SYNOPSIS
Concerns calculation of allocation factor for purposes of Corporation Business Tax and provides for “throwback” rule.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning the calculation of the allocation factor for purposes of the Corporation Business Tax and providing for the “throwback” rule, amending P.L.1945, c.162.

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

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

6. The portion of a taxpayer's entire net worth to be used as a measure of the tax imposed by subsection (a) of section 5 of P.L.1945, c.162 (C.54:10A-5), and the portion of its entire net income to be used as a measure of the tax imposed by subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5), shall be determined by multiplying such entire net worth and entire net income, respectively, by an allocation factor which is the property fraction, plus twice the sales fraction plus the payroll fraction and the denominator of which is four, and which, for privilege periods beginning on or after January 1, 2012, is the sum of the portions of the property fraction, the sales fraction, and the payroll fraction determined in accordance with the following schedule:

for privilege periods beginning on or after January 1, 2012 but before January 1, 2013, 15% of the property fraction plus 70% of the sales fraction plus 15% of the payroll fraction,

for privilege periods beginning on or after January 1, 2013 but before January 1, 2014, 5% of the property fraction plus 90% of the sales fraction plus 5% of the payroll fraction, and

for privilege periods beginning on or after January 1, 2014, 100% of the sales fraction, except as the director may determine pursuant to section 8 of P.L.1945, c.162 (C.54:10A-8), that is:

(A) The property fraction is the average value of the taxpayer's real and tangible personal property within the State during the period covered by its report divided by the average value of all the taxpayer's real and tangible personal property wherever situated during such period; provided, however, that for the purpose of determining average value, the provisions with respect to depreciation as set forth in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving at such value.

(B) The sales fraction is the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes, arising during such period from

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) sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,
(2) sales of tangible personal property located without the State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State,
(3) (Deleted by amendment.)
(4) services performed within the State,
(5) rentals from property situated, and royalties from the use of patents or copyrights, within the State,
(6) all other business receipts (excluding dividends excluded from entire net income by paragraph (1) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State,
(7) sales of its tangible personal property shipped from a location within this State to a state, possession or territory of the United States or the District of Columbia or to any foreign country in which the taxpayer is not subject to a tax on or measured by profits or income, or business presence or business activity, divided by the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business receipts, whether within or without the State.

(C) The payroll fraction is the total wages, salaries and other personal service compensation, similarly computed, during such period of officers and employees within the State divided by the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's officers and employees within and without the State.

In the case of a banking corporation which maintains a regular place of business outside this State other than a statutory office, and which elects to take the exclusion from net worth provided in subsection (d) of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from entire net income provided in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall be computed and applied in accordance with section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that the numerators and the denominators of the fractions described in (A), (B) or (C) above shall include all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are otherwise attributable to this State. (cf: P.L.2011, c.59, s.1)

2. This act shall take effect immediately and apply to privilege periods beginning on or after January 1, 2018.
This bill amends the Corporation Business Tax Act to allow for the taxation of corporate income currently not taxed by this State. States may impose a tax on a corporation’s income to the extent that the income is attributable to that state. In the case of a multi-state corporation, the proportion of a corporation’s income which is taxable by a single state is determined by the allocation factor. The allocation factor is calculated by taking certain factors, such as payroll, sales, or property and dividing the corporation’s factors located within the State by the corporation’s total factors. The corporation’s income is then multiplied by the allocation factor to determine the proportion of the corporation’s income which is attributable to, and therefore taxable by, the state.

Currently, this State imposes the Corporation Business Tax (CBT) on the proportion of the taxpayer’s income that is attributable to this State. This State uses the sales factor for purposes of calculating the allocation factor. The current allocation factor calculation does not take into account “nowhere income.” “Nowhere income” arises when a sale is made and the product is shipped from this State to a state where the taxpayer is not subject to tax. This results in a sales transaction from which the taxpayer’s profits are not taxed by any state. This bill ensures that “nowhere income” is captured and taxed by requiring a sale which is untaxed in any state to be included as a sale in this State for the purpose of calculating the allocation factor. Income from a sales transaction is not subject to tax in a state which is prohibited from taxing the corporation due to federal law or constitutional constraints.

This bill’s method of accounting for the “nowhere income” is referred to as the “throwback rule” and has been adopted by roughly half the states which impose a tax on corporate income. This bill will bring this State in line with the majority approach to capturing “nowhere income.”