

[First Reprint]

ASSEMBLY, No. 4262

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED JUNE 21, 2018

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Revises tax base of surtax on corporation business income; revising method through which unitary businesses file returns.

CURRENT VERSION OF TEXT

As amended on August 27, 2018 by the General Assembly pursuant to the Governor's recommendations.



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

1 AN ACT concerning the corporation business tax, ¹and¹ amending
 2 ¹【P.L.1945, c.162, P.L.2002, c.40, and P.L. , c. (pending
 3 before the Legislature as Assembly Bill No. 4202 and Senate Bill
 4 No. 2746), and repealing section 3 of P.L. , c. (pending before
 5 the Legislature as Assembly Bill No. 4202 and Senate Bill No.
 6 2746)】 P.L.2018, c.48).¹

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

10
 11 ¹【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))】¹

39
 40 ¹【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:

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly amendments adopted in accordance with Governor's
 recommendations August 27, 2018.

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

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

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

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

43 In the case of banking corporations which have international
44 banking facilities as defined in subsection (n), the foregoing
45 aggregate of values shall also be reduced by retained earnings of the
46 international banking facility. Retained earnings means the
47 earnings accumulated over the life of such facility and shall not

1 include the distributive share of dividends paid and federal income
2 taxes paid or payable during the tax year.

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

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

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

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

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

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

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

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

45 For the purpose of this act, the amount of a taxpayer's entire net
46 income shall be deemed prima facie to be equal in amount to the
47 taxable income, before net operating loss deduction and special
48 deductions, which the taxpayer is required to report, or, if the

1 taxpayer is classified as a partnership for federal tax purposes,
2 would otherwise be required to report, to the United States Treasury
3 Department for the purpose of computing its federal income tax,
4 provided however, that in the determination of such entire net
5 income,

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

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

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

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

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

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

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

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

1 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
2 seq.) prior to 1998.

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

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

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

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

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

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

1 and (iii)(aa) the related member was subject to a tax on its net
2 income or receipts in this State or another state or possession of the
3 United States or in a foreign nation, (bb) a measure of the tax
4 includes the interest received from the related member, and (cc) the
5 rate of tax applied to the interest received by the related member is
6 equal to or greater than a rate three percentage points less than the
7 rate of tax applied to taxable interest by this State.

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

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

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

45 (ii) For privilege periods beginning after December 31, 2017,
46 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-1 et
47 seq.) or any other law to the contrary, for the purposes of
48 determining the amount of income pursuant to P.L.1945, c.162

1 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be
2 taken as a deduction pursuant to section 199A of the Internal
3 Revenue Code (26 U.S.C. s.199A).

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

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

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

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

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

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

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

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

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

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

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

1 subsidiaries owned by the taxpayer to the extent of the 80% or more
2 ownership of investment described in subsection (d) of this section
3 **【and】 for privilege periods ending on or before December 31, 2016.**

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

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

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

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

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

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

47 (D) Change in ownership. Where there is a change in 50% or
48 more of the ownership of a corporation because of redemption or

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

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

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

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

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

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

12 (A) Depreciation for property placed in service prior to January
13 1, 1998 shall be adjusted as follows:

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

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

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

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

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

44 (9) Notwithstanding paragraph (1) of this subsection, entire net
45 income shall not include the income derived by a corporation
46 organized in a foreign country from the international operation of a
47 ship or ships, or from the international operation of aircraft, if such

1 income is exempt from federal taxation pursuant to section 883 of
2 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

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

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

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

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

46 (13) (A) Notwithstanding the provisions of section 179 of the
47 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
48 property placed in service on or after January 1, 2004, the costs that

1 a taxpayer may otherwise elect to treat as an expense which is not
2 chargeable to a capital account shall be determined pursuant to the
3 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.
4 s.1 et seq.) in effect on December 31, 2002.

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

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

22 (15) Entire net income shall exclude the gain or income derived
23 from the sale or assignment of a tax credit transfer certificate
24 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
25 10 of P.L.2014, c.63 (C.34:1B-251).

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

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

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

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

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

40 (p) "New Jersey S corporation" means a corporation that is an S
41 corporation; which has made a valid election pursuant to section 3
42 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
43 corporation continuously since the effective date of the valid
44 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
45 5.22).

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

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

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

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

(cf: P.L.2017, c.313, s.4)]¹

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

5. a. For the purposes of this section:

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

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

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

"Related member" means a person that, with respect to the taxpayer during all or any portion of the privilege period, is: (1) a

1 related entity, (2) a component member as defined in subsection (b)
2 of section 1563 of the federal Internal Revenue Code of 1986, 26
3 U.S.C. s.1563, (3) is a person to or from whom there is attribution
4 of stock ownership in accordance with subsection (e) of section
5 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
6 s.1563, or (4) is a person that, notwithstanding its form of
7 organization, bears the same relationship to the taxpayer as a person
8 described in (1) through (3) of this definition.

9 "Related entity" means (1) a stockholder who is an individual, or
10 a member of the stockholder's family enumerated in section 318 of
11 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
12 stockholder and the members of the stockholder's family own,
13 directly, indirectly, beneficially or constructively, in the aggregate,
14 **【at least】** 50% or more of the value of the taxpayer's outstanding
15 stock; (2) a stockholder, or a stockholder's partnership, limited
16 liability company, estate, trust or corporation, if the stockholder and
17 the stockholder's partnerships, limited liability companies, estates,
18 trusts and corporations own directly, indirectly, beneficially or
19 constructively, in the aggregate, **【at least】** 50% or more per cent of
20 the value of the taxpayer's outstanding stock; or (3) a corporation,
21 or a party related to the corporation in a manner that would require
22 an attribution of stock from the corporation to the party or from the
23 party to the corporation under the attribution rules of the federal
24 Internal Revenue Code of 1986, 26 U.S.C. s.318, if the taxpayer
25 owns, directly, indirectly, beneficially or constructively, **【at least】**
26 50% or more percent of the value of the corporation's outstanding
27 stock. The attribution rules of the federal Internal Revenue Code of
28 1986, 26 U.S.C. s.318, shall apply for purposes of determining
29 whether the ownership requirements of this definition have been
30 met.

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

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

1 authority to otherwise enter into agreements and compromises
2 otherwise allowed by law.

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

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

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

26 e. Nothing in this section shall be construed to limit or negate
27 the director's authority to make adjustments under paragraph (3) of
28 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section
29 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
30 (C.54:10A-10).

31 (cf: P.L.2002, c.40, s.5)】¹

32

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

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

37 (a) 【"Commissioner" or "director"】 "Director" shall mean the
38 Director of the Division of Taxation of the State Department of the
39 Treasury.

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

43 (c) "Corporation" shall mean any corporation, joint-stock
44 company or association and any business conducted by a trustee or
45 trustees wherein interest or ownership is evidenced by a certificate
46 of interest or ownership or similar written instrument, any other
47 entity classified as a corporation for federal income tax purposes,

1 and any state or federally chartered building and loan association or
2 savings and loan association.

3 (d) "Net worth" shall mean the aggregate of the values
4 disclosed by the books of the corporation for (1) issued and
5 outstanding capital stock, (2) paid-in or capital surplus, (3) earned
6 surplus and undivided profits, and (4) surplus reserves which can
7 reasonably be expected to accrue to holders or owners of equitable
8 shares, not including reasonable valuation reserves, such as reserves
9 for depreciation or obsolescence or depletion. Notwithstanding the
10 foregoing, net worth shall not include any deduction for the amount
11 of the excess depreciation described in paragraph (2) (F) of
12 subsection (k) of this section. The foregoing aggregate of values
13 shall be reduced by ~~100%~~ 50% of the amount disclosed by the
14 books of the corporation for investment in the capital stock of one
15 or more subsidiaries, which investment is defined as ownership (1)
16 of at least 80% of the total combined voting power of all classes of
17 stock of the subsidiary entitled to vote and (2) of at least 80% of the
18 total number of shares of all other classes of stock except nonvoting
19 stock which is limited and preferred as to dividends. In the case of
20 investment in an entity organized under the laws of a foreign
21 country, the foregoing requisite degree of ownership shall effect a
22 like reduction of such investment from the net worth of the
23 taxpayer, if the foreign entity is considered a corporation for any
24 purpose under the United States federal income tax laws, such as
25 (but not by way of sole examples) for the purpose of supplying
26 deemed paid foreign tax credits or for the purpose of status as a
27 controlled foreign corporation. In calculating the net worth of a
28 taxpayer entitled to reduction for investment in subsidiaries, the
29 amount of liabilities of the taxpayer shall be reduced by such
30 proportion of the liabilities as corresponds to the ratio which the
31 excluded portion of the subsidiary values bears to the total assets of
32 the taxpayer.

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

40 If in the opinion of the director, the corporation's books do not
41 disclose fair valuations the director may make a reasonable
42 determination of the net worth which, in his opinion, would reflect
43 the fair value of the assets, exclusive of subsidiary investments as
44 defined aforesaid, carried on the books of the corporation, in
45 accordance with sound accounting principles, and such
46 determination shall be used as net worth for the purpose of this act.

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

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

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

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

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

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

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

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

43 (1) Entire net income shall exclude for the periods set forth in
44 paragraph (2)(F)(i) of this subsection, any amount, except with
45 respect to qualified mass commuting vehicles as described in
46 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect
47 immediately prior to January 1, 1984, which is included in a

1 taxpayer's federal taxable income solely as a result of an election
2 made pursuant to the provisions of paragraph (8) of that section.

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

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

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

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

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

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

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

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

47 The director shall promulgate rules and regulations necessary to
48 carry out the provisions of this section, which rules shall provide,

1 among others, the manner in which the remaining life of property
2 shall be reported.

