

[First Reprint]

ASSEMBLY, No. 4809

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED OCTOBER 8, 2020

Sponsored by:

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District 29 (Essex)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblywoman SERENA DIMASO

District 13 (Monmouth)

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District 36 (Bergen and Passaic)

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District 7 (Burlington)

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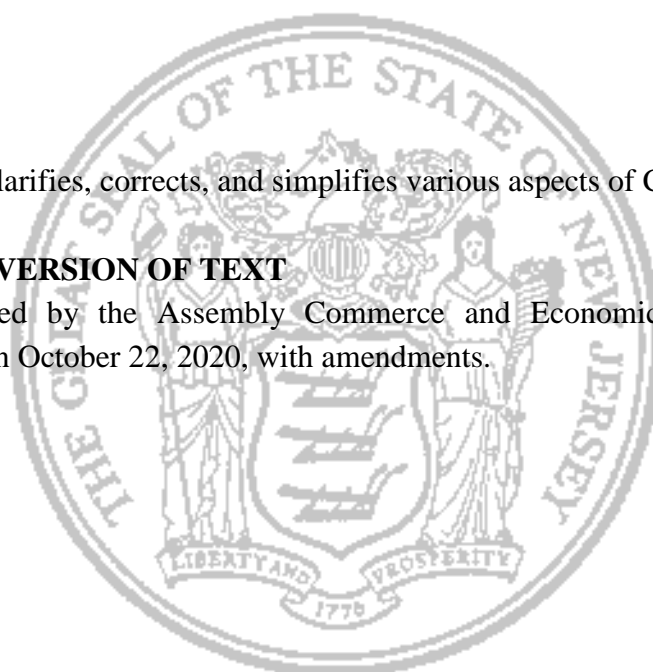
Assemblywoman Swain and Assemblyman Tully

SYNOPSIS

Revises, clarifies, corrects, and simplifies various aspects of CBT.

CURRENT VERSION OF TEXT

As reported by the Assembly Commerce and Economic Development Committee on October 22, 2020, with amendments.



(Sponsorship Updated As Of: 10/29/2020)

1 AN ACT concerning the corporation business tax, amending various
2 parts of the statutory law and supplementing P.L.1945, c.162.

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

6
7 1. Section 1 of P.L.1997, c.334 (C.34:1B-7.42a) is amended to
8 read as follows:

9 1. a. The New Jersey Economic Development Authority shall
10 establish within the New Jersey Emerging Technology and
11 Biotechnology Financial Assistance Program established pursuant
12 to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business
13 tax benefit certificate transfer program to allow new or expanding
14 emerging technology and biotechnology companies in this State
15 with unused amounts of research and development tax credits
16 otherwise allowable which cannot be applied for the credit's tax
17 year due to the limitations of subsection b. of section 1 of P.L.1993,
18 c.175 (C.54:10A-5.24) and unused prior net operating loss
19 conversion carryover or net operating loss carryover pursuant to
20 **【**subparagraph (B) of paragraph (6) of subsection (k) of**】** section 4
21 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for
22 use by other corporation business taxpayers in this State, provided
23 that the taxpayer receiving the surrendered tax benefits is not
24 affiliated with a corporation that is surrendering its tax benefits
25 under the program established under P.L.1997, c.334. For the
26 purposes of this section, the test of affiliation is whether the same
27 entity directly or indirectly owns or controls 5% or more of the
28 voting rights or 5% or more of the value of all classes of stock of
29 both the taxpayer receiving the benefits and a corporation that is
30 surrendering the benefits. The tax benefits may be used on the
31 corporation business tax returns to be filed by those taxpayers in
32 exchange for private financial assistance to be provided by the
33 corporation business taxpayer that is the recipient of the corporation
34 business tax benefit certificate to assist in the funding of costs
35 incurred by the new or expanding emerging technology and
36 biotechnology company. For purposes of this subsection, a member
37 of a combined group may sell prior net operating loss conversion
38 carryover to other members of the combined group, if otherwise
39 applicable and allowable under section 2 of P.L.1997, c.334
40 (C.54:10A-4.2) and this section; provided, however, such sale of
41 prior net operating loss conversion carryover shall be made at arm's
42 length price at the same rate as though the sale was to an unrelated
43 taxpayer.

44 b. The authority, in cooperation with the Division of Taxation
45 in the Department of the Treasury, shall review and approve

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACE committee amendments adopted October 22, 2020.

1 applications by new or expanding emerging technology and
2 biotechnology companies in this State with unused but otherwise
3 allowable carryover of research and development tax credits
4 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and
5 unused but otherwise allowable prior net operating loss conversion
6 carryover or net operating loss carryover pursuant to ~~¶~~paragraph (6)
7 of subsection (k) of ~~§~~section 4 of P.L.1945, c.162 (C.54:10A-4), to
8 surrender those tax benefits in exchange for private financial
9 assistance to be made by the corporation business taxpayer that is
10 the recipient of the corporation business tax benefit certificate in an
11 amount equal to at least 80% of the amount of the surrendered tax
12 benefit. Provided that the amount of the surrendered tax benefit for
13 a surrendered research and development tax credit carryover is the
14 amount of the credit, and provided that the amount of the
15 surrendered tax benefit for a surrendered ~~§~~net operating loss
16 carryover is the amount of the loss multiplied by the new or
17 expanding emerging technology or biotechnology company's
18 anticipated allocation factor, as determined pursuant to section 6 of
19 P.L.1945, c.162 (C.54:10A-6) for the tax year in which the benefit
20 is transferred~~§~~ prior net operating loss conversion carryover or net
21 operating loss carryover is that amount for the tax year in which the
22 benefit is transferred and subsequently multiplied by the
23 corporation business tax rate provided pursuant to subsection (c) of
24 section 5 of P.L.1945, c.162 (C.54:10A-5). The authority shall be
25 authorized to approve the transfer of no more than \$60,000,000 of
26 tax benefits in a State fiscal year. If the total amount of transferable
27 tax benefits requested to be surrendered by approved applicants
28 exceeds \$60,000,000 for a State fiscal year, the authority, in
29 cooperation with the Division of Taxation in the Department of the
30 Treasury, shall not be authorized to approve the transfer of more
31 than \$60,000,000 for that State fiscal year and shall allocate the
32 transfer of tax benefits by approved companies using the following
33 method:

34 (1) an eligible applicant with \$250,000 or less of transferable
35 tax benefits shall be authorized to surrender the entire amount of its
36 transferable tax benefits;

37 (2) an eligible applicant with more than \$250,000 of transferable
38 tax benefits shall be authorized to surrender a minimum of
39 \$250,000 of its transferable tax benefits;

40 (3) (Deleted by amendment, P.L.2009, c.90.)

41 (4) an eligible applicant with more than \$250,000 shall also be
42 authorized to surrender additional transferable tax benefits
43 determined by multiplying the applicant's transferable tax benefits
44 less the minimum transferable tax benefits that company is
45 authorized to surrender under paragraph (2) of this subsection by a
46 fraction, the numerator of which is the total amount of transferable
47 tax benefits that the authority is authorized to approve less the total
48 amount of transferable tax benefits approved under paragraphs (1),

1 (2), and (5) of this subsection and the denominator of which is the
2 total amount of transferable tax benefits requested to be surrendered
3 by all eligible applicants less the total amount of transferable tax
4 benefits approved under paragraphs (1), (2), and (5) of this
5 subsection;

6 (5) The authority shall establish the boundaries for three
7 innovation zones to be geographically distributed in the northern,
8 central, and southern portions of this State. Of the \$60,000,000 of
9 transferable tax benefits authorized for each State fiscal year,
10 \$10,000,000 shall be allocated for the surrender of transferable tax
11 benefits exclusively by new and expanding emerging technology
12 and biotechnology companies that operate within the boundaries of
13 the innovation zones, except that any portion of the \$10,000,000
14 that is not so approved shall be available for that State fiscal year
15 for the surrender of transferable tax benefits by new and expanding
16 emerging technology and biotechnology companies that do not
17 operate within the boundaries of an innovation zone.

18 If the total amount of transferable tax benefits that would be
19 authorized using the above method exceeds \$60,000,000 for a State
20 fiscal year, then the authority, in cooperation with the Division of
21 Taxation in the Department of the Treasury, shall limit the total
22 amount of tax benefits authorized to be transferred to \$60,000,000
23 by applying the above method on an apportioned basis.

24 For purposes of this section transferable tax benefits include an
25 eligible applicant's unused but otherwise allowable **carryover of**
26 net operating losses multiplied by the applicant's anticipated
27 allocation factor as determined pursuant to section 6 of P.L.1945,
28 c.162 (C.54:10A-6) **prior net operating loss conversion carryover**
29 **or net operating loss carryover determined pursuant to section 4 of**
30 **P.L.1945, c.162 (C.54:10A-4)** for the tax year in which the benefit
31 is transferred and subsequently multiplied by the corporation
32 business tax rate as provided in subsection (c) of section 5 of
33 P.L.1945, c.162 (C.54:10A-5) plus the total amount of the
34 applicant's unused but otherwise allowable carryover of research
35 and development tax credits. An eligible applicant's transferable
36 tax benefits shall be limited to net operating losses and research and
37 development tax credits that the applicant requests to surrender in
38 its application to the authority and shall not, in total, exceed the
39 maximum amount of tax benefits that the applicant is eligible to
40 surrender.

41 No application for a corporation business tax benefit transfer
42 certificate shall be approved in which the new or expanding
43 emerging technology or biotechnology company (1) has
44 demonstrated positive net operating income in any of the two
45 previous full years of ongoing operations as determined on its
46 financial statements issued according to generally accepted
47 accounting standards endorsed by the Financial Accounting
48 Standards Board; or (2) is directly or indirectly at least 50 percent

1 owned or controlled by another corporation that has demonstrated
2 positive net operating income in any of the two previous full years
3 of ongoing operations as determined on its financial statements
4 issued according to generally accepted accounting standards
5 endorsed by the Financial Accounting Standards Board or is part of
6 a consolidated group of affiliated corporations, as filed for federal
7 income tax purposes, that in the aggregate has demonstrated
8 positive net operating income in any of the two previous full years
9 of ongoing operations as determined on its combined financial
10 statements issued according to generally accepted accounting
11 standards endorsed by the Financial Accounting Standards Board.

12 For purposes of this subsection, a member of a combined group
13 may sell prior net operating loss conversion carryover to other
14 members of the combined group, if otherwise applicable and
15 allowable under section 2 of P.L.1997, c.334 (C.54:10A-4.2) and
16 this section; provided, however, such sale of prior net operating loss
17 conversion carryover shall be made at arm's length price at the
18 same rate as though the sale was to an unrelated taxpayer.

19 The maximum lifetime value of surrendered tax benefits that a
20 corporation shall be permitted to surrender pursuant to the program
21 is \$15,000,000. Applications must be received on or before June 30
22 of each State fiscal year.

