitute insurance for
43 federal income tax purposes.

44 A combinable captive insurance company shall not be exempt
45 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
46 insurance company that does not meet the definition of combinable
47 captive insurance company shall be excluded as provided in

1 subsection k. of section 18 of P.L. 2018, c.48 (C.54:10A-4.6) and
2 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

3 For purposes of this definition:

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

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

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

23 (z) "Combined group" means the group of all companies that
24 have common ownership and are engaged in a unitary business,
25 where at least one company is subject to tax under this chapter, and
26 shall include all business entities, except as provided in subsection
27 k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6)】 for under any
28 section of the Corporation Business Tax Act (1945), P.L.1945, c.
29 162 (C:54:10A-1 et seq.).

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

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

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

1 managerial member, the director shall designate a taxable member
2 of the combined group as managerial member.

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

5 (ee) "Nontaxable member" means a member that is: (i) not
6 subject to tax pursuant to the Corporation Business Tax Act (1945),
7 P.L.1945, c.162 (C.54:10A-1 et seq.) and is not a corporation
8 exempted from the tax pursuant to section 3 of P.L.1945, c.162
9 (C.54:10A-3) except for a combinable captive insurance company;
10 or (ii) a New Jersey S Corporation which does not elect to be
11 included in the ~~combine~~ combined group.

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

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

37 (cf: P.L.2018, c.48, s.3)

38

39 3. Section 5 of P.L.2002, c.40 (C.54:10A-4.4) is amended to
40 read as follows:

41 5. a. For the purposes of this section:

42 "Intangible expenses and costs" includes (1) expenses, losses and
43 costs for, related to, or in connection directly or indirectly with the
44 direct or indirect acquisition, use, maintenance or management,
45 ownership, sale, exchange, or any other disposition of intangible
46 property to the extent such amounts are allowed as deductions or
47 costs in determining taxable income before operating loss deduction
48 and special deductions for the taxable year under the federal

1 Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses
2 related to, or incurred in connection directly or indirectly with,
3 factoring transactions or discounting transactions; (3) royalty,
4 patent, technical and copyright fees; (4) licensing fees; and (5) other
5 similar expenses and costs.

6 "Intangible property" means patents, patent applications, trade
7 names, trademarks, service marks, copyrights, mask works, trade
8 secrets and similar types of intangible assets.

9 "Interest expenses and costs" means amounts directly or
10 indirectly allowed as deductions under section 163 of the federal
11 Internal Revenue Code of 1986, 26 U.S.C. s.163, for purposes of
12 determining taxable income under the code to the extent such
13 expenses and costs are directly or indirectly for, related to, or in
14 connection with the direct or indirect acquisition, maintenance,
15 management, ownership, sale, exchange or disposition of intangible
16 property.

17 "Related member" means a person that, with respect to the
18 taxpayer during all or any portion of the privilege period, is: (1) a
19 related entity, (2) a component member as defined in subsection (b)
20 of section 1563 of the federal Internal Revenue Code of 1986, 26
21 U.S.C. s.1563, (3) is a person to or from whom there is attribution
22 of stock ownership in accordance with subsection (e) of section
23 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
24 s.1563, or (4) is a person that, notwithstanding its form of
25 organization, bears the same relationship to the taxpayer as a person
26 described in (1) through (3) of this definition.

27 "Related entity" means (1) a stockholder who is an individual, or
28 a member of the stockholder's family enumerated in section 318 of
29 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
30 stockholder and the members of the stockholder's family own,
31 directly, indirectly, beneficially or constructively, in the aggregate,
32 50% or more of the value of the taxpayer's outstanding stock; (2) a
33 stockholder, or a stockholder's partnership, limited liability
34 company, estate, trust or corporation, if the stockholder and the
35 stockholder's partnerships, limited liability companies, estates,
36 trusts and corporations own directly, indirectly, beneficially or
37 constructively, in the aggregate, 50% or more per cent of the value
38 of the taxpayer's outstanding stock; or (3) a corporation, or a party
39 related to the corporation in a manner that would require an
40 attribution of stock from the corporation to the party or from the
41 party to the corporation under the attribution rules of the federal
42 Internal Revenue Code of 1986, 26 U.S.C. s.318, if the taxpayer
43 owns, directly, indirectly, beneficially or constructively, 50% or
44 more percent of the value of the corporation's outstanding stock.
45 The attribution rules of the federal Internal Revenue Code of 1986,
46 26 U.S.C. s.318, shall apply for purposes of determining whether
47 the ownership requirements of this definition have been met.

1 b. For purposes of computing its entire net income under
2 section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add
3 back otherwise deductible interest expenses and costs and
4 intangible expenses and costs directly or indirectly paid, accrued or
5 incurred to, or in connection directly or indirectly with one or more
6 direct or indirect transactions with, one or more related members.

7 c. (1) The adjustments required in subsection b. of this section
8 shall not apply if: (a) the interest expenses and costs and intangible
9 expenses and costs are directly or indirectly paid, accrued or
10 incurred to a related member in a foreign nation which has in force
11 a comprehensive income tax treaty with the United States and the
12 (i) related member was subject to tax in the foreign nation on a tax
13 base that included the 【payment】 amount paid, accrued, or incurred
14 and (ii) the related member's income received from the transaction
15 was taxed at an effective tax rate equal to or greater than a rate of
16 three percentage points less than the rate of tax applied to taxable
17 interest by the State of New Jersey pursuant to section 5 of
18 P.L.1945, c.162 (C.54:10A-5); or (b) the taxpayer establishes by
19 clear and convincing evidence, as determined by the director, that
20 the adjustments are unreasonable; or (c) the taxpayer and the
21 director agree in writing to the application or use of an alternative
22 method of apportionment under section 8 of P.L.1945, c.162
23 (C.54:10A-8). Nothing in this subsection shall be construed to limit
24 or negate the director's authority to otherwise enter into agreements
25 and compromises otherwise allowed by law.

