

[Second Reprint]

**SENATE, No. 3246**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED DECEMBER 3, 2018

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**SYNOPSIS**

Establishes elective pass-through entity business alternative income tax and allows corresponding refundable gross income tax and corporation business tax credit.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on December 12, 2019, with amendments.

(Sponsorship Updated As Of: 12/17/2019)

1 AN ACT establishing an elective pass-through <sup>2</sup>entity<sup>2</sup> business  
 2 alternative income tax and allowing a <sup>2</sup>corresponding<sup>2</sup>  
 3 refundable gross income tax credit <sup>2</sup>**[for taxpayers earning**  
 4 **income from pass-through businesses]** and corporation business  
 5 tax credit<sup>2</sup>, 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 <sup>2</sup>“Director” means the Director of the Division of Taxation in the  
 17 Department of the Treasury.<sup>2</sup>

18 “Distributive proceeds” means the <sup>2</sup>net<sup>2</sup> income, dividends,  
 19 <sup>2</sup>royalties, interest, rents, guaranteed payments,<sup>2</sup> and <sup>2</sup>**[gain]** gains<sup>2</sup>  
 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 <sup>2</sup>For 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  
 31 is classified as a partnership or an S Corporation for purposes of  
 32 federal income tax law.<sup>2</sup>

33 “Member” means a <sup>1</sup>**[natural person who is a]**<sup>1</sup> shareholder of a  
 34 <sup>2</sup>**[New Jersey]**<sup>2</sup> S corporation; a partner in a general, limited, or  
 35 limited liability partnership; or a member of a <sup>2</sup>**[New Jersey]**<sup>2</sup>  
 36 limited liability company.

37 <sup>2</sup>**[“New Jersey limited liability company”** means an entity  
 38 organized pursuant to the “Revised Uniform Limited Liability  
 39 Company Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law  
 40 providing for the formation of a limited liability company in this  
 41 State that , pursuant to section 92 of P.L.2012, c.50 (C.42:2C-92), is  
 42 classified as a partnership.

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

**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:

<sup>1</sup>Senate SBA committee amendments adopted December 10, 2018.

<sup>2</sup>Assembly AAP committee amendments adopted December 12, 2019.

1 “Partnership” means a syndicate, group, pool, joint venture, or  
2 other unincorporated organization, through or by means of which  
3 any business, financial operation, or venture is carried on in this  
4 State <sup>1</sup>], and which is not, within the meaning of P.L. ,  
5 c. (C. ) (pending before the Legislature as this bill), a trust or  
6 estate or a corporation<sup>1</sup>.

7 <sup>2</sup>“Pass-through business alternative income tax” means the tax  
8 set forth in subsection b. of section 3 of P.L. , c. (C. )  
9 (pending before the Legislature as this bill).<sup>2</sup>

10 “Pass-through entity” means a partnership, <sup>2</sup>[a New Jersey] an<sup>2</sup>  
11 S corporation, or a <sup>2</sup>[New Jersey]<sup>2</sup> limited liability company, with  
12 at least one member who is liable for tax on distributive proceeds  
13 pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1  
14 et seq., in a taxable year.

15 “<sup>2</sup>[Pro rata share] Share<sup>2</sup> of distributive proceeds” means the  
16 portion of distributive proceeds attributable to a member of a pass-  
17 through entity in a taxable year.

18 “Taxable year” means the same as <sup>2</sup>[that term is used in section  
19 12 of P.L.1993, c.173 (C.54A:5-10)] in N.J.S.54A:1-2<sup>2</sup>.

20 <sup>2</sup>“Taxed at the business entity level” means taxed pursuant to an  
21 election made under P.L. , c. (C. ) (pending before the  
22 Legislature as this bill).<sup>2</sup>

23  
24 3. (New section) a. A pass-through entity with at least one  
25 member who is liable pursuant to the “New Jersey Gross Income  
26 Tax Act,” N.J.S.54A:1-1 et seq., for tax on that member’s <sup>2</sup>[pro  
27 rata]<sup>2</sup> share of distributive proceeds of the pass-through entity in a  
28 taxable year may elect <sup>1</sup>to<sup>1</sup> be liable for, and pay, a pass-through  
29 business alternative income tax in the taxable year.