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

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

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

29 (I) Interest paid, accrued or incurred for the privilege period to a
30 related member, as defined in section 5 of P.L.2002, c.40
31 (C.54:10A-4.4), except that a deduction shall be permitted to the
32 extent that the taxpayer establishes by clear and convincing
33 evidence, as determined by the director, that: (i) a principal purpose
34 of the transaction giving rise to the payment of the interest was not
35 to avoid taxes otherwise due under Title 54 of the Revised Statutes
36 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
37 pursuant to arm's length contracts at an arm's length rate of interest,
38 and (iii)(aa) the related member was subject to a tax on its net
39 income or receipts in this State or another state or possession of the
40 United States or in a foreign nation, (bb) a measure of the tax
41 includes the interest received from the related member, and (cc) the
42 rate of tax applied to the interest received by the related member is
43 equal to or greater than a rate three percentage points less than the
44 rate of tax applied to taxable interest by this State, pursuant to
45 subsection (c)(1) of section 5 of P.L.1945, c.162 (C.54:10A-5).

46 A deduction shall also be permitted if the taxpayer establishes by
47 clear and convincing evidence, as determined by the director, that
48 the disallowance of a deduction is unreasonable, or the taxpayer and

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

6 A deduction shall also be permitted to the extent that the
7 taxpayer establishes by a preponderance of the evidence, as
8 determined by the director, that the interest is directly or indirectly
9 paid, accrued or incurred to (i) a related member in a foreign nation
10 which has in force a comprehensive income tax treaty with the
11 United States and the related member (aa) was subject to tax in the
12 foreign nation on a tax base that included the payment paid,
13 accrued, or incurred; and (bb) under which the related member's
14 income received from the transaction was taxed at an effective tax
15 rate equal to or greater than a rate of three percentage points less
16 than the rate of tax applied to taxable interest by the State of New
17 Jersey, pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
18 provided however that the taxpayer shall disclose on its return for
19 the privilege period the name of the related member, the amount of
20 the interest, the relevant foreign nation, and such other information
21 as the director may prescribe or (ii) to an independent lender and
22 the taxpayer guarantees the debt on which the interest is required.
23 Transactions between members of a combined group are
24 **[eliminated]** offset in the computation of the entire net income of
25 the members of the combined group, where included in the same
26 New Jersey combined return; therefore, this subparagraph only
27 applies to interest paid, accrued or incurred by a taxable member of
28 a combined group to related **[parties]** members that are not
29 **[members of the combined group]** included in the same New Jersey
30 combined return as such taxable member.

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

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

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

15 (3) The director may, whenever necessary to properly reflect the
16 entire net income of any taxpayer, determine the year or period in
17 which any item of income or deduction shall be included, without
18 being limited to the method of accounting employed by the
19 taxpayer.

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

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

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

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

38 (ii) Making or placing deposits with foreign persons which are
39 banks or foreign branches of banks (including foreign subsidiaries)
40 or foreign branches of the taxpayers or with other international
41 banking facilities;

42 (iii) Entering into foreign exchange trading or hedging
43 transactions related to any of the transactions described in this
44 paragraph; or

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

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

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

10 (ii) For **the** privilege **period** periods beginning after
11 December 31, 2016, entire net income shall exclude 95% of
12 dividends which were included in computing such taxable income
13 for federal income tax purposes, paid or deemed paid, to the
14 taxpayer by one or more subsidiaries owned by the taxpayer to the
15 extent of the 80% or more ownership of investment described in
16 subsection (d) of this section. For the purposes of calculating the
17 tax liability owed for the paid or deemed paid dividends included in
18 entire net income by this subsection, the taxpayer shall use either
19 their three-year average allocation factor for the taxpayer's **[2015]**
20 2014 through **[2017]** 2016 tax years reported on the taxpayer's tax
21 returns or 3.5 percent, whichever is lower, for privilege periods
22 beginning before January 1, 2019.

23 (iii) For privilege periods beginning on and after **[January 1,**
24 **2018]** January 1, 2019, entire net income shall exclude 95% of
25 dividends which were included in computing such taxable income
26 for federal income tax purposes, paid or deemed paid to the
27 taxpayer by one or more subsidiaries owned by the taxpayer to the
28 extent of the 80% or more ownership of investment described in
29 subsection (d) of this section.

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

37 (C) To the extent a subsidiary received dividends from other
38 subsidiaries and included those dividends in its entire net income
39 for the purposes of determining its tax liability pursuant to section 5
40 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,
41 the taxpayer receiving those same dividends from the subsidiary
42 shall exclude those dividends from its entire net income based on
43 the subsidiary's allocation factor used by the subsidiary in
44 determining its tax liability pursuant to section 5 of P.L.1945, c.162
45 (C.54:10A-5).

46 (6) (A) Net operating loss deduction. For privilege periods
47 ending before **[the effective date of P.L.2018, c.48]** July 31, 2019,

1 there shall be allowed as a deduction for the privilege period the net
2 operating loss carryover to that period.

3 (B) Net operating loss carryover. A net operating loss for any
4 privilege period ending after June 30, 1984 shall be a net operating
5 loss carryover to each of the seven privilege periods following the
6 period of the loss and a net operating loss for any privilege period
7 ending after June 30, 2009 shall be a net operating loss carryover to
8 each of the twenty privilege periods following the period of the
9 loss. The entire amount of the net operating loss for any privilege
10 period (the "loss period") shall be carried to the earliest of the
11 privilege periods to which the loss may be carried. The portion of
12 the loss which shall be carried to each of the other privilege periods
13 shall be the excess, if any, of the amount of the loss over the sum of
14 the entire net income, computed without the **【exclusion】** exclusions
15 permitted in **【paragraph】** paragraphs (4) or (5) of this subsection or
16 the net operating loss deduction provided by subparagraph (A) of
17 this paragraph, for each of the prior privilege periods to which the
18 loss may be carried.

19 (C) Net operating loss. For purposes of this paragraph the term
20 "net operating loss" means the excess of the deductions over the
21 gross income used in computing entire net income without the net
22 operating loss deduction provided for in subparagraph (A) of this
23 paragraph and the **【exclusion】** exclusions in paragraph (4) or (5) of
24 this subsection.

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

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

1 Provided, that this subparagraph (E) shall not restrict the
2 surrender or acquisition of corporation business tax benefit
3 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
4 7.42a) and shall not restrict the application of corporation business
5 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
6 (C.54:10A-4.2).

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

14 (7) The entire net income of gas, electric and gas and electric
15 public utilities that were subject to, or would have been subject to
16 tax if doing business in this State, the provisions of P.L.1940, c.5
17 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
18 substituting the New Jersey depreciation allowance for federal tax
19 depreciation with respect to assets placed in service prior to January
20 1, 1998. For gas, electric, and gas and electric public utilities that
21 were subject to, or would have been subject to tax if doing business
22 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
23 prior to 1998, the New Jersey depreciation allowance shall be
24 computed as follows: All depreciable assets placed in service prior
25 to January 1, 1998 shall be considered a single asset account. The
26 New Jersey tax basis of this depreciable asset account shall be an
27 amount equal to the carryover adjusted basis for federal income tax
28 purposes on December 31, 1997 of all depreciable assets in service
29 on December 31, 1997, increased by the excess, of the "net carrying
30 value," defined to be adjusted book basis of all assets and liabilities,
31 excluding deferred income taxes, recorded on the public utility's
32 books of account on December 31, 1997, over the carryover
33 adjusted basis for federal income tax purposes on December 31,
34 1997 of all assets and liabilities owned by the gas, electric, or gas
35 and electric public utility as of December 31, 1997. "Books of
36 account" for gas, gas and electric, and electric public utilities means
37 the uniform system of accounts as promulgated by the Federal
38 Energy Regulatory Commission and adopted by the Board of Public
39 Utilities. The following adjustments to entire net income shall be
40 made pursuant to this section:

41 (A) Depreciation for property placed in service prior to January
42 1, 1998 shall be adjusted as follows:

43 (i) Depreciation for federal income tax purposes shall be
44 disallowed in full.

45 (ii) A deduction shall be allowed for the New Jersey
46 depreciation allowance. The New Jersey depreciation allowance
47 shall be computed for the single asset account described above
48 based on the New Jersey tax basis as adjusted above as if all assets

1 in the single asset account were first placed in service on January 1,
2 1998. Depreciation shall be computed using the straight line
3 method over a thirty-year life. A full year's depreciation shall be
4 allowed in the initial tax year. No half-year convention shall apply.
5 The depreciable basis of the single account shall be reduced by the
6 adjusted federal tax basis of assets sold, retired, or otherwise
7 disposed of during any year on which gain or loss is recognized for
8 federal income tax purposes as described in subparagraph (B) of
9 this paragraph.

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

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

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

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

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

1 the laws of a jurisdiction other than the United States or its political
2 subdivisions.

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

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

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

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

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

38 (14) Notwithstanding the provisions of subsection (i) of section
39 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
40 for privilege periods beginning after December 31, 2008 and before
41 January 1, 2011, entire net income shall include the amount of
42 discharge of indebtedness income excluded for federal income tax
43 purposes pursuant to subsection (i) of section 108 of the federal
44 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
45 periods beginning on or after January 1, 2014 and before January 1,
46 2019, entire net income shall exclude the amount of discharge of
47 indebtedness income included for federal income tax purposes,

1 pursuant to subsection (i) of section 108 of the federal Internal
2 Revenue Code of 1986 (26 U.S.C. s.108).

3 (15) Entire net income shall exclude the gain or income derived
4 from the sale or assignment of a tax credit transfer certificate
5 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
6 10 of P.L.2014, c.63 (C.34:1B-251).

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

9 (B) For purposes of this paragraph, "net deferred tax liability"
10 means deferred tax liabilities that exceed the deferred tax assets of
11 the combined group, as computed in accordance with generally
12 accepted accounting principles, and "net deferred tax asset" means
13 that deferred tax assets exceed the deferred tax liabilities of the
14 combined group, as computed in accordance with generally
15 accepted accounting principles.

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

21 (D) If the provisions of sections 18 through **22** 23 of P.L.2018,
22 c.48 (C.54:10A-4.6 to C.54:10A-4.10) result in an aggregate
23 increase to the members' net deferred tax liability or an aggregate
24 decrease to the members' net deferred tax asset, or an aggregate
25 change from a net deferred tax asset to a net deferred tax liability,
26 the combined group shall be entitled to a deduction, as determined
27 in this paragraph.

