

P.L. 2019, CHAPTER 320, *approved January 13, 2020*
Senate, No. 3246 (*Second Reprint*)

1 **AN ACT** establishing an elective pass-through ²entity² business
2 alternative income tax and allowing a ²corresponding²
3 refundable gross income tax credit ²**[for taxpayers earning**
4 income from pass-through businesses] and corporation business
5 tax credit², supplementing Title 54A of the New Jersey Statutes
6 and amending N.J.S.54A:4-1 and P.L.1993, c.173.
7
8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:
10
11 1. (New section) This act shall be known and may be cited as
12 the “Pass-Through Business Alternative Income Tax Act.”
13
14 2. (New section) As used in P.L. , c. (C.) (pending
15 before the Legislature as this bill):
16 ²“Director” means the Director of the Division of Taxation in the
17 Department of the Treasury.²
18 “Distributive proceeds” means the ²net² income, dividends,
19 ²royalties, interest, rents, guaranteed payments,² and ²**[gain]** gains²
20 of a pass-through entity, derived from or connected with sources
21 within the State, and upon which tax is imposed and due on a
22 member of the pass-through entity pursuant to the “New Jersey
23 Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in a taxable year.
24 ²For a nonresident, this means New Jersey source income as set
25 forth in N.J.S.54A:5-8.
26 “Limited liability company” means an entity organized pursuant
27 to the “Revised Uniform Limited Liability Company Act,”
28 P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law providing for the
29 formation of a limited liability company in this State, or formed as a
30 limited liability company under similar statutes of other states, that

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:
¹Senate SBA committee amendments adopted December 10, 2018.
²Assembly AAP committee amendments adopted December 12, 2019.

1 is classified as a partnership or an S Corporation for purposes of
 2 federal income tax law.²

3 “Member” means a ¹“natural person who is a”¹ shareholder of a
 4 ²“New Jersey”² S corporation; a partner in a general, limited, or
 5 limited liability partnership; or a member of a ²“New Jersey”²
 6 limited liability company.

7 ²“New Jersey limited liability company” means an entity
 8 organized pursuant to the “Revised Uniform Limited Liability
 9 Company Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law
 10 providing for the formation of a limited liability company in this
 11 State that, pursuant to section 92 of P.L.2012, c.50 (C.42:2C-92), is
 12 classified as a partnership.

13 “New Jersey S corporation” means the same as that term is used
 14 in subsection (p) of section 4 of P.L.1945, c.162 (C.54:10A-4).²

15 “Partnership” means a syndicate, group, pool, joint venture, or
 16 other unincorporated organization, through or by means of which
 17 any business, financial operation, or venture is carried on in this
 18 State ¹“,” and which is not, within the meaning of P.L. ,
 19 c. (C.) (pending before the Legislature as this bill), a trust or
 20 estate or a corporation¹.

21 ²“Pass-through business alternative income tax” means the tax
 22 set forth in subsection b. of section 3 of P.L. , c. (C.)
 23 (pending before the Legislature as this bill).²

24 “Pass-through entity” means a partnership, ²“a New Jersey”² an²
 25 S corporation, or a ²“New Jersey”² limited liability company, with
 26 at least one member who is liable for tax on distributive proceeds
 27 pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
 28 et seq., in a taxable year.

29 ²“Pro rata share”² Share² of distributive proceeds” means the
 30 portion of distributive proceeds attributable to a member of a pass-
 31 through entity in a taxable year.

32 “Taxable year” means the same as ²“that term is used in section
 33 12 of P.L.1993, c.173 (C.54A:5-10)”² in N.J.S.54A:1-2².

34 ²“Taxed at the business entity level” means taxed pursuant to an
 35 election made under P.L. , c. (C.) (pending before the
 36 Legislature as this bill).²

37
 38 3. (New section) a. A pass-through entity with at least one
 39 member who is liable pursuant to the “New Jersey Gross Income
 40 Tax Act,” N.J.S.54A:1-1 et seq., for tax on that member’s ²“pro
 41 rata”² share of distributive proceeds of the pass-through entity in a
 42 taxable year may elect ¹“to”¹ be liable for, and pay, a pass-through
 43 business alternative income tax in the taxable year.

