

**ASSEMBLY, No. 4262**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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INTRODUCED JUNE 21, 2018

**Sponsored by:**

**Assemblywoman ELIANA PINTOR MARIN**

**District 29 (Essex)**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**SYNOPSIS**

Decouples certain provisions of corporation business tax from Internal Revenue Code; alters dividends received deduction; revises tax base of surtax on corporation business income; repeals tax on certain dividends.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/26/2018)**

1 AN ACT concerning the corporation business tax, amending  
2 P.L.1945, c.162, P.L.2002, c.40, and P.L. , c. (pending before  
3 the Legislature as Assembly Bill No. 4202 and Senate Bill No.  
4 2746), and repealing section 3 of P.L. , c. (pending before the  
5 Legislature as Assembly Bill No. 4202 and Senate Bill No.  
6 2746).

7  
8 **BE IT ENACTED** by the Senate and General Assembly of the State  
9 of New Jersey:

10  
11 1. Section 1 of P.L. , c. (pending before the Legislature as  
12 Assembly Bill No. 4202 and Senate Bill No. 2746) is amended to  
13 read as follows:

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

18 (1) For a taxpayer, except a public utility, that has **【entire】**  
19 allocated net income in excess of \$1 million, but less than \$25  
20 million for the privilege period, the surtax imposed shall be 2.5%;

21 (2) For a taxpayer, except a public utility, that has **【entire】**  
22 allocated net income in excess of \$25 million for the privilege  
23 period, the surtax imposed shall be 4%.

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

37 (cf: P.L. , c. (pending before the Legislature as Assembly Bill  
38 No. 4202 and Senate Bill No. 2746))

39  
40 2. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to  
41 read as follows:

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

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

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

4 (c) "Corporation" shall mean any corporation, joint-stock  
5 company or association and any business conducted by a trustee or  
6 trustees wherein interest or ownership is evidenced by a certificate  
7 of interest or ownership or similar written instrument, any other  
8 entity classified as a corporation for federal income tax purposes,  
9 and any state or federally chartered building and loan association or  
10 savings and loan association.

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

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

1 If in the opinion of the **【commissioner】** director, the  
2 corporation's books do not disclose fair valuations the  
3 **【commissioner】** director may make a reasonable determination of  
4 the net worth which, in his opinion, would reflect the fair value of  
5 the assets, exclusive of subsidiary investments as defined aforesaid,  
6 carried on the books of the corporation, in accordance with sound  
7 accounting principles, and such determination shall be used as net  
8 worth for the purpose of this act.

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

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

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

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

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

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

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

43 For the purpose of this act, the amount of a taxpayer's entire net  
44 income shall be deemed prima facie to be equal in amount to the  
45 taxable income, before net operating loss deduction and special  
46 deductions, which the taxpayer is required to report, or, if the  
47 taxpayer is classified as a partnership for federal tax purposes,  
48 would otherwise be required to report, to the United States Treasury

1 Department for the purpose of computing its federal income tax,  
2 provided however, that in the determination of such entire net  
3 income,

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

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

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

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

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

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

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

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

1 (ii) For the periods set forth in subparagraph (F)(i) of paragraph  
2 (2) of this subsection, any amount, except with respect to qualified  
3 mass commuting vehicles as described in section 168(f)(8)(D)(v) of  
4 the Internal Revenue Code as in effect immediately prior to January  
5 1, 1984, which the taxpayer claimed as a deduction in computing  
6 federal income tax pursuant to a qualified lease agreement under  
7 paragraph (8) of that section.

8 The director shall promulgate rules and regulations necessary to  
9 carry out the provisions of this section, which rules shall provide,  
10 among others, the manner in which the remaining life of property  
11 shall be reported.