28 (E) For 10 years beginning with the combined group's first
29 privilege period beginning on or after January 1 of the fifth year
30 after the effective date of P.L.2018, c.48 (C.54:10A-54.1 et al.)
31 **【becomes effective】**, a combined group shall be entitled to a
32 deduction from combined group entire net income equal to one-
33 tenth of the amount necessary to offset the increase in the net
34 deferred tax liability or decrease in the net deferred tax asset, or
35 aggregate change from a net deferred tax asset to a net deferred tax
36 liability. Such increase in the net deferred tax liability or decrease
37 in the net deferred tax asset or the aggregate change from a net
38 deferred tax asset to a net deferred tax liability shall be computed
39 based on the change that would result from the imposition of the
40 unitary reporting requirements under sections 1 **【through】** and
41 sections **【17-21】** 18-23 of P.L.2018, c.48 (C.54:10A-54.1 et al.) but
42 for the deduction provided under this paragraph as of the effective
43 date of this paragraph.

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

47 (i) the deferred tax impact determined in subparagraph (E) of this
48 paragraph shall be divided by the rate determined under section 5 of

1 P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018, c.48
2 (C.54:10A-54.1 et al.);

3 (ii) the resulting amount shall be further divided by the New
4 Jersey unitary business allocation factor that was used by the
5 combined group in the calculation of the deferred tax assets and
6 deferred tax liabilities as described in subparagraph (E) of this
7 paragraph;

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

11 (G) The deduction calculated under this paragraph shall not be
12 adjusted as a result of any events happening subsequent to such
13 calculation, including, but not limited to, any disposition or
14 abandonment of assets. Such deduction shall be calculated without
15 regard to the federal tax effect and shall not alter the tax basis of
16 any asset. If the deduction under this section is greater than
17 combined group entire net income, any excess deduction shall be
18 carried forward and applied as a deduction to combined group entire
19 net income in future privilege periods until fully utilized.

20 (H) Any combined group intending to claim a deduction under
21 this paragraph shall file a statement with the director on or before
22 July 1 of the year subsequent to the first privilege period for which
23 a combined return is required. Such statement shall specify the
24 total amount of the deduction which the combined group claims on
25 such form and in such manner as prescribed by the director. No
26 deduction shall be allowed under this paragraph for any privilege
27 period except to the extent claimed on such timely filed statement
28 in accordance with this paragraph.

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

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

1 banks, dealers in commercial paper and acceptances, sales finance,
2 personal finance, small loan and mortgage financing businesses, as
3 well as any other enterprise employing moneyed capital coming
4 into competition with the business of national banks; provided that
5 the holding of bonds, notes, or other evidences of indebtedness by
6 individual persons not employed or engaged in the banking or
7 investment business and representing merely personal investments
8 not made in competition with the business of national banks, shall
9 not be deemed financial business. Nor shall "financial business"
10 include national banks, production credit associations organized
11 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
12 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
13 insurance companies duly authorized to transact business in this
14 State, security brokers or dealers or investment companies or
15 bankers not employing moneyed capital coming into competition
16 with the business of national banks, real estate investment trusts, or
17 any of the following entities organized under the laws of this State:
18 credit unions, savings banks, savings and loan and building and
19 loan associations, pawnbrokers, and State banks and trust
20 companies.

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

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

43 (p) "New Jersey S corporation" means a corporation that is an S
44 corporation; which has made a valid election pursuant to section 3
45 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
46 corporation continuously since the effective date of the valid
47 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
48 5.22).

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

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

16 (s) "Savings institution" means a state or federally chartered
17 building and loan association, savings and loan association, or
18 savings bank.

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

21 (u) "Prior net operating loss conversion carryover" means a net
22 operating loss incurred in a privilege period ending prior to **the**
23 effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.) **July 31,**
24 2019 and converted from a pre-allocation net operating loss to a
25 post-allocation net operating loss as follows:

26 (1) As used in this subsection:

27 "Base year" means the last privilege period prior to **the**
28 effective date of P.L.2018, c.48 (C.54:10A-54.1 et al.) **July 31,**
29 2019.

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

36 "UNOL" means the unabsorbed portion of net operating loss as
37 calculated under paragraph (6) of subsection (k) of this section, as
38 such paragraph was in effect for the last privilege period ending
39 prior to **the** effective date of P.L.2018, c.48 (C.54:10A-54.1 et
40 al.) **July 31, 2019**, that was not deductible in previous privilege
41 periods and was eligible for carryover on the last day of the base
42 year subject to the limitations for deduction under such subsection,
43 including any net operating loss sustained by the taxpayer during
44 the base year.

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

1 (A) The taxpayer shall first calculate the tax value of its UNOL
2 for the base year and for each preceding privilege period for which
3 there is a UNOL. The value of the UNOL for each privilege period
4 is equal to the product of (I) the amount of the taxpayer's UNOL for
5 a privilege period, and (II) the taxpayer's base year BAF. This result
6 shall equal the taxpayer's prior net operating loss conversion
7 carryover.

8 (B) The taxpayer shall continue to carry over its prior net
9 operating loss conversion carryover to offset its allocated entire net
10 income as provided in sections 6 through **8** 10 of P.L.1945, c.162
11 (C.54:10A-6 through **54:10A-8** 54:10A-10) for privilege periods
12 **beginning** ending on and after **the effective date of P.L.2018,**
13 **c.48 (C.54:10A-54.1 et al.)** July 31, 2019. Such carryover periods
14 shall not exceed the twenty privilege periods following the privilege
15 period of the initial loss. The entire amount of the prior net
16 operating loss conversion carryover for any privilege period shall
17 be carried to the earliest of the privilege periods to which the loss
18 may be carried. The portion of the prior net operating loss
19 conversion carryover which shall be carried to each of the other
20 privilege periods shall be the excess, if any, of the amount of the
21 prior net operating loss conversion carryover over the sum of the
22 entire net income, computed without the exclusion permitted in
23 **paragraph** paragraphs (4) and (5) of subsection (k) of this section
24 allocated to this State.

25 (C) The prior net operating loss conversion carryover computed
26 under this subsection shall be applied against the entire net income
27 allocated to this State before the net operating loss carryover
28 computed under subsection (v) of this section.

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

32 (1) Net operating loss carryover. A net operating loss for any
33 privilege period **beginning** ending on or after **the effective date**
34 **of this act** July 31, 2019 shall be a net operating loss carryover to
35 each of the twenty privilege periods following the period of the
36 loss. The entire amount of the net operating loss for any privilege
37 period shall be carried to the earliest of the privilege periods to
38 which the loss may be carried. The portion of the loss which shall
39 be carried to each of the other privilege periods shall be the excess,
40 if any, of the amount of the loss over the sum of the entire net
41 income, computed without the exclusion permitted in **paragraph**
42 paragraphs (4) and (5) of subsection (k) of this section allocated to
43 this State.

44 (2) Net operating loss. For purposes of this paragraph the term
45 "net operating loss" means the excess of the deductions over the
46 gross income used in computing entire net income, without regard
47 to any net operating loss carryover, and computed without the

1 exclusion in ~~paragraph~~ paragraphs (4) and (5) of subsection (k) of
2 this section, allocated to this State pursuant to sections 6 through
3 ~~8~~ 10 of P.L.1945, c.162 (C.54:10A-6 through ~~54:10A-8~~
4 ~~54:10A-10~~).

5 (3) Reduction for discharge of indebtedness. A net operating
6 loss for any privilege period ~~beginning~~ ending on or after ~~the~~
7 effective date of this act July 31, 2019, and any net operating loss
8 carryover to such privilege period, shall be reduced by the amount
9 excluded from federal taxable income under subparagraph (A), (B),
10 or (C) of paragraph (1) of subsection (a) of section 108 of the
11 federal Internal Revenue Code, 26 U.S.C. s.108, for the privilege
12 period of the discharge of indebtedness.

13 (4) A net operating loss carryover shall not include any net
14 operating loss incurred during any privilege period ~~beginning~~
15 ending prior to ~~the effective date of P.L.2018, c.48 (C.54:10A-54.1~~
16 ~~et al.)~~ July 31, 2019.

17 (5) Change in ownership. Where there is a change in 50% or
18 more of the ownership of a corporation because of redemption or
19 sale of stock and the corporation changes the trade or business
20 giving rise to the loss, no net operating loss sustained before the
21 changes may be carried over to be deducted from income earned
22 after such changes. In addition where the facts support the premise
23 that the corporation was acquired under any circumstances for the
24 primary purpose of the use of its net operating loss carryover, the
25 director may disallow the carryover. Provided however this
26 subparagraph shall not apply between members of a combined
27 group reported on a New Jersey combined return.

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

34 (x) "Affiliated group" means an affiliated group as defined in
35 section 1504 of the federal Internal Revenue Code, 26 U.S.C.
36 s.1504, except such affiliated group shall include all domestic
37 corporations that are commonly owned, directly or indirectly, by
38 any member of such affiliated group, without regard to whether the
39 affiliated group includes (1) corporations included in more than one
40 federal consolidated return, (2) corporations engaged in one or more
41 unitary businesses, or (3) corporations that are not engaged in a
42 unitary business with any other member of the affiliated group.

43 (y) "Combinable captive insurance company" means an entity
44 that is treated as an association taxable as a corporation under the
45 federal Internal Revenue Code~~[:].~~ A combinable captive insurance
46 company shall not be exempt under section 3 of P.L.1945, c.162
47 (C.54:10A-3). A captive insurance company that does not meet the

1 definition of combinable captive insurance company will be
2 excluded as provided in subsection k. of section 18 of P.L.2018,
3 c.48 (C.54:10A-4.6) and is exempt under section 3 of P.L.1945,
4 c.162 (C.54:10A-3).

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

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

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

14 (4) 50% or less of whose gross receipts for the privilege period
15 consist of premiums from arrangements that constitute insurance for
16 federal income tax purposes.

