

ASSEMBLY, No. 1661

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Assemblywoman ANNETTE QUIJANO
District 20 (Union)

SYNOPSIS

Decouples State tax provisions from federal prohibition on cannabis business expense deductions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



A1661 QUIJANO

2

1 AN ACT concerning certain business deductions incurred in carrying
2 on a cannabis business, amending P.L.1945, c.162 and P.L.1993,
3 c.173.
4

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

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

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

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

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

17 (c) "Corporation" shall mean any corporation, joint-stock
18 company or association and any business conducted by a trustee or
19 trustees wherein interest or ownership is evidenced by a certificate
20 of interest or ownership or similar written instrument, any other
21 entity classified as a corporation for federal income tax purposes,
22 and any state or federally chartered building and loan association or
23 savings and loan association.

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 controlled foreign corporation. In calculating the net worth of a
2 taxpayer entitled to reduction for investment in subsidiaries, the
3 amount of liabilities of the taxpayer shall be reduced by such
4 proportion of the liabilities as corresponds to the ratio which the
5 excluded portion of the subsidiary values bears to the total assets of
6 the taxpayer.

7 In the case of banking corporations which have international
8 banking facilities as defined in subsection (n), the foregoing
9 aggregate of values shall also be reduced by retained earnings of the
10 international banking facility. Retained earnings means the
11 earnings accumulated over the life of such facility and shall not
12 include the distributive share of dividends paid and federal income
13 taxes paid or payable during the tax year.

14 If in the opinion of the director, the corporation's books do not
15 disclose fair valuations the director may make a reasonable
16 determination of the net worth which, in his opinion, would reflect
17 the fair value of the assets, exclusive of subsidiary investments as
18 defined aforesaid, carried on the books of the corporation, in
19 accordance with sound accounting principles, and such
20 determination shall be used as net worth for the purpose of this act.

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

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

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

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

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

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

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

9 For the purpose of this act, the amount of a taxpayer's entire net
10 income shall be deemed prima facie to be equal in amount to the
11 taxable income, before net operating loss deduction and special
12 deductions, which the taxpayer is required to report, or, if the
13 taxpayer is classified as a partnership for federal tax purposes,
14 would otherwise be required to report, to the United States Treasury
15 Department for the purpose of computing its federal income tax,
16 provided however, that in the determination of such entire net
17 income,

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

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

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

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

33 (C) Taxes paid or accrued to the United States, a possession or
34 territory of the United States, a state, a political subdivision thereof,
35 or the District of Columbia, or to any foreign country, state,
36 province, territory or subdivision thereof, on or measured by profits
37 or income, or business presence or business activity, or the tax
38 imposed by this act, or any tax paid or accrued with respect to
39 subsidiary dividends excluded from entire net income as provided
40 in paragraph (5) of subsection (k) of this section.

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

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

43 (F) (i) The amount by which depreciation reported to the United
44 States Treasury Department for property placed in service on and
45 after January 1, 1981, but prior to taxpayer fiscal or calendar
46 accounting years beginning on and after the effective date of
47 P.L.1993, c.172, for purposes of computing federal taxable income
48 in accordance with section 168 of the Internal Revenue Code in

1 effect after December 31, 1980, exceeds the amount of depreciation
2 determined in accordance with the Internal Revenue Code
3 provisions in effect prior to January 1, 1981, but only with respect
4 to a taxpayer's accounting period ending after December 31, 1981;
5 provided, however, that where a taxpayer's accounting period
6 begins in 1981 and ends in 1982, no modification shall be required
7 with respect to this paragraph (F) for the report filed for such period
8 with respect to property placed in service during that part of the
9 accounting period which occurs in 1981. The provisions of this
10 subparagraph shall not apply to assets placed in service prior to
11 January 1, 1998 of a gas, gas and electric, and electric public utility
12 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
13 seq.) prior to 1998.

14 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
15 (2) of this subsection, any amount, except with respect to qualified
16 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
17 the Internal Revenue Code as in effect immediately prior to January
18 1, 1984, which the taxpayer claimed as a deduction in computing
19 federal income tax pursuant to a qualified lease agreement under
20 paragraph (8) of that section.