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

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

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

38 (I) Interest paid, accrued or incurred for the privilege period to  
39 a related member, as defined in section 5 of P.L.2002, c.40  
40 (C.54:10A-4.4), except that a deduction shall be permitted to the  
41 extent that the taxpayer establishes by clear and convincing  
42 evidence, as determined by the director, that: (i) a principal purpose  
43 of the transaction giving rise to the payment of the interest was not  
44 to avoid taxes otherwise due under Title 54 of the Revised Statutes  
45 or Title 54A of the New Jersey Statutes, (ii) the interest is paid  
46 pursuant to arm's length contracts at an arm's length rate of interest,  
47 and (iii)(aa) the related member was subject to a tax on its net  
48 income or receipts in this State or another state or possession of the

1 United States or in a foreign nation, (bb) a measure of the tax  
2 includes the interest received from the related member, and (cc) the  
3 rate of tax applied to the interest received by the related member is  
4 equal to or greater than a rate three percentage points less than the  
5 rate of tax applied to taxable interest by this State.

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

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

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

43 (ii) For privilege periods beginning after December 31, 2017,  
44 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-1 et  
45 seq.) or any other law to the contrary, for the purposes of  
46 determining the amount of income pursuant to P.L.1945, c.162  
47 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be

1 taken as a deduction pursuant to section 199A of the Internal  
2 Revenue Code (26 U.S.C. s.199A).

3 (K) For privilege periods beginning after December 31, 2017,  
4 the interest deduction limitation in subsection (j) of section 163 of  
5 the Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-  
6 rata basis to interest paid to both related and unrelated parties, with  
7 any interest, which is not allowed as a deduction pursuant to either  
8 subparagraph (I) of paragraph (2) of this subsection or in section 5  
9 of P.L.2002, c.40 (C.54:10A-4.4), excluded from this calculaton.

10 (3) The **【commissioner】** director may, whenever necessary to  
11 properly reflect the entire net income of any taxpayer, determine the  
12 year or period in which any item of income or deduction shall be  
13 included, without being limited to the method of accounting  
14 employed by the taxpayer.

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

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

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

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

33 (ii) Making or placing deposits with foreign persons which are  
34 banks or foreign branches of banks (including foreign subsidiaries)  
35 or foreign branches of the taxpayers or with other international  
36 banking facilities;

37 (iii) Entering into foreign exchange trading or hedging  
38 transactions related to any of the transactions described in this  
39 paragraph; or

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

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

45 (5) (A) (i) Entire net income shall exclude 100% of dividends  
46 which were included in computing such taxable income for federal  
47 income tax purposes, paid to the taxpayer by one or more  
48 subsidiaries owned by the taxpayer to the extent of the 80% or more



1 ownership of investment described in subsection (d) of this section  
2 **【and】 for privilege periods ending on or before December 31, 2016.**

3 (ii) For the privilege period beginning after December 31, 2016,  
4 entire net income shall exclude 90% of dividends which were  
5 included in computing such taxable income for federal income tax  
6 purposes, paid to the taxpayer by one or more subsidiaries owned  
7 by the taxpayer to the extent of the 80% or more ownership of  
8 investment described in subsection (d) of this section.

9 (iii) For privilege periods beginning on and after January 1,  
10 2018, entire net income shall exclude 95% of dividends which were  
11 included in computing such taxable income for federal income tax  
12 purposes, paid to the taxpayer by one or more subsidiaries owned  
13 by the taxpayer to the extent of the 80% or more ownership of  
14 investment described in subsection (d) of this section.

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

22 (6) (A) Net operating loss deduction. There shall be allowed as  
23 a deduction for the privilege period the net operating loss carryover  
24 to that period.

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

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

46 (D) Change in ownership. Where there is a change in 50% or  
47 more of the ownership of a corporation because of redemption or  
48 sale of stock and the corporation changes the trade or business

1 giving rise to the loss, no net operating loss sustained before the  
2 changes may be carried over to be deducted from income earned  
3 after such changes. In addition where the facts support the premise  
4 that the corporation was acquired under any circumstances for the  
5 primary purpose of the use of its net operating loss carryover, the  
6 director may disallow the carryover.