17 For purposes of this definition:

18 "Affiliated group" shall have the same meaning as that term is
19 given by section 1504 of the federal Internal Revenue Code, 26
20 U.S.C. s.1504, except that the term "common parent corporation" as
21 used in section 1504 of the federal Internal Revenue Code, 26
22 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
23 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
24 to "at least 80%" in section 1504 of the federal Internal Revenue
25 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
26 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
27 be read without regard to the exclusions provided for in subsection
28 (b) of that section.

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

33 "Premiums" includes consideration for annuity contracts and
34 excludes any part of the consideration for insurance, reinsurance, or
35 annuity contracts that do not provide bona fide insurance,
36 reinsurance, or annuity benefits.

37 (z) "Combined group" means the group of all companies that
38 have common ownership and are engaged in a unitary business,
39 where at least one company is subject to tax under this chapter, and
40 shall include all business entities except as otherwise provided [in
41 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6)] for
42 under any section of the Corporation Business Tax Act (1945),
43 P.L.1945, c.162 (C.54:10A-1 et seq.).

44 (aa) "Common ownership" means that more than 50% of the
45 voting control of each member of a combined group is directly or
46 indirectly owned by a common owner or owners, either corporate or
47 non-corporate, whether or not the owner or owners are members of
48 the combined group. Whether voting control is indirectly owned

1 shall be determined in accordance with section 318 of the federal
2 Internal Revenue Code, 26 U.S.C. s.318.

3 (bb) "Group privilege period" means, if two or more members in
4 the combined group file in the same federal consolidated tax return,
5 the same income year as that used on the federal consolidated tax
6 return and, in all other cases, the privilege period of the managerial
7 member.

8 (cc) "Managerial member" means if the combined group has a
9 common parent corporation and that common parent corporation is
10 a taxable member, the managerial member shall be the common
11 parent corporation. In other cases, the combined group shall select
12 a taxable member as its managerial member or, in the discretion of
13 the director or upon failure of the combined group to select its
14 managerial member, the director shall designate a taxable member
15 of the combined group as managerial member.

16 (dd) "Member" means a **【corporation】** business entity that is a
17 part of a combined group.

18 (ee) "Nontaxable member" means a member that is not subject to
19 tax pursuant to the Corporation Business Tax Act (1945), P.L.1945,
20 c.162 (C.54:10A-1 et seq.) and is not (i) a corporation exempted
21 from the tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3)
22 **【except for a combinable captive insurance company.】** or (ii) a
23 New Jersey S Corporation which does not elect to be included in the
24 **【combine】** combined group.

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

28 (gg) "Unitary business" means a single economic enterprise that
29 is made up either of separate parts of a single business entity or of a
30 group of business entities under common ownership that are
31 sufficiently interdependent, integrated, and interrelated through
32 their activities so as to provide a synergy and mutual benefit that
33 produces a sharing or exchange of value among them and a
34 significant flow of value among the separate parts. "Unitary
35 business" shall be construed to the broadest extent permitted under
36 the Constitution of the United States. A business conducted by a
37 partnership which is in a unitary business with the combined group
38 shall be treated as the business of the partners that are members of
39 the combined group, whether the partnership interest is held directly
40 or indirectly through a series of partnerships, to the extent of a
41 partner's distributive share of partnership income. The amount of
42 partnership income to be included in the partner's entire net income
43 shall be determined in accordance with subsection a. of section 3 of
44 P.L.2001, c.136 **【(C.54:10A-15.6(a))】** (C.54:10A-15.6) or
45 subsection a. of section 4 of P.L.2001, c.136 (C.54:10A-15.7), as
46 applicable. A business conducted directly or indirectly by one
47 corporation is unitary with that portion of a business conducted by

1 another corporation through its direct or indirect interest in a
2 partnership.¹

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

4
5 ¹2. Section 2 of P.L.1997, c.334 (C.54:10A-4.2) is amended to
6 read as follows:

7 2. a. Notwithstanding the provisions of [paragraph (6) of
8 subsection (k) of] section 4 of P.L.1945, c.162 (C.54:10A-4) to the
9 contrary, a taxpayer that has acquired a corporation business tax
10 benefit certificate pursuant to the provisions of section 1 of
11 P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a net
12 operating loss carryover deduction shall attach that certificate to
13 any return the taxpayer is required to file under P.L.1945, c.162
14 (C.54:10A-1 et seq.), and shall determine the amount of its net
15 operating loss carryover deduction by multiplying the surrendered
16 net operating loss by the new or expanding emerging technology or
17 biotechnology company's anticipated allocation factor determined
18 pursuant to subsection b. of section 1 of P.L.1997, c.334 (C.34:1B-
19 7.42a) and subsequently dividing the amount by the taxpayer's
20 allocation factor determined pursuant to section 6 of P.L.1945,
21 c.162 (C.54:10A-6) for the tax year in which the surrendered tax
22 benefit is used. The taxpayer shall otherwise apply the net
23 operating loss carryover deduction as evidenced by the certificate
24 according to the provisions of subsection (k) of section 4 of
25 P.L.1945, c.162 and any rules or regulations the director may adopt
26 to carry out the provisions of this section.

27 b. A new or expanding emerging technology or biotechnology
28 company that has surrendered an unused net operating loss
29 carryover pursuant to the provisions of section 1 of P.L.1997, c.334
30 (C.34:1B-7.42a), shall not be allowed a net operating loss carryover
31 deduction based upon the right to such a deduction as evidenced by
32 the corporation business tax benefit certificate and shall attach a
33 copy of the certificate to any return the taxpayer is required to file
34 under P.L.1945, c.162 (C.54:10A-1 et seq.).

35 c. The unused net operating loss carryovers of a taxpayer under
36 subsections (u) and (v) of section 4 of P.L.1945, c.162 (C.54:10A-
37 4) shall also qualify to be surrendered for the purposes of this
38 section and section 1 of P.L.1997, c.334 (C.34:1B-7.42a) by a new
39 or expanding emerging technology or biotechnology company.¹
40 (cf: P.L.1999, c.140, s.3)

41
42 ¹3. Section 5 of P.L.2002, c.40 (C.54:10A-4.4) is amended to
43 read as follows:

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

45 "Intangible expenses and costs" includes (1) expenses, losses and
46 costs for, related to, or in connection directly or indirectly with the
47 direct or indirect acquisition, use, maintenance or management,

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

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

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

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

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

1 The attribution rules of the federal Internal Revenue Code of 1986,
2 26 U.S.C. s.318, shall apply for purposes of determining whether
3 the ownership requirements of this definition have been met.

4 b. For purposes of computing its entire net income under section
5 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add back
6 otherwise deductible interest expenses and costs and intangible
7 expenses and costs directly or indirectly paid, accrued or incurred
8 to, or in connection directly or indirectly with one or more direct or
9 indirect transactions with, one or more related members, therefore,
10 this subparagraph only applies to interest expenses and costs and
11 intangible expenses and costs paid, accrued or incurred by a taxable
12 member of a combined group to related members that are not
13 included in the same New Jersey combined return as such taxable
14 member.

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 and the
20 (i) related member was subject to tax in the foreign nation on a tax
21 base that included the **【payment】** amount paid, accrued, or incurred
22 and (ii) the related member's income received from the transaction
23 was taxed at an effective tax rate equal to or greater than a rate of
24 three percentage points less than the rate of tax applied to taxable
25 interest by the State of New Jersey, pursuant to section 5 of
26 P.L.1945, c.162 (C.54:10A-5); or (b) the taxpayer establishes by
27 clear and convincing evidence, as determined by the director, that
28 the adjustments are unreasonable; or (c) the taxpayer and the
29 director agree in writing to the application or use of an alternative
30 method of apportionment under section 8 of P.L.1945, c.162
31 (C.54:10A-8). Nothing in this subsection shall be construed to limit
32 or negate the director's authority to otherwise enter into agreements
33 and compromises otherwise allowed by law.

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

40 (3) The adjustments required in subsection b. of this section
41 shall not apply to the portion of interest expenses and costs and
42 intangible expenses and costs that the taxpayer establishes by a
43 preponderance of the evidence meets both of the following: (a) the
44 related member during the same income year directly or indirectly
45 paid, received, accrued or incurred the portion to or from a person
46 that is not a related member, and (b) the transaction giving rise to
47 the interest expenses and costs or the intangible expenses and costs
48 between the taxpayer and the related member did not have as a

1 principal purpose the avoidance of any portion of the tax due under
2 Title 54 of the Revised Statutes or Title 54A of the New Jersey
3 Statutes.

4 d. Nothing in this section shall require a taxpayer to add to its
5 net income more than once any amount of interest expenses and
6 costs and intangible expenses and costs that the taxpayer pays,
7 accrues or incurs to a related member described in subsection b. of
8 this section.

9 e. Nothing in this section shall be construed to limit or negate
10 the director's authority to make adjustments under paragraph (3) of
11 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section
12 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
13 (C.54:10A-10).¹

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

15
16 ¹4. Section 27 of P.L.2002 c.40 (C.54:10A-4.5) is amended to
17 read as follows:

18 27. a. Notwithstanding any provision of subsection (k) of section
19 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal
20 Revenue Code, including but not limited to 26 U.S.C. s.381 or any
21 successor or equivalent provision, that permits a corporation to use
22 the net operating losses of another for federal income tax purposes
23 following certain transactions, including but not limited to those
24 qualifying as reorganizations under the provisions of subparagraph
25 (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of
26 section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368,
27 a net operating loss for a privilege period ending after June 30,
28 1984, may be carried over and allowed as a deduction only by the
29 corporation that sustained the loss; provided, however, that in the
30 case of a merger of two or more corporations pursuant to statute of
31 this State or any other jurisdiction, the net operating loss may be
32 carried over only by the corporation that sustained the loss and that
33 is also the surviving corporation following the merger. The net
34 operating loss may not be carried over by a taxpayer that changes
35 its state of incorporation.