30 b. <sup>2</sup>[(1)]<sup>2</sup> Each pass-through entity that makes an election for a  
31 taxable year pursuant to this section shall <sup>2</sup>annually<sup>2</sup> report to each  
32 of its members, for the taxable year, the member’s <sup>2</sup>[pro rata]<sup>2</sup>  
33 share of distributive proceeds.

34 <sup>2</sup>(1) The election to pay tax at the entity level is available if  
35 consent is made by each member of the electing entity who is a  
36 member at the time the election is filed or by any officer, manager,  
37 or member of the electing entity who is authorized, under law or the  
38 entity’s organizational documents, to make the election and who  
39 represents to having such authorization under penalties of perjury.  
40 This election shall be made annually on or before the due date of  
41 the entity’s return as established by the director and on forms  
42 prescribed by the director. This election shall not be made  
43 retroactively. If the members decide to revoke an election, that  
44 revocation shall occur on or before the due date of the entity’s  
45 return.<sup>2</sup>

1 (2) The tax imposed on a pass-through entity pursuant to this  
 2 section shall be <sup>2</sup>~~equal to~~ determined in accordance with the  
 3 following table with respect to<sup>2</sup> the sum of <sup>1</sup>~~:~~<sup>1</sup> each member's  
 4 <sup>2</sup>~~pro rata~~<sup>2</sup> share of distributive proceeds attributable to the pass-  
 5 through entity for the taxable year <sup>2</sup>~~,~~ multiplied by <sup>1</sup>:

6 5.525%, if the distributive proceeds of the pass-through entity  
 7 are less than \$250,000 in the taxable year;

8 6.37%, if the distributive proceeds of the pass-through entity are  
 9 less than \$1,000,000, but greater than or equal to \$250,000, in the  
 10 taxable year;

11 8.97%, if the distributive proceeds of the pass through entity are  
 12 less than \$3,000,000, but greater than or equal to \$1,000,000, in the  
 13 taxable year; or<sup>1</sup>

14 10.75% <sup>1</sup>, if the distributive proceeds of the pass through entity  
 15 are greater than or equal to \$3,000,000 in the taxable year<sup>1</sup>.

16 (3) If a member's <sup>1</sup>~~proportionate share of~~<sup>1</sup> New Jersey gross  
 17 income tax liability for the taxable year <sup>1</sup>~~that is attributable to the~~  
 18 member's pro rate share of distributive proceeds from the pass-  
 19 through entity<sup>1</sup>, after the application of any credits, deductions, or  
 20 exemptions, is an amount equal to or less than \$1, then that  
 21 member's pro rata share of distributive proceeds shall be  
 22 disregarded for purposes of determining the tax pursuant to this  
 23 section; provided, however, that the member shall not be eligible to  
 24 claim a credit pursuant to section 5 of P.L. , c. (C. )  
 25 (pending before the Legislature as this bill) for the taxable year. **]**

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

<u>If the sum of each member's</u> <u>share of distributive proceeds</u> <u>attributable to the pass-through</u> <u>entity is:</u>	<u>The tax is:</u>
28 <u>Not over \$250,000.00.....</u> 29 <u>distributive</u>	33 <u>5.675% of the sum of</u> 34 <u>proceeds</u>
35 <u>Over \$250,000.00 but not</u> 36 <u>over \$1,000,000.00.....</u>	37 <u>\$14,187.50 plus 6.52% of the</u> 38 <u>excess over \$250,000.00</u>
39 <u>Over \$1,000,000.00 but not</u> 40 <u>over \$5,000,000.00.....</u>	41 <u>\$63,087.50 plus 9.12% of the</u> 42 <u>excess over \$1,000,000.00</u>
43 <u>Over \$5,000,000.00 .....</u>	44 <u>\$427,887.50 plus 10.9% of the</u> 45 <u>excess over \$5,000,000.00.</u> <sup>2</sup>

46 c. The amount of pass-through business alternative income tax  
 47 due from a pass-through entity in a taxable year shall be exclusive

1 of any amount of tax due and paid by the pass-through entity  
2 pursuant to the "Corporation Business Tax Act (1945)," P.L.1945,  
3 c.162 (C.54:10A-1 et seq.), during any privilege period, except as  
4 otherwise provided in P.L. , c. (C. ) (pending before the  
5 Legislature as this bill).

