

ASSEMBLY, No. 4202

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 18, 2018

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Imposes surtax on corporation business tax liability; decouples certain provisions from Internal Revenue Code; imposes tax on certain dividends.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2018)

A4202 PINTOR MARIN

2

1 AN ACT concerning taxation, supplementing P.L.1945, c.162, and
2 amending various parts of the statutory law.

3

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

6

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

11 (1) For a taxpayer, except a public utility, that has entire net
12 income in excess of \$1 million, but less than \$25 million for the
13 privilege period, the surtax imposed shall be 2.5%;

14 (2) For a taxpayer, except a public utility, that has entire net
15 income in excess of \$25 million for the privilege period, the surtax
16 imposed shall be 4%.

17 b. The surtax imposed pursuant to this section shall be upon a
18 taxpayer's allocated net income for the privilege period ending on
19 or after January 1, 2018 and upon a taxpayer's allocated net income
20 for the next following privilege period. The surtax imposed under
21 this section shall be due and payable in accordance with section 15
22 of P.L.1945, c.162 (C.54:10A-15), and the surtax shall be
23 administered pursuant to the provisions of P.L.1945, c.162
24 (C.54:10A-1 et seq.). Notwithstanding the provisions of any other
25 law to the contrary, no credits shall be allowed against the surtax
26 liability computed under this section except for credits for
27 installment payments, estimated payments made with a request for
28 an extension of time for filing a return, or overpayments from prior
29 privilege periods.

30

31 2. (New section) For privilege periods beginning on and after
32 January 1, 2017, for the purposes of computing entire net income
33 pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer
34 shall not be allowed the amount of any deduction, exemption, or
35 credit allowed under the Internal Revenue Code for income reported
36 pursuant to section 965 of the Internal Revenue Code (26 U.S.C.
37 s.965).

38

39 3. (New section) a. Notwithstanding the provisions of section
40 4 of P.L.1945, c.162 (C.54:10A-4) or any other law to the contrary,
41 as used in this section only:

42 "Dividends" means all dividends, including but not limited to
43 dividends actually paid, deemed dividends, and all other
44 distributions treated as dividends, under the Internal Revenue Code
45 or under the laws of the State of New Jersey.

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 “Gross domestic product” means the nominal gross domestic
2 product for the prior calendar year.

3 “Subsidiary” means a business entity of which the taxpayer has a
4 direct or indirect ownership interest regardless of its percentage of
5 ownership.

6 “Taxpayer” means a business entity required to report and pay
7 tax on dividends for federal income tax purposes and either (1) is
8 subject to tax pursuant to section 2 of P.L.1945, c.162 (C.54:10A-
9 2); or (2) has taxable premiums subject to the taxes imposed
10 pursuant to R.S.54:16-1 et seq., R.S.54:18-1 et seq., and P.L.1945,
11 c.132 (C.54:18A-1 et seq.), or any other law of this State imposing
12 a tax on insurance companies for insuring risks in this State.

13 b. For tax years beginning on or after January 1, 2017 and
14 ending before December 31, 2018, in addition to the tax paid by a
15 taxpayer pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a
16 taxpayer shall pay a tax equal to a rate of 9% applied to all of the
17 taxpayer’s dividends included in the taxpayer’s income for federal
18 income tax purposes pursuant to the Internal Revenue Code without
19 any deduction, exemption, or credit allowed under the Internal
20 Revenue Code or any credits, grants, or net operating losses
21 allowed under the laws of the State of New Jersey.

22 c. A taxpayer shall not be liable for the tax imposed by this
23 section, if so prohibited by any federal law, or if the total amount of
24 dividends which were included in computing such taxable income
25 for federal income tax purposes, paid to the taxpayer by one or
26 more subsidiaries owned by the taxpayer, are in aggregate less than
27 \$1,000,000 for the tax year.