21 The director shall promulgate rules and regulations necessary to
22 carry out the provisions of this section, which rules shall provide,
23 among others, the manner in which the remaining life of property
24 shall be reported.

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

42 (ii) The amount of treble damages paid to the Department of
43 Environmental Protection pursuant to subsection a. of section 7 of
44 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
45 department in removing, or arranging for the removal of, an
46 unauthorized discharge upon failure of the discharger to comply
47 with a directive from the department to remove, or arrange for the
48 removal of, the discharge.

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

3 (I) Interest paid, accrued or incurred for the privilege period to
4 a related member, as defined in section 5 of P.L.2002, c.40
5 (C.54:10A-4.4), except that a deduction shall be permitted to the
6 extent that the taxpayer establishes by clear and convincing
7 evidence, as determined by the director, that: (i) a principal purpose
8 of the transaction giving rise to the payment of the interest was not
9 to avoid taxes otherwise due under Title 54 of the Revised Statutes
10 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
11 pursuant to arm's length contracts at an arm's length rate of interest,
12 and (iii)(aa) the related member was subject to a tax on its net
13 income or receipts in this State or another state or possession of the
14 United States or in a foreign nation, (bb) a measure of the tax
15 includes the interest received from the related member, and (cc) the
16 rate of tax applied to the interest received by the related member is
17 equal to or greater than a rate three percentage points less than the
18 rate of tax applied to taxable interest by this State pursuant to
19 section 5 of P.L.1945, c.162 (C.54:10A-5).

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

28 A deduction shall also be permitted to the extent that the
29 taxpayer establishes by a preponderance of the evidence, as
30 determined by the director, that the interest is directly or indirectly
31 paid, accrued or incurred to (i) a related member in a foreign nation
32 which has in force a comprehensive income tax treaty with the
33 United States and the related member (aa) was subject to tax in the
34 foreign nation on a tax base that included the payment paid,
35 accrued, or incurred; and (bb) under which the related member's
36 income received from the transaction was taxed at an effective tax
37 rate equal to or greater than a rate of three percentage points less
38 than the rate of tax applied to taxable interest by the State of New
39 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
40 provided however that the taxpayer shall disclose on its return for
41 the privilege period the name of the related member, the amount of
42 the interest, the relevant foreign nation, and such other information
43 as the director may prescribe or (ii) to an independent lender and
44 the taxpayer guarantees the debt on which the interest is required.
45 The adjustments required by this subparagraph shall not apply to
46 transactions between related members included in a combined
47 group reported on a New Jersey combined return.

1 (J) (i) Amounts deducted for federal tax purposes pursuant to
2 section 199 of the federal Internal Revenue Code of 1986, 26
3 U.S.C. s.199, except that this exclusion shall not apply to amounts
4 deducted pursuant to that section that are exclusively based upon
5 domestic production gross receipts of the taxpayer which are
6 derived only from any lease, rental, license, sale, exchange, or other
7 disposition of qualifying production property which the taxpayer
8 demonstrates to the satisfaction of the director was manufactured or
9 produced by the taxpayer in whole or in significant part within the
10 United States but not qualified production property that was grown
11 or extracted by the taxpayer. "Manufactured or produced" as used
12 in this paragraph shall be limited to performance of an operation or
13 series of operations the object of which is to place items of tangible
14 personal property in a form, composition, or character different
15 from that in which they were acquired. The change in form,
16 composition, or character shall be a substantial change, and result in
17 a transformation of property into a different or substantially more
18 usable product.

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

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

33 (3) The director may, whenever necessary to properly reflect the
34 entire net income of any taxpayer, determine the year or period in
35 which any item of income or deduction shall be included, without
36 being limited to the method of accounting employed by the
37 taxpayer.

