

ASSEMBLY, No. 4098

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Eliminates requirement that taxpayer that qualifies as S corporation for federal tax purposes affirmatively elect New Jersey S corporation status for purposes of corporation business and gross income taxes.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning election of S corporation status, amending and
2 supplementing P.L.1945, c.162 and amending P.L.1993, c.173.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to
8 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

45 (i) "Fiscal year" shall mean an accounting period ending on any
46 day other than the last day of December on the basis of which the
47 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-
13 49 et 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
18 January 1, 1984, which the taxpayer claimed as a deduction in
19 computing federal income tax pursuant to a qualified lease
20 agreement under 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-
21 1 et 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
28 and 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
32 January 1, 1998. For gas, electric, and gas and electric public
33 utilities that were subject to, or would have been subject to tax if
34 doing business in this State, the provisions of P.L.1940, c.5
35 (C.54:30A-49 et seq.) prior to 1998, the New Jersey depreciation
36 allowance shall be computed as follows: All depreciable assets
37 placed in service prior to January 1, 1998 shall be considered a
38 single asset account. The New Jersey tax basis of this depreciable
39 asset account shall be an amount equal to the carryover adjusted
40 basis for federal income tax purposes on December 31, 1997 of all
41 depreciable assets in service on December 31, 1997, increased by
42 the excess, of the "net carrying value," defined to be adjusted book
43 basis of all assets and liabilities, excluding deferred income taxes,
44 recorded on the public utility's books of account on December 31,
45 1997, over the carryover adjusted basis for federal income tax
46 purposes on December 31, 1997 of all assets and liabilities owned
47 by the gas, electric, or gas and electric public utility as of December
48 31, 1997. "Books of account" for gas, gas and electric, and electric

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

6 (A) Depreciation for property placed in service prior to January
7 1, 1998 shall be adjusted as follows:

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

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

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

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

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

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

44 (10) Entire net income shall exclude all income of an alien
45 corporation the activities of which are limited in this State to
46 investing or trading in stocks and securities for its own account,
47 investing or trading in commodities for its own account, or any
48 combination of those activities, within the meaning of section 864

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

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

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

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

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

46 (B) The director shall prescribe the rules and regulations
47 necessary to carry out the provisions of this paragraph, including,
48 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 (I) "Real estate investment trust" shall mean any corporation,
41 trust or association qualifying and electing to be taxed as a real
42 estate investment trust under federal law.

43 (m) "Financial business corporation" shall mean any corporate
44 enterprise which is (1) in substantial competition with the business
45 of national banks and which (2) employs moneyed capital with the
46 object of making profit by its use as money, through discounting
47 and negotiating promissory notes, drafts, bills of exchange and
48 other evidences of debt; buying and selling exchange; making of or

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

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

1 Banking and Insurance shall thereafter provide the applicable
2 definitions.

3 (o) "S corporation" means a corporation ~~included in the~~
4 ~~definition of~~ that has elected to be an "S corporation" pursuant to
5 section 1361 of the federal Internal Revenue Code ~~of 1986~~, 26
6 U.S.C. s.1361 , for the taxable year.

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

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

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

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

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

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

38 (1) As used in this subsection:

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

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

46 "UNOL" means the unabsorbed portion of net operating loss as
47 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,
37 26 U.S.C. s.1504, except such affiliated group shall include all
38 domestic corporations that are commonly owned, directly or
39 indirectly, by any member of such affiliated group, without regard
40 to whether the affiliated group includes (1) corporations included in
41 more than one federal consolidated return, (2) corporations engaged
42 in one or more unitary businesses, or (3) corporations that are not
43 engaged in a unitary business with any other member of the
44 affiliated group.

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

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

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

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

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

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

19 For purposes of this definition:

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

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

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

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

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

1 the combined group. Whether voting control is indirectly owned
2 shall be determined in accordance with section 318 of the federal
3 Internal Revenue Code, 26 U.S.C. s.318.