26 (2) For the purposes of qualifying for the exception provided by
27 subparagraph (a) of paragraph (1) of this subsection, the taxpayer
28 shall disclose on its return for the privilege period the name of the
29 related member, the amount of the interest expenses and costs and
30 intangible expenses and costs deducted, the relevant foreign nation,
31 and such other information as the director may prescribe.

32 (3) The adjustments required in subsection b. of this section
33 shall not apply to the portion of interest expenses and costs and
34 intangible expenses and costs that the taxpayer establishes by a
35 preponderance of the evidence meets both of the following: (a) the
36 related member during the same income year directly or indirectly
37 paid, received, accrued or incurred the portion to or from a person
38 that is not a related member, and (b) the transaction giving rise to
39 the interest expenses and costs or the intangible expenses and costs
40 between the taxpayer and the related member did not have as a
41 principal purpose the avoidance of any portion of the tax due under
42 Title 54 of the Revised Statutes or Title 54A of the New Jersey
43 Statutes.

44 d. Nothing in this section shall require a taxpayer to add to its
45 net income more than once any amount of interest expenses and
46 costs and intangible expenses and costs that the taxpayer pays,
47 accrues or incurs to a related member described in subsection b. of
48 this section.

1 e. The adjustments required by this section shall not apply to
2 transactions between related members included in a combined
3 group reported on a New Jersey combined return.

4 f. Nothing in this section shall be construed to limit or negate
5 the director's authority to make adjustments under paragraph (3) of
6 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section
7 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
8 (C.54:10A-10).

9 (cf: P.L.2018, c.48, s.4)

10

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

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

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

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

1 c. (1) If a member of a combined group receives income from
2 the unitary business from a partnership, the combined group's entire
3 net income shall include the member's direct and indirect
4 distributive share of the partnership's unitary business income.

5 (2) The distributive share of income received by a limited
6 partner from a qualified investment partnership shall not be
7 considered to be derived from a unitary business unless the general
8 partner of such investment partnership and such limited partner
9 have common ownership. To the extent that the limited partner is
10 otherwise carrying on or doing business in New Jersey, it shall
11 allocate its distributive share of income from a qualified investment
12 partnership in accordance with subsection a. of section 3 of
13 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
14 P.L.2001, c.136 (C.54:10A-15.7) as applicable. If the limited
15 partner is not otherwise carrying on or doing business in New
16 Jersey, its distributive share of income from an investment
17 partnership is not subject to tax under this chapter.

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

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

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

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

43 f. A charitable expense incurred by a member of a combined
44 group shall, to the extent allowable as a deduction pursuant to
45 section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170,
46 be subtracted first from the combined group's entire net income,
47 subject to the income limitations of that section applied to the entire
48 business income of the group. A charitable deduction disallowed

1 under section 170 of the federal Internal Revenue Code, 26 U.S.C.
2 s.170, but allowed as a carryover deduction in a subsequent
3 privilege period, shall be treated as originally incurred in the
4 subsequent year by the same member and the provisions of this
5 section shall apply in the subsequent privilege period in
6 determining the allowable deduction for that privilege period.

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

11 (1) Such prior net operating loss conversion carryover deduction
12 shall be allowed to offset only the entire net income allocated to
13 this state of the corporation that created the prior net operating loss;
14 the prior net operating loss conversion carryover cannot be shared
15 with other members of the combined group.

16 (2) The prior net operating loss conversion carryover deduction
17 computed under subsection (u) of section 4 of P.L.1945, c.162
18 (C.54:10A-4) shall be applied against the entire net income
19 allocated to this state of the corporation that created the prior net
20 operating loss before the net operating loss carryover computed
21 under subsection h. of this section.

22 The director shall provide regulations establishing rules on how
23 each such corporation shall apply its prior net operating loss
24 conversion carryover against its share of entire net income allocated
25 as if filing on a separate entity basis.

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

30 (1) For privilege periods beginning on or after the first day of
31 the initial privilege period for which a combined unitary tax return
32 is required under this section and sections 19, 20, and 23 of
33 P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11),
34 if the computation of a combined group's entire net income
35 allocated to this state results in a net operating loss, a taxable
36 member of such group may carry over the net operating loss
37 allocated to this state, as calculated under this section and sections
38 19 and 23 of P.L.2018, c.48 (C.54:18A-4.7 and C.54:18A-4.11),
39 and shall be deductible from entire net income derived from the
40 unitary business in a future privilege period to the extent that the
41 carryover and deduction is otherwise consistent with subsection (v)
42 of section 4 of P.L.1945, c.162 (C.54:10A-4).

43 (2) Where a taxable member of a combined group has a net
44 operating loss carryover derived from a loss incurred by a combined
45 group in a privilege period beginning on or after the first day of the
46 initial privilege period for which a combined unitary tax return is
47 required under this section and sections 19, 20, and 23 of P.L.2018,
48 c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11), then the

1 taxable member may share the net operating loss carryover with
2 other taxable members of the combined group if such other taxable
3 members were members of the combined group in the privilege
4 period that the loss was incurred. Any amount of net operating loss
5 carryover that is deducted by another taxable member of the
6 combined group shall reduce the amount of net operating loss
7 carryover that may be carried over by the taxable member that
8 originally incurred the loss.

9 (3) Where a taxable member of a combined group has a net
10 operating loss carryover derived from a loss incurred in a privilege
11 period during which the taxable member was not a member of such
12 combined group, the carryover shall remain available to be
13 deducted by that taxable member or other group members that, in
14 the year the loss was incurred, were part of the same combined
15 group as such taxable member. Such carryover shall not be
16 deductible by any other members of the combined group.