44 b. ²“(1)”² Each pass-through entity that makes an election for a
 45 taxable year pursuant to this section shall ²“annually”² report to each

1 of its members, for the taxable year, the member's ²~~pro rata~~²
2 share of distributive proceeds.

3 ²(1) The election to pay tax at the entity level is available if
4 consent is made by each member of the electing entity who is a
5 member at the time the election is filed or by any officer, manager,
6 or member of the electing entity who is authorized, under law or the
7 entity's organizational documents, to make the election and who
8 represents to having such authorization under penalties of perjury.
9 This election shall be made annually on or before the due date of
10 the entity's return as established by the director and on forms
11 prescribed by the director. This election shall not be made
12 retroactively. If the members decide to revoke an election, that
13 revocation shall occur on or before the due date of the entity's
14 return.²

15 (2) The tax imposed on a pass-through entity pursuant to this
16 section shall be ²~~equal to~~ determined in accordance with the
17 following table with respect to² the sum of ¹~~:~~¹ each member's
18 ²~~pro rata~~² share of distributive proceeds attributable to the pass-
19 through entity for the taxable year ²~~,~~ multiplied by ¹:

20 5.525%, if the distributive proceeds of the pass-through entity
21 are less than \$250,000 in the taxable year;

22 6.37%, if the distributive proceeds of the pass-through entity are
23 less than \$1,000,000, but greater than or equal to \$250,000, in the
24 taxable year;

25 8.97%, if the distributive proceeds of the pass through entity are
26 less than \$3,000,000, but greater than or equal to \$1,000,000, in the
27 taxable year; or¹

28 10.75% ¹, if the distributive proceeds of the pass through entity
29 are greater than or equal to \$3,000,000 in the taxable year¹.

30 (3) If a member's ¹~~proportionate share of~~¹ New Jersey gross
31 income tax liability for the taxable year ¹that is attributable to the
32 member's pro rate share of distributive proceeds from the pass-
33 through entity¹, after the application of any credits, deductions, or
34 exemptions, is an amount equal to or less than \$1, then that
35 member's pro rata share of distributive proceeds shall be
36 disregarded for purposes of determining the tax pursuant to this
37 section; provided, however, that the member shall not be eligible to
38 claim a credit pursuant to section 5 of P.L. , c. (C.)
39 (pending before the Legislature as this bill) for the taxable year.】

40 For taxable years beginning on or after January 1, 2020:

41
42 If the sum of each member's
43 share of distributive proceeds
44 attributable to the pass-through
45 entity is:

The tax is:

1	<u>Not over \$250,000.00.....</u>	<u>5.675% of the sum of</u>
2	<u>distributive</u>	<u>proceeds</u>
3		
4	<u>Over \$250,000.00 but not</u>	
5	<u>over \$1,000,000.00.....</u>	<u>\$14,187.50 plus 6.52% of the</u>
6		<u>excess over \$250,000.00</u>
7		
8	<u>Over \$1,000,000.00 but not</u>	
9	<u>over \$5,000,000.00.....</u>	<u>\$63,087.50 plus 9.12% of the</u>
10		<u>excess over \$1,000,000.00</u>
11		
12	<u>Over \$5,000,000.00</u>	<u>\$427,887.50 plus 10.9% of the</u>
13		<u>excess over \$5,000,000.00.²</u>

14 c. The amount of pass-through business alternative income tax
 15 due from a pass-through entity in a taxable year shall be exclusive
 16 of any amount of tax due and paid by the pass-through entity
 17 pursuant to the "Corporation Business Tax Act (1945)," P.L.1945,
 18 c.162 (C.54:10A-1 et seq.), during any privilege period, except as
 19 otherwise provided in P.L. , c. (C.) (pending before the
 20 Legislature as this bill).