6 (1) A pass-through entity which elects to pay the pass-through  
7 business entity income tax shall be included in a combined group,  
8 as defined in subsection (z) of section 4 of P.L.1945, c.162  
9 (C.54:10A-4), and file a New Jersey combined return pursuant to  
10 the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et  
11 seq.). A pass-through entity which elects to pay the pass-through  
12 business entity income tax shall be excluded from a combined  
13 group, as defined in subsection (z) of section 4 of P.L.1945, c.162  
14 (C.54:10A-4), and from filing a New Jersey combined return  
15 pursuant to the Corporation Business Tax Act, P.L. 1945, c.162  
16 (C.54:10A-1 et seq.) if the pass-through entity meets the following:  
17 (a) all of the members of the pass-through entity are taxpayers  
18 otherwise liable for the tax under the "New Jersey Gross Income  
19 Tax Act," N.J.S.A. 54A:1-1 et seq., and (b) no business entity  
20 taxed as a corporation under the Corporation Business Tax Act, P.L.  
21 1945, c.162 (C.54:10A-1 et seq.), has a direct, indirect, beneficial,  
22 or constructive ownership or control of the pass-through entity.

23 (2) Nothing shall prevent a group of pass-through entities under  
24 common ownership by an individual, estate, or trust, or a group of  
25 related individuals, estates, or trusts, from filing a composite or  
26 consolidated pass-through business entity income tax return. In  
27 determining whether the pass-through entities are under common  
28 ownership, the individual, estate, or trust, or a group of related  
29 individuals, estates, or trusts, must own more than 50 percent of the  
30 direct or indirect voting control of each pass-through entity;  
31 provided, however, section 318 of the federal Internal Revenue  
32 Code, 26 U.S.C. s.318, shall apply for determining voting control.<sup>2</sup>

33 d. <sup>2</sup> [The director shall set the schedule and procedures for the  
34 payment of 'the' pass-through business alternative income tax]  
35 Pass-through entities whose members have made the business  
36 alternative income tax election shall file an entity tax return and  
37 make payments on or before the 15th day of the third month  
38 following the close of each entity's taxable year for federal income  
39 tax purposes. A pass-through entity shall make estimated entity tax  
40 payments on or before the 15th day of each of the fourth month,  
41 sixth month, and ninth month of the taxable year and on or before  
42 the 15th day of the first month succeeding the close of the taxable  
43 year<sup>2</sup>.

44  
45 4. (New section) a. For the purpose of administration of  
46 P.L. , c. (C. ) (pending before the Legislature as this bill),  
47 the director shall have those powers as the director deems necessary  
48 to apply to a pass-through entity subject to P.L. , c. (C. )

1 (pending before the Legislature as this bill), for the reporting,  
2 payment, collection, administration, and enforcement of the tax  
3 imposed pursuant to P.L. , c. (C. ) (pending before the  
4 Legislature as this bill), as may be applicable to the collection,  
5 administration, and enforcement of the New Jersey gross income  
6 tax provided in the “New Jersey Gross Income Tax Act,”  
7 N.J.S.54A:1-1 et seq., <sup>2</sup>and the “New Jersey State Uniform Tax  
8 Procedure Law,” N.J.S.54:48-1 et seq.,<sup>2</sup> except as otherwise  
9 provided by subsection b. of this section.

10 b. Taxes collected under the provisions of P.L. ,  
11 c. (C. ) (pending before the Legislature as this bill) shall be  
12 deposited by the State Treasurer in the General Fund.  
13

14 5. (New section) a. Except as otherwise provided in paragraph  
15 (3) of subsection b. of section 3 of P.L. , c. (C. ) (pending  
16 before the Legislature as this bill), a taxpayer shall be allowed a  
17 refundable gross income tax credit, pursuant to the “New Jersey  
18 Gross Income Tax Act,” N.J.S.54A:1-1 et seq., if the taxpayer is a  
19 member of a pass-through entity that elects to owe and pay the  
20 pass-through business alternative income tax determined pursuant  
21 to section 3 of P.L. , c. (C. ) (pending before the Legislature  
22 as this bill) for the taxable year.

23 For each pass-through entity of which the taxpayer is a member,  
24 the amount of the credit shall equal the member’s pro rata share of  
25 the tax paid pursuant to section 3 of P.L. , c. (C. ) (pending  
26 before the Legislature as this bill) <sup>1</sup>**【multiplied by 89.25%】**<sup>1</sup>, which  
27 credit shall be applied against the gross income tax liability of the  
28 member in the taxable year.