28 d. In order for a taxpayer to determine its tax liability under
29 this section, the taxpayer shall use an allocation factor based on the
30 gross domestic product of the State over the total gross domestic
31 product of every state within the United States, the District of
32 Columbia, and every United States territory, regardless of how such
33 amounts taxed by this section are classified under section 5 of
34 P.L.1993, c.173 (C.54:10A-6.1); provided, however, the director
35 may adjust and provide relief pursuant to section 8 of P.L.1945,
36 c.162 (C.54:10A-8).

37 e. The tax imposed pursuant to this section shall not be deemed
38 a tax on capital stock or property and shall be added back for the
39 purposes of subparagraph (C) of paragraph (2) of subsection (k) of
40 section 4 of P.L. 1945, c.162 (C.54:10A-4).

41 f. Except as provided in subsection c. of this section, a
42 taxpayer shall be liable to pay the tax imposed by this section if the
43 taxpayer is subject to tax pursuant to section 2 of P.L.1945, c.162
44 (C.54:10A-2), or if the taxpayer is an insurance company licensed
45 to insure risks in this State.

46 g. The tax imposed pursuant to this section shall be due and
47 payable on or before May 15, 2019 on amounts which the taxpayer
48 reports for federal income tax purposes for tax years beginning on

1 or after January 1, 2017 and ending before December 31, 2018
2 pursuant to the Internal Revenue Code. The tax shall be reported on
3 a form prescribed by the director and shall be due and payable
4 regardless of whether the taxpayer elects to pay its federal tax
5 liability for the amount in installment payments.

6 h. A taxpayer paying the tax imposed pursuant to this section
7 shall be allowed a credit against the taxpayer's tax liability under
8 subsection b. of this section in an amount equal to the tax, if any,
9 paid on the same dividends under section 5 of P.L.1945, c.162
10 (C.54:10A-5). The credit allowed by this subsection shall only be
11 allowed to the extent the taxpayer paid tax on the dividends under
12 both this section and section 5 of P.L.1945, c.162 (C.54:10A-5). A
13 taxpayer shall not transfer the credit allowed pursuant to this
14 subsection to any other taxpayer.

15 i. The tax imposed pursuant to this section shall be
16 administered pursuant to the provisions of the State Uniform Tax
17 Procedure Law, R.S.54:48-1. Penalties and interest shall be applied
18 for failure to file and pay the tax imposed pursuant to this section.
19 No penalties or interest shall be imposed upon payment of the tax
20 imposed pursuant to this section if payment is made on or before
21 May 15, 2019.

22

23 4. 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
46 foregoing, net worth shall not include any deduction for the amount
47 of the excess depreciation described in paragraph (2)(F) of
48 subsection (k) of this section. The foregoing aggregate of values

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

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

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

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

37 (f) "Investment company" shall mean any corporation whose
38 business during the period covered by its report consisted, to the
39 extent of at least 90% thereof of holding, investing and reinvesting
40 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
41 and other securities for its own account, but this shall not include
42 any corporation which: (1) is a merchant or a dealer of stocks,
43 bonds and other securities, regularly engaged in buying the same
44 and selling the same to customers; or (2) had less than 90% of its
45 average gross assets in New Jersey, at cost, invested in stocks,
46 bonds, debentures, mortgages, notes, patents, patent rights or other
47 securities or consisting of cash on deposit during the period covered
48 by its report; or (3) is a banking corporation, a savings institution,

1 or a financial business corporation as defined in the Corporation
2 Business Tax Act.

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

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

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

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

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

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

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

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

40 (A) The amount of any [specific] exemption or credit allowed in
41 any law of the United States imposing any tax on or measured by
42 the income of corporations.

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

46 (C) Taxes paid or accrued to the United States, a possession or
47 territory of the United States, a state, a political subdivision thereof,
48 or the District of Columbia, or to any foreign country, state,

1 province, territory or subdivision thereof, on or measured by profits
2 or income, or business presence or business activity, or the tax
3 imposed by this act, or any tax paid or accrued with respect to
4 subsidiary dividends excluded from entire net income as provided
5 in paragraph (5) of subsection (k) of this section.