17 (4) A net operating loss carryover shall not include any net
18 operating loss incurred during any privilege period beginning prior
19 to the first day of the initial privilege period for which a combined
20 unitary tax return is required under this section and sections 19 and
21 23 of P.L.2018, c.48 (C.54:18A-4.7 and C.54:18A-4.11).

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

24 (1) If a taxable member of a combined group earns a tax credit
25 in a privilege period beginning on or after the first day of the initial
26 privilege period for which a combined unitary tax return is required
27 under this section and sections 19, 20, and 23 of P.L.2018, c.48
28 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11), then the taxable
29 member may share the credit with other taxable members of the
30 combined group. Any amount of credit that is utilized by another
31 taxable member of the combined group shall reduce the amount of
32 credit carryover that may be carried over by the taxable member
33 that originally earned the credit. If a taxable member of a combined
34 group has a tax credit carryover derived from a privilege period
35 beginning on or after the first day of the initial privilege period for
36 which a combined unitary tax return is required under this section
37 and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:18A-4.7,
38 C.54:18A-4.8, and C.54:18A-4.11), then the taxable member may
39 share the carryover credit with other taxable members of the
40 combined group.

41 (2) If a taxable member of a combined group has a tax credit
42 carryover derived from a privilege period beginning prior to the
43 first day of the initial privilege period for which a combined unitary
44 tax return is required under this section and sections 19, 20, and 23
45 of P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
46 4.11), then the taxable member may share the carryover credit with
47 other taxable members of the combined group.

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

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

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

18 k. Nothing in this section shall apply to:

19 (1) A corporation or combined group which is licensed, in
20 whole or in part, as an insurance company under the laws of this
21 State or of another state, including corporations which are surplus
22 lines insurers declared eligible by the Commissioner of Banking
23 and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-
24 6.45) to insure risks within this State that is not a combinable
25 captive insurance company. Notwithstanding a provision, if any, to
26 the contrary in this section, the income of an insurance company
27 that is not a combinable captive insurance company, the allocation
28 or apportionment of income related thereto and the apportionment
29 factors of an insurance company that is not a combinable captive
30 insurance company shall not be included in a combined unitary tax
31 return filed under this section and sections 19, 20, and 23 of
32 P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11).
33 In addition, the dividend exclusion provisions of paragraph (5) of
34 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating
35 to dividends paid by insurance companies to non-insurance
36 companies included in the unitary group shall not be affected by
37 P.L.2018, c.48 (C.54:10A-5.41 et al.).

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

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

45 (cf: P.L.2018, c.48, s.18)

46

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

1 22. a. Determination of Managerial Member. If the combined
2 group has a common parent corporation within the meaning of the
3 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
4 et seq.), and that common parent corporation is a taxable member of
5 the corporate group, the managerial member shall be the common
6 parent corporation. In other cases, the combined group shall select
7 a taxable member as its managerial member or, in the discretion of
8 the director or upon failure of the combined group to select its
9 managerial member, the director shall designate a taxable member
10 of the combined group as managerial member. Once the election of
11 the managerial member is made, the election shall be binding for 10
12 successive privilege periods, except as otherwise provided for by
13 the director.

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

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

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

37 e. If a combined group is eligible to elect the managerial
38 member of the combined group, notice of the election shall be
39 submitted in writing to the director not later than the due date or, if
40 an extension of time to file has been requested and granted, not later
41 than the extended due date of the mandatory combined return for
42 the initial privilege period for which a return is required. The
43 managerial member shall be the designated agent and the
44 responsible person for filing the combined return and paying the tax
45 for the combined group. If another taxable member is subsequently
46 designated as the managerial member, the subsequent designation
47 shall be subject to the approval of the director.

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

5 g. For privilege periods ~~beginning~~ ending on and after
6 ~~January 1, 2019~~ July 31, 2019, a combined group must file a
7 mandatory combined return. However, if privilege periods of the
8 members of the combined group differ, the first mandatory
9 combined return for the combined group shall be required for the
10 privilege period of the managerial member.

11 h. The members of a combined group shall notify the director
12 within 90 days of a change in the combined group where a member
13 dissolves, a merger of any kind occurs, a member withdraws from
14 the group, a member ceases doing business, a member of the group
15 is acquired by a third party not in the group, or additional members
16 enter the group which are required to be included.

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

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

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

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

27 (3) require any payment to be made by electronic funds transfer;
28 and

29 (4) require the mandatory combined return to be filed
30 electronically.

31 (cf: P.L.2018, c.48, s.22)

32

33 6. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to
34 read as follows:

35 5. The franchise tax to be annually assessed to and paid by
36 each taxpayer shall be the greater of the amount computed pursuant
37 to this section or the alternative minimum assessment computed
38 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
39 however, that in the case of a taxpayer that is a New Jersey S
40 corporation, an investment company, a professional corporation
41 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a
42 similar corporation for profit organized for the purpose of rendering
43 professional services under the laws of another state, or a person
44 operating on a cooperative basis under Part I of Subchapter T of the
45 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
46 there shall be no alternative minimum assessment computed
47 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

1 The amount computed pursuant to this section shall be the sum
2 of the amount computed under subsection (a) hereof, or in the
3 alternative to the amount computed under subsection (a) hereof, the
4 amount computed under subsection (f) hereof, and the amount
5 computed under subsection (c) hereof:

6 (a) That portion of its entire net worth as may be allocable to
7 this State as provided in section 6, multiplied by the following
8 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
9 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
10 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
11 mill per dollar on all amounts of allocated net worth in excess of
12 \$300,000,000.00; provided, however, that with respect to reports
13 covering accounting or privilege periods set forth below, the rate
14 shall be that percentage of the rate set forth in this subsection for
15 the appropriate year:

16	Accounting or Privilege	17	Periods Beginning on or	18	The Percentage of the Rate
			after:		to be Imposed Shall be:
19		April 1, 1983			75%
20		July 1, 1984			50%
21		July 1, 1985			25%
22		July 1, 1986			0