29 b. The <sup>1</sup>**【order of priority in which the】**<sup>1</sup> credit allowed by this  
30 section <sup>1</sup>**【and any】 shall be available after the application of all**<sup>1</sup>  
31 other credits allowed by law <sup>1</sup>**【may be taken shall be as prescribed】**  
32 **and claimed**<sup>1</sup> by the <sup>1</sup>**【director】 taxpayer in the taxable year**<sup>1</sup>.

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

39 <sup>1</sup>**d. The credit allowed to any trust or estate pursuant to this**  
40 **section may be allocated to beneficiaries or be used against the tax**  
41 **liability of the estate or trust, in accordance with rules and**  
42 **regulations adopted by the director.**<sup>1</sup>  
43

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

46 3. a. A corporation may elect, in accordance with the  
47 provisions of this section, to be a New Jersey S corporation. In

1 order for an election to be valid, the corporation and each of its  
2 shareholders on the day on which the election is made (hereinafter  
3 "initial shareholders") must consent to such election and the  
4 jurisdictional requirements of becoming a New Jersey S  
5 corporation. The form of the election and consent to jurisdictional  
6 requirements and the place for filing shall be as prescribed by the  
7 Director of the Division of Taxation.

8 b. Each initial shareholder and the corporation shall consent to  
9 the following jurisdictional requirements:

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

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

20 (3) If shareholders that are not initial shareholders of the  
21 corporation, while the corporation is a New Jersey S corporation,  
22 fail to consent to New Jersey's jurisdiction to tax S corporation  
23 income to such shareholders, this State shall have the right and  
24 jurisdiction to collect a payment of tax each year directly from the  
25 corporation equal to the S corporation income allocated to this  
26 State, as defined pursuant to section 12 of P.L.1993, c.173  
27 (C.54A:5-10), of the nonconsenting shareholders for the accounting  
28 or privilege period multiplied by the maximum tax bracket rate  
29 provided under N.J.S.54A:2-1 for the accounting or privilege  
30 period. In such case, the corporation shall have the right, but not  
31 the obligation, to recover payments made by the corporation  
32 pursuant to this paragraph from each nonconsenting shareholder.

33 c. A corporation may make an election to become a New Jersey  
34 S corporation with respect to an accounting or privilege period for  
35 which the corporation is or will be an S corporation. The election  
36 for an accounting or privilege period, along with the consents to  
37 jurisdictional requirements, shall be filed within one calendar  
38 month of the time at which a federal S corporation election would  
39 be required if such accounting or privilege period were a "taxable  
40 year" for which a federal S corporation election were to be made  
41 pursuant to section 1362 of the federal Internal Revenue Code of  
42 1986, 26 U.S.C. s.1362. Such elections may only be revoked  
43 pursuant to subsection d. of this section. Such election shall  
44 terminate immediately upon the corporation's failure to satisfy the  
45 definition of a New Jersey S corporation pursuant to paragraph (p)  
46 of section 4 of P.L.1945, c.162 (C.54:10A-4).

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

5  
6 7. Section 4 of P.L.1993, c.173 (C.54:10A-5.23) is amended to  
7 read as follows:

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

11 b. Deliver a consent to the jurisdictional requirements as set  
12 forth in subsection b. of section 3 of P.L.1993, c.173 (C.54:10A-  
13 5.22).

14 c. Make payments to the Director of the Division of Taxation  
15 on behalf of each nonconsenting shareholder in an amount equal to  
16 the shareholder's pro rata share of S corporation income allocated to  
17 this State, as defined pursuant to section 12 of P.L.1993, c.173  
18 (C.54A:5-10), reflected on the corporation's return for the  
19 accounting or privilege period, multiplied by the maximum tax  
20 bracket rate provided under N.J.S.54A:2-1 in effect at the end of the  
21 accounting or privilege period. The payments shall be made no  
22 later than the time for filing of the return for the accounting or  
23 privilege period. The director may, by regulation, require that  
24 amounts estimated to be equal to the liability expected to be due  
25 pursuant to this subsection be withheld from any distribution made  
26 to a nonconsenting shareholder.