36 b. Subsection a. of this section shall not apply between members
37 of a combined group reported on a combined return in New Jersey,
38 or between members of **【a commonly owned】** an affiliated group
39 reported on the elective combined return in New Jersey.¹

40 (cf: P.L.2018, c.48, s.25)

41
42 ¹5. Section 18 of P.L.2018, c.48 (C.54:10A-4.6) is amended to
43 read as follows:

44 18. A taxable member of a combined group shall determine its
45 entire net income from the unitary business as its share of the entire
46 net income of the combined group in accordance with a combined
47 unitary tax return made pursuant to this section and sections 19, 20,

1 and 23 of P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and
2 C.54:10A-4.11). The entire net income from the unitary business of
3 a combined group is the sum of the entire net incomes of each
4 taxable member and each nontaxable member of the combined
5 group derived from the unitary business, which shall be determined
6 as follows:

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

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

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

37 (2) The distributive share of income received by a limited
38 partner from a qualified investment partnership shall not be
39 considered to be derived from a unitary business unless the general
40 partner of such investment partnership and such limited partner
41 have common ownership. To the extent that the limited partner is
42 otherwise carrying on or doing business in New Jersey, it shall
43 allocate its distributive share of income from a qualified investment
44 partnership in accordance with subsection a. of section 3 of
45 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
46 P.L.2001, c.136 (C.54:10A-15.7) as applicable. If the limited
47 partner is not otherwise carrying on or doing business in New

1 Jersey, its distributive share of income from an investment
2 partnership is not subject to tax under this chapter.

3 d. All dividends paid by one member to another member of the
4 combined group shall be eliminated from the income of the
5 recipient.

6 e. Except as otherwise provided by regulation, business income
7 from an intercompany transaction among members of the same
8 combined group shall be deferred in a manner similar to the deferral
9 under 26 C.F.R. s.1.1502-13, as determined by the director. Upon
10 the occurrence of either of the events set forth in subparagraphs (1)
11 and (2) of this subsection, deferred income resulting from an
12 intercompany transaction among members of a combined group
13 shall be restored to the income of the seller and shall be included in
14 the net income of the combined group as if the seller had earned the
15 income immediately before the event:

16 (1) The object of a deferred intercompany transaction is: (a)
17 resold by the buyer to an entity that is not a member of the
18 combined group , (b) resold by the buyer to an entity that is a
19 member of the combined group for use outside the unitary business
20 in which the buyer and seller are engaged, or (c) converted by the
21 buyer to a use outside the unitary business in which the buyer and
22 seller are engaged; or

23 (2) The buyer and seller cease to be members of the same
24 combined group, and no portion of the income or loss is included in
25 the entire net income of the unitary group, regardless of whether the
26 buyer and seller remain sufficiently interdependent, integrated, and
27 interrelated through their activities so as to provide a synergy and
28 mutual benefit that produces a sharing or exchange of value
29 between them.

30 f. A charitable expense incurred by a member of a combined
31 group shall, to the extent allowable as a deduction pursuant to
32 section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170,
33 be subtracted first from the combined group's entire net income,
34 subject to the income limitations of that section applied to the entire
35 **【business】** net income of the group. A charitable deduction
36 disallowed under section 170 of the federal Internal Revenue Code,
37 26 U.S.C. s.170, but allowed as a carryover deduction in a
38 subsequent privilege period, shall be treated as originally incurred
39 in the subsequent year by the same member and the provisions of
40 this section shall apply in the subsequent privilege period in
41 determining the allowable deduction for that privilege period.

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

46 (1) Such prior net operating loss conversion carryover deduction
47 shall be allowed to offset only the entire net income allocated to
48 this state of the corporation that created the prior net operating loss;

1 the prior net operating loss conversion carryover cannot be shared
2 with other members of the combined group .

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

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

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

17 (1) For privilege periods beginning on or after the first day of
18 the initial privilege period for which a combined unitary tax return
19 is required under this section and sections 19, 20, and 23 of
20 P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11),
21 if the computation of a combined group's entire net income
22 allocated to this state results in a net operating loss, a taxable
23 member of such group may carry over the net operating loss
24 allocated to this state, as calculated under this section and sections
25 19 and 23 of P.L.2018, c.48 (C.54:18A-4.7 and C.54:18A-4.11),
26 and shall be deductible from entire net income derived from the
27 unitary business in a future privilege period to the extent that the
28 carryover and deduction is otherwise consistent with subsection (v)
29 of section 4 of P.L.1945, c.162 (C.54:10A-4).

30 (2) Where a taxable member of a combined group has a net
31 operating loss carryover derived from a loss incurred by a combined
32 group in a privilege period beginning on or after the first day of the
33 initial privilege period for which a combined unitary tax return is
34 required under this section and sections 19, 20, and 23 of P.L.2018,
35 c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11), then the
36 taxable member may share the net operating loss carryover with
37 other taxable members of the combined group if such other taxable
38 members were members of the combined group in the privilege
39 period that the loss was incurred. Any amount of net operating loss
40 carryover that is deducted by another taxable member of the
41 combined group shall reduce the amount of net operating loss
42 carryover that may be carried over by the taxable member that
43 originally incurred the loss.

44 (3) Where a taxable member of a combined group has a net
45 operating loss carryover derived from a loss incurred in a privilege
46 period during which the taxable member was not a member of such
47 combined group, the carryover shall remain available to be
48 deducted by that taxable member or other group members that, in

1 the year the loss was incurred, were part of the same combined
2 group as such taxable member . Such carryover shall not be
3 deductible by any other members of the combined group.

4 (4) A net operating loss carryover shall not include any net
5 operating loss incurred during any privilege period beginning prior
6 to the first day of the initial privilege period for which a combined
7 unitary tax return is required under this section and sections 19 and
8 23 of P.L.2018, c.48 (C.54:18A-4.7 and C.54:18A-4.11).

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

11 (1) If a taxable member of a combined group earns a tax credit
12 in a privilege period beginning on or after the first day of the initial
13 privilege period for which a combined unitary tax return is required
14 under this section and sections 19, 20, and 23 of P.L.2018, c.48
15 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11), then the taxable
16 member may share the credit with other taxable members of the
17 combined group . Any amount of credit that is utilized by another
18 taxable member of the combined group shall reduce the amount of
19 credit carryover that may be carried over by the taxable member
20 that originally earned the credit. If a taxable member of a combined
21 group has a tax credit carryover derived from a privilege period
22 beginning on or after the first day of the initial privilege period for
23 which a combined unitary tax return is required under this section
24 and sections 19, 20, and 23 of P.L.2018, c.48 (C.54:18A-4.7,
25 C.54:18A-4.8, and C.54:18A-4.11), then the taxable member may
26 share the carryover credit with other taxable members of the
27 combined group .

28 (2) If a taxable member of a combined group has a tax credit
29 carryover derived from a privilege period beginning prior to the
30 first day of the initial privilege period for which a combined unitary
31 tax return is required under this section and sections 19, 20, and 23
32 of P.L.2018, c.48 (C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
33 4.11), then the taxable member may share the carryover credit with
34 other taxable members of the combined group .

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

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

46 j. An expense of a member of the combined group that is
47 directly or indirectly attributable to the income of any member of
48 the combined group , which income this State is prohibited from

1 taxing pursuant to the laws or Constitution of the United States,
2 shall be disallowed as a deduction for purposes of determining the
3 combined group's entire net income.

4 k. Nothing in this section shall apply to:

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

25 (2) A corporation that is regulated, in whole or in part, by the
26 Federal Energy Regulatory Commission, the New Jersey Board of
27 Public Utilities or similar regulatory body of another state, with
28 respect to rates charged to customers for electric or gas services.

29 1. The director shall promulgate rules and regulations necessary
30 to carry out the provisions of this section. The director is
31 authorized to promulgate rules and regulations to either include or
32 exclude other business entities in the combined group reported on
33 the combined return which the director determines is appropriate to
34 carry out the statutory intent of P.L. , c. (C.) (pending before the
35 Legislature as this bill).¹

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

37
38 ¹6. Section 19 of P.L.2018, c.48 (C.54:10A-4.7) is amended to
39 read as follows:

40 19. A taxable member of a combined group shall determine its
41 allocation factor for determining its share of the entire net income
42 of the combined group, as determined pursuant to the provisions of
43 section 18 of P.L.2018, c.48 (C.54:10A-4.6), pursuant to sections 6
44 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8);
45 provided however:

46 a. **【**In computing its denominator for the sales fraction, the
47 taxable member shall use the combined group's denominator for
48 that fraction. In computing the numerator of its sales fraction, each

1 taxable member shall be treated as a separate taxpayer and that
2 taxable member's numerator will include only that taxable member's
3 receipts assignable to this State.】 Each taxable member shall
4 determine its allocation factor based on the otherwise applicable
5 allocation provided in sections 6 through 10 of P.L.1945 c.162
6 (C.54:10A-6 through C.54:10A-10). In computing its denominators
7 for all factors, the taxable member shall use the combined group's
8 denominator for that factor. In computing the numerator of its
9 receipts factor, each taxable member shall add to such numerator its
10 share of receipts of nontaxable members assignable to this State, as
11 provided herein.

12 Receipts assignable to this State of each nontaxable member
13 shall be determined based upon the allocation factor that would be
14 applicable to such member if it were a taxable member and shall be
15 aggregated. Each taxable member of the combined group shall
16 include in the numerator of its receipts factor a portion of the
17 aggregate receipts assignable to this State of nontaxable members
18 based on a ratio, the numerator of which is such taxable member's
19 receipts assignable to this State, without regard to this subsection,
20 and the denominator of which is the aggregate receipts assignable to
21 this State of all the taxable members of the combined group,
22 without regard to this subsection.

23 b. All business income of a combined group engaged in the
24 transportation of freight by air or ground shall be apportioned to
25 this State by multiplying the income by a fraction, the numerator of
26 which is the ton miles traveled by the combined group's mobile
27 assets in this State by type of mobile asset and the denominator of
28 which is the total ton miles traveled by the combined group's
29 mobile assets everywhere. This section applies, if 50 per cent or
30 more of the combined group's entire net income is derived from the
31 transportation of freight by air or ground.