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

21 Provided, that this subparagraph (E) shall not restrict the  
22 surrender or acquisition of corporation business tax benefit  
23 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-  
24 7.42a) and shall not restrict the application of corporation business  
25 tax benefit certificates pursuant to section 2 of P.L.1997, c.334  
26 (C.54:10A-4.2).

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

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

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

11 (A) Depreciation for property placed in service prior to January  
12 1, 1998 shall be adjusted as follows:

13 (i) Depreciation for federal income tax purposes shall be  
14 disallowed in full.

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

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

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

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

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

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

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

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

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

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

1 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.  
2 s.1 et seq.) in effect on December 31, 2002.

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

8 (14) Notwithstanding the provisions of subsection (i) of section  
9 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),  
10 for privilege periods beginning after December 31, 2008 and before  
11 January 1, 2011, entire net income shall include the amount of  
12 discharge of indebtedness income excluded for federal income tax  
13 purposes pursuant to subsection (i) of section 108 of the federal  
14 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege  
15 periods beginning on or after January 1, 2014 and before January 1,  
16 2019, entire net income shall exclude the amount of discharge of  
17 indebtedness income included for federal income tax purposes,  
18 pursuant to subsection (i) of section 108 of the federal Internal  
19 Revenue Code of 1986 (26 U.S.C. s.108).

20 (15) Entire net income shall exclude the gain or income derived  
21 from the sale or assignment of a tax credit transfer certificate  
22 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section  
23 10 of P.L.2014, c.63 (C.34:1B-251).

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

27 (m) "Financial business corporation" shall mean any corporate  
28 enterprise which is (1) in substantial competition with the business  
29 of national banks and which (2) employs moneyed capital with the  
30 object of making profit by its use as money, through discounting  
31 and negotiating promissory notes, drafts, bills of exchange and  
32 other evidences of debt; buying and selling exchange; making of or  
33 dealing in secured or unsecured loans and discounts; dealing in  
34 securities and shares of corporate stock by purchasing and selling  
35 such securities and stock without recourse, solely upon the order  
36 and for the account of customers; or investing and reinvesting in  
37 marketable obligations evidencing indebtedness of any person,  
38 copartnership, association or corporation in the form of bonds,  
39 notes or debentures commonly known as investment securities; or  
40 dealing in or underwriting obligations of the United States, any  
41 state or any political subdivision thereof, or of a corporate  
42 instrumentality of any of them. This shall include, without  
43 limitation of the foregoing, business commonly known as industrial  
44 banks, dealers in commercial paper and acceptances, sales finance,  
45 personal finance, small loan and mortgage financing businesses, as  
46 well as any other enterprise employing moneyed capital coming  
47 into competition with the business of national banks; provided that  
48 the holding of bonds, notes, or other evidences of indebtedness by

1 individual persons not employed or engaged in the banking or  
2 investment business and representing merely personal investments  
3 not made in competition with the business of national banks, shall  
4 not be deemed financial business. Nor shall "financial business"  
5 include national banks, production credit associations organized  
6 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,  
7 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
8 insurance companies duly authorized to transact business in this  
9 State, security brokers or dealers or investment companies or  
10 bankers not employing moneyed capital coming into competition  
11 with the business of national banks, real estate investment trusts, or  
12 any of the following entities organized under the laws of this State:  
13 credit unions, savings banks, savings and loan and building and  
14 loan associations, pawnbrokers, and State banks and trust  
15 companies.

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

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

38 (p) "New Jersey S corporation" means a corporation that is an S  
39 corporation; which has made a valid election pursuant to section 3  
40 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
41 corporation continuously since the effective date of the valid  
42 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-  
43 5.22).

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

46 (r) "Qualified investment partnership" means a partnership  
47 under this act that has more than 10 members or partners with no  
48 member or partner owning more than a 50% interest in the entity

1 and that derives at least 90% of its gross income from dividends,  
2 interest, payments with respect to securities loans, and gains from  
3 the sale or other disposition of stocks or securities or foreign  
4 currencies or commodities or other similar income (including but  
5 not limited to gains from swaps, options, futures or forward  
6 contracts) derived with respect to its business of investing or  
7 trading in those stocks, securities, currencies or commodities, but  
8 "investment partnership" shall not include a "dealer in securities"  
9 within the meaning of section 1236 of the federal Internal Revenue  
10 Code of 1986, 26 U.S.C. s.1236.