21 (1) A pass-through entity which elects to pay the pass-through
 22 business entity income tax shall be included in a combined group,
 23 as defined in subsection (z) of section 4 of P.L.1945, c.162
 24 (C.54:10A-4), and file a New Jersey combined return pursuant to
 25 the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et
 26 seq.). A pass-through entity which elects to pay the pass-through
 27 business entity income tax shall be excluded from a combined
 28 group, as defined in subsection (z) of section 4 of P.L.1945, c.162
 29 (C.54:10A-4), and from filing a New Jersey combined return
 30 pursuant to the Corporation Business Tax Act, P.L. 1945, c.162
 31 (C.54:10A-1 et seq.) if the pass-through entity meets the following:
 32 (a) all of the members of the pass-through entity are taxpayers
 33 otherwise liable for the tax under the "New Jersey Gross Income
 34 Tax Act," N.J.S.A. 54A:1-1 et seq., and (b) no business entity
 35 taxed as a corporation under the Corporation Business Tax Act, P.L.
 36 1945, c.162 (C.54:10A-1 et seq.), has a direct, indirect, beneficial,
 37 or constructive ownership or control of the pass-through entity.

38 (2) Nothing shall prevent a group of pass-through entities under
 39 common ownership by an individual, estate, or trust, or a group of
 40 related individuals, estates, or trusts, from filing a composite or
 41 consolidated pass-through business entity income tax return. In
 42 determining whether the pass-through entities are under common
 43 ownership, the individual, estate, or trust, or a group of related
 44 individuals, estates, or trusts, must own more than 50 percent of the
 45 direct or indirect voting control of each pass-through entity;
 46 provided, however, section 318 of the federal Internal Revenue
 47 Code, 26 U.S.C. s.318, shall apply for determining voting control.²

1 d. ²**【The director shall set the schedule and procedures for the**
 2 **payment of ¹the¹ pass-through business alternative income tax】**
 3 Pass-through entities whose members have made the business
 4 alternative income tax election shall file an entity tax return and
 5 make payments on or before the 15th day of the third month
 6 following the close of each entity's taxable year for federal income
 7 tax purposes. A pass-through entity shall make estimated entity tax
 8 payments on or before the 15th day of each of the fourth month,
 9 sixth month, and ninth month of the taxable year and on or before
 10 the 15th day of the first month succeeding the close of the taxable
 11 year².

12
 13 4. (New section) a. For the purpose of administration of
 14 P.L. , c. (C.) (pending before the Legislature as this bill),
 15 the director shall have those powers as the director deems necessary
 16 to apply to a pass-through entity subject to P.L. , c. (C.)
 17 (pending before the Legislature as this bill), for the reporting,
 18 payment, collection, administration, and enforcement of the tax
 19 imposed pursuant to P.L. , c. (C.) (pending before the
 20 Legislature as this bill), as may be applicable to the collection,
 21 administration, and enforcement of the New Jersey gross income
 22 tax provided in the "New Jersey Gross Income Tax Act,"
 23 N.J.S.54A:1-1 et seq., ²and the "New Jersey State Uniform Tax
 24 Procedure Law," N.J.S.54:48-1 et seq.,² except as otherwise
 25 provided by subsection b. of this section.

26 b. Taxes collected under the provisions of P.L. ,
 27 c. (C.) (pending before the Legislature as this bill) shall be
 28 deposited by the State Treasurer in the General Fund.
 29

30 5. (New section) a. Except as otherwise provided in paragraph
 31 (3) of subsection b. of section 3 of P.L. , c. (C.) (pending
 32 before the Legislature as this bill), a taxpayer shall be allowed a
 33 refundable gross income tax credit, pursuant to the "New Jersey
 34 Gross Income Tax Act," N.J.S.54A:1-1 et seq., if the taxpayer is a
 35 member of a pass-through entity that elects to owe and pay the
 36 pass-through business alternative income tax determined pursuant
 37 to section 3 of P.L. , c. (C.) (pending before the Legislature
 38 as this bill) for the taxable year.

39 For each pass-through entity of which the taxpayer is a member,
 40 the amount of the credit shall equal the member's pro rata share of
 41 the tax paid pursuant to section 3 of P.L. , c. (C.) (pending
 42 before the Legislature as this bill) ¹**【multiplied by 89.25%】¹**, which
 43 credit shall be applied against the gross income tax liability of the
 44 member in the taxable year.