32 c. In determining the numerator and denominator of the
33 allocation factors of taxable members, transactions between or
34 among members of the combined group shall be eliminated.

35 d. The director shall promulgate rules and regulations necessary
36 to carry out the provisions of this section.¹

37 (cf: P.L.2018, c.48, s.19)

38

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

41 22. a. Determination of Managerial Member. If the combined
42 group has a common parent corporation within the meaning of the
43 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
44 et seq.), and that common parent corporation is a taxable member of
45 the corporate group, the managerial member shall be the common
46 parent corporation. In other cases, the combined group shall select
47 a taxable member as its managerial member or, in the discretion of
48 the director or upon failure of the combined group to select its

1 managerial member, the director shall designate a taxable member
2 of the combined group as managerial member. Once the election of
3 the managerial member is made, the election shall be binding for 10
4 successive privilege periods, except as otherwise provided for by
5 the director. The director may prescribe by regulation the
6 appointment of a managerial member under other circumstances
7 that otherwise differ from this subsection to prevent undue harm to
8 the members of the combined group.

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

21 c. The privilege period for the combined group is the privilege
22 period of the managerial member, unless otherwise provided by
23 regulations promulgated by the director. If a member of a combined
24 group has a different fiscal or calendar accounting period from the
25 combined group's privilege period, that member with a different
26 period shall report amounts from its return for its fiscal or calendar
27 accounting year that ends during the group privilege period. The
28 director is authorized to prescribe by regulation the determination
29 of the group privilege period where one of the members of the
30 combined group is subject to different filing requirements of the
31 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
32 et seq.) or other regulatory filing requirements under the laws of the
33 State of New Jersey.

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

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

1 designated as the managerial member, the subsequent designation
2 shall be subject to the approval of the director.

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

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

13 h. The members of a combined group shall notify the director
14 within **90** 120 days of a change in the combined group where a
15 member dissolves, a merger of any kind occurs, a member
16 withdraws from the group, a member ceases doing business, a
17 member of the group is acquired by a third party not in the group,
18 or additional members enter the group which are required to be
19 included.

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

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

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

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

30 (3) require any payment to be made by electronic funds transfer;
31 and

32 (4) require the mandatory combined return to be filed
33 electronically.¹

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

35

36 ¹8. Section 23 of P.L.2018, c.48 (C.54:10A-4.11) is amended to
37 read as follows:

38 23. a. The managerial member of a combined group may elect to
39 have the combined group determined on a world-wide basis or an
40 affiliated group basis. If no such election is made, the combined
41 group shall be determined on a water's-edge basis and will take into
42 account the incomes and allocation factors of only the following
43 members of the combined group:

44 (1) each member incorporated in the United States, or formed
45 under the laws of the United States, any state, the District of
46 Columbia, or any territory or possession of the United States,
47 excluding such a member if eighty per cent or more of both its

1 property and payroll during the privilege period are located outside
2 the United States, the District of Columbia, and any territory or
3 possession of the United States;

4 (2) each member, wherever incorporated or formed, if twenty
5 per cent or more of both its property and payroll during the
6 privilege period are located in the United States, the District of
7 Columbia, or any territory or possession of the United States;

8 (3) any member that earns more than 20% of its income, directly
9 or indirectly, from intangible property or related service activities
10 that are deductible against the income of other members of the
11 combined group, to the extent that income and the apportionment
12 factors are related thereto;

13 (4) each member that is a domestic international sales
14 corporation, as described in sections 991 through 994 of the federal
15 Internal Revenue Code of 1986, 26 U.S.C. s.991-94, a foreign sales
16 corporation, as described in sections 921 through 927 of the federal
17 Internal Revenue Code of 1986, 26 U.S.C. s.921-27, or any member
18 that is an export trade corporation, as described in sections 970
19 through 971 of the Internal Revenue Code of 1986, 26 U.S.C. s.970-
20 71;

21 (5) each member that is a “controlled foreign corporation,” as
22 defined in federal Internal Revenue Code section 957, 26 U.S.C.
23 s.957, to the extent of the income of that member that is defined in
24 section 952 of subpart F of the federal Internal Revenue Code of
25 1986, 26 U.S.C. s.957, (subpart F income) not excluding lower-tier
26 subsidiaries’ distributions of such income that were previously
27 taxed, determined without regard to federal treaties, and the
28 allocation factors related to that income; any item of income
29 received by a controlled foreign corporation shall be excluded if
30 such income was subject to an effective rate of income tax imposed
31 by a foreign country greater than 90% of the maximum rate of tax
32 specified in section 11 of the federal Internal Revenue Code of
33 1986, 26 U.S.C. s.11;

34 (6) each member that is doing business in a jurisdiction that is
35 determined by the director to be a tax haven for the privilege
36 period, unless it is proven to the satisfaction of the director by a
37 preponderance of the evidence that the member is incorporated in a
38 tax haven for a legitimate business purpose;

39 (7) each member that has income as defined under the
40 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
41 et seq.) and has sufficient nexus in New Jersey pursuant to section 2
42 of P.L.1945, c.162 (C.54:10A-2).

43 (8) any member not described in subdivision (1), (2), or (3) of
44 this subsection shall include its income that is effectively
45 connected, or treated as effectively connected under the provisions
46 of the federal Internal Revenue Code of 1986, with the conduct of a
47 trade or business within the United States and, for that reason,
48 subject to federal income tax.

1 b. A world-wide election or an affiliated group election is
2 effective only if made on a timely filed, original return for a
3 privilege period by the managerial member of the combined group.
4 Such election is binding for, and applicable to, the privilege period
5 for which it is made and for the five immediately succeeding
6 privilege periods. Provided however, the election can be revoked
7 prior to the expiration of the binding period by written request to
8 the Director of Taxation for reasonable cause including but not
9 limited to a substantial change in ownership, members of the
10 combined group or principal business, or changes in tax law,
11 regulation or policy.

12 c. If the managerial member elects to determine the members of
13 a combined group on an affiliated group basis, the taxable members
14 shall take into account the entire net income or loss and allocation
15 factors of all of the members of its affiliated group, regardless of
16 whether such members are engaged in a unitary business, that are
17 subject to tax or would be subject to tax under this chapter, if doing
18 business in this State.

19 d. An election made pursuant to subsection b. of this section that
20 is not renewed shall be revoked. In the case of a revocation, a new
21 election under this subsection shall not be permitted in any of the
22 immediately following three privilege periods. The managerial
23 member shall notify the director within 120 days of any change in
24 the membership of the elective group, including but not limited to,
25 where a member dissolves, a merger of any kind occurs, a member
26 withdraws from the elective group, a member ceases doing
27 business, a member of the elective group is acquired by a third
28 party not in the elective group, the elective group becomes a unitary
29 business with members not included in the elective combined
30 return.

31 e. “Tax haven” means a jurisdiction that, during the privilege
32 period, has no or only nominal effective tax on relevant income
33 and:

34 (1) has laws or practices that prevent effective exchange of
35 information for tax purposes with other governments on taxpayers
36 benefiting from the tax regime;

37 (2) has a tax regime which lacks transparency. A tax regime
38 lacks transparency if the details of legislative, legal, or
39 administrative provisions are not open and apparent or are not
40 consistently applied among similarly situated taxpayers, or if the
41 information needed by tax authorities to determine a taxpayer’s
42 correct tax liability, such as accounting records and underlying
43 documentation, is not adequately available;

44 (3) facilitates the establishment of foreign-owned entities
45 without the need for a local substantive presence or prohibits these
46 entities from having any commercial impact on the local economy;

47 (4) explicitly or implicitly excludes the jurisdiction’s resident
48 taxpayers from taking advantage of the tax regime’s benefits or

1 prohibits enterprises that benefit from the regime from operating in
2 the jurisdiction's domestic market; or
3 (5) has created a tax regime which is favorable for tax
4 avoidance, based upon an overall assessment of relevant factors,
5 including whether the jurisdiction has a significant untaxed offshore
6 financial or other services sector relative to its overall economy.
7 A tax haven does not include a jurisdiction that has entered into a
8 comprehensive income tax treaty with the United States.

9 f. The director shall promulgate rules and regulations necessary
10 to carry out the provisions of this section.¹
11 (cf: P.L.2018, c.48, s.23)

12
13 ^{19.} Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to
14 read as follows:

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

28 The amount computed pursuant to this section shall be the sum
29 of the amount computed under subsection (a) hereof, or in the
30 alternative to the amount computed under subsection (a) hereof, the
31 amount computed under subsection (f) hereof, and the amount
32 computed under subsection (c) hereof:

33 (a) That portion of its entire net worth as may be allocable to
34 this State as provided in section 6, multiplied by the following
35 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
36 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
37 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
38 mill per dollar on all amounts of allocated net worth in excess of
39 \$300,000,000.00; provided, however, that with respect to reports
40 covering accounting or privilege periods set forth below, the rate
41 shall be that percentage of the rate set forth in this subsection for
42 the appropriate year:

43 Accounting or Privilege

44	Periods Beginning on or	The Percentage of the
45	Rate	
46	after:	to be Imposed Shall be:
47	April 1, 1983	75%
48	July 1, 1984	50%

1 July 1, 1985 25%

2 July 1, 1986 0

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

4 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
5 1/4% of its entire net income or such portion thereof as may be
6 allocable to this State as provided in sections 6 through **【8】 10** of
7 P.L.1945, c.162 (C.54:10A-6 through **【C.54:10A-8】 C.54:10A-10**),
8 plus such portion thereof as is specifically assigned to this State as
9 provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided,
10 however, that with respect to reports covering accounting or
11 privilege periods or parts thereof ending after December 31, 1967,
12 the rate shall be 4 1/4%; and that with respect to reports covering
13 accounting or privilege periods or parts thereof ending after
14 December 31, 1971, the rate shall be 5 1/2%; and that with respect
15 to reports covering accounting or privilege periods or parts thereof
16 ending after December 31, 1974, the rate shall be 7 1/2%; and that
17 with respect to reports covering privilege periods or parts thereof
18 ending after December 31, 1979, the rate shall be 9%; provided
19 however, that for a taxpayer that has entire net income of \$100,000
20 or less for a privilege period and is not a partnership the rate for that
21 privilege period shall be 7 1/2% and provided further that for a
22 taxpayer that has entire net income of \$50,000 or less for a privilege
23 period and is not a partnership the rate for that privilege period shall
24 be 6 1/2%.