23 The authority, in consultation with the Division of Taxation,
24 shall establish rules for the recapture of all, or a portion of, the
25 amount of a grant of a corporation business tax benefit certificate
26 from the new or expanding emerging technology and biotechnology
27 company having surrendered tax benefits pursuant to this section in
28 the event the taxpayer fails to use the private financial assistance
29 received for the surrender of tax benefits as required by this section
30 or fails to maintain a headquarters or a base of operation in this
31 State during the five years following receipt of the private financial
32 assistance; except if the failure to maintain a headquarters or a base
33 of operation in this State is due to the liquidation of the new or
34 expanding emerging technology and biotechnology company.

35 c. The authority, in cooperation with the Division of Taxation
36 in the Department of the Treasury, shall review and approve
37 applications by taxpayers under the Corporation Business Tax Act
38 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire
39 surrendered tax benefits approved pursuant to subsection b. of this
40 section which shall be issued in the form of corporation business
41 tax benefit transfer certificates, in exchange for private financial
42 assistance to be made by the taxpayer in an amount equal to at least
43 80% of the amount of the surrendered tax benefit of an emerging
44 technology or biotechnology company in the State. A corporation
45 business tax benefit transfer certificate shall not be issued unless the
46 applicant certifies that as of the date of the exchange of the
47 corporation business tax benefit certificate it is operating as a new
48 or expanding emerging technology or biotechnology company and

1 has no current intention to cease operating as a new or expanding
2 emerging technology or biotechnology company.

3 The managerial member of a combined group shall be the
4 member that acquires a corporation business tax benefit certificate
5 on behalf of the combined group for use on the combined return.

6 The private financial assistance shall assist in funding expenses
7 incurred in connection with the operation of the new or expanding
8 emerging technology or biotechnology company in the State,
9 including but not limited to the expenses of fixed assets, such as the
10 construction and acquisition and development of real estate,
11 materials, start-up, tenant fit-out, working capital, salaries, research
12 and development expenditures and any other expenses determined
13 by the authority to be necessary to carry out the purposes of the
14 New Jersey Emerging Technology and Biotechnology Financial
15 Assistance Program.

16 The authority shall require a corporation business taxpayer that
17 acquires a corporation business tax benefit certificate to enter into a
18 written agreement with the new or expanding emerging technology
19 or biotechnology company concerning the terms and conditions of
20 the private financial assistance made in exchange for the certificate.
21 The written agreement may contain terms concerning the
22 maintenance by the new or expanding emerging technology or
23 biotechnology company of a headquarters or a base of operation in
24 this State.

25 d. (Deleted by amendment, P.L.2009, c.90.)
26 (cf: P.L.2009, c.90, s.29)
27

28 2. Section 8 of P.L.2004, c.66 (C.46:15-7.2) is amended to read
29 as follows:

30 8. a. In addition to all other fees imposed under P.L.1968, c.49
31 (C.46:15-5 et seq.), there is imposed a fee upon the grantee of a
32 deed for the transfer of real property:

33 (1) that is classified pursuant to the requirements of
34 N.J.A.C.18:12-2.2 as Class 2 "residential";

35 (2) (a) that includes property classified pursuant to the
36 requirements of N.J.A.C.18:12-2.2 as Class 3A: "farm property
37 (regular)" but only if the property includes a building or structure
38 intended or suited for residential use, and

39 (b) any other real property, regardless of class, that is effectively
40 transferred to the same grantee in conjunction with the property
41 described in subparagraph (a) of this paragraph;

42 (3) that is a cooperative unit as defined in section 3 of P.L.1987,
43 c.381 (C.46:8D-3); or

44 (4) that is classified pursuant to the requirements of
45 N.J.A.C.18:12-2.2 as Class 4A "commercial properties"

46 that is transferred for consideration in excess of \$1,000,000 recited
47 in the deed, which fee shall be an amount equal to 1 percent of the
48 entire amount of such consideration, which fee shall be collected by

1 the county recording officer at the time the deed is offered for
2 recording and remitted to the State Treasurer not later than the 10th
3 day of the month following the month of collection for deposit into
4 the General Fund.

5 b. (1) The fee imposed by subsection a. of this section shall
6 not apply to a deed if the grantee of the deed for the transfer of real
7 property is an organization determined by the federal Internal
8 Revenue Service to be exempt from federal income taxation
9 pursuant to paragraph (3) of subsection (c) of section 501 of the
10 federal Internal Revenue Code of 1986, 26 U.S.C. s.501.

11 (2) The fee imposed by subsection a. of this section shall not
12 apply to a deed if the transfer of real property is incidental to a
13 corporate merger or acquisition and the equalized assessed value of
14 the real property transferred is less than 20% of the total value of all
15 assets exchanged in the merger or acquisition. A grantee shall
16 claim this exemption from imposition of the fee at the time the deed
17 is offered for recording by filing with the county recording officer
18 such information, in addition to the affidavit of consideration filed
19 by one or more of the grantee parties named in the deed or by the
20 grantee's legal representative pursuant to subsection d. of this
21 section, as the Director of the Division of Taxation in the
22 Department of the Treasury may prescribe as to constitute a filing
23 of a protest of the assessment of the fee and by paying any other
24 recording fees not exempted pursuant to this paragraph. This
25 additional information shall be forwarded by the county recording
26 officer to the director along with the grantee's affidavit of
27 consideration, and shall be deemed to be and have the effect of a
28 protest of a finding by the director of a deficiency of payment of the
29 fee filed on the date on which the deed is recorded.

30 (3) The fee imposed by subsection a. of this section shall not
31 apply to a deed if the transfer of real property is entered into on or
32 after '【July 31, 2020】 January 1, 2021' and is an intercompany
33 transfer between combined group members as part of the unitary
34 business, as those terms are used in section 4 of P.L.1945, c.162
35 (C.54:10A-4).

36 c. The fee imposed by subsection a. of this section shall be
37 subject to the provisions of the State Uniform Tax Procedure Law,
38 R.S.54:48-1 et seq.; provided however, that notwithstanding the
39 provisions of subsection a. of R.S.54:49-14, a taxpayer may file a
40 claim under oath for refund at any time within 90 days after the
41 payment of any original fee and that subsection b. of R.S.54:49-14
42 shall not apply to any additional fee assessed.

43 d. (1) If a transfer includes property classified pursuant to the
44 requirements of N.J.A.C.18:12-2.2 as Class 4 property of any type,
45 an affidavit of consideration shall be filed by one or more of the
46 grantor parties named in the deed or by the grantor's legal
47 representative declaring the consideration and shall be annexed to
48 and recorded with the deed as a prerequisite for the recording of the

1 deed. The filing of an affidavit of consideration pursuant to this
2 paragraph shall be in addition to the filing, if any, pursuant to
3 paragraph (2) of this subsection.

4 (2) Whether or not the transfer is exempt, pursuant to subsection
5 b. of this section or any other provision of law, from payment of the
6 fee pursuant to subsection a. of this section, if a transfer includes
7 property otherwise subject to subsection a. of this section, then an
8 affidavit of consideration shall be filed by one or more of the
9 grantee parties named in the deed or by the grantee's legal
10 representative declaring the consideration and shall be annexed to
11 and recorded with the deed as a prerequisite for the recording of the
12 deed. The filing of an affidavit of consideration pursuant to this
13 paragraph shall be in addition to the filing, if any, pursuant to
14 paragraph (1) of this subsection.

15 (3) An affidavit of consideration filed pursuant to paragraph (1)
16 or paragraph (2) of this subsection shall clearly and entirely state
17 the consideration, the county and municipality in which the
18 property is situate, and the block and lot description of the real
19 property conveyed.

20 (4) One copy of each affidavit of consideration filed and
21 recorded with deeds pursuant to this subsection shall be forwarded
22 by the county recording officer to the Director of the Division of
23 Taxation in the Department of the Treasury on the tenth day of the
24 month following the month of the filing of the deed.

25 (cf: P.L.2006, c.33, s.1)

26

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

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

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

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

36 (c) "Corporation" shall mean any corporation, joint-stock
37 company or association and any business conducted by a trustee or
38 trustees wherein interest or ownership is evidenced by a certificate
39 of interest or ownership or similar written instrument, any other
40 entity classified as a corporation for federal income tax purposes,
41 and any state or federally chartered building and loan association or
42 savings and loan association.

43 (d) "Net worth" shall mean the aggregate of the values disclosed
44 by the books of the corporation for (1) issued and outstanding
45 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
46 undivided profits, and (4) surplus reserves which can reasonably be
47 expected to accrue to holders or owners of equitable shares, not
48 including reasonable valuation reserves, such as reserves for

1 depreciation or obsolescence or depletion. Notwithstanding the
2 foregoing, net worth shall not include any deduction for the amount
3 of the excess depreciation described in paragraph (2) (F) of
4 subsection (k) of this section. The foregoing aggregate of values
5 shall be reduced by 50% of the amount disclosed by the books of
6 the corporation for investment in the capital stock of one or more
7 subsidiaries, which investment is defined as ownership (1) of at
8 least 80% of the total combined voting power of all classes of stock
9 of the subsidiary entitled to vote and (2) of at least 80% of the total
10 number of shares of all other classes of stock except nonvoting
11 stock which is limited and preferred as to dividends. In the case of
12 investment in an entity organized under the laws of a foreign
13 country, the foregoing requisite degree of ownership shall effect a
14 like reduction of such investment from the net worth of the
15 taxpayer, if the foreign entity is considered a corporation for any
16 purpose under the United States federal income tax laws, such as
17 (but not by way of sole examples) for the purpose of supplying
18 deemed paid foreign tax credits or for the purpose of status as a
19 controlled foreign corporation. In calculating the net worth of a
20 taxpayer entitled to reduction for investment in subsidiaries, the
21 amount of liabilities of the taxpayer shall be reduced by such
22 proportion of the liabilities as corresponds to the ratio which the
23 excluded portion of the subsidiary values bears to the total assets of
24 the taxpayer.

25 In the case of banking corporations which have international
26 banking facilities as defined in subsection (n), the foregoing
27 aggregate of values shall also be reduced by retained earnings of the
28 international banking facility. Retained earnings means the
29 earnings accumulated over the life of such facility and shall not
30 include the distributive share of dividends paid and federal income
31 taxes paid or payable during the tax year.

32 If in the opinion of the director, the corporation's books do not
33 disclose fair valuations the director may make a reasonable
34 determination of the net worth which, in his opinion, would reflect
35 the fair value of the assets, exclusive of subsidiary investments as
36 defined aforesaid, carried on the books of the corporation, in
37 accordance with sound accounting principles, and such
38 determination shall be used as net worth for the purpose of this act.

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

40 (f) "Investment company" shall mean any corporation whose
41 business during the period covered by its report consisted, to the
42 extent of at least 90% thereof of holding, investing and reinvesting
43 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
44 and other securities for its own account, but this shall not include
45 any corporation which: (1) is a merchant or a dealer of stocks,
46 bonds and other securities, regularly engaged in buying the same
47 and selling the same to customers; or (2) had less than 90% of its
48 average gross assets in New Jersey, at cost, invested in stocks,

1 bonds, debentures, mortgages, notes, patents, patent rights or other
2 securities or consisting of cash on deposit during the period covered
3 by its report; or (3) is a banking corporation, a savings institution,
4 or a financial business corporation as defined in the Corporation
5 Business Tax Act.

