

ASSEMBLY, No. 3486

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 23, 2014

Sponsored by:

Assemblyman GORDON M. JOHNSON
District 37 (Bergen)

Co-Sponsored by:

Senator Sweeney

SYNOPSIS

Adjusts and clarifies certain State tax compliance standards and restricts certain State tax benefits.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/27/2014)

1 AN ACT adjusting and clarifying certain State tax compliance
2 standards and restricting certain State tax benefits, amending
3 various parts of the statutory law.

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

7
8 1. Section 5 of P.L.1993, c.173 (C.54:10A-6.1) is amended to
9 read as follows:

10 5. a. "Operational income" subject to allocation to New Jersey
11 means income from tangible and intangible property if the
12 acquisition, management, **[and]** or disposition of the property
13 constitute an integral **[parts]** part of the taxpayer's regular trade or
14 business operations and includes investment income serving an
15 operational function. Income that a taxpayer demonstrates with
16 clear and convincing evidence is not operational income is
17 classified as nonoperational income, and the nonoperational income
18 of taxpayers is not subject to allocation but shall be specifically
19 assigned; provided, that 100% of the nonoperational income of a
20 taxpayer that has its principal place from which the trade or
21 business of the taxpayer is directed or managed in this State shall be
22 specifically assigned to this State to the extent permitted under the
23 Constitution and statutes of the United States.

24 b. Corporate expenses related to nonoperational income are not
25 deductible in determining entire net income. Notwithstanding the
26 provisions of R.S.54:49-6 or any other law to the contrary:

27 (1) if in prior privilege periods property had been classified as
28 operational property, and later is demonstrated to have been
29 nonoperational property and is subsequently disposed of, all
30 expenses, without limitation, deducted for prior privilege periods
31 related to such nonoperational property shall be added back and
32 recaptured as income in the period of disposition of such property;

33 (2) if in prior privilege periods income had been classified as
34 serving an operational function, and later is demonstrated not to
35 have been serving an operational function, all expenses, without
36 limitation, deducted in prior privilege periods related to such
37 income not serving an operational function shall be added back and
38 recaptured as income; and

39 (3) the denominators of the fractions used to determine the
40 allocation factor pursuant to section 6 of P.L.1945, c.162
41 (C.54:10A-6), for privilege periods for which redeterminations are
42 required pursuant to paragraphs (1) and (2) of this subsection shall
43 be redetermined to exclude the amounts, if any, relating to the
44 nonoperational property or the nonoperational income.

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 c. The Director of the Division of Taxation shall prescribe such
2 forms for administration and adopt such administrative rules as the
3 director deems necessary for the implementation of this section.
4 (cf: P.L.2002, c.40, s.9)

5
6 2. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended
7 to read as follows:

8 12. a. (1) A partnership that is not a qualified investment
9 partnership or an investment club and that is not listed on a United
10 States national stock exchange shall, on or before the 15th day of
11 the fourth month succeeding the close of each privilege period,
12 remit a payment of tax. The amount of tax shall be equal to the sum
13 of: all of the share of the entire net income of the partnership for
14 that privilege period of all nonresident noncorporate partners,
15 multiplied by an allocation factor determined, pursuant to section 6
16 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
17 of the partnership for that privilege period, and multiplied by .0637
18 plus all of the share of the entire net income of the partnership for
19 that privilege period of all nonresident corporate partners,
20 multiplied by an allocation factor determined, pursuant to section 6
21 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
22 of the partnership for that privilege period, and multiplied by .09.

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

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

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

1 entitled to claim a refund of payments credited to any of its
2 nonresident partners.

3 c. For the purposes of this section:

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

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

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

33 "Partner" means an owner of an interest in the partnership, in
34 whatever manner that owner and ownership interest are designated.
35 (cf: P.L.2005, c.288, s.1)

36

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

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

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

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

46 (c) "Corporation" shall mean any corporation, joint-stock
47 company or association and any business conducted by a trustee or
48 trustees wherein interest or ownership is evidenced by a certificate

1 of interest or ownership or similar written instrument, any other
2 entity classified as a corporation for federal income tax purposes,
3 and any state or federally chartered building and loan association or
4 savings and loan association.

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

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

42 If in the opinion of the commissioner, the corporation's books do
43 not disclose fair valuations the commissioner may make a
44 reasonable determination of the net worth which, in his opinion,
45 would reflect the fair value of the assets, exclusive of subsidiary
46 investments as defined aforesaid, carried on the books of the
47 corporation, in accordance with sound accounting principles, and

1 such determination shall be used as net worth for the purpose of this
2 act.

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

4 (f) "Investment company" shall mean any corporation whose
5 business during the period covered by its report consisted, to the
6 extent of at least 90% thereof of holding, investing and reinvesting
7 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
8 and other securities for its own account, but this shall not include
9 any corporation which: (1) is a merchant or a dealer of stocks,
10 bonds and other securities, regularly engaged in buying the same
11 and selling the same to customers; or (2) had less than 90% of its
12 average gross assets in New Jersey, at cost, invested in stocks,
13 bonds, debentures, mortgages, notes, patents, patent rights or other
14 securities or consisting of cash on deposit during the period covered
15 by its report; or (3) is a banking corporation, a savings institution,
16 or a financial business corporation as defined in the Corporation
17 Business Tax Act.