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

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

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

36 (ii) For a taxpayer that has entire net income in excess of
37 \$100,000 for the privilege period, for privilege periods ending on or
38 after July 1, 1998, but on or before June 30, 2001, the rate shall be
39 2%,

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

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

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

46 (iii) For a taxpayer that has entire net income of \$100,000 or
47 less for privilege periods ending on or after July 1, 1998, but on or

1 before June 30, 2001, the rate for that privilege period shall be
2 0.5%, and for privilege periods ending on or after July 1, 2001,
3 there shall be no rate of tax imposed under this paragraph.

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

13 (3) For a taxpayer that is a New Jersey S corporation, in addition
14 to the amount, if any, determined under paragraph (2) of this
15 subsection, the tax rate that would otherwise be applicable to the
16 taxpayer's entire net income for the privilege period if the taxpayer
17 were not an S corporation provided under paragraph (1) of this
18 subsection for the privilege period multiplied by its entire net
19 income that is subject to federal income taxation or such portion
20 thereof as may be allocable to this State pursuant to sections 6
21 through **[8]** **10** of P.L.1945, c.162 (C.54:10A-6 through **[54:10A-**
22 **8]** **54:10A-10**). For privilege periods **[beginning]** ending on or
23 after **[the effective date of P.L.2018, c.48 (C.54:10A-54.1 et al.)]**
24 July 31, 2019, the tax rate shall be applied against taxable entire net
25 income.

26 (d) Provided, however, that the franchise tax to be annually
27 assessed to and paid by any investment company or real estate
28 investment trust, which has elected to report as such and has filed
29 its return in the form and within the time provided in this act and
30 the rules and regulations promulgated in connection therewith,
31 shall, in the case of an investment company, be measured by 40% of
32 its entire net income and 40% of its entire net worth, and in the case
33 of a real estate investment trust, by 4% of its entire net income and
34 15% of its entire net worth, at the rates hereinbefore set forth for the
35 computation of tax on net income and net worth, respectively, but in
36 no case less than \$250, and further provided, however, that the
37 franchise tax to be annually assessed to and paid by a regulated
38 investment company which for a period covered by its report
39 satisfies the requirements of Chapter 1, Subchapter M, Part I,
40 Section 852(a) of the federal Internal Revenue Code shall be \$250.
41 For privilege periods **[beginning]** ending on or after **[the effective**
42 **date of P.L.2018, c.48 (C.54:10A-54.1 et al.)]** July 31, 2019, the tax
43 rate shall be applied against taxable entire net income.

44 (e) The tax assessed to any taxpayer pursuant to this section
45 shall not be less than \$25 in the case of a domestic corporation, \$50
46 in the case of a foreign corporation, or \$250 in the case of an
47 investment company or regulated investment company. Provided

1 however, that for privilege periods beginning in calendar year 1994
2 and thereafter the minimum taxes for taxpayers other than an
3 investment company or a regulated investment company shall be as
4 provided in the following schedule:

Period Beginning In Calendar Year Minimum Tax	Domestic Corporation Minimum Tax	Foreign Corporation Minimum Tax
1994	\$50	\$100
1995	\$100	\$200
1996	\$150	\$200
1997	\$200	\$200
1998	\$200	\$200
1999	\$200	\$200
2000	\$200	\$200
2001	\$210	\$210

5 and for calendar years 2002 through 2005 the minimum tax for all
6 taxpayers shall be \$500, and for calendar year 2006 through
7 calendar year 2011 the minimum tax for all corporations, and for
8 privilege periods beginning in calendar year 2012 and thereafter the
9 minimum tax for corporations that are not New Jersey S
10 corporations shall be based on the New Jersey gross receipts of the
11 taxpayer pursuant to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$500
\$100,000 or more but less than \$250,000	\$750
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000	\$1,500
\$1,000,000 or more	\$2,000

12
13 and for privilege periods beginning in calendar year 2012 and
14 thereafter the minimum tax for corporations that are New Jersey S
15 corporations shall be based on the New Jersey gross receipts of the
16 taxpayer pursuant to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$375

\$100,000 or more \$562.50
 but less than
 \$250,000
 \$250,000 or more \$750
 but less than
 \$500,000
 \$500,000 or more \$1,125
 but less than
 \$1,000,000
 \$1,000,000 or more \$1,500

1 provided however, that for a taxpayer that is a member of an
 2 affiliated group or a controlled group pursuant to section 1504 or
 3 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
 4 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
 5 more for the privilege period, the minimum tax shall be \$2,000 for
 6 the privilege period.

7 For privilege periods ending on or after July 31, 2019, the
 8 minimum tax shall be \$2,000 for each taxpayer that is a member of
 9 a combined group filing a mandatory New Jersey combined return,
 10 or is a member of a group filing an elective New Jersey combined
 11 return, and the minimum tax reported on the New Jersey combined
 12 return shall include the aggregate minimum tax of each of the
 13 members of the group.

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

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

23 (1) that is a limited liability company or foreign limited liability
 24 company classified as a partnership for federal income tax purposes
 25 shall be the amount determined pursuant to the provisions of section
 26 3 of P.L.2001, c.136 (C.54:10A-15.6); or

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

31 (h) Provided however, that for privilege periods beginning on
 32 or after January 1, 2002 the franchise tax annually assessed to and
 33 paid by a taxpayer that is a partnership shall be the amount
 34 determined pursuant to the provisions of section 12 of P.L.2002,
 35 c.40 (C.54:10A-15.11).¹
 36 (cf: P.L.2018, c.48, s.5)

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

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

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

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

15 b. For purposes of this section, "taxpayer" shall mean any
16 business entity required to report and pay tax for federal income tax
17 purposes, and shall include any business entity subject to tax as
18 provided in the Corporation Business Tax (1945), P.L.1945, c.162
19 (C.54:10A-1 et seq.).

20 The surtax imposed under this section shall be due and payable
21 in accordance with section 15 of P.L.1945, c.162 (C.54:10A-15),
22 and the surtax shall be administered pursuant to the provisions of
23 P.L.1945, c.162 (C.54:10A-1 et seq.). Notwithstanding the
24 provisions of any other law to the contrary, no credits shall be
25 allowed against the surtax liability computed under this section
26 except for credits for installment payments, estimated payments
27 made with a request for an extension of time for filing a return, or
28 overpayments from prior privilege periods.¹

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

30

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

33 10. a. Whenever it shall appear to the director that any taxpayer
34 fails to maintain its records in accordance with sound accounting
35 principles or conducts its business or maintains its records in such
36 manner as either directly or indirectly to distort its true entire net
37 income or its true entire net worth under this act or the proportion
38 thereof properly allocable to this State, or whenever any taxpayer
39 maintains a place of business outside this State, or whenever any
40 agreement, understanding or arrangement exists between a taxpayer
41 and any other corporation or any person or firm, for the purpose of
42 evading tax under this act, or whereby the activity, business,
43 receipts, expenses, assets, liabilities, income or net worth of the
44 taxpayer are improperly or inaccurately reflected, the director is
45 authorized and empowered, in the director's discretion and in such
46 manner as the director may determine, to adjust and redetermine
47 such items, and to adjust items of gross receipts, tangible or
48 intangible property and payrolls within and without the State and

1 the allocation of entire net income or entire net worth or to make
2 any other adjustments in any tax report or tax returns as may be
3 necessary to make a fair and reasonable determination of the
4 amount of tax payable under this act.

5 b. Where (1) any taxpayer conducts its activity or business
6 under any agreement, arrangement or understanding in such manner
7 as either directly or indirectly to benefit its members or
8 stockholders, or any of them, or any person or persons directly or
9 indirectly interested in such activity or business, by entering into
10 any transaction at more or less than a fair price which, but for such
11 agreement, arrangement or understanding, might have been paid or
12 received therefor, or (2) any taxpayer, a substantial portion of
13 whose capital stock is owned either directly or indirectly by or
14 through another corporation, enters into any transaction with such
15 other corporation on such terms as to create an improper loss or net
16 income, the director may include in the entire net income of the
17 taxpayer the fair profits which, but for such agreement, arrangement
18 or understanding, the taxpayer might have derived from such
19 transaction. The director may require any person or corporation to
20 submit such information under oath or affirmation, or to permit
21 such examination of its books, papers and documents, as may be
22 necessary to enable the director to determine the existence, nature
23 or extent of an agreement, understanding or arrangement to which
24 this section relates, whether or not such person or corporation is
25 subject to the tax imposed by this act.

26 c. The director may require that a combined return include the
27 income and associated allocation factor or factors of any taxpayer
28 who is not otherwise included in a combined group on the combined
29 return, but who is a member of a unitary business, in order to reflect
30 proper allocation of income of the entire unitary business. The
31 director may require that a combined return include the income and
32 associated allocation factor or factors of taxpayers that are not
33 corporations.

34 If the director determines that the reported income or loss of a
35 member of a combined group engaged in a unitary business with
36 any taxpayer not otherwise included in the combined group on the
37 combined return represents an avoidance or evasion of tax by the
38 taxpayer or the combined group member, the director may require
39 all or any part of the income or loss and associated allocation factor
40 or factors of the taxpayer be included in or excluded from the
41 combined return for the unitary business or may require the use of a
42 different allocation factor or factors. The director may require that a
43 combined return include or exclude the income or loss and
44 associated allocation factor or factors of taxpayers that are not
45 corporations.