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

10 (h) "Taxpayer" shall mean any corporation, any combined group
11 filing a mandatory or elective New Jersey combined return, and any
12 partnership required, or consenting, to report or to pay taxes,
13 interest or penalties under this act. "Taxpayer" shall not include a
14 partnership that is listed on a United States national stock exchange.

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

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

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

26 For the purpose of this act, the amount of a taxpayer's entire net
27 income shall be deemed prima facie to be equal in amount to the
28 taxable income, before net operating loss deduction and special
29 deductions, which the taxpayer is required to report, or, if the
30 taxpayer is classified as a partnership for federal tax purposes,
31 would otherwise be required to report, to the United States Treasury
32 Department for the purpose of computing its federal income tax,
33 provided however, that in the determination of such entire net
34 income,

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

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

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

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

4 (C) Taxes paid or accrued to the United States, a possession or
5 territory of the United States, a state, a political subdivision thereof,
6 or the District of Columbia, or to any foreign country, state,
7 province, territory or subdivision thereof, on or measured by profits
8 or income, or business presence or business activity, or the tax
9 imposed by this act, or any tax paid or accrued with respect to
10 subsidiary dividends excluded from entire net income as provided
11 in paragraph (5) of subsection (k) of this section.

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

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

14 (F) (i) The amount by which depreciation reported to the United
15 States Treasury Department for property placed in service on and
16 after January 1, 1981, but prior to taxpayer fiscal or calendar
17 accounting years beginning on and after the effective date of
18 P.L.1993, c.172, for purposes of computing federal taxable income
19 in accordance with section 168 of the Internal Revenue Code in
20 effect after December 31, 1980, exceeds the amount of depreciation
21 determined in accordance with the Internal Revenue Code
22 provisions in effect prior to January 1, 1981, but only with respect
23 to a taxpayer's accounting period ending after December 31, 1981;
24 provided, however, that where a taxpayer's accounting period
25 begins in 1981 and ends in 1982, no modification shall be required
26 with respect to this paragraph (F) for the report filed for such period
27 with respect to property placed in service during that part of the
28 accounting period which occurs in 1981. The provisions of this
29 subparagraph shall not apply to assets placed in service prior to
30 January 1, 1998 of a gas, gas and electric, and electric public utility
31 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-
32 49 et seq.) prior to 1998.

33 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
34 (2) of this subsection, any amount, except with respect to qualified
35 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
36 the Internal Revenue Code as in effect immediately prior to January
37 1, 1984, which the taxpayer claimed as a deduction in computing
38 federal income tax pursuant to a qualified lease agreement under
39 paragraph (8) of that section.

40 The director shall promulgate rules and regulations necessary to
41 carry out the provisions of this section, which rules shall provide,
42 among others, the manner in which the remaining life of property
43 shall be reported.

44 (G) (i) The amount of any civil, civil administrative, or criminal
45 penalty or fine, including a penalty or fine under an administrative
46 consent order, assessed and collected for a violation of a State or
47 federal environmental law, an administrative consent order, or an
48 environmental ordinance or resolution of a local governmental

1 entity, and any interest earned on the penalty or fine, and any
2 economic benefits having accrued to the violator as a result of a
3 violation, which benefits are assessed and recovered in a civil, civil
4 administrative, or criminal action, or pursuant to an administrative
5 consent order. The provisions of this paragraph shall not apply to a
6 penalty or fine assessed or collected for a violation of a State or
7 federal environmental law, or local environmental ordinance or
8 resolution, if the penalty or fine was for a violation that resulted
9 from fire, riot, sabotage, flood, storm event, natural cause, or other
10 act of God beyond the reasonable control of the violator, or caused
11 by an act or omission of a person who was outside the reasonable
12 control of the violator.

13 (ii) The amount of treble damages paid to the Department of
14 Environmental Protection pursuant to subsection a. of section 7 of
15 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
16 department in removing, or arranging for the removal of, an
17 unauthorized discharge upon failure of the discharger to comply
18 with a directive from the department to remove, or arrange for the
19 removal of, the discharge.

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

22 (I) Interest paid, accrued or incurred for the privilege period to
23 a related member, as defined in section 5 of P.L.2002, c.40
24 (C.54:10A-4.4), except that a deduction shall be permitted to the
25 extent that the taxpayer establishes by clear and convincing
26 evidence, as determined by the director, that: (i) a principal purpose
27 of the transaction giving rise to the payment of the interest was not
28 to avoid taxes otherwise due under Title 54 of the Revised Statutes
29 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
30 pursuant to arm's length contracts at an arm's length rate of interest,
31 and (iii)(aa) the related member was subject to a tax on its net
32 income or receipts in this State or another state or possession of the
33 United States or in a foreign nation, (bb) a measure of the tax
34 includes the interest received from the related member, and (cc) the
35 rate of tax applied to the interest received by the related member is
36 equal to or greater than a rate three percentage points less than the
37 rate of tax applied to taxable interest by this State pursuant to
38 section 5 of P.L.1945, c.162 (C.54:10A-5).

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

47 A deduction shall also be permitted to the extent that the
48 taxpayer establishes by a preponderance of the evidence, as

1 determined by the director, that the interest is directly or indirectly
2 paid, accrued or incurred to (i) a related member in a foreign nation
3 which has in force a comprehensive income tax treaty with the
4 United States and the related member (aa) was subject to tax in the
5 foreign nation on a tax base that included the payment paid,
6 accrued, or incurred; and (bb) under which the related member's
7 income received from the transaction was taxed at an effective tax
8 rate equal to or greater than a rate of three percentage points less
9 than the rate of tax applied to taxable interest by the State of New
10 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
11 provided however that the taxpayer shall disclose on its return for
12 the privilege period the name of the related member, the amount of
13 the interest, the relevant foreign nation, and such other information
14 as the director may prescribe or (ii) to an independent lender and
15 the taxpayer guarantees the debt on which the interest is required.
16 The adjustments required by this subparagraph shall not apply to
17 transactions between related members included in a combined
18 group reported on a New Jersey combined return.

19 (J) (i) Amounts deducted for federal tax purposes pursuant to
20 section 199 of the federal Internal Revenue Code of 1986, 26
21 U.S.C. s.199, except that this exclusion shall not apply to amounts
22 deducted pursuant to that section that are exclusively based upon
23 domestic production gross receipts of the taxpayer which are
24 derived only from any lease, rental, license, sale, exchange, or other
25 disposition of qualifying production property which the taxpayer
26 demonstrates to the satisfaction of the director was manufactured or
27 produced by the taxpayer in whole or in significant part within the
28 United States but not qualified production property that was grown
29 or extracted by the taxpayer. "Manufactured or produced" as used
30 in this paragraph shall be limited to performance of an operation or
31 series of operations the object of which is to place items of tangible
32 personal property in a form, composition, or character different
33 from that in which they were acquired. The change in form,
34 composition, or character shall be a substantial change, and result in
35 a transformation of property into a different or substantially more
36 usable product.

37 (ii) For privilege periods beginning after December 31, 2017,
38 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-
39 1 et seq.) or any other law to the contrary, for the purposes of
40 determining the amount of income pursuant to P.L.1945, c.162
41 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be
42 taken as a deduction pursuant to section 199A of the Internal
43 Revenue Code (26 U.S.C. s.199A).

44 (K) For privilege periods beginning after December 31, 2017,
45 the interest deduction limitation in subsection (j) of section 163 of
46 the Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-
47 rata basis to interest paid to both related and unrelated parties,
48 regardless of whether the related parties are subject to the add-back

1 provision of either subparagraph (I) of paragraph (2) of this
2 subsection or in section 5 of P.L.2002, c.40 (C.54:10A-4.4).

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

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

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

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

18 (i) Making, arranging for, placing or carrying loans to foreign
19 persons, provided, however, that in the case of a foreign person
20 which is an individual, or which is a foreign branch of a domestic
21 corporation (other than a bank), or which is a foreign corporation or
22 foreign partnership which is controlled by one or more domestic
23 corporations (other than banks), domestic partnerships or resident
24 individuals, all the proceeds of the loan are for use outside of the
25 United States;

26 (ii) Making or placing deposits with foreign persons which are
27 banks or foreign branches of banks (including foreign subsidiaries)
28 or foreign branches of the taxpayers or with other international
29 banking facilities;

30 (iii) Entering into foreign exchange trading or hedging
31 transactions related to any of the transactions described in this
32 paragraph; or

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

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

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

44 (ii) For privilege periods beginning after December 31, 2016
45 and before January 1, 2019, entire net income shall exclude 95% of
46 dividends which were included in computing such taxable income
47 for federal income tax purposes, paid or deemed paid, to the
48 taxpayer by one or more subsidiaries owned by the taxpayer to the

1 extent of the 80% or more ownership of investment described in
2 subsection (d) of this section. For the purposes of calculating the
3 tax liability owed for the paid or deemed paid dividends included in
4 entire net income by this ~~【subsection】~~ subsubparagraph (ii), the
5 taxpayer shall use either their three-year average allocation factor
6 for the taxpayer's 2014 through 2016 tax years reported on the
7 taxpayer's tax returns or 3.5 percent, whichever is lower.

8 (iii) For privilege periods beginning on and after January 1,
9 2019, entire net income shall exclude 95% of dividends which were
10 included in computing such taxable income for federal income tax
11 purposes, paid or deemed paid to the taxpayer by one or more
12 subsidiaries owned by the taxpayer to the extent of the 80% or more
13 ownership of investment described in subsection (d) of this section.

14 (B) Entire net income shall exclude 50% of dividends which
15 were included in computing such taxable income for federal income
16 tax purposes, paid or deemed paid to the taxpayer by one or more
17 subsidiaries owned by the taxpayer to the extent of 50% or more
18 ownership of investment, such ownership of investment calculated
19 in the same manner as the 80% or more of ownership of investment
20 is calculated as described in subsection (d) of this section.

21 (C) To the extent a subsidiary received dividends from other
22 subsidiaries and included those dividends in its entire net income
23 for the purposes of determining its tax liability pursuant to section 5
24 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,
25 the taxpayer receiving those same dividends from the subsidiary
26 shall exclude those dividends from its entire net income based on
27 the subsidiary's allocation factor used by the subsidiary in
28 determining its tax liability pursuant to section 5 of P.L.1945, c.162
29 (C.54:10A-5). This subparagraph (C) shall not apply to privilege
30 periods ending on and after July 31, 2019.

31 (D) For privilege periods ending on and after July 31, 2019 but
32 before July 31, 2020, to the extent a subsidiary received dividends
33 from other subsidiaries and included those dividends in its entire net
34 income for the purposes of determining its tax liability pursuant to
35 section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those
36 dividends, the taxpayer receiving those same dividends from the
37 subsidiary shall exclude those dividends from its entire net income.