27 d. If a shareholder that is not an initial shareholder of a New  
28 Jersey S corporation fails to deliver a consent to the jurisdictional  
29 requirements set forth in subsection b. of section 3 of P.L.1993,  
30 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to  
31 withhold payments pursuant to subsection c. of this section, then  
32 this State shall have the right and jurisdiction to collect a tax each  
33 year directly from the corporation equal to the pro rata share of the  
34 S corporation income allocated to this State, as defined pursuant to  
35 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting  
36 shareholder times the maximum tax bracket rate provided under  
37 N.J.S.54A:2-1 for the appropriate accounting or privilege period.  
38 In such case, the corporation shall have the right, but not the  
39 obligation, to recover payments made by the corporation pursuant to  
40 this subsection from each nonconsenting shareholder. The  
41 corporation shall not be liable for the pass-through business  
42 alternative income tax pursuant to P.L. , c. (C. ) (pending  
43 before the Legislature as this bill) relative to collections made in a  
44 taxable year for such nonconsenting members.

45 (cf: P.L.1993, c.173, s.4)

46  
47 8. N.J.S.54A:4-1 is amended to read as follows:



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

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

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

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

20 (e) Readjustment of the tax of another state or political  
21 subdivision thereof--if the taxpayer is allowed credit under this  
22 section for more or less of the tax of another state or political  
23 subdivision thereof than he is finally required to pay, the taxpayer  
24 shall send notice of the difference to the director who shall  
25 redetermine the tax for any years affected regardless of any  
26 otherwise applicable statute of limitations.

27 (f) A resident taxpayer shall be allowed a credit against the tax  
28 otherwise due under this act for the amount of any tax that the  
29 director determines is substantially similar to the tax imposed  
30 pursuant to section <sup>1</sup>[2] <sup>3</sup> of P.L. , c. (C. ) (pending before  
31 the Legislature as this bill), for the taxable year, by another state of  
32 the United States or political subdivision of such state, or by the  
33 District of Columbia, with respect to the direct and indirect  
34 distributive proceeds from a pass-through entity, which distributive  
35 proceeds are also subject to tax under this act. <sup>2</sup>A credit allowed  
36 pursuant to this subsection shall not exceed what would have been  
37 allowed if the income was taxed at the individual level and not  
38 taxed at the entity level.<sup>2</sup>

39 For purposes of this subsection, "distributive proceeds" and  
40 "pass-through entity" mean the same as those terms are used in  
41 section 2 of P.L. , c. (C. ) (pending before the Legislature  
42 as this bill).

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

44  
45 9. Section 11 of P.L.1993, c.173 (C.54A:5-9) is amended to  
46 read as follows:

47 11. [An] Except as otherwise provided by P.L. , c. (C. )  
48 (pending before the Legislature as this bill), an S corporation as

1 such shall not be subject to the tax imposed by the "New Jersey  
2 Gross Income Tax Act," N.J.S.54A:1-1 et seq., but the S  
3 corporation income, dividends, and gain of a shareholder of an S  
4 corporation shall be subject to the tax, and the tax shall be imposed  
5 on the shareholder's pro rata share, whether or not distributed, of the  
6 S corporation income for its taxable year ending within or with the  
7 shareholder's taxable year.

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

9

10 <sup>2</sup>[10. Section 15 of P.L.1993, c.173 (C.54A:5-13) is amended to  
11 read as follows:

12 15. For purposes of **[this act]** the "New Jersey Gross Income  
13 Tax Act," N.J.S.54A:1-1 et seq., if a shareholder of an S  
14 corporation is both a resident and a nonresident of this State during  
15 any taxable year, the shareholder's pro rata share of the S  
16 corporation income allocated to this State and S corporation income  
17 not allocated to this State for the taxable period shall be further  
18 prorated between the shareholder's periods of residence and  
19 nonresidence during the taxable period, in accordance with the  
20 number of days in each period. Any prorated amount of S  
21 corporation income determined pursuant to this section shall also  
22 apply to determinations of income for purposes of the assessment of  
23 the pass-through business alternative income tax, pursuant to  
24 P.L. , c. (C. ) (pending before the Legislature as this bill).

25 (cf: P.L.1993, c.173 s.15)]<sup>2</sup>

26

27 <sup>2</sup>10. Section 18 of P.L.2000, c.161 (C.42:1A-18) is amended to  
28 read as follows:

29 18. a. Except as otherwise provided in subsections b. and c. of  
30 this section, all partners are liable jointly and severally for all  
31 obligations of the partnership unless otherwise agreed by the  
32 claimant or provided by law. In addition, the entity is also liable for  
33 all obligations of the partnership as provided by P.L. , c. (C.  
34 ) (pending before the Legislature as this bill).