45 b. The ¹**【order of priority in which the】¹** credit allowed by this
 46 section ¹**【and any】** shall be available after the application of all¹

1 other credits allowed by law ¹【may be taken shall be as prescribed】
2 and claimed¹ by the ¹【director】 taxpayer in the taxable year¹.

3 c. For a taxpayer that applies the credit available pursuant to
4 this section to the tax due pursuant to N.J.S.54A:1-1, if the credit
5 exceeds the amount of tax otherwise due, that amount of excess
6 shall be an overpayment for the purposes of N.J.S.54A:9-7;
7 provided however, that subsection (f) of N.J.S.54A:9-7 shall not
8 apply.

9 ¹d. The credit allowed to any trust or estate pursuant to this
10 section may be allocated to beneficiaries or be used against the tax
11 liability of the estate or trust, in accordance with rules and
12 regulations adopted by the director.¹
13

14 6. Section 3 of P.L.1993, c.173 (C.54:10A-5.22) is amended to
15 read as follows:

16 3. a. A corporation may elect, in accordance with the
17 provisions of this section, to be a New Jersey S corporation. In
18 order for an election to be valid, the corporation and each of its
19 shareholders on the day on which the election is made (hereinafter
20 "initial shareholders") must consent to such election and the
21 jurisdictional requirements of becoming a New Jersey S
22 corporation. The form of the election and consent to jurisdictional
23 requirements and the place for filing shall be as prescribed by the
24 Director of the Division of Taxation.

25 b. Each initial shareholder and the corporation shall consent to
26 the following jurisdictional requirements:

27 (1) That this State shall have the right and jurisdiction to tax and
28 collect the tax on each shareholder's S corporation income as
29 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) and,
30 if applicable, the pass-through business alternative income tax
31 pursuant to P.L. , c. (C.) (pending before the Legislature as
32 this bill);

33 (2) That New Jersey's right and jurisdiction to tax the income as
34 set forth in paragraph (1) of this subsection shall not be affected by
35 a change of a shareholder's residency, except as provided by the
36 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

37 (3) If shareholders that are not initial shareholders of the
38 corporation, while the corporation is a New Jersey S corporation,
39 fail to consent to New Jersey's jurisdiction to tax S corporation
40 income to such shareholders, this State shall have the right and
41 jurisdiction to collect a payment of tax each year directly from the
42 corporation equal to the S corporation income allocated to this
43 State, as defined pursuant to section 12 of P.L.1993, c.173
44 (C.54A:5-10), of the nonconsenting shareholders for the accounting
45 or privilege period multiplied by the maximum tax bracket rate
46 provided under N.J.S.54A:2-1 for the accounting or privilege
47 period. In such case, the corporation shall have the right, but not

1 the obligation, to recover payments made by the corporation
2 pursuant to this paragraph from each nonconsenting shareholder.

3 c. A corporation may make an election to become a New Jersey
4 S corporation with respect to an accounting or privilege period for
5 which the corporation is or will be an S corporation. The election
6 for an accounting or privilege period, along with the consents to
7 jurisdictional requirements, shall be filed within one calendar
8 month of the time at which a federal S corporation election would
9 be required if such accounting or privilege period were a "taxable
10 year" for which a federal S corporation election were to be made
11 pursuant to section 1362 of the federal Internal Revenue Code of
12 1986, 26 U.S.C. s.1362. Such elections may only be revoked
13 pursuant to subsection d. of this section. Such election shall
14 terminate immediately upon the corporation's failure to satisfy the
15 definition of a New Jersey S corporation pursuant to paragraph (p)
16 of section 4 of P.L.1945, c.162 (C.54:10A-4).

17 d. A corporation may revoke an election pursuant to this
18 section on or before the last day of the first accounting or privilege
19 period to which the election would otherwise apply.
20 (cf: P.L.1993, c.173, s.3)

21

22 7. Section 4 of P.L.1993, c.173 (C.54:10A-5.23) is amended to
23 read as follows:

24 4. a. With respect to each of its shareholders that is not an
25 initial shareholder, a New Jersey S corporation shall satisfy the
26 requirements of either paragraph b. or c. of this section.