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

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

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

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

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

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

46 (1) Entire net income shall exclude for the periods set forth in
47 paragraph (2)(F)(i) of this subsection, any amount, except with
48 respect to qualified mass commuting vehicles as described in

1 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect
2 immediately prior to January 1, 1984, which is included in a
3 taxpayer's federal taxable income solely as a result of an election
4 made pursuant to the provisions of paragraph (8) of that section.

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

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

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

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

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

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

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

42 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
43 (2) of this subsection, any amount, except with respect to qualified
44 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
45 the Internal Revenue Code as in effect immediately prior to January
46 1, 1984, which the taxpayer claimed as a deduction in computing
47 federal income tax pursuant to a qualified lease agreement under
48 paragraph (8) of that section.

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

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

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

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

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

47 A deduction shall also be permitted if the taxpayer establishes by
48 clear and convincing evidence, as determined by the director, that

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

7 A deduction shall also be permitted to the extent that the
8 taxpayer establishes by a preponderance of the evidence, as
9 determined by the director, that the interest is directly or indirectly
10 paid, accrued or incurred to (i) a related member in a foreign nation
11 which has in force a comprehensive income tax treaty with the
12 United States, provided however that the taxpayer shall disclose on
13 its return for the privilege period the name of the related member,
14 the amount of the interest, the relevant foreign nation, and such
15 other information as the director may prescribe or (ii) to an
16 independent lender and the taxpayer guarantees the debt on which
17 the interest is required.

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

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

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

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

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

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

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

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

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

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

24 (5) Entire net income shall exclude 100% of dividends which
25 were included in computing such taxable income for federal income
26 tax purposes, paid to the taxpayer by one or more subsidiaries
27 owned by the taxpayer to the extent of the 80% or more ownership
28 of investment described in subsection (d) of this section and shall
29 exclude 50% of dividends which were included in computing such
30 taxable income for federal income tax purposes, paid to the
31 taxpayer by one or more subsidiaries owned by the taxpayer to the
32 extent of 50% or more ownership of investment, such ownership of
33 investment calculated in the same manner as the 80% or more of
34 ownership of investment is calculated as described in subsection (d)
35 of this section.

36 (6) (A) Net operating loss deduction. There shall be allowed as a
37 deduction for the privilege period the net operating loss carryover to
38 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 exclusions permitted in
3 paragraphs (4) and (5) of this subsection or the net operating loss
4 deduction provided by subparagraph (A) of this paragraph, for each
5 of the prior privilege periods to which the loss may be carried.

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

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

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

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

41 (F) Reduction for discharge of indebtedness. A net operating
42 loss for any privilege period ending after June 30, 2014, and any net
43 operating loss carryover to such privilege period, shall be reduced
44 by the amount excluded from federal taxable income under
45 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
46 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),
47 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 the provisions of P.L.1940, c.5
3 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
4 substituting the New Jersey depreciation allowance for federal tax
5 depreciation with respect to assets placed in service prior to January
6 1, 1998. For gas, electric, and gas and electric public utilities that
7 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
8 seq.) prior to 1998, the New Jersey depreciation allowance shall be
9 computed as follows: All depreciable assets placed in service prior
10 to January 1, 1998 shall be considered a single asset account. The
11 New Jersey tax basis of this depreciable asset account shall be an
12 amount equal to the carryover adjusted basis for federal income tax
13 purposes on December 31, 1997 of all depreciable assets in service
14 on December 31, 1997, increased by the excess, of the "net carrying
15 value," defined to be adjusted book basis of all assets and liabilities,
16 excluding deferred income taxes, recorded on the public utility's
17 books of account on December 31, 1997, over the carryover
18 adjusted basis for federal income tax purposes on December 31,
19 1997 of all assets and liabilities owned by the gas, electric, or gas
20 and electric public utility as of December 31, 1997. "Books of
21 account" for gas, gas and electric, and electric public utilities means
22 the uniform system of accounts as promulgated by the Federal
23 Energy Regulatory Commission and adopted by the Board of Public
24 Utilities. The following adjustments to entire net income shall be
25 made pursuant to this section:

26 (A) Depreciation for property placed in service prior to January
27 1, 1998 shall be adjusted as follows:

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

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

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

47 (C) The Director of the Division of Taxation shall promulgate
48 regulations describing the methodology for allocating the single

1 asset account in the event that a portion of the utility's operations
2 are separated, spun-off, transferred to a separate company or
3 otherwise desegregated.

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

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

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

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

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

1 depreciation deduction otherwise allowed pursuant to section 167 of
2 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
3 be determined pursuant to the provisions of the federal Internal
4 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
5 December 31, 2001.