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

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

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

1 (i) Making, arranging for, placing or carrying loans to foreign
2 persons, provided, however, that in the case of a foreign person
3 which is an individual, or which is a foreign branch of a domestic
4 corporation (other than a bank), or which is a foreign corporation or
5 foreign partnership which is controlled by one or more domestic
6 corporations (other than banks), domestic partnerships or resident
7 individuals, all the proceeds of the loan are for use outside of the
8 United States;

9 (ii) Making or placing deposits with foreign persons which are
10 banks or foreign branches of banks (including foreign subsidiaries)
11 or foreign branches of the taxpayers or with other international
12 banking facilities;

13 (iii) Entering into foreign exchange trading or hedging
14 transactions related to any of the transactions described in this
15 paragraph; or

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

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

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

27 (ii) For privilege periods beginning after December 31, 2016 and
28 before January 1, 2019, entire net income shall exclude 95% of
29 dividends which were included in computing such taxable income
30 for federal income tax purposes, paid or deemed paid, to the
31 taxpayer by one or more subsidiaries owned by the taxpayer to the
32 extent of the 80% or more ownership of investment described in
33 subsection (d) of this section. For the purposes of calculating the
34 tax liability owed for the paid or deemed paid dividends included in
35 entire net income by this subsection, the taxpayer shall use either
36 their three-year average allocation factor for the taxpayer's 2014
37 through 2016 tax years reported on the taxpayer's tax returns or 3.5
38 percent, whichever is lower.

39 (iii) For privilege periods beginning on and after January 1,
40 2019, entire net income shall exclude 95% of dividends which were
41 included in computing such taxable income for federal income tax
42 purposes, paid or deemed paid to the taxpayer by one or more
43 subsidiaries owned by the taxpayer to the extent of the 80% or more
44 ownership of investment described in subsection (d) of this section.

45 (B) Entire net income shall exclude 50% of dividends which
46 were included in computing such taxable income for federal income
47 tax purposes, paid or deemed paid to the taxpayer by one or more
48 subsidiaries owned by the taxpayer to the extent of 50% or more

1 ownership of investment, such ownership of investment calculated
2 in the same manner as the 80% or more of ownership of investment
3 is calculated as described in subsection (d) of this section.

4 (C) To the extent a subsidiary received dividends from other
5 subsidiaries and included those dividends in its entire net income
6 for the purposes of determining its tax liability pursuant to section 5
7 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,
8 the taxpayer receiving those same dividends from the subsidiary
9 shall exclude those dividends from its entire net income based on
10 the subsidiary's allocation factor used by the subsidiary in
11 determining its tax liability pursuant to section 5 of P.L.1945, c.162
12 (C.54:10A-5).

13 (6) (A) Net operating loss deduction. For privilege periods
14 ending before July 31, 2019, there shall be allowed as a deduction
15 for the privilege period the net operating loss carryover to that
16 period.

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

32 (C) Net operating loss. For purposes of this paragraph the term
33 "net operating loss" means the excess of the deductions over the
34 gross income used in computing entire net income without the net
35 operating loss deduction provided for in subparagraph (A) of this
36 paragraph and the exclusions in paragraphs (4) and (5) of this
37 subsection.

38 (D) Change in ownership. Where there is a change in 50% or
39 more of the ownership of a corporation because of redemption or
40 sale of stock and the corporation changes the trade or business
41 giving rise to the loss, no net operating loss sustained before the
42 changes may be carried over to be deducted from income earned
43 after such changes. In addition where the facts support the premise
44 that the corporation was acquired under any circumstances for the
45 primary purpose of the use of its net operating loss carryover, the
46 director may disallow the carryover.

47 (E) Notwithstanding the provisions of this paragraph (6) of
48 subsection (k) of this section to the contrary, for privilege periods

1 beginning during calendar year 2002 and calendar year 2003, no
2 deduction for any net operating loss carryover shall be allowed and
3 for privilege periods beginning during calendar year 2004 and
4 calendar year 2005, there shall be allowed as a deduction for the
5 privilege period so much of the net operating loss carryover as
6 reduces entire net income otherwise calculated by 50%. If and only
7 to the extent that any net operating loss carryover deduction is
8 disallowed by reason of this subparagraph (E), the date on which
9 the amount of the disallowed net operating loss carryover deduction
10 would otherwise expire shall be extended by a period equal to the
11 period for which application of the net operating loss was
12 disallowed by this subparagraph.