27 b. Deliver a consent to the jurisdictional requirements as set
28 forth in subsection b. of section 3 of P.L.1993, c.173 (C.54:10A-
29 5.22).

30 c. Make payments to the Director of the Division of Taxation
31 on behalf of each nonconsenting shareholder in an amount equal to
32 the shareholder's pro rata share of S corporation income allocated to
33 this State, as defined pursuant to section 12 of P.L.1993, c.173
34 (C.54A:5-10), reflected on the corporation's return for the
35 accounting or privilege period, multiplied by the maximum tax
36 bracket rate provided under N.J.S.54A:2-1 in effect at the end of the
37 accounting or privilege period. The payments shall be made no
38 later than the time for filing of the return for the accounting or
39 privilege period. The director may, by regulation, require that
40 amounts estimated to be equal to the liability expected to be due
41 pursuant to this subsection be withheld from any distribution made
42 to a nonconsenting shareholder.

43 d. If a shareholder that is not an initial shareholder of a New
44 Jersey S corporation fails to deliver a consent to the jurisdictional
45 requirements set forth in subsection b. of section 3 of P.L.1993,
46 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to
47 withhold payments pursuant to subsection c. of this section, then
48 this State shall have the right and jurisdiction to collect a tax each

1 year directly from the corporation equal to the pro rata share of the
2 S corporation income allocated to this State, as defined pursuant to
3 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting
4 shareholder times the maximum tax bracket rate provided under
5 N.J.S.54A:2-1 for the appropriate accounting or privilege period.
6 In such case, the corporation shall have the right, but not the
7 obligation, to recover payments made by the corporation pursuant to
8 this subsection from each nonconsenting shareholder. The
9 corporation shall not be liable for the pass-through business
10 alternative income tax pursuant to P.L. , c. (C.) (pending
11 before the Legislature as this bill) relative to collections made in a
12 taxable year for such nonconsenting members.
13 (cf: P.L.1993, c.173, s.4)

14
15 8. N.J.S.54A:4-1 is amended to read as follows:

16 54A:4-1. Resident credit for tax of another state. (a) A
17 resident taxpayer shall be allowed a credit against the tax otherwise
18 due under this act for the amount of any income tax or wage tax
19 imposed for the taxable year by another state of the United States or
20 political subdivision of such state, or by the District of Columbia,
21 with respect to income which is also subject to tax under this act,
22 except as provided by subsections (c) and (d) of this section.

23 (b) The credit provided under this section shall not exceed the
24 proportion of the tax otherwise due under this act that the amount of
25 the taxpayer's income subject to tax by the other jurisdiction bears
26 to his entire New Jersey income.

27 (c) No credit shall be allowed against the tax otherwise due
28 under this act for the amount of any income tax or wage tax
29 imposed for the taxable year on S corporation income allocated to
30 this State.

31 (d) No credit shall be allowed for the amount of any taxes paid
32 or accrued for the taxable year on or measured by profits or income
33 imposed on or paid on behalf of a person other than the taxpayer,
34 whether or not the taxpayer may be held liable for the tax.

35 (e) Readjustment of the tax of another state or political
36 subdivision thereof--if the taxpayer is allowed credit under this
37 section for more or less of the tax of another state or political
38 subdivision thereof than he is finally required to pay, the taxpayer
39 shall send notice of the difference to the director who shall
40 redetermine the tax for any years affected regardless of any
41 otherwise applicable statute of limitations.