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

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

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

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

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

38 (m) "Financial business corporation" shall mean any corporate
39 enterprise which is (1) in substantial competition with the business
40 of national banks and which (2) employs moneyed capital with the
41 object of making profit by its use as money, through discounting
42 and negotiating promissory notes, drafts, bills of exchange and
43 other evidences of debt; buying and selling exchange; making of or
44 dealing in secured or unsecured loans and discounts; dealing in
45 securities and shares of corporate stock by purchasing and selling
46 such securities and stock without recourse, solely upon the order
47 and for the account of customers; or investing and reinvesting in
48 marketable obligations evidencing indebtedness of any person,

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

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

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

1 (p) "New Jersey S corporation" means a corporation that is an S
2 corporation; which has made a valid election pursuant to section 3
3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
4 corporation continuously since the effective date of the valid
5 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
6 5.22).

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

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

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

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

27 (cf: P.L.2009, c.72, s.2)

28

29 4. Section 2 of P.L.1966, c.30 (C.54:32B-2) is amended to read
30 as follows:

31 2. Unless the context in which they occur requires otherwise,
32 the following terms when used in this act shall mean:

33 (a) "Person" includes an individual, trust, partnership, limited
34 partnership, limited liability company, society, association, joint
35 stock company, corporation, public corporation or public authority,
36 estate, receiver, trustee, assignee, referee, fiduciary and any other
37 legal entity.

38 (b) "Purchase at retail" means a purchase by any person at a
39 retail sale.

40 (c) "Purchaser" means a person to whom a sale of personal
41 property is made or to whom a service is furnished.

42 (d) "Receipt" means the amount of the sales price of any
43 tangible personal property, specified digital product or service
44 taxable under this act.

45 (e) "Retail sale" means any sale, lease, or rental for any purpose,
46 other than for resale, sublease, or subrent.

47 (1) For the purposes of this act a sale is for "resale, sublease, or
48 subrent" if it is a sale (A) for resale either as such or as converted

1 into or as a component part of a product produced for sale by the
2 purchaser, including the conversion of natural gas into another
3 intermediate or end product, other than electricity or thermal
4 energy, produced for sale by the purchaser, (B) for use by that
5 person in performing the services subject to tax under subsection
6 (b) of section 3 where the property so sold becomes a physical
7 component part of the property upon which the services are
8 performed or where the property so sold is later actually transferred
9 to the purchaser of the service in conjunction with the performance
10 of the service subject to tax, (C) of telecommunications service to a
11 telecommunications service provider for use as a component part of
12 telecommunications service provided to an ultimate customer, or
13 (D) to a person who receives by contract a product transferred
14 electronically for further commercial broadcast, rebroadcast,
15 transmission, retransmission, licensing, relicensing, distribution,
16 redistribution or exhibition of the product, in whole or in part, to
17 another person, other than rights to redistribute based on statutory
18 or common law doctrine such as fair use.

19 (2) For the purposes of this act, the term "retail sale" includes:
20 sales of tangible personal property to all contractors, subcontractors
21 or repairmen of materials and supplies for use by them in erecting
22 structures for others, or building on, or otherwise improving,
23 altering, or repairing real property of others.

24 (3) (Deleted by amendment, P.L.2005, c.126).

25 (4) The term "retail sale" does not include:

26 (A) Professional, insurance, or personal service transactions
27 which involve the transfer of tangible personal property as an
28 inconsequential element, for which no separate charges are made.

29 (B) The transfer of tangible personal property to a corporation,
30 solely in consideration for the issuance of its stock, pursuant to a
31 merger or consolidation effected under the laws of New Jersey or
32 any other jurisdiction.

33 (C) The distribution of property by a corporation to its
34 stockholders as a liquidating dividend.

35 (D) The distribution of property by a partnership to its partners
36 in whole or partial liquidation.

37 (E) The transfer of property to a corporation upon its
38 organization in consideration for the issuance of its stock.

39 (F) The contribution of property to a partnership in
40 consideration for a partnership interest therein.

41 (G) The sale of tangible personal property where the purpose of
42 the vendee is to hold the thing transferred as security for the
43 performance of an obligation of the seller.

44 (f) "Sale, selling or purchase" means any transfer of title or
45 possession or both, exchange or barter, rental, lease or license to
46 use or consume, conditional or otherwise, in any manner or by any
47 means whatsoever for a consideration, or any agreement therefor,

1 including the rendering of any service, taxable under this act, for a
2 consideration or any agreement therefor.

3 (g) "Tangible personal property" means personal property that
4 can be seen, weighed, measured, felt, or touched, or that is in any
5 other manner perceptible to the senses. "Tangible personal
6 property" includes electricity, water, gas, steam, and prewritten
7 computer software including prewritten computer software
8 delivered electronically.

9 (h) "Use" means the exercise of any right or power over tangible
10 personal property, specified digital products, services to property or
11 products, or services by the purchaser thereof and includes, but is
12 not limited to, the receiving, storage or any keeping or retention for
13 any length of time, withdrawal from storage, any distribution, any
14 installation, any affixation to real or personal property, or any
15 consumption of such property or products. Use also includes the
16 exercise of any right or power over intrastate or interstate
17 telecommunications and prepaid calling services. Use also includes
18 the exercise of any right or power over utility service. Use also
19 includes the derivation of a direct or indirect benefit from a service.