13 Provided, that this subparagraph (E) shall not restrict the
14 surrender or acquisition of corporation business tax benefit
15 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
16 7.42a) and shall not restrict the application of corporation business
17 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
18 (C.54:10A-4.2).

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

26 (7) The entire net income of gas, electric and gas and electric
27 public utilities that were subject to, or would have been subject to
28 tax if doing business in this State, the provisions of P.L.1940, c.5
29 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
30 substituting the New Jersey depreciation allowance for federal tax
31 depreciation with respect to assets placed in service prior to January
32 1, 1998. For gas, electric, and gas and electric public utilities that
33 were subject to, or would have been subject to tax if doing business
34 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
35 prior to 1998, the New Jersey depreciation allowance shall be
36 computed as follows: All depreciable assets placed in service prior
37 to January 1, 1998 shall be considered a single asset account. The
38 New Jersey tax basis of this depreciable asset account shall be an
39 amount equal to the carryover adjusted basis for federal income tax
40 purposes on December 31, 1997 of all depreciable assets in service
41 on December 31, 1997, increased by the excess, of the "net carrying
42 value," defined to be adjusted book basis of all assets and liabilities,
43 excluding deferred income taxes, recorded on the public utility's
44 books of account on December 31, 1997, over the carryover
45 adjusted basis for federal income tax purposes on December 31,
46 1997 of all assets and liabilities owned by the gas, electric, or gas
47 and electric public utility as of December 31, 1997. "Books of
48 account" for gas, gas and electric, and electric public utilities means

1 the uniform system of accounts as promulgated by the Federal
2 Energy Regulatory Commission and adopted by the Board of Public
3 Utilities. The following adjustments to entire net income shall be
4 made pursuant to this section:

5 (A) Depreciation for property placed in service prior to January
6 1, 1998 shall be adjusted as follows:

7 (i) Depreciation for federal income tax purposes shall be
8 disallowed in full.

9 (ii) A deduction shall be allowed for the New Jersey
10 depreciation allowance. The New Jersey depreciation allowance
11 shall be computed for the single asset account described above
12 based on the New Jersey tax basis as adjusted above as if all assets
13 in the single asset account were first placed in service on January 1,
14 1998. Depreciation shall be computed using the straight line
15 method over a thirty-year life. A full year's depreciation shall be
16 allowed in the initial tax year. No half-year convention shall apply.
17 The depreciable basis of the single account shall be reduced by the
18 adjusted federal tax basis of assets sold, retired, or otherwise
19 disposed of during any year on which gain or loss is recognized for
20 federal income tax purposes as described in subparagraph (B) of
21 this paragraph.

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

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

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

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

43 (10) Entire net income shall exclude all income of an alien
44 corporation the activities of which are limited in this State to
45 investing or trading in stocks and securities for its own account,
46 investing or trading in commodities for its own account, or any
47 combination of those activities, within the meaning of section 864
48 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in

1 effect on December 31, 1998. Notwithstanding the previous
2 sentence, if an alien corporation undertakes one or more infrequent,
3 extraordinary or non-recurring activities, including but not limited
4 to the sale of tangible property, only the income from such
5 infrequent, extraordinary or non-recurring activity shall be subject
6 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et
7 seq.), and that amount of income subject to tax shall be determined
8 without regard to the allocation to that specific transaction of any
9 general business expense of the taxpayer and shall be specifically
10 assigned to this State for taxation by this State without regard to
11 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this
12 paragraph, "alien corporation" means a corporation organized under
13 the laws of a jurisdiction other than the United States or its political
14 subdivisions.

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

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

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

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

45 (B) The director shall prescribe the rules and regulations
46 necessary to carry out the provisions of this paragraph, including,
47 among others, those for determining the adjusted basis of the

1 acquired property for the purposes of the Corporation Business Tax
2 Act (1945), P.L.1945, c.162.