11 (s) "Savings institution" means a state or federally chartered  
12 building and loan association, savings and loan association, or  
13 savings bank.

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

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

17

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

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

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

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

36 "Interest expenses and costs" means amounts directly or  
37 indirectly allowed as deductions under section 163 of the federal  
38 Internal Revenue Code of 1986, 26 U.S.C. s.163, for purposes of  
39 determining taxable income under the code to the extent such  
40 expenses and costs are directly or indirectly for, related to, or in  
41 connection with the direct or indirect acquisition, maintenance,  
42 management, ownership, sale, exchange or disposition of intangible  
43 property.

44 "Related member" means a person that, with respect to the  
45 taxpayer during all or any portion of the privilege period, is: (1) a  
46 related entity, (2) a component member as defined in subsection (b)  
47 of section 1563 of the federal Internal Revenue Code of 1986, 26  
48 U.S.C. s.1563, (3) is a person to or from whom there is attribution

1 of stock ownership in accordance with subsection (e) of section  
2 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
3 s.1563, or (4) is a person that, notwithstanding its form of  
4 organization, bears the same relationship to the taxpayer as a person  
5 described in (1) through (3) of this definition.

6 "Related entity" means (1) a stockholder who is an individual, or  
7 a member of the stockholder's family enumerated in section 318 of  
8 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the  
9 stockholder and the members of the stockholder's family own,  
10 directly, indirectly, beneficially or constructively, in the aggregate,  
11 **【at least】** 50% or more of the value of the taxpayer's outstanding  
12 stock; (2) a stockholder, or a stockholder's partnership, limited  
13 liability company, estate, trust or corporation, if the stockholder and  
14 the stockholder's partnerships, limited liability companies, estates,  
15 trusts and corporations own directly, indirectly, beneficially or  
16 constructively, in the aggregate, **【at least】** 50% or more per cent of  
17 the value of the taxpayer's outstanding stock; or (3) a corporation,  
18 or a party related to the corporation in a manner that would require  
19 an attribution of stock from the corporation to the party or from the  
20 party to the corporation under the attribution rules of the federal  
21 Internal Revenue Code of 1986, 26 U.S.C. s.318, if the taxpayer  
22 owns, directly, indirectly, beneficially or constructively, **【at least】**  
23 50% or more percent of the value of the corporation's outstanding  
24 stock. The attribution rules of the federal Internal Revenue Code of  
25 1986, 26 U.S.C. s.318, shall apply for purposes of determining  
26 whether the ownership requirements of this definition have been  
27 met.

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

34 c. (1) The adjustments required in subsection b. of this section  
35 shall not apply if: (a) the interest expenses and costs and intangible  
36 expenses and costs are directly or indirectly paid, accrued or  
37 incurred to a related member in a foreign nation which has in force  
38 a comprehensive income tax treaty with the United States; or (b) the  
39 taxpayer establishes by clear and convincing evidence, as  
40 determined by the director, that the adjustments are unreasonable;  
41 or (c) the taxpayer and the director agree in writing to the  
42 application or use of an alternative method of apportionment under  
43 section 8 of P.L.1945, c.162 (C.54:10A-8). Nothing in this  
44 subsection shall be construed to limit or negate the director's  
45 authority to otherwise enter into agreements and compromises  
46 otherwise allowed by law.

47 (2) For the purposes of qualifying for the exception provided by  
48 subparagraph (a) of paragraph (1) of this subsection, the taxpayer



1 shall disclose on its return for the privilege period the name of the  
2 related member, the amount of the interest expenses and costs and  
3 intangible expenses and costs deducted, the relevant foreign nation,  
4 and such other information as the director may prescribe.