20 (i) "Seller" means a person making sales, leases or rentals of
21 personal property or services.

22 (1) The term "seller" includes:

23 (A) A person making sales, leases or rentals of tangible personal
24 property, specified digital products or services, the receipts from
25 which are taxed by this act;

26 (B) A person maintaining a place of business in the State or
27 having an agent maintaining a place of business in the State and
28 making sales, whether at such place of business or elsewhere, to
29 persons within the State of tangible personal property, specified
30 digital products or services, the use of which is taxed by this act;

31 (C) A person who solicits business either by employees,
32 independent contractors, agents or other representatives or by
33 distribution of catalogs or other advertising matter and by reason
34 thereof makes sales to persons within the State of tangible personal
35 property, specified digital products or services, the use of which is
36 taxed by this act .

37 A person making sales of tangible personal property, specified
38 digital products, or services taxable under the "Sales and Use Tax
39 Act," P.L.1966, c. 30 (C.54:32B-1 et seq.) shall be presumed to be
40 soliciting business through an independent contractor or other
41 representative if the person making sales enters into an agreement
42 with an independent contractor having physical presence in this
43 State or other representative having physical presence in this State,
44 for a commission or other consideration, under which the
45 independent contractor or representative directly or indirectly refers
46 potential customers, whether by a link on an internet website or
47 otherwise, and the cumulative gross receipts from sales to
48 customers in this State who were referred by all independent

1 contractors or representatives that have this type of an agreement
2 with the person making sales are in excess of \$10,000 during the
3 preceding four quarterly periods ending on the last day of March,
4 June, September, and December. This presumption may be rebutted
5 by proof that the independent contractor or representative with
6 whom the person making sales has an agreement did not engage in
7 any solicitation in the State on behalf of the person that would
8 satisfy the nexus requirements of the United States Constitution
9 during the four quarterly periods in question. Nothing in this
10 subparagraph shall be construed to narrow the scope of the terms
11 independent contractor or other representative for purposes of any
12 other provision of the "Sales and Use Tax Act," P.L.1966, c. 30
13 (C.54:32B-1 et seq.);

14 (D) Any other person making sales to persons within the State of
15 tangible personal property, specified digital products or services,
16 the use of which is taxed by this act, who may be authorized by the
17 director to collect the tax imposed by this act;

18 (E) The State of New Jersey, any of its agencies,
19 instrumentalities, public authorities, public corporations (including
20 a public corporation created pursuant to agreement or compact with
21 another state) or political subdivisions when such entity sells
22 services or property of a kind ordinarily sold by private persons;

23 (F) (Deleted by amendment, P.L.2005, c.126);

24 (G) A person who sells, stores, delivers or transports energy to
25 users or customers in this State whether by mains, lines or pipes
26 located within this State or by any other means of delivery;

27 (H) A person engaged in collecting charges in the nature of
28 initiation fees, membership fees or dues for access to or use of the
29 property or facilities of a health and fitness, athletic, sporting or
30 shopping club or organization; and

31 (I) A person engaged in the business of parking, storing or
32 garaging motor vehicles.

33 (2) In addition, when in the opinion of the director it is
34 necessary for the efficient administration of this act to treat any
35 salesman, representative, peddler or canvasser as the agent of the
36 seller, distributor, supervisor or employer under whom the agent
37 operates or from whom the agent obtains tangible personal property
38 or a specified digital product sold by the agent or for whom the
39 agent solicits business, the director may, in the director's discretion,
40 treat such agent as the seller jointly responsible with the agent's
41 principal, distributor, supervisor or employer for the collection and
42 payment over of the tax. A person is an agent of a seller in all
43 cases, but not limited to such cases, that: (A) the person and the
44 seller have the relationship of a "related person" described pursuant
45 to section 2 of P.L.1993, c.170 (C.54:10A-5.5); and (B) the seller
46 and the person use an identical or substantially similar name,
47 tradename, trademark, or goodwill, to develop, promote, or
48 maintain sales, or the person and the seller pay for each other's

1 services in whole or in part contingent upon the volume or value of
2 sales, or the person and the seller share a common business plan or
3 substantially coordinate their business plans, or the person provides
4 services to, or that inure to the benefit of, the seller related to
5 developing, promoting, or maintaining the seller's market.

6 (j) "Hotel" means a building or portion of it which is regularly
7 used and kept open as such for the lodging of guests. The term
8 "hotel" includes an apartment hotel, a motel, boarding house or
9 club, whether or not meals are served.

10 (k) "Occupancy" means the use or possession or the right to the
11 use or possession, of any room in a hotel.

12 (l) "Occupant" means a person who, for a consideration, uses,
13 possesses, or has the right to use or possess, any room in a hotel
14 under any lease, concession, permit, right of access, license to use
15 or other agreement, or otherwise.

16 (m) "Permanent resident" means any occupant of any room or
17 rooms in a hotel for at least 90 consecutive days shall be considered
18 a permanent resident with regard to the period of such occupancy.