3 (14) Notwithstanding the provisions of subsection (i) of section
4 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
5 for privilege periods beginning after December 31, 2008 and before
6 January 1, 2011, entire net income shall include the amount of
7 discharge of indebtedness income excluded for federal income tax
8 purposes pursuant to subsection (i) of section 108 of the federal
9 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
10 periods beginning on or after January 1, 2014 and before January 1,
11 2019, entire net income shall exclude the amount of discharge of
12 indebtedness income included for federal income tax purposes,
13 pursuant to subsection (i) of section 108 of the federal Internal
14 Revenue Code of 1986 (26 U.S.C. s.108).

15 (15) Entire net income shall exclude the gain or income derived
16 from the sale or assignment of a tax credit transfer certificate
17 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
18 10 of P.L.2014, c.63 (C.34:1B-251).

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

21 (B) For purposes of this paragraph, "net deferred tax liability"
22 means deferred tax liabilities that exceed the deferred tax assets of
23 the combined group, as computed in accordance with generally
24 accepted accounting principles, and "net deferred tax asset" means
25 that deferred tax assets exceed the deferred tax liabilities of the
26 combined group, as computed in accordance with generally
27 accepted accounting principles.

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

33 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48
34 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to
35 the members' net deferred tax liability or an aggregate decrease to
36 the members' net deferred tax asset, or an aggregate change from a
37 net deferred tax asset to a net deferred tax liability, the combined
38 group shall be entitled to a deduction, as determined in this
39 paragraph.

40 (E) For 10 years beginning with the combined group's first
41 privilege period beginning on or after January 1 of the fifth year
42 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a
43 combined group shall be entitled to a deduction from combined
44 group entire net income equal to one-tenth of the amount necessary
45 to offset the increase in the net deferred tax liability or decrease in
46 the net deferred tax asset, or aggregate change from a net deferred
47 tax asset to a net deferred tax liability. Such increase in the net
48 deferred tax liability or decrease in the net deferred tax asset or the

1 aggregate change from a net deferred tax asset to a net deferred tax
2 liability shall be computed based on the change that would result
3 from the imposition of the unitary reporting requirements under
4 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and
5 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided
6 under this paragraph as of the effective date of this paragraph.

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

10 (i) the deferred tax impact determined in subparagraph (E) of
11 this paragraph shall be divided by the rate determined under section
12 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
13 c.48 (C.54:10A-5.41 et al.);

14 (ii) the resulting amount shall be further divided by the New
15 Jersey unitary business allocation factor that was used by the
16 combined group in the calculation of the deferred tax assets and
17 deferred tax liabilities as described in subparagraph (E) of this
18 paragraph;

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

22 (G) The deduction calculated under this paragraph shall not be
23 adjusted as a result of any events happening subsequent to such
24 calculation, including, but not limited to, any disposition or
25 abandonment of assets. Such deduction shall be calculated without
26 regard to the federal tax effect and shall not alter the tax basis of
27 any asset. If the deduction under this section is greater than
28 combined group entire net income, any excess deduction shall be
29 carried forward and applied as a deduction to combined group entire
30 net income in future privilege periods until fully utilized.

31 (H) Any combined group intending to claim a deduction under
32 this paragraph shall file a statement with the director on or before
33 July 1 of the year subsequent to the first privilege period for which
34 a combined return is required. Such statement shall specify the
35 total amount of the deduction which the combined group claims on
36 such form and in such manner as prescribed by the director. No
37 deduction shall be allowed under this paragraph for any privilege
38 period except to the extent claimed on such timely filed statement
39 in accordance with this paragraph.

40 (17) There shall be allowed as a deduction all ordinary and
41 necessary business expenses in carrying on a State-licensed
42 cannabis trade or business.