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

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

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

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

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

38 (G) (i) The amount of any civil, civil administrative, or criminal
39 penalty or fine, including a penalty or fine under an administrative
40 consent order, assessed and collected for a violation of a State or
41 federal environmental law, an administrative consent order, or an
42 environmental ordinance or resolution of a local governmental
43 entity, and any interest earned on the penalty or fine, and any
44 economic benefits having accrued to the violator as a result of a
45 violation, which benefits are assessed and recovered in a civil, civil
46 administrative, or criminal action, or pursuant to an administrative
47 consent order. The provisions of this paragraph shall not apply to a
48 penalty or fine assessed or collected for a violation of a State or

1 federal environmental law, or local environmental ordinance or
2 resolution, if the penalty or fine was for a violation that resulted
3 from fire, riot, sabotage, flood, storm event, natural cause, or other
4 act of God beyond the reasonable control of the violator, or caused
5 by an act or omission of a person who was outside the reasonable
6 control of the violator.

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

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

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

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

40 A deduction shall also be permitted to the extent that the
41 taxpayer establishes by a preponderance of the evidence, as
42 determined by the director, that the interest is directly or indirectly
43 paid, accrued or incurred to (i) a related member in a foreign nation
44 which has in force a comprehensive income tax treaty with the
45 United States containing an express exemption from state income
46 taxation, provided however that the taxpayer shall disclose on its
47 return for the privilege period the name of the related member, the
48 amount of the interest, the relevant foreign nation, and such other

1 information as the director may prescribe or (ii) to an independent
2 lender and the taxpayer guarantees the debt on which the interest is
3 required.

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

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

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

36 (3) The **【commissioner】** director may, whenever necessary to
37 properly reflect the entire net income of any taxpayer, determine the
38 year or period in which any item of income or deduction shall be
39 included, without being limited to the method of accounting
40 employed by the 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) (A) Entire net income shall exclude 100% of dividends
25 which were included in computing such taxable income for federal
26 income tax purposes, paid to the taxpayer by one or more
27 subsidiaries owned by the taxpayer to the extent of the 80% or more
28 ownership of investment described in subsection (d) of this section
29 **[and]** for privilege periods ending on or before December 31, 2018.

30 (B) For privilege periods beginning on and after January 1,
31 2019, entire net income shall exclude 95% of dividends which were
32 included in computing such taxable income for federal income tax
33 purposes, paid to the taxpayer by one or more subsidiaries owned
34 by the taxpayer to the extent of the 80% or more ownership of
35 investment described in subsection (d) of this section.

36 Entire net income shall exclude 50% of dividends which were
37 included in computing such taxable income for federal income tax
38 purposes, paid to the taxpayer by one or more subsidiaries owned
39 by the taxpayer to the extent of 50% or more ownership of
40 investment, such ownership of investment calculated in the same
41 manner as the 80% or more of ownership of investment is
42 calculated as described in subsection (d) of this section.

43 (6) (A) Net operating loss deduction. There shall be allowed as
44 a deduction for the privilege period the net operating loss carryover
45 to that period.

46 (B) Net operating loss carryover. A net operating loss for any
47 privilege period ending after June 30, 1984 shall be a net operating
48 loss carryover to each of the seven privilege periods following the

1 period of the loss and a net operating loss for any privilege period
2 ending after June 30, 2009 shall be a net operating loss carryover to
3 each of the twenty privilege periods following the period of the
4 loss. The entire amount of the net operating loss for any privilege
5 period (the "loss period") shall be carried to the earliest of the
6 privilege periods to which the loss may be carried. The portion of
7 the loss which shall be carried to each of the other privilege periods
8 shall be the excess, if any, of the amount of the loss over the sum of
9 the entire net income, computed without the exclusions permitted in
10 paragraphs (4) and (5) of this subsection or the net operating loss
11 deduction provided by subparagraph (A) of this paragraph, for each
12 of the prior privilege periods to which the loss may be carried.