19 (n) "Room" means any room or rooms of any kind in any part or
20 portion of a hotel, which is available for or let out for any purpose
21 other than a place of assembly.

22 (o) "Admission charge" means the amount paid for admission,
23 including any service charge and any charge for entertainment or
24 amusement or for the use of facilities therefor.

25 (p) "Amusement charge" means any admission charge, dues or
26 charge of a roof garden, cabaret or other similar place.

27 (q) "Charge of a roof garden, cabaret or other similar place"
28 means any charge made for admission, refreshment, service, or
29 merchandise at a roof garden, cabaret or other similar place.

30 (r) "Dramatic or musical arts admission charge" means any
31 admission charge paid for admission to a theater, opera house,
32 concert hall or other hall or place of assembly for a live, dramatic,
33 choreographic or musical performance.

34 (s) "Lessor" means any person who is the owner, licensee, or
35 lessee of any premises, tangible personal property or a specified
36 digital product which the person leases, subleases, or grants a
37 license to use to other persons.

38 (t) "Place of amusement" means any place where any facilities
39 for entertainment, amusement, or sports are provided.

40 (u) "Casual sale" means an isolated or occasional sale of an item
41 of tangible personal property or a specified digital product by a
42 person who is not regularly engaged in the business of making retail
43 sales of such property or product where the item of tangible
44 personal property or the specified digital product was obtained by
45 the person making the sale, through purchase or otherwise, for the
46 person's own use.

47 (v) "Motor vehicle" includes all vehicles propelled otherwise
48 than by muscular power (excepting such vehicles as run only upon

1 rails or tracks), trailers, semitrailers, house trailers, or any other
2 type of vehicle drawn by a motor-driven vehicle, and motorcycles,
3 designed for operation on the public highways.

4 (w) "Persons required to collect tax" or "persons required to
5 collect any tax imposed by this act" includes: every seller of
6 tangible personal property, specified digital products or services;
7 every recipient of amusement charges; every operator of a hotel;
8 every seller of a telecommunications service; every recipient of
9 initiation fees, membership fees or dues for access to or use of the
10 property or facilities of a health and fitness, athletic, sporting or
11 shopping club or organization; and every recipient of charges for
12 parking, storing or garaging a motor vehicle. Said terms shall also
13 include any officer or employee of a corporation or of a dissolved
14 corporation who as such officer or employee is under a duty to act
15 for such corporation in complying with any requirement of this act
16 and any member of a partnership.

17 (x) "Customer" includes: every purchaser of tangible personal
18 property, specified digital products or services; every patron paying
19 or liable for the payment of any amusement charge; every occupant
20 of a room or rooms in a hotel; every person paying charges in the
21 nature of initiation fees, membership fees or dues for access to or
22 use of the property or facilities of a health and fitness, athletic,
23 sporting or shopping club or organization; and every purchaser of
24 parking, storage or garaging a motor vehicle.

25 (y) "Property and services the use of which is subject to tax"
26 includes: (1) all property sold to a person within the State, whether
27 or not the sale is made within the State, the use of which property is
28 subject to tax under section 6 or will become subject to tax when
29 such property is received by or comes into the possession or control
30 of such person within the State; (2) all services rendered to a person
31 within the State, whether or not such services are performed within
32 the State, upon tangible personal property or a specified digital
33 product the use of which is subject to tax under section 6 or will
34 become subject to tax when such property or product is distributed
35 within the State or is received by or comes into possession or
36 control of such person within the State; (3) intrastate, interstate, or
37 international telecommunications sourced to this State pursuant to
38 section 29 of P.L.2005, c.126 (C.54:32B-3.4); (4) (Deleted by
39 amendment, P.L.1995, c.184); (5) energy sold, exchanged or
40 delivered in this State for use in this State; (6) utility service sold,
41 exchanged or delivered in this State for use in this State; (7) mail
42 processing services in connection with printed advertising material
43 distributed in this State; (8) (Deleted by amendment, P.L.2005,
44 c.126); and (9) services the benefit of which are received in this
45 State.

46 (z) "Director" means the Director of the Division of Taxation in
47 the State Department of the Treasury, or any officer, employee or
48 agency of the Division of Taxation in the Department of the

1 Treasury duly authorized by the director (directly, or indirectly by
2 one or more redelegations of authority) to perform the functions
3 mentioned or described in this act.

4 (aa) "Lease or rental" means any transfer of possession or control
5 of tangible personal property for a fixed or indeterminate term for
6 consideration. A "lease or rental" may include future options to
7 purchase or extend.

8 (1) "Lease or rental" does not include:

9 (A) A transfer of possession or control of property under a
10 security agreement or deferred payment plan that requires the
11 transfer of title upon completion of the required payments;

12 (B) A transfer of possession or control of property under an
13 agreement that requires the transfer of title upon completion of
14 required payments and payment of an option price does not exceed
15 the greater of \$100 or one percent of the total required payments; or

16 (C) Providing tangible personal property or a specified digital
17 product along with an operator for a fixed or indeterminate period
18 of time. A condition of this exclusion is that the operator is
19 necessary for the equipment to perform as designed. For the
20 purpose of this subparagraph, an operator must do more than
21 maintain, inspect, or set-up the tangible personal property or
22 specified digital product.