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

46 (m) "Financial business corporation" shall mean any corporate
47 enterprise which is (1) in substantial competition with the business
48 of national banks and which (2) employs moneyed capital with the

1 object of making profit by its use as money, through discounting
2 and negotiating promissory notes, drafts, bills of exchange and
3 other evidences of debt; buying and selling exchange; making of or
4 dealing in secured or unsecured loans and discounts; dealing in
5 securities and shares of corporate stock by purchasing and selling
6 such securities and stock without recourse, solely upon the order
7 and for the account of customers; or investing and reinvesting in
8 marketable obligations evidencing indebtedness of any person,
9 copartnership, association or corporation in the form of bonds,
10 notes or debentures commonly known as investment securities; or
11 dealing in or underwriting obligations of the United States, any
12 state or any political subdivision thereof, or of a corporate
13 instrumentality of any of them. This shall include, without
14 limitation of the foregoing, business commonly known as industrial
15 banks, dealers in commercial paper and acceptances, sales finance,
16 personal finance, small loan and mortgage financing businesses, as
17 well as any other enterprise employing moneyed capital coming
18 into competition with the business of national banks; provided that
19 the holding of bonds, notes, or other evidences of indebtedness by
20 individual persons not employed or engaged in the banking or
21 investment business and representing merely personal investments
22 not made in competition with the business of national banks, shall
23 not be deemed financial business. Nor shall "financial business"
24 include national banks, production credit associations organized
25 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
26 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
27 insurance companies duly authorized to transact business in this
28 State, security brokers or dealers or investment companies or
29 bankers not employing moneyed capital coming into competition
30 with the business of national banks, real estate investment trusts, or
31 any of the following entities organized under the laws of this State:
32 credit unions, savings banks, savings and loan and building and
33 loan associations, pawnbrokers, and State banks and trust
34 companies.

35 (n) "International banking facility" shall mean a set of asset and
36 liability accounts segregated on the books and records of a
37 depository institution, United States branch or agency of a foreign
38 bank, or an Edge or Agreement Corporation that includes only
39 international banking facility time deposits and international
40 banking facility extensions of credit as such terms are defined in
41 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
42 board of governors of the Federal Reserve System, 12 CFR Part
43 204, effective December 3, 1981. In the event that the United
44 States enacts a law, or the board of governors of the Federal
45 Reserve System adopts a regulation which amends the present
46 definition of international banking facility or of such facilities' time
47 deposits or extensions of credit, the Commissioner of Banking and
48 Insurance shall forthwith adopt regulations defining such terms in

1 the same manner as such terms are set forth in the laws of the
2 United States or the regulations of the board of governors of the
3 Federal Reserve System. The regulations of the Commissioner of
4 Banking and Insurance shall thereafter provide the applicable
5 definitions.

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

9 (p) "New Jersey S corporation" means a corporation that is an S
10 corporation; which has made a valid election pursuant to section 3
11 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
12 corporation continuously since the effective date of the valid
13 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
14 5.22).

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

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

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

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

35 (u) "Prior net operating loss conversion carryover" means a net
36 operating loss incurred in a privilege period ending prior to July 31,
37 2019 and converted from a pre-allocation net operating loss to a
38 post-allocation net operating loss as follows:

39 (1) As used in this subsection:

40 "Base year" means the last privilege period ending prior to July
41 31, 2019.

42 "Base year BAF" means the taxpayer's business allocation factor
43 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
44 6 through C.54:10A-10) for purposes of calculating entire net
45 income for the base year, as such section was in effect for the last
46 privilege period ending prior to July 31, 2019.

47 "UNOL" means the unabsorbed portion of net operating loss as
48 calculated under paragraph (6) of subsection (k) of this section as

1 such paragraph was in effect for the last privilege period ending
2 prior to July 31, 2019, that was not deductible in previous privilege
3 periods and was eligible for carryover on the last day of the base
4 year subject to the limitations for deduction under such subsection,
5 including any net operating loss sustained by the taxpayer during
6 the base year.

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

9 (A) The taxpayer shall first calculate the tax value of its UNOL
10 for the base year and for each preceding privilege period for which
11 there is a UNOL. The value of the UNOL for each privilege period
12 is equal to the product of (I) the amount of the taxpayer's UNOL for
13 a privilege period, and (II) the taxpayer's base year BAF. This result
14 shall equal the taxpayer's prior net operating loss conversion
15 carryover.