13 (C) Net operating loss. For purposes of this paragraph the term
14 "net operating loss" means the excess of the deductions over the
15 gross income used in computing entire net income without the net
16 operating loss deduction provided for in subparagraph (A) of this
17 paragraph and the exclusions in paragraphs (4) and (5) of this
18 subsection.

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

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

42 Provided, that this subparagraph (E) shall not restrict the
43 surrender or acquisition of corporation business tax benefit
44 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
45 7.42a) and shall not restrict the application of corporation business
46 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
47 (C.54:10A-4.2).

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

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

33 (A) Depreciation for property placed in service prior to January
34 1, 1998 shall be adjusted as follows:

35 (i) Depreciation for federal income tax purposes shall be
36 disallowed in full.

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

1 federal income tax purposes as described in subparagraph (B) of
2 this paragraph.

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

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

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

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

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

44 (11) No deduction shall be allowed for research and
45 experimental expenditures, to the extent that those research and
46 experimental expenditures are qualified research expenses or basic
47 research payments for which an amount of credit is claimed
48 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless

1 those research and experimental expenditures are also used to
2 compute a federal credit claimed pursuant to section 41 of the
3 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

4 (12) (A) Notwithstanding the provisions of subsection (k) of
5 section 168 of the federal Internal Revenue Code of 1986, 26
6 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
7 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
8 law, for property acquired after September 10, 2001, the
9 depreciation deduction otherwise allowed pursuant to section 167 of
10 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
11 be determined pursuant to the provisions of the federal Internal
12 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
13 December 31, 2001.

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

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

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

31 (14) Notwithstanding the provisions of subsection (i) of section
32 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
33 for privilege periods beginning after December 31, 2008 and before
34 January 1, 2011, entire net income shall include the amount of
35 discharge of indebtedness income excluded for federal income tax
36 purposes pursuant to subsection (i) of section 108 of the federal
37 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
38 periods beginning on or after January 1, 2014 and before January 1,
39 2019, entire net income shall exclude the amount of discharge of
40 indebtedness income included for federal income tax purposes,
41 pursuant to subsection (i) of section 108 of the federal Internal
42 Revenue Code of 1986 (26 U.S.C. s.108).

43 (15) Entire net income shall exclude the gain or income derived
44 from the sale or assignment of a tax credit transfer certificate
45 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
46 10 of P.L.2014, c.63 (C.34:1B-251).

47 (16) Entire net income shall be determined without the exclusion,
48 exemption, deduction, or credit of any income exempt from federal

1 taxable income under any treaty obligation of the United States,
2 unless such exclusion, exemption, deduction, or credit is explicitly
3 made applicable to states under the express terms of a tax treaty
4 entered into by the United States.

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

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

45 (n) "International banking facility" shall mean a set of asset and
46 liability accounts segregated on the books and records of a
47 depository institution, United States branch or agency of a foreign
48 bank, or an Edge or Agreement Corporation that includes only

1 international banking facility time deposits and international
2 banking facility extensions of credit as such terms are defined in
3 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
4 board of governors of the Federal Reserve System, 12 CFR Part
5 204, effective December 3, 1981. In the event that the United
6 States enacts a law, or the board of governors of the Federal
7 Reserve System adopts a regulation which amends the present
8 definition of international banking facility or of such facilities' time
9 deposits or extensions of credit, the Commissioner of Banking and
10 Insurance shall forthwith adopt regulations defining such terms in
11 the same manner as such terms are set forth in the laws of the
12 United States or the regulations of the board of governors of the
13 Federal Reserve System. The regulations of the Commissioner of
14 Banking and Insurance shall thereafter provide the applicable
15 definitions.

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

19 (p) "New Jersey S corporation" means a corporation that is an S
20 corporation; which has made a valid election pursuant to section 3
21 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
22 corporation continuously since the effective date of the valid
23 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
24 5.22).

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

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

40 (s) "Savings institution" means a state or federally chartered
41 building and loan association, savings and loan association, or
42 savings bank.