38 (E) For privilege periods ending on and after July 31, 2020, for
39 purposes of this paragraph (5), the members of a combined group
40 filing a New Jersey combined return shall be treated as one taxpayer
41 with regard to dividends and deemed dividends that were received
42 as part of the unitary business of the combined group.

43 (6) (A) Net operating loss deduction. For privilege periods
44 ending before July 31, 2019, there shall be allowed as a deduction
45 for the privilege period the net operating loss carryover to that
46 period.

47 (B) Net operating loss carryover. A net operating loss for any
48 privilege period ending after June 30, 1984 shall be a net operating

1 loss carryover to each of the seven privilege periods following the
2 period of the loss and a net operating loss for any privilege period
3 ending after June 30, 2009 shall be a net operating loss carryover to
4 each of the twenty privilege periods following the period of the
5 loss. The entire amount of the net operating loss for any privilege
6 period (the "loss period") shall be carried to the earliest of the
7 privilege periods to which the loss may be carried. The portion of
8 the loss which shall be carried to each of the other privilege periods
9 shall be the excess, if any, of the amount of the loss over the sum of
10 the entire net income, computed without the exclusions permitted in
11 paragraphs (4) and (5) of this subsection or the net operating loss
12 deduction provided by subparagraph (A) of this paragraph, for each
13 of the prior privilege periods to which the loss may be carried.

14 (C) Net operating loss. For purposes of this paragraph the term
15 "net operating loss" means the excess of the deductions over the
16 gross income used in computing entire net income without the net
17 operating loss deduction provided for in subparagraph (A) of this
18 paragraph and the exclusions in paragraphs (4) and (5) of this
19 subsection.

20 (D) Change in ownership. Where there is a change in 50% or
21 more of the ownership of a corporation because of redemption or
22 sale of stock and the corporation changes the trade or business
23 giving rise to the loss, no net operating loss sustained before the
24 changes may be carried over to be deducted from income earned
25 after such changes. In addition where the facts support the premise
26 that the corporation was acquired under any circumstances for the
27 primary purpose of the use of its net operating loss carryover, the
28 director may disallow the carryover.

29 (E) Notwithstanding the provisions of this paragraph (6) of
30 subsection (k) of this section to the contrary, for privilege periods
31 beginning during calendar year 2002 and calendar year 2003, no
32 deduction for any net operating loss carryover shall be allowed and
33 for privilege periods beginning during calendar year 2004 and
34 calendar year 2005, there shall be allowed as a deduction for the
35 privilege period so much of the net operating loss carryover as
36 reduces entire net income otherwise calculated by 50%. If and only
37 to the extent that any net operating loss carryover deduction is
38 disallowed by reason of this subparagraph (E), the date on which
39 the amount of the disallowed net operating loss carryover deduction
40 would otherwise expire shall be extended by a period equal to the
41 period for which application of the net operating loss was
42 disallowed by this subparagraph.

43 Provided, that this subparagraph (E) shall not restrict the
44 surrender or acquisition of corporation business tax benefit
45 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
46 7.42a) and shall not restrict the application of corporation business
47 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
48 (C.54:10A-4.2).

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

8 (7) The entire net income of gas, electric and gas and electric
9 public utilities that were subject to, or would have been subject to
10 tax if doing business in this State, the provisions of P.L.1940, c.5
11 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
12 substituting the New Jersey depreciation allowance for federal tax
13 depreciation with respect to assets placed in service prior to January
14 1, 1998. For gas, electric, and gas and electric public utilities that
15 were subject to, or would have been subject to tax if doing business
16 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
17 prior to 1998, the New Jersey depreciation allowance shall be
18 computed as follows: All depreciable assets placed in service prior
19 to January 1, 1998 shall be considered a single asset account. The
20 New Jersey tax basis of this depreciable asset account shall be an
21 amount equal to the carryover adjusted basis for federal income tax
22 purposes on December 31, 1997 of all depreciable assets in service
23 on December 31, 1997, increased by the excess, of the "net carrying
24 value," defined to be adjusted book basis of all assets and liabilities,
25 excluding deferred income taxes, recorded on the public utility's
26 books of account on December 31, 1997, over the carryover
27 adjusted basis for federal income tax purposes on December 31,
28 1997 of all assets and liabilities owned by the gas, electric, or gas
29 and electric public utility as of December 31, 1997. "Books of
30 account" for gas, gas and electric, and electric public utilities means
31 the uniform system of accounts as promulgated by the Federal
32 Energy Regulatory Commission and adopted by the Board of Public
33 Utilities. The following adjustments to entire net income shall be
34 made pursuant to this section:

35 (A) Depreciation for property placed in service prior to January
36 1, 1998 shall be adjusted as follows:

37 (i) Depreciation for federal income tax purposes shall be
38 disallowed in full.

39 (ii) A deduction shall be allowed for the New Jersey
40 depreciation allowance. The New Jersey depreciation allowance
41 shall be computed for the single asset account described above
42 based on the New Jersey tax basis as adjusted above as if all assets
43 in the single asset account were first placed in service on January 1,
44 1998. Depreciation shall be computed using the straight line method
45 over a thirty-year life. A full year's depreciation shall be allowed in
46 the initial tax year. No half-year convention shall apply. The
47 depreciable basis of the single account shall be reduced by the
48 adjusted federal tax basis of assets sold, retired, or otherwise

1 disposed of during any year on which gain or loss is recognized for
2 federal income tax purposes as described in subparagraph (B) of
3 this paragraph.

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

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

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

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

25 (10) Entire net income shall exclude all income of an alien
26 corporation the activities of which are limited in this State to
27 investing or trading in stocks and securities for its own account,
28 investing or trading in commodities for its own account, or any
29 combination of those activities, within the meaning of section 864
30 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
31 effect on December 31, 1998. Notwithstanding the previous
32 sentence, if an alien corporation undertakes one or more infrequent,
33 extraordinary or non-recurring activities, including but not limited
34 to the sale of tangible property, only the income from such
35 infrequent, extraordinary or non-recurring activity shall be subject
36 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-
37 1 et seq.), and that amount of income subject to tax shall be
38 determined without regard to the allocation to that specific
39 transaction of any general business expense of the taxpayer and
40 shall be specifically assigned to this State for taxation by this State
41 without regard to section 6 of P.L.1945, c.162 (C.54:10A-6). For
42 the purposes of this paragraph, "alien corporation" means a
43 corporation organized under the laws of a jurisdiction other than the
44 United States or its political subdivisions.

45 (11) No deduction shall be allowed for research and
46 experimental expenditures, to the extent that those research and
47 experimental expenditures are qualified research expenses or basic
48 research payments for which an amount of credit is claimed

1 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless
2 those research and experimental expenditures are also used to
3 compute a federal credit claimed pursuant to section 41 of the
4 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

5 (12) (A) Notwithstanding the provisions of subsection (k) of
6 section 168 of the federal Internal Revenue Code of 1986,
7 26 U.S.C. s.168, subsection (b) of section 1400L of the federal
8 Internal Revenue Code of 1986, 26 U.S.C. s.1400L, or any other
9 federal law, for property acquired after September 10, 2001, the
10 depreciation deduction otherwise allowed pursuant to section 167 of
11 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
12 be determined pursuant to the provisions of the federal Internal
13 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
14 December 31, 2001.

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

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

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

32 (14) Notwithstanding the provisions of subsection (i) of section
33 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
34 for privilege periods beginning after December 31, 2008 and before
35 January 1, 2011, entire net income shall include the amount of
36 discharge of indebtedness income excluded for federal income tax
37 purposes pursuant to subsection (i) of section 108 of the federal
38 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
39 periods beginning on or after January 1, 2014 and before January 1,
40 2019, entire net income shall exclude the amount of discharge of
41 indebtedness income included for federal income tax purposes,
42 pursuant to subsection (i) of section 108 of the federal Internal
43 Revenue Code of 1986 (26 U.S.C. s.108).

44 (15) Entire net income shall exclude the gain or income derived
45 from the sale or assignment of a tax credit transfer certificate
46 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
47 10 of P.L.2014, c.63 (C.34:1B-251).

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

3 (B) For purposes of this paragraph, "net deferred tax liability"
4 means deferred tax liabilities that exceed the deferred tax assets of
5 the combined group, as computed in accordance with generally
6 accepted accounting principles, and "net deferred tax asset" means
7 that deferred tax assets exceed the deferred tax liabilities of the
8 combined group, as computed in accordance with generally
9 accepted accounting principles.

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

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

22 (E) For 10 years beginning with the combined group's first
23 privilege period beginning on or after January 1 of the fifth year
24 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a
25 combined group shall be entitled to a deduction from combined
26 group entire net income equal to one-tenth of the amount necessary
27 to offset the increase in the net deferred tax liability or decrease in
28 the net deferred tax asset, or aggregate change from a net deferred
29 tax asset to a net deferred tax liability. Such increase in the net
30 deferred tax liability or decrease in the net deferred tax asset or the
31 aggregate change from a net deferred tax asset to a net deferred tax
32 liability shall be computed based on the change that would result
33 from the imposition of the unitary reporting requirements under
34 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and
35 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided
36 under this paragraph as of the effective date of this paragraph.

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

40 (i) the deferred tax impact determined in subparagraph (E) of
41 this paragraph shall be divided by the rate determined under section
42 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
43 c.48 (C.54:10A-5.41 et al.);

44 (ii) the resulting amount shall be further divided by the New
45 Jersey unitary business allocation factor that was used by the
46 combined group in the calculation of the deferred tax assets and
47 deferred tax liabilities as described in subparagraph (E) of this
48 paragraph;

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

4 (G) The deduction calculated under this paragraph shall not be
5 adjusted as a result of any events happening subsequent to such
6 calculation, including, but not limited to, any disposition or
7 abandonment of assets. Such deduction shall be calculated without
8 regard to the federal tax effect and shall not alter the tax basis of
9 any asset. If the deduction under this section is greater than
10 combined group entire net income, any excess deduction shall be
11 carried forward and applied as a deduction to combined group entire
12 net income in future privilege periods until fully utilized.

13 (H) Any combined group intending to claim a deduction under
14 this paragraph shall file a statement with the director on or before
15 July 1 of the year subsequent to the first privilege period for which
16 a combined return is required. Such statement shall specify the
17 total amount of the deduction which the combined group claims on
18 such form and in such manner as prescribed by the director. No
19 deduction shall be allowed under this paragraph for any privilege
20 period except to the extent claimed on such timely filed statement
21 in accordance with this paragraph.

22 (I) "Real estate investment trust" shall mean any corporation,
23 trust or association qualifying and electing to be taxed as a real
24 estate investment trust under federal law.