23 (2) "Lease or rental" does include agreements covering motor
24 vehicles and trailers where the amount of consideration may be
25 increased or decreased by reference to the amount realized upon
26 sale or disposition of the property as defined in 26 U.S.C.
27 s.7701(h)(1).

28 (3) The definition of "lease or rental" provided in this subsection
29 shall be used for the purposes of this act regardless of whether a
30 transaction is characterized as a lease or rental under generally
31 accepted accounting principles, the federal Internal Revenue Code
32 or other provisions of federal, state or local law.

33 (bb) (Deleted by amendment, P.L.2005, c.126).

34 (cc) "Telecommunications service" means the electronic
35 transmission, conveyance, or routing of voice, data, audio, video, or
36 any other information or signals to a point, or between or among
37 points.

38 "Telecommunications service" shall include such transmission,
39 conveyance, or routing in which computer processing applications
40 are used to act on the form, code, or protocol of the content for
41 purposes of transmission, conveyance, or routing without regard to
42 whether such service is referred to as voice over Internet protocol
43 services or is classified by the Federal Communications
44 Commission as enhanced or value added. "Telecommunications
45 service" shall not include:

46 (1) (Deleted by amendment, P.L.2008, c.123);

47 (2) (Deleted by amendment, P.L.2008, c.123);

48 (3) (Deleted by amendment, P.L.2008, c.123);

1 (4) (Deleted by amendment, P.L.2008, c.123);

2 (5) (Deleted by amendment, P.L.2008, c.123);

3 (6) (Deleted by amendment, P.L.2008, c.123);

4 (7) data processing and information services that allow data to
5 be generated, acquired, stored, processed, or retrieved and delivered
6 by an electronic transmission to a purchaser where such purchaser's
7 primary purpose for the underlying transaction is the processed data
8 or information;

9 (8) installation or maintenance of wiring or equipment on a
10 customer's premises;

11 (9) tangible personal property;

12 (10) advertising, including but not limited to directory
13 advertising;

14 (11) billing and collection services provided to third parties;

15 (12) internet access service;

16 (13) radio and television audio and video programming services,
17 regardless of the medium, including the furnishing of transmission,
18 conveyance, and routing of such services by the programming
19 service provider. Radio and television audio and video
20 programming services shall include but not be limited to cable
21 service as defined in section 47 U.S.C. s.522(6) and audio and video
22 programming services delivered by commercial mobile radio
23 service providers, as defined in section 47 C.F.R. 20.3;

24 (14) ancillary services; or

25 (15) digital products delivered electronically, including but not
26 limited to software, music, video, reading materials, or ringtones.

27 For the purposes of this subsection:

28 "ancillary service" means a service that is associated with or
29 incidental to the provision of telecommunications services,
30 including but not limited to detailed telecommunications billing,
31 directory assistance, vertical service, and voice mail service;

32 "conference bridging service" means an ancillary service that
33 links two or more participants of an audio or video conference call
34 and may include the provision of a telephone number. Conference
35 bridging service does not include the telecommunications services
36 used to reach the conference bridge;

37 "detailed telecommunications billing service" means an ancillary
38 service of separately stating information pertaining to individual
39 calls on a customer's billing statement;

40 "directory assistance" means an ancillary service of providing
41 telephone number information or address information or both;

42 "vertical service" means an ancillary service that is offered in
43 connection with one or more telecommunications services, which
44 offers advanced calling features that allow customers to identify
45 callers and to manage multiple calls and call connections, including
46 conference bridging services; and

47 "voice mail service" means an ancillary service that enables the
48 customer to store, send, or receive recorded messages. Voice mail

1 service does not include any vertical service that a customer may be
2 required to have to utilize the voice mail service. (dd) (1)
3 "Intrastate telecommunications" means a telecommunications
4 service that originates in one United States state or a United States
5 territory or possession or federal district, and terminates in the same
6 United States state or United States territory or possession or
7 federal district.

8 (2) "Interstate telecommunications" means a
9 telecommunications service that originates in one United States
10 state or a United States territory or possession or federal district,
11 and terminates in a different United States state or United States
12 territory or possession or federal district.

13 (3) "International telecommunications" means a
14 telecommunications service that originates or terminates in the
15 United States and terminates or originates outside the United States,
16 respectively. "United States" includes the District of Columbia or a
17 United States territory or possession.

18 (ee) (Deleted by amendment, P.L.2008, c.123)

19 (ff) "Natural gas" means any gaseous fuel distributed through a
20 pipeline system.

21 (gg) "Energy" means natural gas or electricity.

22 (hh) "Utility service" means the transportation or transmission of
23 natural gas or electricity by means of mains, wires, lines or pipes, to
24 users or customers.

25 (ii) "Self-generation unit" means a facility located on the user's
26 property, or on property purchased or leased from the user by the
27 person owning the self-generation unit and such property is
28 contiguous to the user's property, which generates electricity to be
29 used only by that user on the user's property and is not transported
30 to the user over wires that cross a property line or public
31 thoroughfare unless the property line or public thoroughfare merely
32 bifurcates the user's or self-generation unit owner's otherwise
33 contiguous property.