5 (3) The adjustments required in subsection b. of this section  
6 shall not apply to the portion of interest expenses and costs and  
7 intangible expenses and costs that the taxpayer establishes by a  
8 preponderance of the evidence meets both of the following: (a) the  
9 related member during the same income year directly or indirectly  
10 paid, received, accrued or incurred the portion to or from a person  
11 that is not a related member, and (b) the transaction giving rise to  
12 the interest expenses and costs or the intangible expenses and costs  
13 between the taxpayer and the related member did not have as a  
14 principal purpose the avoidance of any portion of the tax due under  
15 Title 54 of the Revised Statutes or Title 54A of the New Jersey  
16 Statutes.

17 d. Nothing in this section shall require a taxpayer to add to its  
18 net income more than once any amount of interest expenses and  
19 costs and intangible expenses and costs that the taxpayer pays,  
20 accrues or incurs to a related member described in subsection b. of  
21 this section.

22 e. Nothing in this section shall be construed to limit or negate  
23 the director's authority to make adjustments under paragraph (3) of  
24 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section  
25 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162  
26 (C.54:10A-10).

27 (cf: P.L.2002, c.40, s.5)

28  
29 4. (New section) Notwithstanding the provisions of the  
30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
31 seq.), to the contrary, the director may adopt, immediately, upon  
32 filing with the Office of Administrative Law, regulations that the  
33 director deems necessary to implement the provisions of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill),  
35 which regulations shall be effective for a period not to exceed 180  
36 days from the date of the filing. The director may thereafter amend,  
37 adopt, or readopt the regulations in accordance with the  
38 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

39  
40 5. Section 3 of P.L. , c. (C. ) (pending before the Legislature  
41 as Assembly Bill No. 4202 and Senate Bill No. 2746) is repealed.

42  
43 6. This act shall take effect immediately upon the enactment  
44 into law of P.L. , c. (pending before the Legislature as Assembly  
45 Bill No. 4202 and Senate Bill No. 2746) and shall apply to privilege  
46 periods beginning on and after January 1, 2018, except section 5  
47 and part (ii) of subparagraph (A) of paragraph (5) of subsection (k)

1 of section 4 of P.L.1945, c.162 shall apply retroactively to the  
2 privilege period beginning after December 31, 2016.

3  
4  
5 STATEMENT

6  
7 This bill decouples certain provisions of the corporation business  
8 tax from the Internal Revenue Code, adjusts the rate of the  
9 dividends received deduction under the corporation business tax,  
10 and alters P.L. c, (pending before the Legislature as Assembly  
11 Bill No. 4202 and Senate Bill No. 2746).

12 The bill changes the income on which the surtax established  
13 pursuant to P.L. c, (pending before the Legislature as Assembly  
14 Bill No. 4202 and Senate Bill No. 2746) is determined from entire  
15 net income to allocated net income.

16 This bill prescribes a method to apply the federal interest  
17 deduction limitation in section 163(j) of the federal Internal  
18 Revenue Code. Additionally, the bill decouples the corporation  
19 business tax from section 199A of the federal Internal Revenue  
20 Code. Section 199A allows taxpayers other than corporations a  
21 deduction of 20 percent of qualified business income earned in a  
22 qualified trade or business, subject to certain limitations.

23 The bill reduces the dividend exclusion amount for taxpayers  
24 receiving dividends from an 80 percent or greater owned subsidiary,  
25 from 100 percent to 90 percent for the privilege period beginning  
26 after December 31, 2016. For privilege periods beginning on and  
27 after January 1, 2018, the bill sets the dividend exclusion amount  
28 for taxpayers receiving dividends from an 80 percent or greater  
29 owned subsidiary at 95 percent.

30 It is the intent of the bill's sponsor that this bill be treated as an  
31 enactment subsequent to P.L. c, (pending before the Legislature  
32 as Assembly Bill No. 4202 and Senate Bill No. 2746) and that  
33 sections 2 and 3 of this bill supplant the amendatory provisions of  
34 P.L. c, (pending before the Legislature as Assembly Bill No.  
35 4202 and Senate Bill No. 2746) in their entirety.