25 (m) "Financial business corporation" shall mean any corporate
26 enterprise which is (1) in substantial competition with the business
27 of national banks and which (2) employs moneyed capital with the
28 object of making profit by its use as money, through discounting
29 and negotiating promissory notes, drafts, bills of exchange and
30 other evidences of debt; buying and selling exchange; making of or
31 dealing in secured or unsecured loans and discounts; dealing in
32 securities and shares of corporate stock by purchasing and selling
33 such securities and stock without recourse, solely upon the order
34 and for the account of customers; or investing and reinvesting in
35 marketable obligations evidencing indebtedness of any person,
36 copartnership, association or corporation in the form of bonds,
37 notes or debentures commonly known as investment securities; or
38 dealing in or underwriting obligations of the United States, any
39 state or any political subdivision thereof, or of a corporate
40 instrumentality of any of them. This shall include, without
41 limitation of the foregoing, business commonly known as industrial
42 banks, dealers in commercial paper and acceptances, sales finance,
43 personal finance, small loan and mortgage financing businesses, as
44 well as any other enterprise employing moneyed capital coming
45 into competition with the business of national banks; provided that
46 the holding of bonds, notes, or other evidences of indebtedness by
47 individual persons not employed or engaged in the banking or
48 investment business and representing merely personal investments

1 not made in competition with the business of national banks, shall
2 not be deemed financial business. Nor shall "financial business"
3 include national banks, production credit associations organized
4 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
5 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
6 insurance companies duly authorized to transact business in this
7 State, security brokers or dealers or investment companies or
8 bankers not employing moneyed capital coming into competition
9 with the business of national banks, real estate investment trusts, or
10 any of the following entities organized under the laws of this State:
11 credit unions, savings banks, savings and loan and building and
12 loan associations, pawnbrokers, and State banks and trust
13 companies.

14 (n) "International banking facility" shall mean a set of asset and
15 liability accounts segregated on the books and records of a
16 depository institution, United States branch or agency of a foreign
17 bank, or an Edge or Agreement Corporation that includes only
18 international banking facility time deposits and international
19 banking facility extensions of credit as such terms are defined in
20 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
21 board of governors of the Federal Reserve System, 12 CFR Part
22 204, effective December 3, 1981. In the event that the United
23 States enacts a law, or the board of governors of the Federal
24 Reserve System adopts a regulation which amends the present
25 definition of international banking facility or of such facilities' time
26 deposits or extensions of credit, the Commissioner of Banking and
27 Insurance shall forthwith adopt regulations defining such terms in
28 the same manner as such terms are set forth in the laws of the
29 United States or the regulations of the board of governors of the
30 Federal Reserve System. The regulations of the Commissioner of
31 Banking and Insurance shall thereafter provide the applicable
32 definitions.

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

36 (p) "New Jersey S corporation" means a corporation that is an S
37 corporation; which has made a valid election pursuant to section 3
38 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
39 corporation continuously since the effective date of the valid
40 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
41 5.22).

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

44 (r) "Qualified investment partnership" means a partnership
45 under this act that has more than 10 members or partners with no
46 member or partner owning more than a 50% interest in the entity
47 and that derives at least 90% of its gross income from dividends,
48 interest, payments with respect to securities loans, and gains from

1 the sale or other disposition of stocks or securities or foreign
2 currencies or commodities or other similar income (including but
3 not limited to gains from swaps, options, futures or forward
4 contracts) derived with respect to its business of investing or
5 trading in those stocks, securities, currencies or commodities, but
6 "investment partnership" shall not include a "dealer in securities"
7 within the meaning of section 1236 of the federal Internal Revenue
8 Code of 1986, 26 U.S.C. s.1236.

9 (s) "Savings institution" means a state or federally chartered
10 building and loan association, savings and loan association, or
11 savings bank.

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

14 (u) "Prior net operating loss conversion carryover" means a net
15 operating loss incurred in a privilege period ending prior to July 31,
16 2019 and converted from a pre-allocation net operating loss to a
17 post-allocation net operating loss as follows:

18 (1) As used in this subsection:

19 "Base year" means the last privilege period ending prior to July
20 31, 2019.

21 "Base year BAF" means the taxpayer's business allocation factor
22 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
23 6 through C.54:10A-10) for purposes of calculating entire net
24 income for the base year, as such section was in effect for the last
25 privilege period ending prior to July 31, 2019.

26 "UNOL" means the unabsorbed portion of net operating loss as
27 calculated under paragraph (6) of subsection (k) of this section as
28 such paragraph was in effect for the last privilege period ending
29 prior to July 31, 2019, that was not deductible in previous privilege
30 periods and was eligible for carryover on the last day of the base
31 year subject to the limitations for deduction under such subsection,
32 including any net operating loss sustained by the taxpayer during
33 the base year.

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

36 (A) The taxpayer shall first calculate the tax value of its UNOL
37 for the base year and for each preceding privilege period for which
38 there is a UNOL. The value of the UNOL for each privilege period
39 is equal to the product of (I) the amount of the taxpayer's UNOL for
40 a privilege period, and (II) the taxpayer's base year BAF. This result
41 shall equal the taxpayer's prior net operating loss conversion
42 carryover.

43 (B) The taxpayer shall continue to carry over its prior net
44 operating loss conversion carryover to offset its allocated entire net
45 income as provided in sections 6 through 10 of P.L.1945, c.162
46 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
47 and after July 31, 2019. Such carryover periods shall not exceed
48 the twenty privilege periods following the privilege period of the

1 initial loss. The entire amount of the prior net operating loss
2 conversion carryover for any privilege period shall be carried to the
3 earliest of the privilege periods to which the loss may be carried.
4 The portion of the prior net operating loss conversion carryover
5 which shall be carried to each of the other privilege periods shall be
6 the excess, if any, of the amount of the prior net operating loss
7 conversion carryover over the sum of the entire net income,
8 computed without the exclusions permitted in paragraphs (4) and
9 (5) of subsection (k) of this section allocated to this State.

10 (C) The prior net operating loss conversion carryover computed
11 under this subsection shall be applied against the entire net income
12 allocated to this State before the net operating loss carryover
13 computed under subsection (v) of this section.

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

17 (1) Net operating loss carryover. A net operating loss for any
18 privilege period ending on or after July 31, 2019, shall be a net
19 operating loss carryover to each of the twenty privilege periods
20 following the period of the loss. The entire amount of the net
21 operating loss for any privilege period shall be carried to the earliest
22 of the privilege periods to which the loss may be carried. The
23 portion of the loss which shall be carried to each of the other
24 privilege periods shall be the excess, if any, of the amount of the
25 loss over the sum of the entire net income, computed without the
26 exclusions permitted in paragraphs (4) and (5) of subsection (k) of
27 this section allocated to this State.

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

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

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

45 (5) Change in ownership. Where there is a change in 50% or
46 more of the ownership of a corporation because of redemption or
47 sale of stock and the corporation changes the trade or business
48 giving rise to the loss, no net operating loss sustained before the

1 changes may be carried over to be deducted from income earned
2 after such changes. In addition, where the facts support the premise
3 that the corporation was acquired under any circumstances for the
4 primary purpose of the use of its net operating loss carryover, the
5 director may disallow the carryover; provided, however, this
6 paragraph shall not apply between members of a combined group
7 reported on a New Jersey combined return.

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

14 (x) "Affiliated group" means, for purposes of section 23 of
15 P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in
16 section 1504 of the federal Internal Revenue Code, 26 U.S.C.
17 s.1504, except such affiliated group shall include all U.S. domestic
18 corporations that are commonly owned, directly or indirectly, by
19 any member of such affiliated group, without regard to whether the
20 affiliated group includes (1) corporations included in more than one
21 federal consolidated return, (2) corporations engaged in one or more
22 unitary businesses, or (3) corporations that are not engaged in a
23 unitary business with any other member of the affiliated group.

24 For purposes of this subsection:

25 "U.S. domestic corporations" means: (1) business entities
26 wherever incorporated or formed that are U.S. domestic
27 corporations, are deemed to be, or are treated as U.S. domestic
28 corporations under the provisions of the federal Internal Revenue
29 Code; or (2) any entities incorporated or formed under the laws of a
30 foreign nation that are required to file federal tax returns if such
31 entities have effectively connected income within the meaning of
32 the federal Internal Revenue Code; and

33 "commonly owned" means that more than 50 percent of the
34 voting control of each member of an affiliated group is directly or
35 indirectly owned by a common owner or owners, either corporate or
36 non-corporate, whether or not the owner or owners are members of
37 the affiliated group. Whether voting control is indirectly owned
38 shall be determined in accordance with section 318 of the federal
39 Internal Revenue Code (26 U.S.C. s.318).

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

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

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

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

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

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

13 For purposes of this definition:

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

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

29 "Premiums" includes consideration for annuity contracts and
30 excludes any part of the consideration for insurance, reinsurance, or
31 annuity contracts that do not provide bona fide insurance,
32 reinsurance, or annuity benefits.

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

39 A combined group shall be treated, for privilege periods ending
40 on and after July 31, 2020, as one taxpayer for purposes of
41 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162
42 (C.54:10A-5) ¹and section 1 of P.L.2018, c.48 (C.54:10A-5.41) ¹ for
43 the income derived from the unitary business ¹], and a combined
44 group shall be treated as one taxpayer for transactions entered into
45 on and after July 31, 2020 that are intercompany transfers between
46 combined group members as part of the unitary business the
47 transfers of which would otherwise be subject to the realty transfer
48 fee imposed under section 8 of P.L.2004, c.66 (C.46:15-7.2), the

1 controlling interest transfer tax imposed under section 3 of
2 P.L.2006, c.33 (C.54:15C-1), or the bulk sales notice requirements
3 of section 5 of P.L.2007, c.100 (C.54:50-38)] ; provided however,
4 with regard to the surtax imposed pursuant to section 1 of P.L.2018,
5 c.48 (C.54:10A-5.41) and for that purpose only, the portion of
6 income that is attributable to a member which is a public utility
7 exempt from the surtax shall not be included when computing the
8 surtax due¹.

9 (aa) "Common ownership" means that more than 50% of the
10 voting control of each member of a combined group is directly or
11 indirectly owned by a common owner or owners, either corporate or
12 non-corporate, whether or not the owner or owners are members of
13 the combined group. Whether voting control is indirectly owned
14 shall be determined in accordance with section 318 of the federal
15 Internal Revenue Code, 26 U.S.C. s.318.

16 (bb) "Group privilege period" means, if two or more members
17 in the combined group file in the same federal consolidated tax
18 return, the same income year as that used on the federal
19 consolidated tax return and, in all other cases, the privilege period
20 of the managerial member.

21 (cc) "Managerial member" means if the combined group has a
22 common parent corporation and that common parent corporation is
23 a taxable member, the managerial member shall be the common
24 parent corporation. In other cases, the combined group shall select
25 a taxable member as its managerial member or, in the discretion of
26 the director or upon failure of the combined group to select its
27 managerial member, the director shall designate a taxable member
28 of the combined group as managerial member.

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

31 A corporation exempt pursuant to section 3 of P.L.1945, c.162
32 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-
33 1 et seq.) shall not be a member of a combined group.