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

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

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

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

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

29 (gg) "Unitary business" means a single economic enterprise that
30 is made up either of separate parts of a single business entity or of a
31 group of business entities under common ownership that are
32 sufficiently interdependent, integrated, and interrelated through
33 their activities so as to provide a synergy and mutual benefit that
34 produces a sharing or exchange of value among them and a
35 significant flow of value among the separate parts. "Unitary
36 business" shall be construed to the broadest extent permitted under
37 the Constitution of the United States. A business conducted by a
38 partnership which is in a unitary business with the combined group
39 shall be treated as the business of the partners that are members of
40 the combined group, whether the partnership interest is held directly
41 or indirectly through a series of partnerships, to the extent of a
42 partner's distributive share of partnership income. The amount of
43 partnership income to be included in the partner's entire net income
44 shall be determined in accordance with subsection a. of section 3 of
45 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
46 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business
47 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 3 of P.L.1993, c.173 (C.54:10A-5.22) is amended to
6 read as follows:

7 3. a. **【A corporation may elect, in accordance with the**
8 **provisions of this section, to be a New Jersey S corporation. In**
9 **order for an election to be valid, the corporation and each of its**
10 **shareholders on the day on which the election is made (hereinafter**
11 **"initial shareholders") must consent to such election and the**
12 **jurisdictional requirements of becoming a New Jersey S**
13 **corporation. The form of the election and consent to jurisdictional**
14 **requirements and the place for filing shall be as prescribed by the**
15 **Director of the Division of Taxation.】** (Deleted by amendment
16 P.L. , c.) (pending before the Legislature as this bill)

17 b. **【Each initial shareholder and the corporation shall】** A New
18 Jersey S Corporation and each shareholder shall consent to the
19 following jurisdictional requirements:

20 (1) That this State shall have the right and jurisdiction to tax and
21 collect the tax on each shareholder's S corporation income as
22 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10);
23 and

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

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

41 c. **【A corporation may make an election to become a New**
42 **Jersey S corporation with respect to an accounting or privilege**
43 **period for which the corporation is or will be an S corporation. The**
44 **election for an accounting or privilege period, along with the】** The
45 consents to jurisdictional requirements【.】 shall be filed within one
46 calendar month of the time at which a federal S corporation election
47 would be required if such accounting or privilege period were a

1 "taxable year" for which a federal S corporation election were to be
2 made pursuant to section 1362 of the federal Internal Revenue Code
3 **【of 1986】**, 26 U.S.C. s.1362. **【Such elections may only be revoked**
4 **pursuant to subsection d. of this section. Such election shall**
5 **terminate immediately upon the corporation's failure to satisfy the**
6 **definition of a New Jersey S corporation pursuant to paragraph (p)**
7 **of section 4 of P.L.1945, c.162 (C.54:10A-4).】**

8 d. **【 A corporation may revoke an election pursuant to this**
9 **section on or before the last day of the first accounting or privilege**
10 **period to which the election would otherwise apply. 】** (Deleted by
11 amendment P.L. _____, c.) (pending before the Legislature as this
12 bill)

13 e. A corporation shall report any change in its shareholders or
14 their share of ownership to the Director of the Division of Taxation
15 in a form and manner determined by the director.

16 (cf: P.L.1993, c.173, s.3)

17
18 3. Section 4 of P.L.1993, c.173 (C.54:10A-5.23) is amended to
19 read as follows:

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

24 b. Deliver a consent to the jurisdictional requirements as set
25 forth in **【subsection b. of】** section 3 of P.L.1993, c.173 (C.54:10A-
26 5.22), in a form and manner determined by the director.

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

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

1 S corporation income allocated to this State, as defined pursuant to
2 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting
3 shareholder times the maximum tax bracket rate provided under
4 N.J.S.54A:2-1 for the appropriate accounting or privilege period.
5 In such case, the corporation shall have the right, but not the
6 obligation, to recover payments made by the corporation pursuant to
7 this subsection from each nonconsenting shareholder.
8 (cf: P.L.1993, c.173, s.4)

9
10 4. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to
11 read as follows:

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

14 "New Jersey S corporation" means a **【**corporation that is an S
15 corporation ; which has made a valid election pursuant to section 3
16 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
17 corporation continuously since the effective date of the valid
18 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
19 5.22)**】** taxpayer that has made a valid election to be an S
20 corporation for federal tax purposes for the taxable year.