42 (f) A resident taxpayer shall be allowed a credit against the tax
43 otherwise due under this act for the amount of any tax that the
44 director determines is substantially similar to the tax imposed
45 pursuant to section '1[2] 3' of P.L. , c. (C.) (pending before
46 the Legislature as this bill), for the taxable year, by another state of
47 the United States or political subdivision of such state, or by the
48 District of Columbia, with respect to the direct and indirect

1 distributive proceeds from a pass-through entity, which distributive
2 proceeds are also subject to tax under this act. ²A credit allowed
3 pursuant to this subsection shall not exceed what would have been
4 allowed if the income was taxed at the individual level and not
5 taxed at the entity level.²

6 For purposes of this subsection, “distributive proceeds” and
7 “pass-through entity” mean the same as those terms are used in
8 section 2 of P.L. , c. (C.) (pending before the Legislature
9 as this bill).

10 (cf: P.L.1993, c.173, s.7)

11
12 9. Section 11 of P.L.1993, c.173 (C.54A:5-9) is amended to
13 read as follows:

14 11. **【An】** Except as otherwise provided by P.L. , c. (C.)
15 (pending before the Legislature as this bill), an S corporation as
16 such shall not be subject to the tax imposed by the "New Jersey
17 Gross Income Tax Act," N.J.S.54A:1-1 et seq., but the S
18 corporation income, dividends, and gain of a shareholder of an S
19 corporation shall be subject to the tax, and the tax shall be imposed
20 on the shareholder's pro rata share, whether or not distributed, of the
21 S corporation income for its taxable year ending within or with the
22 shareholder's taxable year.

23 (cf: P.L.1993, c.173, s.11)

24
25 ²**【10.** Section 15 of P.L.1993, c.173 (C.54A:5-13) is amended to
26 read as follows:

27 15. For purposes of **【this act】** the "New Jersey Gross Income
28 Tax Act," N.J.S.54A:1-1 et seq., if a shareholder of an S
29 corporation is both a resident and a nonresident of this State during
30 any taxable year, the shareholder's pro rata share of the S
31 corporation income allocated to this State and S corporation income
32 not allocated to this State for the taxable period shall be further
33 prorated between the shareholder's periods of residence and
34 nonresidence during the taxable period, in accordance with the
35 number of days in each period. Any prorated amount of S
36 corporation income determined pursuant to this section shall also
37 apply to determinations of income for purposes of the assessment of
38 the pass-through business alternative income tax, pursuant to
39 P.L. , c. (C.) (pending before the Legislature as this bill).

40 (cf: P.L.1993, c.173 s.15)**】²**

41
42 ²**【10.** Section 18 of P.L.2000, c.161 (C.42:1A-18) is amended to
43 read as follows:

44 18. a. Except as otherwise provided in subsections b. and c. of
45 this section, all partners are liable jointly and severally for all
46 obligations of the partnership unless otherwise agreed by the
47 claimant or provided by law. In addition, the entity is also liable for

1 all obligations of the partnership as provided by P.L. _____,
2 c. (C. _____) (pending before the Legislature as this bill).

3 b. A person admitted as a partner into an existing partnership is
4 not personally liable for any partnership obligation incurred before
5 the person's admission as a partner.

6 c. An obligation of a partnership incurred while the partnership
7 is a limited liability partnership, whether arising in contract, tort, or
8 otherwise, is solely the obligation of the partnership. A partner is
9 not personally liable, directly or indirectly, by way of contribution
10 or otherwise, for such an obligation solely by reason of being or so
11 acting as a partner. This subsection applies notwithstanding
12 anything inconsistent in the partnership agreement that existed
13 immediately before the vote required to become a limited liability
14 partnership under subsection b. of section 47 of this act.²

15 (cf: P.L.2000, c.161,s.18)

16
17 ²11. (New section) Where the pass-through entity, which pays
18 the pass-through business alternative income tax, is owned by both
19 corporate members and non-corporate members, the corporate
20 member shall be allowed a tax credit against the surtax imposed
21 pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) or the tax
22 imposed under paragraph (1) of subsection c. of section 5 of
23 P.L.1945, c.162 (C.54:10A-5), if the corporate member is a member
24 of a pass-through entity that elects to owe and pay the pass-through
25 business alternative income tax determined pursuant to section 3 of
26 P.L. _____, c. (C. _____) (pending before the Legislature as this bill)
27 for the taxable year; provided, however, the credit shall not reduce
28 the corporate member's tax liability below the statutory minimum
29 imposed under subsection e. of section 5 of P.L. 1945, c. 162
30 (C.54:10A-5). Any excess credit shall be carried over for a period
31 of up to 20 privilege periods.