34 (ee) "Nontaxable member" means a member that is: (i) not
35 subject to tax pursuant to the Corporation Business Tax Act (1945),
36 P.L.1945, c.162 (C.54:10A-1 et seq.) **【and is not a corporation**
37 **exempted from the tax pursuant to section 3 of P.L.1945, c.162**
38 **(C.54:10A-3) except for a combinable captive insurance company】;**
39 **or (ii) 【a New Jersey S Corporation which does not elect to be**
40 **included in the combined group】** (deleted by amendment,
41 P.L. , c.) (pending before the Legislature as this bill).

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

45 A New Jersey S corporation shall only be included as a taxable
46 member of a combined group filing a New Jersey combined return
47 if the New Jersey S Corporation elects to be included as a member

1 and taxed at the same rate as the other members of the combined
2 group. A New Jersey S corporation that does not elect to be
3 included shall be excluded as a member of the combined return and
4 shall file a separate return.

5 (gg) "Unitary business" means a single economic enterprise that
6 is made up either of separate parts of a single business entity or of a
7 group of business entities under common ownership that are
8 sufficiently interdependent, integrated, and interrelated through
9 their activities so as to provide a synergy and mutual benefit that
10 produces a sharing or exchange of value among them and a
11 significant flow of value among the separate parts. "Unitary
12 business" shall be construed to the broadest extent permitted under
13 the Constitution of the United States. A business conducted by a
14 partnership which is in a unitary business with the combined group
15 shall be treated as the business of the partners that are members of
16 the combined group, whether the partnership interest is held directly
17 or indirectly through a series of partnerships, to the extent of a
18 partner's distributive share of partnership income. The amount of
19 partnership income to be included in the partner's entire net income
20 shall be determined in accordance with subsection a. of section 3 of
21 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
22 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business
23 conducted directly or indirectly by one corporation is unitary with
24 that portion of a business conducted by another corporation through
25 its direct or indirect interest in a partnership.

26 (cf: P.L.2018, c.131, s.2)

27
28 4. Section 2 of P.L.1997, c.334 (C.54:10A-4.2) is amended to
29 read as follows:

30 2. a. Notwithstanding the provisions of paragraph (6) of
31 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the
32 contrary, a taxpayer that has acquired a corporation business tax
33 benefit certificate pursuant to the provisions of section 1 of
34 P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a net
35 operating loss carryover deduction shall attach that certificate to
36 any return the taxpayer is required to file under P.L.1945, c.162
37 (C.54:10A-1 et seq.), and shall determine the amount of its net
38 operating loss carryover deduction by multiplying the surrendered
39 net operating loss by the new or expanding emerging technology or
40 biotechnology company's anticipated allocation factor determined
41 pursuant to subsection b. of section 1 of P.L.1997, c.334 (C.34:1B-
42 7.42a) and subsequently dividing the amount by the taxpayer's
43 allocation factor determined pursuant to section 6 of P.L.1945,
44 c.162 (C.54:10A-6) for the tax year in which the surrendered tax
45 benefit is used. The taxpayer shall otherwise apply the net
46 operating loss carryover deduction as evidenced by the certificate
47 according to the provisions of subsection (k) of section 4 of

1 P.L.1945, c.162 and any rules or regulations the director may adopt
2 to carry out the provisions of this section.

3 b. A new or expanding emerging technology or biotechnology
4 company that has surrendered an unused net operating loss
5 carryover pursuant to the provisions of section 1 of P.L.1997, c.334
6 (C.34:1B-7.42a), shall not be allowed a net operating loss carryover
7 deduction based upon the right to such a deduction as evidenced by
8 the corporation business tax benefit certificate and shall attach a
9 copy of the certificate to any return the taxpayer is required to file
10 under P.L.1945, c.162 (C.54:10A-1 et seq.).

11 c. The unused prior net operating loss conversion carryover
12 deduction and unused net operating loss carryover deduction of a
13 taxpayer under subsections (u) and (v) of section 4 of P.L.1945,
14 c.162 (C.54:10A-4) shall also qualify to be surrendered for the
15 purposes of this section and section 1 of P.L.1997, c.334
16 (C.34:1B-7.42a) by a new or expanding emerging technology or
17 biotechnology company. A taxpayer or combined group that has
18 acquired a corporation business tax benefit certificate pursuant to
19 the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that
20 includes the right to a prior net operating loss conversion carryover
21 deduction or a net operating loss carryover deduction shall attach
22 that certificate to any return the taxpayer or the combined group is
23 required to file under P.L.1945, c.162 (C.54:10A-1 et seq.) and
24 shall determine the amount of its net operating loss carryover
25 deduction in a manner prescribed by the director by regulation for
26 the tax year in which the surrendered tax benefit is used.

27 The managerial member of a combined group shall be the
28 member acquiring the prior net operating loss conversion carryover
29 deduction and net operating loss carryover deduction on behalf of
30 the combined group. The taxpayer or combined group shall apply
31 the prior net operating loss conversion carryover deduction and net
32 operating loss carryover deduction, as evidenced by the certificate,
33 according to the provisions of section 4 of P.L.1945, c.162
34 (C.54:10A-4) or section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
35 any rules or regulations the director adopts to carry out the
36 provisions of this section.

37 A member of a combined group may sell prior net operating loss
38 conversion carryover to other members of the combined group, if
39 otherwise applicable and allowable under this section and section 1
40 of P.L.1997, c.334 (C.34:1B-7.42a); provided, however, such sale
41 of prior net operating loss conversion carryover shall be made at
42 arm's length price at the same rate as though the sale was to an
43 unrelated taxpayer.

44 (cf: P.L.1999, c.140, s.3)

45
46 5. Section 27 of P.L.2002, c.40 (C.54:10A-4.5) is amended to
47 read as follows:

1 27. a. Notwithstanding any provision of subsection (k) of
2 section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal
3 Revenue Code, including but not limited to 26 U.S.C. s.381 or any
4 successor or equivalent provision, that permits a corporation to use
5 the net operating losses of another for federal income tax purposes
6 following certain transactions, including but not limited to those
7 qualifying as reorganizations under the provisions of subparagraph
8 (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of
9 section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368,
10 a net operating loss for a privilege period ending after June 30,
11 1984, may be carried over and allowed as a deduction only by the
12 corporation that sustained the loss; provided, however, that in the
13 case of a merger of two or more corporations pursuant to statute of
14 this State or any other jurisdiction, the net operating loss may be
15 carried over only by the corporation that sustained the loss and that
16 is also the surviving corporation following the merger. The net
17 operating loss may not be carried over by a taxpayer that changes
18 its state of incorporation.

19 b. Subsection a. of this section shall not apply: (1) between
20 members of a combined group reported on a combined return in
21 New Jersey, or (2) between members of [a commonly owned] an
22 affiliated group reported on the elective combined return in New
23 Jersey, or (3) if corporations that were parties to the merger would
24 be members of the combined group reported on a combined return
25 in New Jersey within one group privilege period subsequent to the
26 date of the merger, unless there is an unforeseen delay due to
27 required approvals from federal or other state regulatory authorities
28 that delays the finality of the merger or acquisition. In a situation
29 where there is delay due to the regulatory approval requirements of
30 federal or other state regulatory authorities, the corporations may
31 petition the director, in a form and manner prescribed by the
32 director, documenting that the corporations' plan to be a combined
33 group filing a New Jersey combined return upon approval of the
34 merger or acquisition by the federal or other state regulatory
35 authorities. Within 180 days of approval by the federal or other
36 state regulatory authorities of the merger or acquisition, the
37 corporations shall notify the Division of Taxation of the approval
38 and the director shall issue a stamped certificate of attestation
39 attesting that the net operating loss carryovers are not extinguished.
40 The provisions of this paragraph (3) shall only apply to mergers and
41 acquisitions occurring on or after ¹[January 1, 2020] the effective
42 date of P.L. __, c. (C. __) (pending before the Legislature as this
43 bill)¹ and shall not apply to a binding agreement in effect prior to
44 ¹[January 1, 2020] the effective date of P.L. __, c. (C. __)
45 (pending before the Legislature as this bill)¹.

46 c. For privilege periods beginning on and after January 1,
47 2020, the provisions of the federal Internal Revenue Code, the

1 federal rules, limitations, and restrictions, thereto, governing federal
2 net operating losses, federal net operating loss carryovers with
3 regard but not limited to: mergers, acquisitions, reorganizations,
4 spin-offs, split-offs, dissolution, bankruptcy, or any form of
5 cessation of a business, or any other provision that limits or reduces
6 federal net operating losses and federal net operating loss
7 carryovers, shall apply to New Jersey net operating loss carryovers
8 under subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4)
9 and the New Jersey net operating loss carryover provisions of
10 subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

11 The federal rules and regulations governing federal consolidated
12 return net operating losses and net operating loss carryovers shall
13 apply to New Jersey net operating loss carryover provisions of
14 subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) as
15 though the combined group filed a federal consolidated return,
16 regardless of how the members of the combined group filed for
17 federal purposes to the extent consistent with the Corporation
18 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).
19 (cf: P.L.2018, c.48, s.25)
20

21 6. Section 18 of P.L.2018, c.48 (C.54:10A-4.6) is amended to
22 read as follows:

23 18. A taxable member of a combined group shall determine its
24 entire net income from the unitary business as its share of the entire
25 net income of the combined group in accordance with a combined
26 unitary tax return made pursuant to this section and sections 19, 20,
27 and 23 of P.L.2018, c.48 **[(C.54:18A-4.7, C.54:18A-4.8, and**
28 **C.54:10A-4.11)]** (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-
29 4.11). The entire net income from the unitary business of a
30 combined group is the sum of the entire net incomes of each taxable
31 member and each nontaxable member of the combined group
32 derived from the unitary business, which shall be determined as
33 follows:

34 a. For a member incorporated in the United States, the income
35 to be included in the entire net income of the combined group shall
36 be the member's entire net income otherwise determined pursuant to
37 the Corporation Business Tax Act (1945), P.L.1945, c.162
38 (C.54:10A-1 et seq.).

39 b. For a member not incorporated in the United States, the
40 income to be included in the entire net income of the combined
41 group shall be determined from a profit and loss statement that shall
42 be prepared for each foreign branch or corporation in the currency
43 in which the books of account of the branch or corporation are
44 regularly maintained, adjusted to conform it to the accounting
45 principles generally accepted in the United States for the
46 presentation of those statements and further adjusted to take into
47 account any book-tax differences required by federal or State law.
48 The profit and loss statement of each foreign member of the

1 combined group and the allocation factors related thereto, whether
2 United States or foreign, shall be translated into or from the
3 currency in which the parent company maintains its books and
4 records on any reasonable basis consistently applied on a year-to-
5 year or entity-by-entity basis. Income shall be expressed in United
6 States dollars. In lieu of these procedures and subject to the
7 determination of the director that the income to be reported
8 reasonably approximates income as determined under the
9 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-
10 1 et seq.), income may be determined on any reasonable basis
11 consistently applied on a year-to-year or entity-by-entity basis.