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

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

29 For a New Jersey S corporation, the S corporation income
30 allocated to this State of all New Jersey S corporations; and the S
31 corporation income not allocated to this State.

32 "S corporation" means a corporation **【**included in the definition
33 of**】** that has elected to be an "S corporation" pursuant to section
34 1361 of the federal Internal Revenue Code **【**of 1986**】**, 26 U.S.C.
35 s.1361 , for the taxable year.

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

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

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

45 (2) taxes paid or accrued to the United States, a possession or
46 territory of the United States, a state including this State, a political
47 subdivision thereof, or the District of Columbia on or measured by

1 profits or income, or business presence or business activity, of the
2 corporation;

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

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

12 (5) interest on indebtedness incurred or continued, expenses
13 paid and incurred to purchase, carry, manage or conserve, and
14 expenses of collection of the income or gain from obligations the
15 income or gain from which is deductible pursuant to subsection b.
16 of this definition; and

17 b. S corporation income shall be determined after deduction of
18 any gains or income derived from obligations which are referred to
19 in N.J.S.54A:6-14 or from securities which evidence ownership in a
20 qualified investment fund as defined in section 2 of P.L.1987, c.310
21 (C.54A:6-14.1), and any interest excluded from gross income
22 pursuant to N.J.S.54A:6-14, or distributions excluded from income
23 pursuant to section 2 of P.L.1987, c.310 (C.54A:6-14.1); and

24 c. The character of any S corporation item taken into account
25 by a shareholder of an S corporation shall be determined as if such
26 items were received or incurred by the S corporation and not its
27 shareholder.

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

35 "S corporation income not allocated to this State" means S
36 corporation income less S corporation income allocated to this
37 State.

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

39

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

42 13. a. A resident shareholder of S corporation stock held by the
43 shareholder on the first day of the first taxable year following
44 enactment of this section shall have an initial basis in the stock of
45 that S corporation and any indebtedness of the S corporation equal
46 to the basis of the stock determined as though the stock was stock
47 of a corporation not an S corporation plus any indebtedness of the S

1 corporation to the shareholder and shall be determined as of the first
2 day of the first taxable year following enactment of this section

3 b. A resident shareholder of S corporation stock to which
4 subsection a. of this section does not apply shall have an initial
5 basis in the stock of the S corporation and any indebtedness of the S
6 corporation as determined pursuant to the federal Internal Revenue
7 Code of 1986, determined as of the date that is the latest to occur
8 of: the date on which the shareholder last became a resident of this
9 State; the date on which the shareholder acquired the stock of the
10 corporation; or the effective date of the corporation's most recent S
11 election under the federal Internal Revenue Code of 1986.

12 c. The initial basis of a resident shareholder in the stock and
13 indebtedness of an S corporation shall be adjusted after the date
14 specified in subsections a. or b. of this section in the manner
15 required by section 1011 of the federal Internal Revenue Code of
16 1986, 26 U.S.C. s.1011, except that such adjustments shall be
17 limited to that portion of S corporation income allocated to this
18 State and S corporation income not allocated to this State that is
19 included in the shareholder's pro rata share of S corporation income
20 and except that, with respect to any taxable period during which the
21 shareholder is a resident of this State:

22 (1) any modification made pursuant to the definition of S
23 corporation income pursuant to section 12 of P.L.1993, c.173
24 (C.54A:5-10) other than those for income exempt from taxation by
25 this State pursuant to paragraph (5) of subsection a. and subsection
26 b. of that definition shall be taken into account; and

27 (2) any adjustments made pursuant to section 1367 of the
28 federal Internal Revenue Code of 1986, 26 U.S.C. s.1367, for a
29 taxable period during which this State did not measure the income
30 of a shareholder of an S corporation by reference to the S
31 corporation's income shall not be taken into account.

32 d. A nonresident shareholder of S corporation stock shall have
33 an initial basis in the stock of the S corporation and any
34 indebtedness of the S corporation of zero as of the date that is the
35 latest to occur of: the date on which the shareholder last became a
36 nonresident of this State; the date on which the shareholder
37 acquired the stock of the corporation; or the effective date of the
38 corporation's most recent S election under the federal Internal
39 Revenue Code of 1986 **【**; or the effective date of the corporation's
40 most recent election pursuant to section 3 of P.L.1993, c.173
41 (C.54:10A-5.22)**】**.