23 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

24 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
25 1/4% of its entire net income or such portion thereof as may be
26 allocable to this State as provided in sections 6 through 【8】 10 of
27 P.L.1945, c.162 (C.54:10A-6 through 【C.54:10A-8】 C.54:10A-10),
28 plus such portion thereof as is specifically assigned to this State as
29 provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided,
30 however, that with respect to reports covering accounting or
31 privilege periods or parts thereof ending after December 31, 1967,
32 the rate shall be 4 1/4%; and that with respect to reports covering
33 accounting or privilege periods or parts thereof ending after
34 December 31, 1971, the rate shall be 5 1/2%; and that with respect
35 to reports covering accounting or privilege periods or parts thereof
36 ending after December 31, 1974, the rate shall be 7 1/2%; and that
37 with respect to reports covering privilege periods or parts thereof
38 ending after December 31, 1979, the rate shall be 9%; provided
39 however, that for a taxpayer that has entire net income of \$100,000
40 or less for a privilege period and is not a partnership the rate for that
41 privilege period shall be 7 1/2% and provided further that for a
42 taxpayer that has entire net income of \$50,000 or less for a privilege
43 period and is not a partnership the rate for that privilege period shall
44 be 6 1/2%.

45 For privilege periods 【beginning】 ending on or after 【the
46 effective date of P.L.2018, c.48】 July 31, 2019, the tax rate shall be
47 applied against 【the】 taxable net income.

1 (2) For a taxpayer that is a New Jersey S corporation:

2 (i) for privilege periods ending on or before June 30, 1998 the
3 rate determined by subtracting the maximum tax bracket rate
4 provided under N.J.S.54A:2-1 for the privilege period from the tax
5 rate that would otherwise be applicable to the taxpayer's entire net
6 income for the privilege period if the taxpayer were not an S
7 corporation provided under paragraph (1) of this subsection for the
8 privilege period; and

9 (ii) For a taxpayer that has entire net income in excess of
10 \$100,000 for the privilege period,

11 for privilege periods ending on or after July 1, 1998, but on or
12 before June 30, 2001, the rate shall be 2%,

13 for privilege periods ending on or after July 1, 2001, but on or
14 before June 30, 2006, the rate shall be 1.33%,

15 for privilege periods ending on or after July 1, 2006, but on or
16 before June 30, 2007, the rate shall be 0.67%, and

17 for privilege periods ending on or after July 1, 2007 there shall
18 be no rate of tax imposed under this paragraph; and

19 (iii) For a taxpayer that has entire net income of \$100,000 or less
20 for privilege periods ending on or after July 1, 1998, but on or
21 before June 30, 2001, the rate for that privilege period shall be
22 0.5%, and for privilege periods ending on or after July 1, 2001,
23 there shall be no rate of tax imposed under this paragraph.

24 (iv) The taxpayer's rate determined under subparagraph (i), (ii)
25 or (iii) of this paragraph shall be multiplied by its entire net income
26 that is not subject to federal income taxation or such portion thereof
27 as may be allocable to this State pursuant to sections 6 through **【8】**
28 **10** of P.L.1945, c.162 (C.54:10A-6 through **【C.54:10A-8】**
29 **C.54:10A-10**) plus such portion thereof as is specifically assigned
30 to this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-
31 6.1). For privilege periods ending on or after July 31, 2019, the tax
32 rate shall be applied against taxable net income.

33 (3) For a taxpayer that is a New Jersey S corporation, in
34 addition to the amount, if any, determined under paragraph (2) of
35 this subsection, the tax rate that would otherwise be applicable to
36 the taxpayer's entire net income for the privilege period if the
37 taxpayer were not an S corporation provided under paragraph (1) of
38 this subsection for the privilege period multiplied by its entire net
39 income that is subject to federal income taxation or such portion
40 thereof as may be allocable to this State pursuant to sections 6
41 through **【8】** **10** of P.L.1945, c.162 (C.54:10A-6 through **【54:10A-8】**
42 **C.54:10A-10**). For privilege periods **【beginning】** **ending** on or
43 after **【the effective date of P.L.2018, c.48 (C.54:10A-54.1 et al.)】**
44 July 31, 2019, the tax rate shall be applied against taxable net
45 income.

46 (d) Provided, however, that the franchise tax to be annually
47 assessed to and paid by any investment company or real estate

1 investment trust, which has elected to report as such and has filed
 2 its return in the form and within the time provided in this act and
 3 the rules and regulations promulgated in connection therewith,
 4 shall, in the case of an investment company, be measured by 40% of
 5 its entire net income and 40% of its entire net worth, and in the case
 6 of a real estate investment trust, by 4% of its entire net income and
 7 15% of its entire net worth, at the rates hereinbefore set forth for the
 8 computation of tax on net income and net worth, respectively, but in
 9 no case less than \$250, and further provided, however, that the
 10 franchise tax to be annually assessed to and paid by a regulated
 11 investment company which for a period covered by its report
 12 satisfies the requirements of Chapter 1, Subchapter M, Part I,
 13 Section 852(a) of the federal Internal Revenue Code shall be \$250.
 14 For privilege periods beginning ending on or after the effective
 15 date of P.L.2018, c.48 (C.54:10A-54.1 et al.) July 31, 2019, the tax
 16 rate shall be applied against taxable net income.