12 c. (1) If a member of a combined group receives income from
13 the unitary business from a partnership, the combined group's entire
14 net income shall include the member's direct and indirect
15 distributive share of the partnership's unitary business income.

16 (2) The distributive share of income received by a limited
17 partner from a qualified investment partnership shall not be
18 considered to be derived from a unitary business unless the general
19 partner of such investment partnership and such limited partner
20 have common ownership. To the extent that the limited partner is
21 otherwise carrying on or doing business in New Jersey, it shall
22 allocate its distributive share of income from a qualified investment
23 partnership in accordance with subsection a. of section 3 of
24 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
25 P.L.2001, c.136 (C.54:10A-15.7) as applicable. If the limited
26 partner is not otherwise carrying on or doing business in New
27 Jersey, its distributive share of income from an investment
28 partnership is not subject to tax under this chapter.

29 d. All dividends paid by one member to another member of the
30 combined group shall be eliminated from the income of the
31 recipient.

32 e. Except as otherwise provided by regulation, business income
33 from an intercompany transaction among members of the same
34 combined group shall be deferred in a manner similar to the deferral
35 under 26 C.F.R. s.1.1502-13, as determined by the director. Upon
36 the occurrence of either of the events set forth in **[subparagraphs]**
37 paragraphs (1) and (2) of this subsection, deferred income resulting
38 from an intercompany transaction among members of a combined
39 group shall be restored to the income of the seller and shall be
40 included in the net income of the combined group as if the seller
41 had earned the income immediately before the event:

42 (1) The object of a deferred intercompany transaction is: (a)
43 resold by the buyer to an entity that is not a member of the
44 combined group, (b) resold by the buyer to an entity that is a
45 member of the combined group for use outside the unitary business
46 in which the buyer and seller are engaged, or (c) converted by the
47 buyer to a use outside the unitary business in which the buyer and
48 seller are engaged; or

1 (2) The buyer and seller cease to be members of the same
2 combined group, regardless of whether the buyer and seller remain
3 sufficiently interdependent, integrated, and interrelated through
4 their activities so as to provide a synergy and mutual benefit that
5 produces a sharing or exchange of value between them.

6 In the case of an event set forth in paragraph (2) of this
7 subsection, no portion of the income or loss shall be included in
8 entire net income of the combined group, but shall be included in
9 the entire net income of the respective member.

10 f. A charitable expense incurred by a member of a combined
11 group shall, to the extent allowable as a deduction pursuant to
12 section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170,
13 be subtracted first from the combined group's entire net income,
14 subject to the income limitations of that section applied to the entire
15 **business** net income of the group. A charitable deduction
16 disallowed under section 170 of the federal Internal Revenue Code,
17 26 U.S.C. s.170, but allowed as a carryover deduction in a
18 subsequent privilege period, shall be treated as originally incurred
19 in the subsequent year by the same member and the provisions of
20 this section shall apply in the subsequent privilege period in
21 determining the allowable deduction for that privilege period.

22 g. A prior net operating loss conversion carryover incurred by a
23 member of a combined group shall be deducted from the entire net
24 income or loss allocated to this state pursuant to section 19 of
25 P.L.2018, c.48 (C.54:10A-4.7) as follows:

26 (1) Such prior net operating loss conversion carryover deduction
27 shall be allowed to offset only the entire net income allocated to
28 this state of the corporation that created the prior net operating loss;
29 the prior net operating loss conversion carryover cannot be shared
30 with other members of the combined group.

31 (2) The prior net operating loss conversion carryover deduction
32 computed under subsection (u) of section 4 of P.L.1945, c.162
33 (C.54:10A-4) shall be applied against the entire net income
34 allocated to this state of the corporation that created the prior net
35 operating loss before the net operating loss carryover computed
36 under subsection h. of this section.

37 The director shall provide regulations establishing rules on how
38 each such corporation shall apply its prior net operating loss
39 conversion carryover against its share of entire net income allocated
40 as if filing on a separate entity basis.

41 A member of a combined group may sell prior net operating loss
42 conversion carryover to other members of the combined group, if
43 otherwise applicable and allowable under section 2 of P.L.1997,
44 c.334 (C.54:10A-4.2) and section 1 of P.L.1997, c.334 (C.34:1B-
45 7.42a); provided, however, such sale of prior net operating loss
46 conversion carryover must be made at arm's length price at the
47 same rate as though the sale was to an unrelated taxpayer.

1 h. A net operating loss carryover incurred by a member of a
2 combined group shall be deducted from entire net income or loss
3 allocated to this State pursuant to section 19 of P.L.2018, c.48
4 (C.54:10A-4.7) as follows:

5 (1) For privilege periods beginning on or after the first day of
6 the initial privilege period for which a combined unitary tax return
7 is required under this section and sections 19, 20, and 23 of
8 P.L.2018, c.48 **[(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
9 4.11)]** (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), if the
10 computation of a combined group's entire net income allocated to
11 this state results in a net operating loss, a taxable member of such
12 group may carry over the net operating loss allocated to this state,
13 as calculated under this section and sections 19 and 23 of P.L.2018,
14 c.48 **[(C.54:18A-4.7 and C.54:18A-4.11)]** (C.54:10A-4.7 and
15 C.54:10A-4.11), and shall be deductible from entire net income
16 derived from the unitary business in a future privilege period to the
17 extent that the carryover and deduction is otherwise consistent with
18 subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4).

19 (2) Where a taxable member of a combined group has a net
20 operating loss carryover derived from a loss incurred by a combined
21 group in a privilege period beginning on or after the first day of the
22 initial privilege period for which a combined unitary tax return is
23 required under this section and sections 19, 20, and 23 of P.L.2018,
24 c.48 **[(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11)]**
25 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable
26 member may share the net operating loss carryover with other
27 taxable members of the combined group if such other taxable
28 members were members of the combined group in the privilege
29 period that the loss was incurred. Any amount of net operating loss
30 carryover that is deducted by another taxable member of the
31 combined group shall reduce the amount of net operating loss
32 carryover that may be carried over by the taxable member that
33 originally incurred the loss.

34 (3) Where a taxable member of a combined group has a net
35 operating loss carryover derived from a loss incurred in a privilege
36 period during which the taxable member was not a member of such
37 combined group, the carryover shall remain available to be
38 deducted by that taxable member or other group members that, in
39 the year the loss was incurred, were part of the same combined
40 group as such taxable member. Such carryover shall not be
41 deductible by any other members of the combined group.

42 (4) A net operating loss carryover shall not include any net
43 operating loss incurred during any privilege period beginning prior
44 to the first day of the initial privilege period for which a combined
45 unitary tax return is required under this section and sections 19 and
46 23 of P.L.2018, c.48 **[(C.54:18A-4.7 and C.54:18A-4.11)]**
47 (C.54:10A-4.7 and C.54:10A-4.11).

1 (5) Where a taxable member of a combined group has a net
2 operating loss carryover derived from a loss incurred by a combined
3 group in a privilege period beginning on or after the first day of the
4 initial privilege period for which a combined unitary tax return is
5 required under this section and sections 19, 20, and 23 of P.L.2018,
6 c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), and the
7 taxable member departs the combined group and continues to be a
8 taxpayer for the purposes of the Corporation Business Tax Act
9 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the taxable member
10 shall be entitled to take its respective portion of the combined group
11 net operating loss carryover and the combined group shall not be
12 entitled to use such portion of the net operating loss carryover.

13 i. Tax credits earned by a member of a combined group shall
14 be utilized as follows:

15 (1) If a taxable member of a combined group earns a tax credit
16 in a privilege period beginning on or after the first day of the initial
17 privilege period for which a combined unitary tax return is required
18 under this section and sections 19, 20, and 23 of P.L.2018, c.48
19 **[(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11)]** (C.54:10A-
20 4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable member
21 may share the credit with other taxable members of the combined
22 group. Any amount of credit that is utilized by another taxable
23 member of the combined group shall reduce the amount of credit
24 carryover that may be carried over by the taxable member that
25 originally earned the credit. If a taxable member of a combined
26 group has a tax credit carryover derived from a privilege period
27 beginning on or after the first day of the initial privilege period for
28 which a combined unitary tax return is required under this section
29 and sections 19, 20, and 23 of P.L.2018, c.48 **[(C.54:18A-4.7,**
30 **C.54:18A-4.8, and C.54:18A-4.11)]** (C.54:10A-4.7, C.54:10A-4.8,
31 and C.54:10A-4.11), then the taxable member may share the
32 carryover credit with other taxable members of the combined group.

33 (2) If a taxable member of a combined group has a tax credit
34 carryover derived from a privilege period beginning prior to the
35 first day of the initial privilege period for which a combined unitary
36 tax return is required under this section and sections 19, 20, and 23
37 of P.L.2018, c.48 **[(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-**
38 **4.11)]** (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the
39 taxable member may share the carryover credit with other taxable
40 members of the combined group.

41 (3) If a taxable member of a combined group has a tax credit
42 carryover derived from a privilege period during which the taxable
43 member was not a member of such combined group, the credit
44 carryover shall remain available to be utilized by such taxable
45 member or other group members.

46 (4) To the extent a taxable member has more than one
47 corporation business tax credit that it may utilize in a privilege

1 period, whether such credits were earned by said member or are
2 available to said member in accordance with paragraphs (1), (2) and
3 (3) of this subsection, the order of priority of the application of the
4 credits shall be as prescribed by the director.

5 j. An expense of a member of the combined group that is
6 directly or indirectly attributable to the income of any member of
7 the combined group, which income this State is prohibited from
8 taxing pursuant to the laws or Constitution of the United States,
9 shall be disallowed as a deduction for purposes of determining the
10 combined group's entire net income.

11 k. Nothing in this section shall apply to:

12 (1) A corporation or combined group which is licensed, in
13 whole or in part, as an insurance company under the laws of this
14 State or of another state, including corporations which are surplus
15 lines insurers declared eligible by the Commissioner of Banking
16 and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-
17 6.45) to insure risks within this State that is not a combinable
18 captive insurance company. Notwithstanding a provision, if any, to
19 the contrary in this section, the income of an insurance company
20 that is not a combinable captive insurance company, the allocation
21 or apportionment of income related thereto and the apportionment
22 factors of an insurance company that is not a combinable captive
23 insurance company shall not be included in a combined unitary tax
24 return filed under this section and sections 19, 20, and 23 of
25 P.L.2018, c.48 [(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
26 4.11)] (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11). In
27 addition, the dividend exclusion provisions of paragraph (5) of
28 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating
29 to dividends paid by insurance companies to non-insurance
30 companies included in the unitary group shall not be affected by
31 P.L.2018, c.48 (C.54:10A-5.41 et al.).

32 (2) A corporation that is regulated, in whole or in part, by the
33 Federal Energy Regulatory Commission, the New Jersey Board of
34 Public Utilities, or similar regulatory body of another state, with
35 respect to rates charged to customers for electric or gas services and
36 water and wastewater services.

