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.
AN ACT establishing an elective pass-through entity business alternative income tax and allowing a corresponding refundable gross income tax credit for taxpayers earning income from pass-through businesses and corporation business tax credit, supplementing Title 54A of the New Jersey Statutes and amending N.J.S.54A:4-1 and P.L.1993, c.173.

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

1. (New section) This act shall be known and may be cited as the “Pass-Through Business Alternative Income Tax Act.”

2. (New section) As used in P.L. , c. (C. ) (pending before the Legislature as this bill):

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Distributive proceeds” means the net income, dividends, royalties, interest, rents, guaranteed payments, gains of a pass-through entity, derived from or connected with sources within the State, and upon which tax is imposed and due on a member of the pass-through entity pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in a taxable year.

For a nonresident, this means New Jersey source income as set forth in N.J.S.54A:5-8.

“Limited liability company” means an entity organized pursuant to the “Revised Uniform Limited Liability Company Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law providing for the formation of a limited liability company in this State, or formed as a limited liability company under similar statutes of other states, that is classified as a partnership or an S Corporation for purposes of federal income tax law.

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

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

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

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:
Senate SBA committee amendments adopted December 10, 2018.
Assembly AAP committee amendments adopted December 12, 2019.
“Partnership” means a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on in this State and which is not, within the meaning of P.L., c. (C.) (pending before the Legislature as this bill), a trust or estate or a corporation.

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

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

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

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

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

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

b. Each pass-through entity that makes an election for a taxable year pursuant to this section shall annually report to each of its members, for the taxable year, the member’s pro rata share of distributive proceeds.

(1) The election to pay tax at the entity level is available if consent is made by each member of the electing entity who is a member at the time the election is filed or by any officer, manager, or member of the electing entity who is authorized, under law or the entity’s organizational documents, to make the election and who represents to having such authorization under penalties of perjury. This election shall be made annually on or before the due date of the entity’s return as established by the director and on forms prescribed by the director. This election shall not be made retroactively. If the members decide to revoke an election, that revocation shall occur on or before the due date of the entity’s return.
(2) The tax imposed on a pass-through entity pursuant to this section shall be \[ \text{equal to} \] determined in accordance with the following table with respect to each member's share of distributive proceeds attributable to the pass-through entity for the taxable year, multiplied by \( \frac{1}{i} \):

- 5.525%, if the distributive proceeds of the pass-through entity are less than $250,000 in the taxable year;
- 6.37%, if the distributive proceeds of the pass-through entity are less than $1,000,000, but greater than or equal to $250,000, in the taxable year;
- 8.97%, if the distributive proceeds of the pass-through entity are less than $3,000,000, but greater than or equal to $1,000,000, in the taxable year; or
- 10.75%, if the distributive proceeds of the pass-through entity are greater than or equal to $3,000,000 in the taxable year.

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

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

<table>
<thead>
<tr>
<th>Sum of Each Member's Share of Distributive Proceeds</th>
<th>Tax Is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $250,000.00</td>
<td>5.675% of the sum of distributive proceeds</td>
</tr>
<tr>
<td>Over $250,000.00 but not over $1,000,000.00</td>
<td>$14,187.50 plus 6.52% of the excess over $250,000.00</td>
</tr>
<tr>
<td>Over $1,000,000.00 but not over $5,000,000.00</td>
<td>$63,087.50 plus 9.12% of the excess over $1,000,000.00</td>
</tr>
<tr>
<td>Over $5,000,000.00</td>
<td>$427,887.50 plus 10.9% of the excess over $5,000,000.00</td>
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c. The amount of pass-through business alternative income tax due from a pass-through entity in a taxable year shall be exclusive
of any amount of tax due and paid by the pass-through entity pursuant to the "Corporation Business Tax Act (1945)." P.L.1945, c.162 (C.54:10A-1 et seq.), during any privilege period, except as otherwise provided in P.L. , c. (C. ) (pending before the Legislature as this bill).

(1) A pass-through entity which elects to pay the pass-through business entity income tax shall be included in a combined group, as defined in subsection (z) of section 4 of P.L.1945, c.162 (C.54:10A-4), and file a New Jersey combined return pursuant to the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et seq.). A pass-through entity which elects to pay the pass-through business entity income tax shall be excluded from a combined group, as defined in subsection (z) of section 4 of P.L.1945, c.162 (C.54:10A-4), and from filing a New Jersey combined return pursuant to the Corporation Business Tax Act, P.L. 1945, c.162 (C.54:10A-1 et seq.) if the pass-through entity meets the following:

(a) all of the members of the pass-through entity are taxpayers otherwise liable for the tax under the “New Jersey Gross Income Tax Act,” N.J.S.A. 54A:1 et seq., and
(b) no business entity taxed as a corporation under the Corporation Business Tax Act, P.L. 1945, c.162 (C.54:10A-1 et seq.), has a direct, indirect, beneficial, or constructive ownership or control of the pass-through entity.

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

(3) The director shall set the schedule and procedures for the payment of the pass-through business alternative income tax. Pass-through entities whose members have made the business alternative income tax election shall file an entity tax return and make payments on or before the 15th day of the third month following the close of each entity’s taxable year for federal income tax purposes. A pass-through entity shall make estimated entity tax payments on or before the 15th day of each of the fourth month, sixth month, and ninth month of the taxable year and on or before the 15th day of the first month succeeding the close of the taxable year.