17 (e) The tax assessed to any taxpayer pursuant to this section
 18 shall not be less than \$25 in the case of a domestic corporation, \$50
 19 in the case of a foreign corporation, or \$250 in the case of an
 20 investment company or regulated investment company. Provided
 21 however, that for privilege periods beginning in calendar year 1994
 22 and thereafter the minimum taxes for taxpayers other than an
 23 investment company or a regulated investment company shall be as
 24 provided in the following schedule:

25	Period Beginning	Domestic	Foreign
26	In Calendar Year	Corporation	Corporation
27		Minimum Tax	Minimum Tax
28	1994	\$ 50	\$100
29	1995	\$100	\$200
30	1996	\$150	\$200
31	1997	\$200	\$200
32	1998	\$200	\$200
33	1999	\$200	\$200
34	2000	\$200	\$200
35	2001	\$210	\$210

36 and for calendar years 2002 through 2005 the minimum tax for all
 37 taxpayers shall be \$500, and for calendar year 2006 through
 38 calendar year 2011 the minimum tax for all corporations, and for
 39 privilege periods beginning in calendar year 2012 and thereafter the
 40 minimum tax for corporations that are not New Jersey S
 41 corporations shall be based on the New Jersey gross receipts of the
 42 taxpayer pursuant to the following schedule:

43	New Jersey Gross Receipts:	Minimum Tax:
44	Less than \$100,000\$500
45	\$100,000 or more but	
46	less than \$250,000 \$750
47	\$250,000 or more but	
48	less than \$500,000 \$1,000

8	New Jersey Gross Receipts:	Minimum Tax:
9	Less than \$100,000\$375
10	\$100,000 or more but	
11	less than \$250,000 \$562.50
12	\$250,000 or more but	
13	less than \$500,000 \$750
14	\$500,000 or more but	
15	less than \$1,000,000 \$1,125
16	\$1,000,000 or more \$1,500

17 provided however, that for a taxpayer that is a member of an
18 affiliated group or a controlled group pursuant to section 1504 or
19 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
20 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
21 more for the privilege period, the minimum tax shall be \$2,000 for
22 the privilege period. For privilege periods ending on and after July
23 31, 2019, the minimum tax of each member of a combined group
24 filings a mandatory or elective New Jersey combined return shall be
25 \$2,000 for the group privilege period.

26 (f) In lieu of the portion of the tax based on net worth and to be
27 computed under subsection (a) of this section, any taxpayer, the
28 value of whose total assets everywhere, less reasonable reserves for
29 depreciation, as of the close of the period covered by its report,
30 amounts to less than \$150,000, may elect to pay the tax shown in a
31 table which shall be promulgated by the director.

32 (g) Provided however, that for privilege periods beginning on or
33 after January 1, 2001 but before January 1, 2002 the franchise tax
34 annually assessed to and paid by a taxpayer:

35 (1) that is a limited liability company or foreign limited liability
36 company classified as a partnership for federal income tax purposes
37 shall be the amount determined pursuant to the provisions of section
38 3 of P.L.2001, c.136 (C.54:10A-15.6); or

39 (2) that is a limited partnership or foreign limited partnership
40 classified as a partnership for federal income tax purposes shall be
41 the amount determined pursuant to the provisions of section 4 of
42 P.L.2001, c.136 (C.54:10A-15.7).

43 (h) Provided however, that for privilege periods beginning on or
44 after January 1, 2002 the franchise tax annually assessed to and paid
45 by a taxpayer that is a partnership shall be the amount determined
46 pursuant to the provisions of section 12 of P.L.2002, c.40
47 (C.54:10A-15.11).

1 (i) (Deleted by amendment, P.L.2008, c.120)
2 (cf: P.L.2018, c.48, s.5)

3
4 7. Section 1 of P.L.2018, c.48 (C.54:10A-5.41) is amended to
5 read as follows:

6 1. a. In addition to the tax paid by each taxpayer determined
7 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), each
8 taxpayer, except for a public utility, shall be assessed and shall pay
9 a surtax as follows:

10 (1) For a taxpayer, except a public utility, that has allocated
11 taxable net income in excess of \$1 million for the privilege periods,
12 beginning on or after January 1, 2018 through December 31, 2019,
13 the surtax imposed shall be 2.5%;

14 (2) For a taxpayer, except a public utility, that has allocated
15 taxable net income in excess of \$1 million for the privilege periods,
16 beginning on or after January 1, 2020 through December 31, 2021,
17 the surtax imposed shall be 1.5%.

18 b. For purposes of this section,

19 (1) "taxpayer" shall mean any business entity required to report
20 and pay tax for federal income tax purposes, and shall include any
21 business entity that is subject to tax as provided in the Corporation
22 Business Tax (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).

23 (2) "allocated taxable net income" shall mean allocated entire net
24 income for privilege periods ending before July 31, 2019, or taxable
25 net income as defined in subsection (w) of section 4 of P.L.1945,
26 c.162 (C.54:10A-4) for privilege periods ending on and after July
27 31, 2019.

28 The surtax imposed under this section shall be imposed on
29 allocated taxable net income, and shall be due and payable in
30 accordance with section 15 of P.L.1945, c.162 (C.54:10A-15), and
31 the surtax shall be administered pursuant to the provisions of
32 P.L.1945, c.162 (C.54:10A-1 et seq.). Notwithstanding the
33 provisions of any other law to the contrary, no credits shall be
34 allowed against the surtax liability computed under this section
35 except for credits for installment payments, estimated payments
36 made with a request for an extension of time for filing a return, or
37 overpayments from prior privilege periods.

38 (cf: P.L.2018, c.48, s.1)

39

40 8. N.J.S.54A:5-1 is amended to read as follows:

41 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
42 income shall consist of the following categories of income:

43 a. Salaries, wages, tips, fees, commissions, bonuses, and other
44 remuneration received for services rendered whether in cash or in
45 property, and amounts paid or distributed, or deemed paid or
46 distributed, out of a medical savings account that are not excluded
47 from gross income pursuant to section 5 of P.L.1997, c.414
48 (C.54A:6-27).