16 (B) The taxpayer shall continue to carry over its prior net
17 operating loss conversion carryover to offset its allocated entire net
18 income as provided in sections 6 through 10 of P.L.1945, c.162
19 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
20 and after July 31, 2019. Such carryover periods shall not exceed
21 the twenty privilege periods following the privilege period of the
22 initial loss. The entire amount of the prior net operating loss
23 conversion carryover for any privilege period shall be carried to the
24 earliest of the privilege periods to which the loss may be carried.
25 The portion of the prior net operating loss conversion carryover
26 which shall be carried to each of the other privilege periods shall be
27 the excess, if any, of the amount of the prior net operating loss
28 conversion carryover over the sum of the entire net income,
29 computed without the exclusions permitted in paragraphs (4) and
30 (5) of subsection (k) of this section allocated to this State.

31 (C) The prior net operating loss conversion carryover computed
32 under this subsection shall be applied against the entire net income
33 allocated to this State before the net operating loss carryover
34 computed under subsection (v) of this section.

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

38 (1) Net operating loss carryover. A net operating loss for any
39 privilege period ending on or after July 31, 2019, shall be a net
40 operating loss carryover to each of the twenty privilege periods
41 following the period of the loss. The entire amount of the net
42 operating loss for any privilege period shall be carried to the earliest
43 of the privilege periods to which the loss may be carried. The
44 portion of the loss which shall be carried to each of the other
45 privilege periods shall be the excess, if any, of the amount of the
46 loss over the sum of the entire net income, computed without the
47 exclusions permitted in paragraphs (4) and (5) of subsection (k) of
48 this section allocated to this State.

1 (2) Net operating loss. For purposes of this paragraph the term
2 "net operating loss" means the excess of the deductions over the
3 gross income used in computing entire net income, without regard
4 to any net operating loss carryover, and computed without the
5 exclusions in paragraphs (4) and (5) of subsection (k) of this
6 section, allocated to this State pursuant to sections 6 through 10 of
7 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

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

15 (4) A net operating loss carryover shall not include any net
16 operating loss incurred during any privilege period ending prior to
17 July 31, 2019.

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

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

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

44 (y) "Combinable captive insurance company" means an entity
45 that is treated as an association taxable as a corporation under the
46 federal Internal Revenue Code:

47 (1) more than 50% of the voting stock of which is owned or
48 controlled, directly or indirectly, by a single entity that is treated as

1 an association taxable as a corporation under the federal Internal
2 Revenue Code, and not exempt from federal income tax;

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

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

8 (4) 50% or less of whose gross receipts for the privilege period
9 consist of premiums from arrangements that constitute insurance for
10 federal income tax purposes.

11 A combinable captive insurance company shall not be exempt
12 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
13 insurance company that does not meet the definition of combinable
14 captive insurance company shall be excluded as provided in
15 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
16 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

17 For purposes of this definition:

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

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

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

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

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

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

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

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

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

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

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

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

1 that portion of a business conducted by another corporation through
 2 its direct or indirect interest in a partnership.
 3 (cf: P.L.2018, c.131, s.2)
 4

5 2. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to
 6 read as follows:

7 12. For the purposes of the "New Jersey Gross Income Tax Act,"
 8 N.J.S.54A:1-1 et seq.:

9 "New Jersey S corporation" means a corporation that is an S
 10 corporation; which has made a valid election pursuant to section 3
 11 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
 12 corporation continuously since the effective date of the valid
 13 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
 14 5.22).

15 "Pro rata share" means the portion of any items attributable to an
 16 S corporation shareholder for a taxable year determined in the
 17 manner provided in, and subject to any election made under
 18 subsection (a) of section 1377 or subsection (e) of section 1362 of
 19 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and
 20 s.1362.

21 "Pro rata share of S corporation income" means the sum of the
 22 shareholder's proportionate share of:

23 For a New Jersey S corporation, the S corporation income
 24 allocated to this State of all New Jersey S corporations; and the S
 25 corporation income not allocated to this State.

26 "S corporation" means a corporation included in the definition of
 27 an "S corporation" pursuant to section 1361 of the federal Internal
 28 Revenue Code of 1986, 26 U.S.C. s.1361.