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

45 (cf: P.L.2017, c.313, s.4)

46

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

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

2 "Intangible expenses and costs" includes (1) expenses, losses and
3 costs for, related to, or in connection directly or indirectly with the
4 direct or indirect acquisition, use, maintenance or management,
5 ownership, sale, exchange, or any other disposition of intangible
6 property to the extent such amounts are allowed as deductions or
7 costs in determining taxable income before operating loss deduction
8 and special deductions for the taxable year under the federal
9 Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses
10 related to, or incurred in connection directly or indirectly with,
11 factoring transactions or discounting transactions; (3) royalty,
12 patent, technical and copyright fees; (4) licensing fees; and (5) other
13 similar expenses and costs.

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

17 "Interest expenses and costs" means amounts directly or
18 indirectly allowed as deductions under section 163 of the federal
19 Internal Revenue Code of 1986, 26 U.S.C. s.163, for purposes of
20 determining taxable income under the code to the extent such
21 expenses and costs are directly or indirectly for, related to, or in
22 connection with the direct or indirect acquisition, maintenance,
23 management, ownership, sale, exchange or disposition of intangible
24 property.

25 "Related member" means a person that, with respect to the
26 taxpayer during all or any portion of the privilege period, is: (1) a
27 related entity, (2) a component member as defined in subsection (b)
28 of section 1563 of the federal Internal Revenue Code of 1986, 26
29 U.S.C. s.1563, (3) is a person to or from whom there is attribution
30 of stock ownership in accordance with subsection (e) of section
31 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
32 s.1563, or (4) is a person that, notwithstanding its form of
33 organization, bears the same relationship to the taxpayer as a person
34 described in (1) through (3) of this definition.

35 "Related entity" means (1) a stockholder who is an individual, or
36 a member of the stockholder's family enumerated in section 318 of
37 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
38 stockholder and the members of the stockholder's family own,
39 directly, indirectly, beneficially or constructively, in the aggregate,
40 **[at least]** 50% or more of the value of the taxpayer's outstanding
41 stock; (2) a stockholder, or a stockholder's partnership, limited
42 liability company, estate, trust or corporation, if the stockholder and
43 the stockholder's partnerships, limited liability companies, estates,
44 trusts and corporations own directly, indirectly, beneficially or
45 constructively, in the aggregate, **[at least]** 50% or more per cent of
46 the value of the taxpayer's outstanding stock; or (3) a corporation,
47 or a party related to the corporation in a manner that would require
48 an attribution of stock from the corporation to the party or from the

1 party to the corporation under the attribution rules of the federal
2 Internal Revenue Code of 1986, 26 U.S.C. s.318, if the taxpayer
3 owns, directly, indirectly, beneficially or constructively, [at least]
4 50% or more percent of the value of the corporation's outstanding
5 stock. The attribution rules of the federal Internal Revenue Code of
6 1986, 26 U.S.C. s.318, shall apply for purposes of determining
7 whether the ownership requirements of this definition have been
8 met.

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

15 c. (1) The adjustments required in subsection b. of this section
16 shall not apply if: (a) the interest expenses and costs and intangible
17 expenses and costs are directly or indirectly paid, accrued or
18 incurred to a related member in a foreign nation which has in force
19 a comprehensive income tax treaty with the United States
20 containing an express exemption from state income taxation; or (b)
21 the taxpayer establishes by clear and convincing evidence, as
22 determined by the director, that the adjustments are unreasonable;
23 or (c) the taxpayer and the director agree in writing to the
24 application or use of an alternative method of apportionment under
25 section 8 of P.L.1945, c.162 (C.54:10A-8). Nothing in this
26 subsection shall be construed to limit or negate the director's
27 authority to otherwise enter into agreements and compromises
28 otherwise allowed by law.

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

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

47 d. Nothing in this section shall require a taxpayer to add to its
48 net income more than once any amount of interest expenses and

1 costs and intangible expenses and costs that the taxpayer pays,
2 accrues or incurs to a related member described in subsection b. of
3 this section.