34 (jj) "Co-generation facility" means a facility the primary purpose
35 of which is the sequential production of electricity and steam or
36 other forms of useful energy which are used for industrial or
37 commercial heating or cooling purposes and which is designated by
38 the Federal Energy Regulatory Commission, or its successor, as a
39 "qualifying facility" pursuant to the provisions of the "Public Utility
40 Regulatory Policies Act of 1978," Pub.L.95-617.

41 (kk) "Non-utility" means a company engaged in the sale,
42 exchange or transfer of natural gas that was not subject to the
43 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to
44 December 31, 1997.

45 (ll) "Pre-paid calling service" means the right to access
46 exclusively telecommunications services, which shall be paid for in
47 advance and which enables the origination of calls using an access
48 number or authorization code, whether manually or electronically

1 dialed, and that is sold in predetermined units or dollars of which
2 the number declines with use in a known amount.

3 (mm) "Mobile telecommunications service" means the same as
4 that term is defined in the federal "Mobile Telecommunications
5 Sourcing Act," 4 U.S.C. s.124 (Pub.L.106-252).

6 (nn) (Deleted by amendment, P.L.2008, c.123)

7 (oo) (1) "Sales price" is the measure subject to sales tax and
8 means the total amount of consideration, including cash, credit,
9 property, and services, for which personal property or services are
10 sold, leased, or rented, valued in money, whether received in money
11 or otherwise, without any deduction for the following:

12 (A) The seller's cost of the property sold;

13 (B) The cost of materials used, labor or service cost, interest,
14 losses, all costs of transportation to the seller, all taxes imposed on
15 the seller, and any other expense of the seller;

16 (C) Charges by the seller for any services necessary to complete
17 the sale;

18 (D) Delivery charges;

19 (E) (Deleted by amendment, P.L.2011, c.49); and

20 (F) (Deleted by amendment, P.L.2008, c.123).

21 (2) "Sales price" does not include:

22 (A) Discounts, including cash, term, or coupons that are not
23 reimbursed by a third party, that are allowed by a seller and taken
24 by a purchaser on a sale;

25 (B) Interest, financing, and carrying charges from credit
26 extended on the sale of personal property or services, if the amount
27 is separately stated on the invoice, bill of sale, or similar document
28 given to the purchaser;

29 (C) Any taxes legally imposed directly on the consumer that are
30 separately stated on the invoice, bill of sale, or similar document
31 given to the purchaser;

32 (D) The amount of sales price for which food stamps have been
33 properly tendered in full or part payment pursuant to the federal
34 Food Stamp Act of 1977, Pub.L.95-113 (7 U.S.C. s.2011 et seq.); or

35 (E) Credit for any trade-in of property of the same kind accepted
36 in part payment and intended for resale if the amount is separately
37 stated on the invoice, bill of sale, or similar document given to the
38 purchaser.

39 (3) "Sales price" includes consideration received by the seller
40 from third parties if:

41 (A) The seller actually receives consideration from a party other
42 than the purchaser and the consideration is directly related to a price
43 reduction or discount on the sale;

44 (B) The seller has an obligation to pass the price reduction or
45 discount through to the purchaser;

46 (C) The amount of the consideration attributable to the sale is
47 fixed and determinable by the seller at the time of the sale of the
48 item to the purchaser; and

1 (D) One of the following criteria is met:

2 (i) the purchaser presents a coupon, certificate, or other
3 documentation to the seller to claim a price reduction or discount
4 where the coupon, certificate, or documentation is authorized,
5 distributed, or granted by a third party with the understanding that
6 the third party will reimburse any seller to whom the coupon,
7 certificate, or documentation is presented;

8 (ii) the purchaser identifies himself to the seller as a member of a
9 group or organization entitled to a price reduction or discount;
10 provided however, that a preferred customer card that is available to
11 any patron does not constitute membership in such a group; or

12 (iii) the price reduction or discount is identified as a third party
13 price reduction or discount on the invoice received by the purchaser
14 or on a coupon, certificate, or other documentation presented by the
15 purchaser.

16 (4) In the case of a bundled transaction that includes a
17 telecommunications service, an ancillary service, internet access, or
18 an audio or video programming service, if the price is attributable to
19 products that are taxable and products that are nontaxable, the
20 portion of the price attributable to the nontaxable products is
21 subject to tax unless the provider can identify by reasonable and
22 verifiable standards such portion from its books and records that are
23 kept in the regular course of business for other purposes, including
24 non-tax purposes.

25 (pp) "Purchase price" means the measure subject to use tax and
26 has the same meaning as "sales price."

27 (qq) "Sales tax" means the tax imposed on certain transactions
28 pursuant to the provisions of the "Sales and Use Tax Act,"
29 P.L.1966, c.30 (C.54:32B-1 et seq.).