46 The authority granted under this subsection is in addition to, and
47 not a limitation of or dependent on, the provisions in P.L.1945,
48 c.162 (C.54:10A-1 et seq.) enacted to prevent tax avoidance or

1 evasion or to clearly reflect the income of any taxpayer. Any
2 determination by the director under this subsection is presumed
3 correct and the person challenging the determination has the burden
4 of proving by clear and convincing evidence that the determination
5 is incorrect.¹

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

7
8 ¹12. Section 33 of P.L.2018, c.48 is amended to read as follows:

9 33. This act shall take effect immediately, but section 1 and
10 provisions of section 3 other than provisions amending paragraph
11 (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4)
12 shall be effective for tax years beginning on and after January 1,
13 2018, sections 2 and only the provisions of section 3 amending
14 paragraph (5) of subsection (k) of section 4 of P.L.1945, c.162
15 (C.54:10A-4) are retroactive to January 1, 2017, and the remaining
16 sections shall apply to tax years beginning on and after January 1,
17 2018, provided however that the provisions of this act related to
18 combined reporting and market based sourcing shall apply to tax
19 years [beginning] ending on and after [January 1, 2019] July 31,
20 2019. Section [35] 32 shall be effective for tax years beginning on
21 and after January 1, 2019.¹

22 (cf: P.L.2018, c.48, s.33)

23
24 ¹13. N.J.S.54A:5-1 is amended to read as follows:

25 54A:5-1 . New Jersey Gross Income Defined. New Jersey gross
26 income shall consist of the following categories of income:

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

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

39 (1) taxes based on income;

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

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

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

16 c. Net gains or income from disposition of property. Net gains
17 or net income, less net losses, derived from the sale, exchange or
18 other disposition of property, including real or personal, whether
19 tangible or intangible as determined in accordance with the method
20 of accounting allowed for federal income tax purposes. For the
21 purpose of determining gain or loss, the basis of property shall be
22 the adjusted basis used for federal income tax purposes, except as
23 expressly provided for under this act, but without a deduction for
24 penalties, fines, or economic benefits excepted pursuant to
25 paragraph (2), or for treble damages excepted pursuant to paragraph
26 (3) of subsection b. of this section.

27 A taxpayer's net gain or loss on the sale, exchange or other
28 disposition of a share of an S corporation shall be calculated by
29 increasing the adjusted basis of the share by an amount equal to the
30 shareholder's net losses and deductions in respect of the share
31 allowed and deducted from income for federal income tax purposes,
32 not including any personal net operating loss deductions, to the
33 extent that such net losses were not offset by the taxpayer's pro rata
34 share of S corporation income otherwise subject to taxation
35 pursuant to subsection p. of this section in respect of another S
36 corporation, subject to rules of priority and assignment determined
37 by the director.

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

1 The term "net gains or income" shall not include gains or income
2 derived from obligations which are referred to in clause (1) or (2) of
3 N.J.S.54A:6-14 of this act or from securities which evidence
4 ownership in a qualified investment fund as defined in section 2 of
5 P.L.1987, c.310 (C.54A:6-14.1). The term "net gains or income"
6 shall not include gains or income derived from the sale or
7 assignment of a tax credit transfer certificate pursuant to section 7
8 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63
9 (C.34:1B-251) for any sale or assignment of a tax credit awarded on
10 or before July 1, 2018 regardless of when such credits are sold or
11 assigned. The term "net gains or net income" shall not include
12 gains or income from transactions to the extent to which
13 nonrecognition is allowed for federal income tax purposes. The
14 term "sale, exchange or other disposition" shall not include the
15 exchange of stock or securities in a corporation a party to a
16 reorganization in pursuance of a plan of reorganization, solely for
17 stock or securities in such corporation or in another corporation a
18 party to the reorganization and the transfer of property to a
19 corporation by one or more persons solely in exchange for stock or
20 securities in such corporation if immediately after the exchange
21 such person or persons are in control of the corporation. For
22 purposes of this clause, stock or securities issued for services shall
23 not be considered as issued in return for property.

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

25 (i) A statutory merger or consolidation;

26 (ii) The acquisition by one corporation, in exchange solely for
27 all or part of its voting stock (or in exchange solely for all or a part
28 of the voting stock of a corporation which is in control of the
29 acquiring corporation) of stock of another corporation if,
30 immediately after the acquisition, the acquiring corporation has
31 control of such other corporation (whether or not such acquiring
32 corporation had control immediately before the acquisition);

33 (iii) The acquisition by one corporation, in exchange solely for
34 all or part of its voting stock (or in exchange solely for all or a part
35 of the voting stock of a corporation which is in control of the
36 acquiring corporation), of substantially all of the properties of
37 another corporation, but in determining whether the exchange is
38 solely for stock the assumption by the acquiring corporation of a
39 liability of the other, or the fact that property acquired is subject to
40 a liability, shall be disregarded;

41 (iv) A transfer by a corporation of all or a part of its assets to
42 another corporation if immediately after the transfer the transferor,
43 or one or more of its shareholders (including persons who were
44 shareholders immediately before the transfer), or any combination
45 thereof, is in control of the corporation to which the assets are
46 transferred;

47 (v) A recapitalization;

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

3 (vii) The acquisition by one corporation, in exchange for stock of
4 a corporation (referred to in this subclause as "controlling
5 corporation") which is in control of the acquiring corporation, of
6 substantially all of the properties of another corporation which in
7 the transaction is merged into the acquiring corporation shall not
8 disqualify a transaction under subclause (i) if such transaction
9 would have qualified under subclause (i) if the merger had been into
10 the controlling corporation, and no stock of the acquiring
11 corporation is used in the transaction;

12 (viii) A transaction otherwise qualifying under subclause (i) shall
13 not be disqualified by reason of the fact that stock of a corporation
14 (referred to in this subclause as the "controlling corporation") which
15 before the merger was in control of the merged corporation is used
16 in the transaction, if after the transaction, the corporation surviving
17 the merger holds substantially all of its properties and of the
18 properties of the merged corporation (other than stock of the
19 controlling corporation distributed in the transaction); and in the
20 transaction, former shareholders of the surviving corporation
21 exchanged, for an amount of voting stock of the controlling
22 corporation, an amount of stock in the surviving corporation which
23 constitutes control of such corporation.

24 For purposes of this clause, the term "control" means the
25 ownership of stock possessing at least 80% of the total combined
26 voting power of all classes of stock entitled to vote and at least 80%
27 of the total number of shares of all other classes of stock of the
28 corporation.

29 For purposes of this clause, the term "a party to a reorganization"
30 includes a corporation resulting from a reorganization, and both
31 corporations, in the case of a reorganization resulting from the
32 acquisition by one corporation of stock or properties of another. In
33 the case of a reorganization qualifying under subclause (i) by reason
34 of subclause (vii) the term "a party to a reorganization" includes the
35 controlling corporation referred to in such subclause (vii).

36 Notwithstanding any provisions hereof, upon every such
37 exchange or conversion, the taxpayer's basis for the stock or
38 securities received shall be the same as the taxpayer's actual or
39 attributed basis for the stock, securities or property surrendered in
40 exchange therefor.

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

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

47 f. Dividends. "Dividends" means any distribution in cash or
48 property made by a corporation, association or business trust that is

1 not an S corporation, (1) out of accumulated earnings and profits, or
2 (2) out of earnings and profits of the year in which such dividend is
3 paid and any distribution in cash or property made by an S
4 corporation, as specifically determined pursuant to section 16 of
5 P.L.1993, c.173 (C.54A:5-14).

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

9 g. Gambling winnings.

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

11 i. Income in respect of a decedent.

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

29 k. Distributive share of partnership income, excluding the gain
30 or income derived from the sale or assignment of a tax credit
31 transfer certificate pursuant to section 7 of P.L.2011, c.149
32 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251) for
33 the sale or assignment of a tax credit awarded on or before July 1,
34 2018 regardless of when such credits are sold or assigned.

35 l. Amounts received as prizes and awards, except as provided in
36 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

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

39 n. Alimony and separate maintenance payments to the extent
40 that such payments are required to be made under a decree of
41 divorce or separate maintenance but not including payments for
42 support of minor children.

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

46 p. Net pro rata share of S corporation income, excluding the
47 gain or income derived from the sale or assignment of a tax credit
48 transfer certificate pursuant to section 7 of P.L.2011, c.149

1 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251) for
2 the sale or assignment of a tax credit awarded on or before July 1,
3 2018 regardless of when such credits are sold or assigned.¹
4 (cf: P.L.2018, c.48, s.26)
5

6 ¹**【4.】 14.**¹ (New section) Notwithstanding the provisions of the
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
8 seq.), to the contrary, the director may adopt, immediately, upon
9 filing with the Office of Administrative Law, regulations that the
10 director deems necessary to implement the provisions of
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 which regulations shall be effective for a period not to exceed 180
13 days from the date of the filing. The director may thereafter amend,
14 adopt, or readopt the regulations in accordance with the
15 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).
16

17 ¹**【5. Section 3 of P.L. , c. (C.) (pending before the Legislature**
18 **as Assembly Bill No. 4202 and Senate Bill No. 2746) is repealed.】**¹
19

20 ¹15. Section 20 of P.L.2018, c.48 is repealed. The repeal of
21 section 30 of P.L.2002, c.40 (C.54:10A-18.1) by section 32 of
22 P.L.2018, c.48, for privilege periods beginning on and after January
23 1, 2018, shall instead be effective for privilege periods ending on
24 and after July 31, 2019.¹
25

26 ¹**【6.】 16.**¹ This act shall take effect immediately ¹**【upon the**
27 **enactment into law of P.L. , c. (pending before the Legislature as**
28 **Assembly Bill No. 4202 and Senate Bill No. 2746)】**¹ and shall
29 apply to privilege periods beginning on and after January 1, 2018,
30 except section 5 and part (ii) of subparagraph (A) of paragraph (5)
31 of subsection (k) of section 4 of P.L.1945, c.162 shall apply
32 retroactively to the privilege period beginning after December 31,
33 2016.