1 b. Net profits from business. The net income from the
2 operation of a business, profession or other activity after provision
3 for all costs and expenses incurred in the conduct thereof,
4 determined either on a cash or accrual basis in accordance with the
5 method of accounting allowed for federal income tax purposes but
6 without deduction of the amount of:

7 (1) taxes based on income;

8 (2) a civil, civil administrative, or criminal penalty or fine,
9 including a penalty or fine under an administrative consent order,
10 assessed and collected for a violation of a State or federal
11 environmental law, an administrative consent order, or an
12 environmental ordinance or resolution of a local governmental
13 entity, and any interest earned on the penalty or fine, and any
14 economic benefits having accrued to the violator as a result of a
15 violation, which benefits are assessed and recovered in a civil, civil
16 administrative, or criminal action, or pursuant to an administrative
17 consent order. The provisions of this paragraph shall not apply to a
18 penalty or fine assessed or collected for a violation of a State or
19 federal environmental law, or local environmental ordinance or
20 resolution, if the penalty or fine was for a violation that resulted
21 from fire, riot, sabotage, flood, storm event, natural cause, or other
22 act of God beyond the reasonable control of the violator, or caused
23 by an act or omission of a person who was outside the reasonable
24 control of the violator; and

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

31 c. Net gains or income from disposition of property. Net gains
32 or net income, less net losses, derived from the sale, exchange or
33 other disposition of property, including real or personal, whether
34 tangible or intangible as determined in accordance with the method
35 of accounting allowed for federal income tax purposes. For the
36 purpose of determining gain or loss, the basis of property shall be
37 the adjusted basis used for federal income tax purposes, except as
38 expressly provided for under this act, but without a deduction for
39 penalties, fines, or economic benefits excepted pursuant to
40 paragraph (2), or for treble damages excepted pursuant to paragraph
41 (3) of subsection b. of this section.

42 A taxpayer's net gain or loss on the sale, exchange or other
43 disposition of a share of an S corporation shall be calculated by
44 increasing the adjusted basis of the share by an amount equal to the
45 shareholder's net losses and deductions in respect of the share
46 allowed and deducted from income for federal income tax purposes,
47 not including any personal net operating loss deductions, to the
48 extent that such net losses were not offset by the taxpayer's pro rata

1 share of S corporation income otherwise subject to taxation
2 pursuant to subsection p. of this section in respect of another S
3 corporation, subject to rules of priority and assignment determined
4 by the director.

5 For the tax year 1976, any taxpayer with a tax liability under this
6 subsection, or under the "Tax on Capital Gains and Other Unearned
7 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be
8 subject to payment of an amount greater than the amount he would
9 have paid if either return had covered all capital transactions during
10 the full tax year 1976; provided, however, that the rate which shall
11 apply to any capital gain shall be that in effect on the date of the
12 transaction. To the extent that any loss is used to offset any gain
13 under P.L.1975, c.172, it shall not be used to offset any gain under
14 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

15 The term "net gains or income" shall not include gains or income
16 derived from obligations which are referred to in clause (1) or (2) of
17 N.J.S.54A:6-14 of this act or from securities which evidence
18 ownership in a qualified investment fund as defined in section 2 of
19 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or income"
20 shall not include gains or income derived from the sale or
21 assignment of a tax credit transfer certificate pursuant to section 7
22 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63
23 (C.34:1B-251) from any sale or assignment of a tax credit issued
24 pursuant to an award of tax credits approved by the New Jersey
25 Economic Development Authority prior to July 1, 2018, regardless
26 of when such sale or assignment occurs. The term "net gains or net
27 income" shall not include gains or income from transactions to the
28 extent to which nonrecognition is allowed for federal income tax
29 purposes. The term "sale, exchange or other disposition" shall not
30 include the exchange of stock or securities in a corporation a party
31 to a reorganization in pursuance of a plan of reorganization, solely
32 for stock or securities in such corporation or in another corporation
33 a party to the reorganization and the transfer of property to a
34 corporation by one or more persons solely in exchange for stock or
35 securities in such corporation if immediately after the exchange
36 such person or persons are in control of the corporation. For
37 purposes of this clause, stock or securities issued for services shall
38 not be considered as issued in return for property.

39 For purposes of this clause, the term "reorganization" means--

40 (i) A statutory merger or consolidation;

41 (ii) The acquisition by one corporation, in exchange solely for
42 all or part of its voting stock (or in exchange solely for all or a part
43 of the voting stock of a corporation which is in control of the
44 acquiring corporation) of stock of another corporation if,
45 immediately after the acquisition, the acquiring corporation has
46 control of such other corporation (whether or not such acquiring
47 corporation had control immediately before the acquisition);

1 (iii) The acquisition by one corporation, in exchange solely for
2 all or part of its voting stock (or in exchange solely for all or a part
3 of the voting stock of a corporation which is in control of the
4 acquiring corporation), of substantially all of the properties of
5 another corporation, but in determining whether the exchange is
6 solely for stock the assumption by the acquiring corporation of a
7 liability of the other, or the fact that property acquired is subject to
8 a liability, shall be disregarded;

9 (iv) A transfer by a corporation of all or a part of its assets to
10 another corporation if immediately after the transfer the transferor,
11 or one or more of its shareholders (including persons who were
12 shareholders immediately before the transfer), or any combination
13 thereof, is in control of the corporation to which the assets are
14 transferred;

15 (v) A recapitalization;

16 (vi) A mere change in identity, form, or place of organization
17 however effected; or

18 (vii) The acquisition by one corporation, in exchange for stock of
19 a corporation (referred to in this subclause as "controlling
20 corporation") which is in control of the acquiring corporation, of
21 substantially all of the properties of another corporation which in
22 the transaction is merged into the acquiring corporation shall not
23 disqualify a transaction under subclause (i) if such transaction
24 would have qualified under subclause (i) if the merger had been into
25 the controlling corporation, and no stock of the acquiring
26 corporation is used in the transaction;

27 (viii) A transaction otherwise qualifying under subclause (i) shall
28 not be disqualified by reason of the fact that stock of a corporation
29 (referred to in this subclause as the "controlling corporation") which
30 before the merger was in control of the merged corporation is used
31 in the transaction, if after the transaction, the corporation surviving
32 the merger holds substantially all of its properties and of the
33 properties of the merged corporation (other than stock of the
34 controlling corporation distributed in the transaction); and in the
35 transaction, former shareholders of the surviving corporation
36 exchanged, for an amount of voting stock of the controlling
37 corporation, an amount of stock in the surviving corporation which
38 constitutes control of such corporation.