4 e. 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.2002, c.40, s.5)

10

11 6. Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is amended to
12 read as follows:

13 49. Every domestic or foreign corporation subject to the tax or
14 to filing requirements imposed under the Corporation Business Tax
15 Act (1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), shall keep all
16 records used to determine its tax liability and such other records as
17 the Director of the Division of Taxation may by regulation require.
18 The records shall be available for inspection and examination at any
19 time upon demand by the director or his duly authorized agent or
20 employee and shall be preserved for a period of five years, except
21 that the director may consent to their destruction within that period
22 or may require that they be kept longer.

23 (cf: P.L.1987, c.76, s.49)

24

25 7. Section 17 of P.L.1945, c.162 (C.54:10A-17) is amended to
26 read as follows:

27 17. (a) If the period covered by the report under this act is other
28 than the period covered by the report to the United States Treasury
29 Department or is a period of less than 12 calendar months, the
30 **【commissioner】** director may, under regulations prescribed by him,
31 determine the entire net worth and entire net income of the
32 taxpayer in such manner as shall properly reflect its entire net worth
33 and entire net income for the period covered by its report under this
34 act.

35 (b) Any taxpayer which shall fail to file its return when due or
36 to pay any tax when the same becomes due, as herein provided,
37 shall be subject to such penalties and interest as provided in the
38 State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the
39 Revised Statutes. The **【commissioner】** director, if satisfied that
40 the failure to comply with any provision of this act was excusable,
41 may abate or remit the whole or part of any penalty.

42 (cf: P.L.1975, c.177, s.9)

43

44 8. Section 20 of P.L.1945, c.162 (C.54:10A-20) is amended to
45 read as follows:

46 20. In addition to other remedies for the collection of the tax
47 imposed by this chapter, the Attorney-General may of his own
48 motion or upon the request of the **【commissioner】** director,

1 whenever any tax due under this chapter shall have remained in
2 arrears for a period of three months after the tax shall have become
3 payable, bring an action in the Superior Court in the name of the
4 State, against such corporation for injunctive relief to restrain it
5 from the exercise of any franchise, or the transaction of any
6 business within this State until the payment of such tax and
7 penalties and interest due thereon, and the costs of such
8 application, to be fixed by the court. The court may proceed in the
9 action in a summary manner or otherwise and may grant the
10 injunctive relief, if a proper case appear. Upon the granting and
11 service of the order or judgment giving injunctive relief, it shall not
12 be lawful for such company thereafter to exercise any franchise or
13 transact any business in this State until such injunction be
14 dissolved.

15 (cf: P.L.1953, c.51, s.116)

16

17 9. Section 21 of P.L.1945, c.162 (C.54:10A-21) is amended to
18 read as follows:

19 21. In the event of failure or neglect of any taxpayer which is a
20 foreign corporation to pay the tax imposed by this chapter, on or
21 before the first day of December in each year, immediate notice
22 thereof may be given by the **【commissioner】** director to the
23 Secretary of State who shall immediately revoke the certificate of
24 authority of said corporation to do business in the State of New
25 Jersey and notice of such revocation shall be given by the Secretary
26 of State to the corporation affected and thereafter such corporation,
27 so far as the further transaction of business in the State of New
28 Jersey is concerned, shall be in the same condition as if no
29 certificate of authority had ever been issued to it by the Secretary
30 of State, but remedies provided by this chapter for the collection of
31 the tax and interest and penalties shall remain unimpaired. After
32 the revocation of any such certificate of authority, no new
33 certificate shall be issued by the Secretary of State to such
34 defaulting corporation until the payment of all assessments
35 imposed hereunder and remaining unpaid with penalties and
36 interest and any costs that may have accrued, such payment to be
37 evidenced by a certificate of the **【commissioner】** director.

38 (cf: P.L.1945, c.162, s.21)

39

40 10. Section 28 of P.L.1945, c.162 (C.54:10A-27) is amended to
41 read as follows:

42 28. The **【commissioner】** director shall prescribe and issue such
43 rules and regulations, not inconsistent herewith, for the
44 interpretation and application of the provisions of this act, as he
45 may deem necessary.