32 a. For each pass-through entity of which the corporate member
33 is a member, the amount of the credit shall equal the member's
34 share of the tax paid pursuant to section 3 of P.L. _____, c. (C. _____)
35 (pending before the Legislature as this bill), which credit shall be
36 applied against the surtax or corporation business tax liability of the
37 member during the member's privilege period.

38 b. The credit allowed by this section shall be taken as
39 prescribed by the director. A taxpayer shall only claim a credit for
40 payment of the pass-through business alternative income tax made
41 by the entity that is applicable to the same tax year.

42 c. If the pass-through entity is unitary with both the corporate
43 member and the member's combined group filing a New Jersey
44 combined return for which the corporate member is included as a
45 member, within the meaning of subsection (dd) of section 4 of
46 P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48
47 (C.54:10A-4.11), the credit shall be shareable for the purposes of
48 subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and

1 allowed to reduce the total surtax and total corporation business tax
2 liability of the combined group but not the below the aggregate
3 statutory minimum tax of the taxable members of the combined
4 group.

5 d. If the pass-through entity is unitary with the corporate
6 member, but not the member's combined group filing a New Jersey
7 combined return for which the corporate member is included as a
8 member, within the meaning of subsection (dd) of section 4 of
9 P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48
10 (C.54:10A-4.11), the credit shall not be shareable for the purposes
11 of subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) but
12 shall be allowed to reduce the total surtax and total corporation
13 business tax liability of the corporate member derived from the
14 corporate member's activities that are independent of the unitary
15 business of the member's combined group.

16 e. An exempt corporate member that is a corporation exempt
17 from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3)
18 shall be refunded the share of the tax paid by the pass-through
19 entity on the exempt corporate member's distributive proceeds of
20 the pass-through entity.

21 f. For the purposes of this section:

22 "Corporate member" means a member that is not an individual,
23 an estate, or a trust subject to taxation pursuant to the "New Jersey
24 Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
25 corporation exempt from the Corporation Business Tax Act
26 pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3). A corporate
27 member does not include another pass-through entity.

28 "Exempt corporate member" means a member that is not an
29 individual, an estate, or a trust subject to taxation pursuant to the
30 "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq. and
31 that is a corporation exempt from the Corporation Business Tax
32 Act pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3).

33 "Noncorporate member" means, an individual, an estate or a
34 trust subject to taxation pursuant to the "New Jersey Gross Income
35 Tax Act," N.J.S.A. 54A:1-1 et seq.

36 "Pass-through entity member" means a member that itself is a
37 pass-through entity.²

38
39 ²11.12. (New section) 12.12. (New section) 12.12. (New section) 12.12. (New section)
40 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
41 1 et seq.), and immediately upon filing with the Office of
42 Administrative Law, rules and regulations necessary to effectuate
43 the purposes of P.L. 1968, c. 410 (C.52:14B-1 et seq.) (pending before the
44 Legislature as this bill) Notwithstanding the provisions of the
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
46 seq.), to the contrary, the director may, immediately, upon filing
47 with the Office of Administrative Law, prescribe forms and adopt
48 regulations that the director deems necessary to administer the

1 provisions of this act², which regulations² shall be effective for a
2 period not to exceed 360 days following enactment of P.L. , c.
3 (C.) (pending before the Legislature as this bill) and may
4 thereafter be amended, adopted, or readopted by the director in
5 accordance with the requirements of P.L.1968, c.410.

6
7 ²~~12.~~ ²13. This act shall take effect immediately and shall
8 ¹~~apply~~ ²~~be retroactive~~¹ ²apply² to taxable years of pass-through
9 entities beginning on or after January 1, ¹~~2019~~ ²~~2018~~¹ 2020².

10
11
12 _____
13
14 Establishes elective pass-through entity business alternative
15 income tax and allows corresponding refundable gross income tax
16 and corporation business tax credit.