42 e. The initial basis of a nonresident shareholder in the stock
43 and indebtedness of an S corporation shall be adjusted after the date
44 specified in subsection d. of this section as provided in section 1367
45 of the of the federal Internal Revenue Code of 1986, 26 U.S.C.
46 s.1367, except that such adjustments shall be limited to that portion
47 of S corporation income allocated to this State that is included in
48 the shareholder's pro rata share of S corporation income. In

1 computing S corporation income allocated to this State any
2 modification made pursuant to the definition of S corporation
3 income pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) for
4 income exempt from taxation by this State pursuant to paragraph (5)
5 of subsection a. and subsection b. of that definition shall not be
6 taken into account.

7 f. The basis in the hands of a resident shareholder of an S
8 corporation in stock of the S corporation shall be reduced by the
9 amount of any cash distribution which is not taxable to the
10 shareholder as a result of the application of section 16 of P.L.1993,
11 c.173 (C.54A:5-14).

12 g. For purposes of this section, any person acquiring stock or
13 indebtedness of an S corporation by gift shall be considered to have
14 acquired the stock or indebtedness at the time the donor acquired
15 the stock or indebtedness.

16 (cf: P.L.1993, c.173, s.13)

17
18 6. (New section) The Directors of the Divisions of Revenue
19 and Enterprise Services and Taxation, when determining whether to
20 grant retroactive election of S corporation status, shall liberally
21 construe regulatory requirements in favor of the corporation and
22 shall have the discretion to authorize retroactive S corporation
23 status in circumstances in which a taxpayer may not be capable of
24 meeting all regulatory requirements for such retroactive election
25 through no fault of the taxpayer.

26
27 7. This act shall take effect on the 60th day after the date of
28 enactment and the Directors of the Divisions of Taxation and
29 Revenue and Enterprise Services shall take such anticipatory
30 administrative action in advance as is necessary to effectuate the
31 purposes of this bill.

32 33 34 STATEMENT

35
36 This bill eliminates the requirement that a taxpayer that qualifies
37 as Subchapter S corporation for federal tax purposes affirmatively
38 elect New Jersey S corporation status for purposes of the State's
39 corporation business and gross income taxes. S corporations retain
40 certain benefits of the corporate form, such as limited liability,
41 without the "double" taxation of corporate income and dividends
42 distributed that applies to C corporations. When S corporation
43 status is elected for federal purposes, the income and losses
44 incurred by the entity pass-through to the shareholders of the S
45 corporation.

46 A "small business corporation" as defined in the federal Internal
47 Revenue Code may elect to be an S corporation for purposes of
48 federal income taxation. The corporation must affirmatively elect to

1 be a S corporation for a particular taxable year, and all shareholders
2 must give their consent to the election.

3 New Jersey currently requires that entities that have elected to be
4 S Corporations for federal tax purposes and that want to be treated
5 as S corporations for State tax purposes must affirmatively elect to
6 be treated as a New Jersey S Corporation by annually submitting a
7 form to the Director of the Division of Taxation. Failure to make
8 such an election for State purposes results in the taxation by the
9 State of the entity's corporate income and of dividends received by
10 shareholders, as occurs for corporations generally.

11 This bill removes the requirement that a taxpayer that elects
12 treatment as an S corporation for federal tax purposes must also
13 elect to be a "New Jersey S corporation." This bill links New Jersey
14 S Corporation status to the S corporation election for federal
15 income tax purposes and eliminates the confusion and
16 administrative snafus that have prevented some eligible taxpayers
17 from receiving the benefits of "pass-through" taxation.

18 Upon enactment of this bill, New Jersey would join the majority
19 of states that accept a federal S corporation election for state tax
20 purposes without requiring any additional action on the part of the
21 corporation. The bill streamlines the process by which eligible
22 corporations may avail themselves of "pass-through" tax treatment
23 on the State level.

24 The bill retains the requirement that the S corporation and each
25 shareholder affirmatively consent to existing jurisdictional
26 requirements, in a form and manner to be determined by the
27 director.