39 For purposes of this clause, the term "control" means the
40 ownership of stock possessing at least 80% of the total combined
41 voting power of all classes of stock entitled to vote and at least 80%
42 of the total number of shares of all other classes of stock of the
43 corporation.

44 For purposes of this clause, the term "a party to a reorganization"
45 includes a corporation resulting from a reorganization, and both
46 corporations, in the case of a reorganization resulting from the
47 acquisition by one corporation of stock or properties of another. In
48 the case of a reorganization qualifying under subclause (i) by reason

1 of subclause (vii) the term "a party to a reorganization" includes the
2 controlling corporation referred to in such subclause (vii).

3 Notwithstanding any provisions hereof, upon every such
4 exchange or conversion, the taxpayer's basis for the stock or
5 securities received shall be the same as the taxpayer's actual or
6 attributed basis for the stock, securities or property surrendered in
7 exchange therefor.

8 d. Net gains or net income derived from or in the form of rents,
9 royalties, patents, and copyrights.

10 e. Interest, except interest referred to in clause (1) or (2) of
11 N.J.S.54A:6-14, or distributions paid by a qualified investment fund
12 as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the
13 extent provided in that section.

14 f. Dividends. "Dividends" means any distribution in cash or
15 property made by a corporation, association or business trust that is
16 not an S corporation, (1) out of accumulated earnings and profits, or
17 (2) out of earnings and profits of the year in which such dividend is
18 paid and any distribution in cash or property made by an S
19 corporation, as specifically determined pursuant to section 16 of
20 P.L.1993, c.173 (C.54A:5-14).

21 The term "dividends" shall not include distributions paid by a
22 qualified investment fund as defined in section 2 of P.L.1987, c.310
23 (C.54A:6-14.1), to the extent provided in that section.

24 g. Gambling winnings.

25 h. Net gains or income derived through estates or trusts.

26 i. Income in respect of a decedent.

27 j. Amounts distributed or withdrawn from an employee trust
28 attributable to contributions to the trust which were excluded from
29 gross income under the provisions of chapter 6 of Title 54A of the
30 New Jersey Statutes, amounts rolled over from an IRA, as defined
31 pursuant to subsection (a) of section 408 of the federal Internal
32 Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as
33 defined pursuant to subsection b. of section 2 of P.L.1998,c.57
34 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and
35 annuities except to the extent of exclusions in N.J.S.54A:6-10
36 hereunder, notwithstanding the provisions of N.J.S.18A:66-51,
37 P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53
38 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965,
39 c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22
40 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954,
41 c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60),
42 R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44,
43 and P.L.1943, c.189, s.5 (C.43:13-37.5).

44 k. Distributive share of partnership income , excluding the gain
45 or income derived from the sale or assignment of a tax credit
46 transfer certificate pursuant to section 7 of P.L.2011, c.149
47 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251) from
48 any sale or assignment of a tax credit issued pursuant to an award of

1 tax credits approved by the New Jersey Economic Development
2 Authority prior to July 1, 2018, regardless of when such sale or
3 assignment occurs.

4 1. Amounts received as prizes and awards, except as provided
5 in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

6 m. Rental value of a residence furnished by an employer or a
7 rental allowance paid by an employer to provide a home.

8 n. Alimony and separate maintenance payments to the extent
9 that such payments are required to be made under a decree of
10 divorce or separate maintenance but not including payments for
11 support of minor children.

12 o. Income, gain or profit derived from acts or omissions
13 defined as crimes or offenses under the laws of this State or any
14 other jurisdiction.

15 p. Net pro rata share of S corporation income, excluding the
16 gain or income derived from the sale or assignment of a tax credit
17 transfer certificate pursuant to section 7 of P.L.2011, c.149
18 (C.34:1B-248) and section 10 P.L.2014, c.63 (C.34:1B-251) from
19 any sale or assignment of a tax credit issued pursuant to an award of
20 tax credits approved by the New Jersey Economic Development
21 Authority prior to July 1, 2018, regardless of when such sale or
22 assignment occurs.

23 (cf: P.L.2018, c.48, s.26)

24

25 9. Section 33 of P.L.2018, c.48 is amended to read as follows:

26 33. This act shall take effect immediately but section 1 and the
27 provisions of section 3, other than provisions amending paragraph (5)
28 of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), shall
29 be effective for tax years beginning on and after January 1, 2018 1,
30 sections 2 and 3]; section 2 and the provisions of section 3
31 amending paragraph (5) of subsection (k) of section 4 of P.L.1945,
32 c.162 (C.54:10A-4) are retroactive to January 1, 2017, and the
33 remaining sections shall apply to tax years beginning on and after
34 January 1, 2018, provided however that the provisions of this act
35 related to combined reporting and market based sourcing shall apply to
36 tax years [beginning] ending on and after [January 1, 2019] July 31,
37 2019. Section [35] 32 shall be effective for tax years beginning on
38 and after [January 1, 2019] July 31, 2019.