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

38 c. An obligation of a partnership incurred while the partnership  
39 is a limited liability partnership, whether arising in contract, tort, or  
40 otherwise, is solely the obligation of the partnership. A partner is  
41 not personally liable, directly or indirectly, by way of contribution  
42 or otherwise, for such an obligation solely by reason of being or so  
43 acting as a partner. This subsection applies notwithstanding  
44 anything inconsistent in the partnership agreement that existed  
45 immediately before the vote required to become a limited liability  
46 partnership under subsection b. of section 47 of this act.<sup>2</sup>

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

1       <sup>2</sup>11. (New section) Where the pass-through entity, which pays  
2 the pass-through business alternative income tax, is owned by both  
3 corporate members and non-corporate members, the corporate  
4 member shall be allowed a tax credit against the surtax imposed  
5 pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) or the tax  
6 imposed under paragraph (1) of subsection c. of section 5 of  
7 P.L.1945, c.162 (C.54:10A-5), if the corporate member is a member  
8 of a pass-through entity that elects to owe and pay the pass-through  
9 business alternative income tax determined pursuant to section 3 of  
10 P.L. , c. (C. ) (pending before the Legislature as this bill)  
11 for the taxable year; provided, however, the credit shall not reduce  
12 the corporate member's tax liability below the statutory minimum  
13 imposed under subsection e. of section 5 of P.L. 1945, c. 162  
14 (C.54:10A-5). Any excess credit shall be carried over for a period  
15 of up to 20 privilege periods.

16       a. For each pass-through entity of which the corporate member  
17 is a member, the amount of the credit shall equal the member's  
18 share of the tax paid pursuant to section 3 of P.L. , c. (C. )  
19 (pending before the Legislature as this bill), which credit shall be  
20 applied against the surtax or corporation business tax liability of the  
21 member during the member's privilege period.

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

26       c. If the pass-through entity is unitary with both the corporate  
27 member and the member's combined group filing a New Jersey  
28 combined return for which the corporate member is included as a  
29 member, within the meaning of subsection (dd) of section 4 of  
30 P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48  
31 (C.54:10A-4.11), the credit shall be shareable for the purposes of  
32 subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and  
33 allowed to reduce the total surtax and total corporation business tax  
34 liability of the combined group but not the below the aggregate  
35 statutory minimum tax of the taxable members of the combined  
36 group.

37       d. If the pass-through entity is unitary with the corporate  
38 member, but not the member's combined group filing a New Jersey  
39 combined return for which the corporate member is included as a  
40 member, within the meaning of subsection (dd) of section 4 of  
41 P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48  
42 (C.54:10A-4.11), the credit shall not be shareable for the purposes  
43 of subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) but  
44 shall be allowed to reduce the total surtax and total corporation  
45 business tax liability of the corporate member derived from the  
46 corporate member's activities that are independent of the unitary  
47 business of the member's combined group.

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

6 f. For the purposes of this section:

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

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

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

21 "Pass-through entity member" means a member that itself is a  
 22 pass-through entity.<sup>2</sup>

23  
 24 <sup>2</sup>[11.] 12.<sup>2</sup> (New section) <sup>2</sup>[The director shall adopt, pursuant  
 25 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
 26 1 et seq.), and immediately upon filing with the Office of  
 27 Administrative Law, rules and regulations necessary to effectuate  
 28 the purposes of P.L. , c. (C. ) (pending before the  
 29 Legislature as this bill)] Notwithstanding the provisions of the  
 30 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
 31 seq.), to the contrary, the director may, immediately, upon filing  
 32 with the Office of Administrative Law, prescribe forms and adopt  
 33 regulations that the director deems necessary to administer the  
 34 provisions of this act<sup>2</sup>, which <sup>2</sup>regulations<sup>2</sup> shall be effective for a  
 35 period not to exceed 360 days following enactment of P.L. , c.  
 36 (C. ) (pending before the Legislature as this bill) and may  
 37 thereafter be amended, adopted, or readopted by the director in  
 38 accordance with the requirements of P.L.1968, c.410.

39  
 40 <sup>2</sup>[12.] 13.<sup>2</sup> This act shall take effect immediately and shall  
 41 <sup>1</sup>[apply] <sup>2</sup>[be retroactive<sup>1</sup>] apply<sup>2</sup> to taxable years of pass-through  
 42 entities beginning on or after January 1, <sup>1</sup>[2019] <sup>2</sup>[2018<sup>1</sup>] 2020<sup>2</sup>.