46 (cf: P.L.1945, c.162, s.28)

1 11. Section 29 of P.L.1945, c.162 (C.54:10A-28) is amended to
2 read as follows:

3 29. This act shall take effect January first, one thousand nine
4 hundred and forty-six, except that the **【commissioner】** director may
5 prior thereto take such action as he may deem appropriate in
6 anticipation of or in preparation for the operation of the provisions
7 hereof, and except further that the appropriation contained herein
8 for the reduction of the State school tax shall be first made for the
9 fiscal year beginning July first, one thousand nine hundred and
10 forty-six.

11 (cf: P.L.1945, c.162, s.29)

12

13 12. Section 4 of P.L.1947, c.51 (C.54:10A-30) is amended to
14 read as follows:

15 4. The **【Commissioner】** director upon written application made
16 to him and upon the payment of a fee of five dollars (\$5.00), may
17 release any property from the lien of any tax, interest or penalty
18 imposed upon any corporation in accordance with the provisions of
19 this act or of chapters thirteen or thirty-two-A of Title 54 of the
20 Revised Statutes, or of any certificate, judgment or levy procured
21 by him; provided, payment be made to the **【commissioner】**
22 director of such sum as he shall deem adequate consideration for
23 such release or deposit be made of such security or such bond be
24 filed as the **【commissioner】** director shall deem proper to secure
25 payment of any debt evidenced by any such tax, interest, penalty,
26 certificate, judgment or levy, the lien of which is sought to be
27 released, or provided the **【commissioner】** director is satisfied that
28 payment of the tax is otherwise provided for. The application for
29 such release shall be in such form as shall be prescribed by the
30 **【commissioner】** director and shall contain an accurate description
31 of the property to be released together with such other information
32 as the **【commissioner】** director may require. Such release shall be
33 given under the seal of the **【commissioner】** director, and may be
34 recorded in any office in which conveyances of real estate may be
35 recorded.

36 (cf: P.L.1947, c.51, s.4)

37

38 13. Section 2 of P.L.2005, c.127 (C.54A:5-15) is amended to
39 read as follows:

40 2. Notwithstanding the provisions of N.J.S.54A:5-1, if any, or
41 any other law to the contrary, for the purposes of determining the
42 amount of a category of income pursuant to N.J.S.54A:5-1 that is
43 net of expenses, no amounts shall be taken as a deduction pursuant
44 to section 199 of the federal Internal Revenue Code of 1986, 26
45 U.S.C. s.199, and the deduction of any amounts pursuant to section
46 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199
47 shall be disallowed except that this disallowance shall not apply to

1 amounts deducted pursuant to section 199 of the federal Internal
2 Revenue Code of 1986 that are exclusively based upon domestic
3 production gross receipts of the taxpayer or allocable to the
4 taxpayer under that section which are derived only from any lease,
5 rental, license, sale, exchange, or other disposition of qualifying
6 production property which the taxpayer shall demonstrate to the
7 satisfaction of the director was manufactured or produced by the
8 taxpayer in whole or in significant part within the United States but
9 not qualified production property that was grown or extracted by
10 the taxpayer. "Manufactured or produced" as used in this paragraph
11 shall be limited to performance of an operation or series of
12 operations the object of which is to place items of tangible personal
13 property in a form, composition, or character different from that in
14 which they were acquired. The change in form, composition, or
15 character shall be a substantial change, and result in a
16 transformation of property into a different or substantially more
17 usable product.

18 For tax years beginning after December 31, 2017,
19 notwithstanding the provisions of N.J.S.54A:5-1 or any other law to
20 the contrary, for the purposes of determining the amount of a
21 category of income pursuant to N.J.S.54A:5-1 that is net of
22 expenses, no amounts shall be taken as a deduction pursuant to
23 section 199A of the federal Internal Revenue Code (26 U.S.C.
24 s.199A).