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

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

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

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

b. The order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed and claimed by the taxpayer in the taxable year.

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

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

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

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

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

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

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

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

c. A corporation may make an election to become a New Jersey S corporation with respect to an accounting or privilege period for which the corporation is or will be an S corporation. The election for an accounting or privilege period, along with the consents to jurisdictional requirements, shall be filed within one calendar month of the time at which a federal S corporation election would be required if such accounting or privilege period were a "taxable year" for which a federal S corporation election were to be made pursuant to section 1362 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1362. Such elections may only be revoked pursuant to subsection d. of this section. Such election shall terminate immediately upon the corporation's failure to satisfy the definition of a New Jersey S corporation pursuant to paragraph (p) of section 4 of P.L.1945, c.162 (C.54:10A-4).
d. A corporation may revoke an election pursuant to this section on or before the last day of the first accounting or privilege period to which the election would otherwise apply. (cf: P.L.1993, c.173, s.3)

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

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


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

d. If a shareholder that is not an initial shareholder of a New Jersey S corporation fails to deliver a consent to the jurisdictional requirements set forth in subsection b. of section 3 of P.L.1993, c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to withhold payments pursuant to subsection c. of this section, then this State shall have the right and jurisdiction to collect a tax each year directly from the corporation equal to the pro rata share of the S corporation income allocated to this State, as defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting shareholder times the maximum tax bracket rate provided under N.J.S.54A:2-1 for the appropriate accounting or privilege period. In such case, the corporation shall have the right, but not the obligation, to recover payments made by the corporation pursuant to this subsection from each nonconsenting shareholder. The corporation shall not be liable for the pass-through business alternative income tax pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) relative to collections made in a taxable year for such nonconsenting members. (cf: P.L.1993, c.173, s.4)

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

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

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

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

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

(f) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any tax that the director determines is substantially similar to the tax imposed pursuant to section 1 of P.L. 1993, c. 173 (pending before the Legislature as this bill), for the taxable year, by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to the direct and indirect distributive proceeds from a pass-through entity, which distributive proceeds are also subject to tax under this act. A credit allowed pursuant to this subsection shall not exceed what would have been allowed if the income was taxed at the individual level and not taxed at the entity level.

For purposes of this subsection, “distributive proceeds” and “pass-through entity” mean the same as those terms are used in section 2 of P.L. 1993, c. 173 (pending before the Legislature as this bill).

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

11. [An] Except as otherwise provided by P.L. 1993, c. 173 (pending before the Legislature as this bill), an S corporation as
such shall not be subject to the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., but the S corporation income, dividends, and gain of a shareholder of an S corporation shall be subject to the tax, and the tax shall be imposed on the shareholder's pro rata share, whether or not distributed, of the S corporation income for its taxable year ending within or with the shareholder's taxable year.

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

210. Section 15 of P.L.1993, c.173 (C.54A:5-13) is amended to read as follows:

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

(cf: P.L.1993, c.173 s.15)

210. Section 18 of P.L.2000, c.161 (C.42:1A-18) is amended to read as follows:

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

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

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

(cf: P.L.2000, c.161,s.18)
11. (New section) Where the pass-through entity, which pays
the pass-through business alternative income tax, is owned by both
corporate members and non-corporate members, the corporate
member shall be allowed a tax credit against the surtax imposed
pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) or the tax
imposed under paragraph (1) of subsection c. of section 5 of
P.L.1945, c.162 (C.54:10A-5), if the corporate member is a member
of a pass-through entity that elects to owe and pay the pass-through
business alternative income tax determined pursuant to section 3 of
P.L. , c. (C. ) (pending before the Legislature as this bill)
for the taxable year; provided, however, the credit shall not reduce
the corporate member’s tax liability below the statutory minimum
imposed under subsection e. of section 5 of P.L. 1945. c. 162
(C.54:10A-5). Any excess credit shall be carried over for a period
of up to 20 privilege periods.

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

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

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

d. If the pass-through entity is unitary with the corporate
member, but not the member’s combined group filing a New Jersey
combined return for which the corporate member is included as a
member, within the meaning of subsection (dd) of section 4 of
P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48
(C.54:10A-4.11), the credit shall not be shareable for the purposes
of subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) but
shall be allowed to reduce the total surtax and total corporation
business tax liability of the corporate member derived from the
member’s activities that are independent of the unitary
business of the member’s combined group.
e. An exempt corporate member that is a corporation exempt from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3) shall be refunded the share of the tax paid by the pass-through entity on the exempt corporate member’s distributive proceeds of the pass-through entity.

f. For the purposes of this section:

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

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

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

“Pass-through entity member” means a member that itself is a pass-through entity.

2[11.] 12. (New section) 2[The director shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), and immediately upon filing with the Office of Administrative Law, rules and regulations necessary to effectuate the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill)] Notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the director may, immediately, upon filing with the Office of Administrative Law, prescribe forms and adopt regulations that the director deems necessary to administer the provisions of this act, which regulations shall be effective for a period not to exceed 360 days following enactment of P.L. , c. (C. ) (pending before the Legislature as this bill) and may thereafter be amended, adopted, or readopted by the director in accordance with the requirements of P.L.1968, c.410.

2[12.] 13. This act shall take effect immediately and shall apply to taxable years of pass-through entities beginning on or after January 1, 2019. 2[2018] 2020.