39

40 10. This act shall take effect immediately and be retroactive to
41 January 1, 2018, except as follows: sub subparagraph (ii) of
42 subparagraph (A) of paragraph (5) of subsection (k) of section 4 of
43 P.L.1945, c.162 (C.54:10A-4) is retroactive to January 1, 2017; the
44 provisions of this act related to combined reporting and market
45 based sourcing shall apply to privilege periods ending on or after
46 July 31, 2019; and section 8 shall apply to tax credits approved
47 prior to July 1, 2018.

1 STATEMENT
2

3 This bill amends certain provisions regarding the tax base and
4 operative dates under the corporation business tax (“CBT”), and in
5 particular P.L.2018, c.48 (C.54:10A-5.41 et al.); provides a CBT
6 deduction in the amount of a deduction claimed by a taxpayer
7 pursuant to section 250 of the federal Internal Revenue Code; and
8 clarifies the gross income tax treatment of certain tax credits
9 approved by the New Jersey Economic Development Authority
10 prior to July 1, 2018.

11

12 *CBT Tax Base, Rates, and Deductions*

13

14 Regarding the CBT surtax imposed under P.L.2018, c.48
15 (C.54:10A-5.41 et al.) (“chapter 48”), the bill: (1) updates the tax
16 base, to provide that “allocated entire net income” means: entire net
17 income for privilege periods ending before July 31, 2019, and
18 taxable net income (as defined in N.J.S.A.54:10A-4(w)) for
19 privilege periods ending on and after July 31, 2019; and (2) clarifies
20 that the term “taxpayer” means a business entity that is subject to
21 the CBT.

22 Likewise, the bill provides that, for privilege periods ending on
23 or after July 31, 2019, the CBT rate per N.J.S.A.54:10A-5 applies to
24 taxable net income.

25 Certain operative dates relative to chapter 48 are revised by the
26 bill. For a taxpayer that owns 80 percent or more of a subsidiary,
27 the dividend received deduction may be claimed at: 100 percent for
28 privilege periods beginning on or before December 31, 2016; at 95
29 percent for privilege periods beginning January 1, 2017 until
30 December 31, 2018, while giving a taxpayer allocation relief on the
31 deemed dividends; and at 95 percent for privilege periods beginning
32 on and after January 1, 2019. The rates of the deduction, however,
33 are not affected by the bill. The bill also extends the operative
34 dates for: (1) the net operating loss deduction; and (2) the prior net
35 operating loss conversion carryover, to privilege periods ending
36 prior to July 31, 2019 (in contrast to the effective date of chapter
37 48, July 1, 2018) under the CBT.

38 The bill provides that a “combinable captive insurance
39 company,” meaning a captive insurer that is more than 50 percent
40 owned (directly or indirectly) by a single entity and with gross
41 receipts of 50 percent or less from insurance premiums, is not
42 exempt from the CBT.

43 For purposes of determining “net worth” under the CBT (per
44 N.J.S.A.54:10A-4), the allowable reduction for investment in
45 capital stock of one or more subsidiaries is reduced, to 50 percent
46 (from 100 percent).

47 In the event that there is a change in 50 percent or more of the
48 ownership of a corporation because of the redemption or sale of

1 stock, and the corporation changes the trade or business giving rise
2 to the loss, no net operating loss sustained before the changes may
3 be carried over to be deducted from income earned after such
4 changes. Nevertheless, if the Director of the Division of Taxation
5 determines that the acquisition was for the primary purpose of the
6 use of taking advantage of the net operating loss carryover, the
7 director may disallow the carryover. This provision does not apply
8 between members of a combined group reported on a New Jersey
9 combined return.

10 Additionally, the bill provides a CBT deduction to mirror the
11 federal deduction allowed under the Internal Revenue Code relative
12 to income derived from certain foreign assets, as adopted by 18
13 other states. The federal Tax Cuts and Jobs Act has implemented a
14 tax on American shareholders' income from controlled foreign
15 corporations ("GILTI"), to the extent the income exceeds a 10
16 percent return on invested foreign assets. Moreover, foreign
17 derived intangible income ("FDII") is income derived from certain
18 business assets, including intellectual property. Section 250 of the
19 federal Internal Revenue Code (26 U.S.C. s.250) allows a taxpayer
20 to claim a deduction relative to the GILTI and FDII of a business.
21 This bill allows a taxpayer to claim a CBT deduction in the amount
22 of the section 250 deduction claimed by the taxpayer in the tax
23 year.

24

25 *Combined Reporting*

26

27 The bill updates the effective dates of the combined reporting
28 requirements of chapter 48, to commence for privilege periods
29 ending on and after July 31, 2019.

30 For each member of a combined reporting group filing a
31 mandatory or elective New Jersey combined return, the minimum
32 tax under the CBT is set at \$2,000 for the group privilege period.

33 Under current law, entities regulated by the Federal Energy
34 Regulatory Commission, the New Jersey Board of Public Utilities,
35 or a similar regulatory body of another State, are exempted from
36 certain combined reporting provisions with respect to rates charged
37 to customers for electric or gas services, per N.J.S.A.54:10A-4.6.
38 The bill extends this exemption to water and wastewater.

39 Regarding the add back provision of N.J.S.A.54:10A-4.4, the bill
40 provides that the add back provision does not apply to transactions
41 between related members included in a combined group reported on
42 a New Jersey combined return.

43

44 *Tax Treatment of Certain EDA Tax Credits*

45

46 The bill clarifies that "gross income" under the gross income tax
47 does not include gains or income from the sale or assignment of a
48 tax credit transfer certificate under the Grow New Jersey Assistance

1 Program, N.J.S.A.34:1B-248 and N.J.S.A.34:1B-251, for any sale
2 or assignment of a tax credit approved by the EDA on or prior to
3 July 1, 2018, irrespective of the date the sale or assignment occurs.

4 It is noted that the director's authority as it relates to allocation
5 factor, more commonly known as 'Section 8,' allows the director
6 discretion to afford relief to individual taxpayers as necessary.