25 (cf: P.L.2005, c.127, s.2)

26

27 14. (New section) If any material provision within a clause,
28 sentence, paragraph, section, or part of P.L. , c. (C.) (pending
29 before the Legislature as this bill) or the application thereof shall be
30 judged invalid by a court of competent jurisdiction, such order or
31 judgment shall be confined in its operation to the controversy in
32 which it was rendered, and shall not affect or invalidate the
33 remainder of any provision of P.L. , c. (C.) (pending before
34 the Legislature as this bill), or the application of any part thereof to
35 any other person or circumstance and, to this end, the provisions of
36 each clause, sentence, paragraph, section, or part of
37 P.L. , c. (C.) (pending before the Legislature as this bill) are
38 declared to be severable.

39

40 15. (New section) Notwithstanding the provisions of the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
42 seq.), to the contrary, the director may adopt, immediately, upon
43 filing with the Office of Administrative Law, regulations that the
44 director deems necessary to implement the provisions of
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 which regulations shall be effective for a period not to exceed 180
47 days from the date of the filing. The director may thereafter amend,

1 adopt, or readopt the regulations in accordance with the
2 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

3

4 16. This act shall take effect immediately. Sections 2 and 3 shall
5 apply retroactively to tax years beginning on and after January 1,
6 2017, and section 3 shall expire on December 31, 2019. The
7 remaining sections shall apply to tax years beginning on and after
8 January 1, 2018.

9

10

11

STATEMENT

12

13 This bill imposes a surtax on allocated entire net income for the
14 privilege period ending in 2018 and the next following privilege
15 period, decouples certain provisions of the corporation business tax
16 from the Internal Revenue Code, and imposes a tax on certain
17 dividends.

18

Surtax on Business Income Exceeding \$1 Million

19

20

21 This bill imposes a surtax of 2.5 percent against a taxpayer,
22 which has entire net income in excess of \$1 million but less than
23 \$25 million, and of four percent against a taxpayer, which has entire
24 net income of \$25 million or more. The surtax applies to the
25 privilege period ending on or after January 1, 2018 and the next
26 following privilege period.

27 This bill imposes the surtax on the allocated entire net income of
28 a taxpayer. The bill disallows the application of the various
29 business incentive credits against the surtax, but allows application
30 of credits for installment payments, estimated payments made with
31 a request for an extension of time for filing a return, or
32 overpayments from prior privilege periods. The surtax imposed by
33 this bill does not apply to public utilities.

34

Decoupling from Internal Revenue Code

35

36

37 The federal Tax Cuts and Jobs Act (Pub.L.115-97), signed into
38 law December 22, 2017, enacted a number of changes to the federal
39 Internal Revenue Code. This bill disallows the deduction taken for
40 federal purposes against income reported pursuant to federal
41 Internal Revenue Code section 965. That section establishes the
42 repatriation transition tax at a substantially lower rate for federal
43 purposes. This bill further prescribes a method to apply the federal
44 interest deduction limitation in section 163(j) of the federal Internal
45 Revenue Code. Additionally, the bill decouples the corporation
46 business tax and the gross income tax from section 199A of the
47 federal Internal Revenue Code. Section 199A allows taxpayers
48 other than corporations a deduction of 20 percent of qualified

1 business income earned in a qualified trade or business, subject to
2 certain limitations.

3

4 *Taxation of Dividends*

5

6 The bill reduces the dividend exclusion amount for taxpayers
7 receiving dividends from an 80 percent or greater owned subsidiary,
8 from 100 percent to 95 percent.

9 Lastly, this bill imposes a special tax on dividends and deemed
10 dividend distributions that either a corporation business tax filer or
11 an insurance company licensed to insure risks in New Jersey
12 receives from subsidiaries if the total aggregate amount of dividend
13 and deemed dividend distributions received is greater than
14 \$1,000,000 for tax years beginning on or after January 1, 2017 and
15 ending before December 31, 2018. The dividends will be taxed at
16 the rate of 9% and the tax must be paid on or before May 15, 2019.