30 (rr) "Delivery charges" means charges by the seller for
31 preparation and delivery to a location designated by the purchaser
32 of personal property or services including, but not limited to,
33 transportation, shipping, postage, handling, crating, and packing. If
34 a shipment includes both exempt and taxable property, the seller
35 should allocate the delivery charge by using: (1) a percentage based
36 on the total sales price of the taxable property compared to the total
37 sales price of all property in the shipment; or (2) a percentage based
38 on the total weight of the taxable property compared to the total
39 weight of all property in the shipment. The seller shall tax the
40 percentage of the delivery charge allocated to the taxable property
41 but is not required to tax the percentage allocated to the exempt
42 property.

43 (ss) "Direct mail" means printed material delivered or distributed
44 by United States mail or other delivery service to a mass audience
45 or to addresses on a mailing list provided by the purchaser or at the
46 direction of the purchaser in cases in which the cost of the items are
47 not billed directly to the recipients. "Direct mail" includes tangible
48 personal property supplied directly or indirectly by the purchaser to

- 1 the direct mail seller for inclusion in the package containing the
2 printed material. "Direct mail" does not include multiple items of
3 printed material delivered to a single address.
- 4 (tt) "Streamlined Sales and Use Tax Agreement" means the
5 agreement entered into as governed and authorized by the "Uniform
6 Sales and Use Tax Administration Act," P.L.2001, c.431
7 (C.54:32B-44 et seq.).
- 8 (uu) "Alcoholic beverages" means beverages that are suitable for
9 human consumption and contain one-half of one percent or more of
10 alcohol by volume.
- 11 (vv) (Deleted by amendment, P.L.2011, c.49)
- 12 (ww) "Landscaping services" means services that result in a
13 capital improvement to land other than structures of any kind
14 whatsoever, such as: seeding, sodding or grass plugging of new
15 lawns; planting trees, shrubs, hedges, plants; and clearing and
16 filling land.
- 17 (xx) "Investigation and security services" means:
- 18 (1) investigation and detective services, including detective
19 agencies and private investigators, and fingerprint, polygraph,
20 missing person tracing and skip tracing services;
- 21 (2) security guard and patrol services, including bodyguard and
22 personal protection, guard dog, guard, patrol, and security services;
- 23 (3) armored car services; and
- 24 (4) security systems services, including security, burglar, and
25 fire alarm installation, repair or monitoring services.
- 26 (yy) "Information services" means the furnishing of information
27 of any kind, which has been collected, compiled, or analyzed by the
28 seller, and provided through any means or method, other than
29 personal or individual information which is not incorporated into
30 reports furnished to other people.
- 31 (zz) "Specified digital product" means an electronically
32 transferred digital audio-visual work, digital audio work, or digital
33 book; provided however, that a digital code which provides a
34 purchaser with a right to obtain the product shall be treated in the
35 same manner as a specified digital product.
- 36 (aaa) "Digital audio-visual work" means a series of related
37 images which, when shown in succession, impart an impression of
38 motion, together with accompanying sounds, if any.
- 39 (bbb) "Digital audio work" means a work that results from the
40 fixation of a series of musical, spoken, or other sounds, including a
41 ringtone.
- 42 (ccc) "Digital book" means a work that is generally recognized in
43 the ordinary and usual sense as a book.
- 44 (ddd) "Transferred electronically" means obtained by the
45 purchaser by means other than tangible storage media.
- 46 (eee) "Ringtone" means a digitized sound file that is downloaded
47 onto a device and that may be used to alert the purchaser with

1 respect to a communication.

2 (cf: P.L.2011, c.49, s.1)

3

4 5. This act shall take effect immediately, except that sections 1,
5 2, and 3 apply to privilege periods ending on or after July 1, 2014,
6 and section 4 shall apply to sales made, services rendered, and uses
7 occurring on or after July 1, 2014.

8

9

10 STATEMENT

11

12 This bill adjusts and clarifies certain State tax compliance
13 standards and restricts certain State tax benefits. The bill has four
14 components:

15 (i) CBT Operational Income Adjustment: adjusting the statutory
16 definition of operational income under the corporation business tax
17 to clarify that the acquisition, management, or disposition of an
18 asset may be independent factors in determining qualification rather
19 than three necessary factors to qualification;

20 (ii) Conditioning Certain Nonresident Partner Credits and
21 Refunds on the Filing of New Jersey Returns: requiring certain
22 nonresident partners to file a tax return as a prerequisite to receiving
23 credit and refunds related to partnership activities taxable to New
24 Jersey;

25 (iii) CBT Net Operating Losses Reduced for Certain Debt
26 Cancellations: reducing corporation business tax net operating
27 losses for amounts of debt discharged and excluded from income on
28 account of bankruptcy, insolvency, or qualified farm indebtedness;
29 and

30 (iv) Sales Tax Nexus through Certain Independent Contractors –
31 i.e. “Click-Through Nexus”: denoting statutorily that sellers using
32 commissioned physically present independent contractors to market
33 in-State sales, online or otherwise, invoke the duty to collect sales
34 tax if cumulative sales through those contractors exceed \$10,000 for
35 the prior four calendar quarters.