29 "S corporation income" means the net of an S corporation's items
 30 of income, loss or deduction taken into account by the shareholder
 31 in the manner provided in section 1366 of the federal Internal
 32 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

33 a. S corporation income shall be determined without the
 34 exclusion, deduction or credit of:

35 (1) any dividend exclusion or deduction otherwise allowed
 36 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,
 37 c.162 (C.54:10A-4);

38 (2) taxes paid or accrued to the United States, a possession or
 39 territory of the United States, a state including this State, a political
 40 subdivision thereof, or the District of Columbia on or measured by
 41 profits or income, or business presence or business activity, of the
 42 corporation;

43 (3) any income taxes paid or accrued to the United States, a
 44 possession or territory of the United States, a state including this
 45 State, a political subdivision thereof, or the District of Columbia
 46 paid or accrued by the S corporation on behalf of, or in satisfaction
 47 of the liabilities of, shareholders of the corporation;

1 (4) interest income on obligations of any state other than this
2 State, or of a political subdivision thereof, or of the federal
3 government, except as deducted pursuant to subsection b. of this
4 section; or

5 (5) interest on indebtedness incurred or continued, expenses
6 paid and incurred to purchase, carry, manage or conserve, and
7 expenses of collection of the income or gain from obligations the
8 income or gain from which is deductible pursuant to subsection b.
9 of this definition; and

10 b. S corporation income shall be determined after deduction of:

11 (1) any gains or income derived from obligations which are
12 referred to in N.J.S.54A:6-14 or from securities which evidence
13 ownership in a qualified investment fund as defined in section 2 of
14 P.L.1987, c.310 (C.54A:6-14.1), and any interest excluded from
15 gross income pursuant to N.J.S.54A:6-14, or distributions excluded
16 from income pursuant to section 2 of P.L.1987, c.310 (C.54A:6-
17 14.1); and

18 (2) all ordinary and necessary business expenses in carrying on a
19 State-licensed cannabis trade or business; and

20 c. The character of any S corporation item taken into account
21 by a shareholder of an S corporation shall be determined as if such
22 items were received or incurred by the S corporation and not its
23 shareholder.

24 "S corporation income allocated to this State" means that portion
25 of the S corporation income that is allocated to this State by the
26 allocation factor of the corporation for the fiscal or calendar
27 accounting period pursuant to sections 6 through 10 of P.L.1945,
28 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax
29 imposed pursuant to paragraph (3) of subsection (c) of section 5 of
30 P.L.1945, c.162 (C. 54:10A-5).

31 "S corporation income not allocated to this State" means S
32 corporation income less S corporation income allocated to this
33 State.

34 (cf: P.L.1993, c.173, s.12)

35
36 3. This act shall take effect immediately.
37
38

39 STATEMENT

40
41 This bill decouples the corporation business tax from the federal
42 income tax provision that prohibits deductions and credits for
43 cannabis businesses. The bill also decouples S corporation income
44 under the gross income tax from the federal provision.

45 Under the State's corporation business tax, and for S corporation
46 income under the gross income tax, the starting point for calculating
47 income that is taxable is that which is taxable under the federal
48 income tax. Federal law (26 U.S.C. s.280E) prohibits deductions

1 and credits for businesses trafficking in federally defined schedule I
2 and II controlled substances, which includes cannabis. The
3 deduction for ordinary and necessary business expenses is therefore
4 not available to cannabis businesses, which results in a higher
5 federal income tax liability than other businesses with similar
6 amounts of income. Because the corporation business tax is
7 currently linked by State law to federal law in this respect, cannabis
8 businesses subject to the corporation business tax would also have a
9 higher tax liability than other businesses with similar amounts of
10 income. The same is true for S corporation income under the gross
11 income tax. (Others subject to the gross income tax are not linked to
12 the federal provision by State law.)

13 As a result of enactment of this bill, a business subject to the
14 corporation business tax will be allowed to deduct from income all
15 ordinary and necessary business expenses incurred in carrying on a
16 licensed cannabis business. The deduction will be allowed when
17 calculating S corporation income as well.