37 l. [The director shall promulgate rules and regulations
38 necessary to carry out the provisions of this section.] (deleted by
39 amendment, P.L. , c.) (pending before the Legislature as this
40 bill)

41 m. To the extent consistent with the Corporation Business Tax
42 Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the federal rules
43 and regulations governing consolidated return net operating losses
44 and net operating loss carryovers shall apply to the New Jersey net
45 operating loss carryover provisions under subsection h. of this
46 section as though the combined group filed a federal consolidated
47 return, regardless of how the members of the combined group filed
48 for federal purposes.

1 n. The principles and provisions set forth in federal regulations
2 promulgated pursuant to section 1502 of the Internal Revenue Code
3 (26 U.S.C. s.1502), shall apply to the extent consistent with the
4 Corporation Business Tax Act (1945), New Jersey combined group
5 membership principles, New Jersey combined unitary return
6 principles, and regulations set forth by the director.

7 o. For purposes of the deduction allowed in paragraph (4) of
8 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a
9 combined group shall be treated as one taxpayer; provided,
10 however, a combined group shall only be eligible for the deduction
11 if at least one of the taxable members is a banking corporation and
12 the taxable member has an international banking facility. The
13 income of the combined group shall not be eligible for the
14 deduction allowed in paragraph (4) of subsection (k) of section 4 of
15 P.L.1945, c.162 (C.54:10A-4) if such income was already
16 eliminated pursuant to other subsections of this section.

17 p. This section shall apply to world-wide group elective
18 combined returns and affiliated group elective combined returns in
19 accordance with section 23 of P.L.2018, c.48 (C.54:10A-4.11). An
20 election to file an affiliated group combined return shall be an
21 election to treat all of the member's attributes and income as though
22 they were from one unitary business.

23 ¹q. The director shall promulgate rules and regulations
24 necessary to carry out the provisions of this section.¹

25 (cf: P.L.2018, c.131, s.4)

26
27 7. Section 21 of P.L.2018, c.48 (C.54:10A-4.9) is amended to
28 read as follows:

29 21. A combined group filing a combined return that has any
30 outstanding alternative minimum assessment credit or credits at the
31 time of the effective date of the repeal of section 7 of P.L.2002,
32 c.40 (C.54:10A-5a) shall be allowed to use the credit to offset the
33 combined group's **net deferred tax liability** resulting from the
34 transition to a mandatory unitary combined return. For purposes of
35 this section, "net deferred tax liability" shall mean the net increase,
36 if any, in deferred tax liabilities minus the net increase, if any, in
37 deferred tax assets of the combined group, as computed in
38 accordance with generally accepted accounting principles, that is
39 the result of the transition from filing separate returns to filing a
40 mandatory unitary combined return **tax liability under paragraph**
41 **(1) of subsection c. of section 5 of P.L.1945, c.165 (C.54:10A-5)**
42 **for the group privilege period.** The remaining balance of the credit
43 carryovers of members of the combined group from prior to the
44 effective date of the repeal of section 7 of P.L.2002, c.40
45 (C.54:10A-5a) shall not reduce the combined tax liability below
46 50% of the tax owed by the group. The remaining balance of the
47 credit may be carried over until used by the combined group.

48 (cf: P.L.2018, c.48)

1 8. Section 22 of P.L.2018, c.48 (C.54:10A-4.10) is amended to
2 read as follows:

3 22. a. Determination of Managerial Member. If the combined
4 group has a common parent corporation within the meaning of the
5 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
6 et seq.), and that common parent corporation is a taxable member of
7 the corporate group, the managerial member shall be the common
8 parent corporation. In other cases, the combined group shall select
9 a taxable member as its managerial member or, in the discretion of
10 the director or upon failure of the combined group to select its
11 managerial member, the director shall designate a taxable member
12 of the combined group as managerial member. Once the election of
13 the managerial member is made, the election shall be binding for 10
14 successive privilege periods, except as otherwise provided for by
15 the director.

16 b. A combined group shall file a mandatory combined return
17 under this section in the form and manner prescribed by the
18 director. The managerial member of the combined group shall file
19 the mandatory combined return on behalf of the taxable members of
20 the combined group. The managerial member shall be required to
21 file taxable member returns; file taxable member extensions for
22 filing tax returns and other documents with the director; pay taxable
23 member liabilities; receive taxable member findings, assessments,
24 and notices; make and receive taxable member claims, or file
25 taxable member protests and appeals; and shall be the responsible
26 party liable for filing and paying the tax on behalf of the combined
27 group.

28 c. The privilege period for the combined group is the privilege
29 period of the managerial member. If a member of a combined group
30 has a different fiscal or calendar accounting period from the
31 combined group's privilege period, that member with a different
32 period shall report amounts from its return for its fiscal or calendar
33 accounting year that ends during the group privilege period.

34 d. Each taxable member of a combined group shall be jointly
35 and severally liable for the tax due from any taxable member
36 pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), whether or not
37 that tax has been self-assessed, and for any interest, penalties, or
38 additions to tax due.

39 e. If a combined group is eligible to elect the managerial
40 member of the combined group, notice of the election shall be
41 submitted in writing to the director not later than the due date or, if
42 an extension of time to file has been requested and granted, not later
43 than the extended due date of the mandatory combined return for
44 the initial privilege period for which a return is required. The
45 managerial member shall be the designated agent and the
46 responsible person for filing the combined return and paying the tax
47 for the combined group. If another taxable member is subsequently

1 designated as the managerial member, the subsequent designation
2 shall be subject to the approval of the director.

3 f. The director is authorized to promulgate regulations with
4 regards to installment payments, estimated payments,
5 overpayments, refunds and any other filing or payment matters
6 related to combined groups filing combined returns.

7 g. For privilege periods ending on and after July 31, 2019, a
8 combined group must file a mandatory combined return. However,
9 if privilege periods of the members of the combined group differ,
10 the first mandatory combined return for the combined group shall
11 be required for the privilege period of the managerial member.

12 h. The members of a combined group shall notify the director
13 **【within 90 days】** of a change in the combined group where a
14 member dissolves, a merger of any kind occurs, a member
15 withdraws from the group, a member ceases doing business, a
16 member of the group is acquired by a third party not in the group,
17 or additional members enter the group which are required to be
18 included. Such notice shall be submitted in written form, as
19 determined by the director, not later than the due date, or, if an
20 extension of time to file has been requested and granted, not later
21 than the extended due date of the combined unitary tax return for
22 the privilege period in which a change in the combined group
23 occurs.

24 i. Any notice shall be sent to the managerial member of the
25 combined group at the last known address of the managerial
26 member as indicated on either the last filing required or made under
27 this Chapter or a subsequent electronic or written notice provided
28 by the managerial member under rules prescribed by the director.

29 j. The director may, at the director's sole discretion:

30 (1) make any deficiency assessment against either the
31 managerial member or a taxable member of the combined group;

32 (2) refund or credit any overpayment to either the managerial
33 member or a taxable member of the combined group;

34 (3) require any payment to be made by electronic funds transfer;
35 and

36 (4) require the mandatory combined return to be filed
37 electronically.

38 (cf: P.L.2018, c.131, s.5)

39

40 9. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to
41 read as follows:

42 5. The franchise tax to be annually assessed to and paid by
43 each taxpayer shall be the greater of the amount computed pursuant
44 to this section or the alternative minimum assessment computed
45 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
46 however, that in the case of a taxpayer that is a New Jersey S
47 corporation, an investment company, a professional corporation
48 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a

1 similar corporation for profit organized for the purpose of rendering
 2 professional services under the laws of another state, or a person
 3 operating on a cooperative basis under Part I of Subchapter T of the
 4 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
 5 there shall be no alternative minimum assessment computed
 6 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

7 The amount computed pursuant to this section shall be the sum
 8 of the amount computed under subsection (a) hereof, or in the
 9 alternative to the amount computed under subsection (a) hereof, the
 10 amount computed under subsection (f) hereof, and the amount
 11 computed under subsection (c) hereof:

12 (a) That portion of its entire net worth as may be allocable to
 13 this State as provided in section 6, multiplied by the following
 14 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
 15 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
 16 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
 17 mill per dollar on all amounts of allocated net worth in excess of
 18 \$300,000,000.00; provided, however, that with respect to reports
 19 covering accounting or privilege periods set forth below, the rate
 20 shall be that percentage of the rate set forth in this subsection for
 21 the appropriate year:

22 Accounting or Privilege

23 Periods Beginning on or	The Percentage of the Rate
24 after:	to be Imposed Shall be:
25 April 1, 1983	75%
26 July 1, 1984	50%
27 July 1, 1985	25%
28 July 1, 1986	0

29 (b) (Deleted by amendment, P.L.1968, c.250, s.2.)

30 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
 31 1/4% of its entire net income or such portion thereof as may be
 32 allocable to this State as provided in sections 6 through 10 of
 33 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), plus such
 34 portion thereof as is specifically assigned to this State as provided
 35 in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided, however,
 36 that with respect to reports covering accounting or privilege periods
 37 or parts thereof ending after December 31, 1967, the rate shall be 4
 38 1/4%; and that with respect to reports covering accounting or
 39 privilege periods or parts thereof ending after December 31, 1971,
 40 the rate shall be 5 1/2%; and that with respect to reports covering
 41 accounting or privilege periods or parts thereof ending after
 42 December 31, 1974, the rate shall be 7 1/2%; and that with respect
 43 to reports covering privilege periods or parts thereof ending after
 44 December 31, 1979, the rate shall be 9%; provided however, that
 45 for a taxpayer that has entire net income of \$100,000 or less for a
 46 privilege period and is not a partnership the rate for that privilege
 47 period shall be 7 1/2% and provided further that for a taxpayer that

1 has entire net income of \$50,000 or less for a privilege period and is
2 not a partnership the rate for that privilege period shall be 6 1/2%.

3 For privilege periods ending on or after July 31, 2019, for a
4 combined group filing a mandatory or elective combined return, for
5 the portion of a taxable member's activities that are independent
6 from the unitary business of the combined group filing a mandatory
7 unitary combined return where the taxable member independently
8 has nexus with this State, and for a taxpayer that files a separate
9 return, the tax rate shall be applied against taxable net income plus
10 such portion thereof as is specifically assigned to this State as
11 provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

12 (2) For a taxpayer that is a New Jersey S corporation:

13 (i) for privilege periods ending on or before June 30, 1998 the
14 rate determined by subtracting the maximum tax bracket rate
15 provided under N.J.S.54A:2-1 for the privilege period from the tax
16 rate that would otherwise be applicable to the taxpayer's entire net
17 income for the privilege period if the taxpayer were not an S
18 corporation provided under paragraph (1) of this subsection for the
19 privilege period; and

20 (ii) For a taxpayer that has entire net income in excess of
21 \$100,000 for the privilege period,

22 for privilege periods ending on or after July 1, 1998, but on or
23 before June 30, 2001, the rate shall be 2%,

24 for privilege periods ending on or after July 1, 2001, but on or
25 before June 30, 2006, the rate shall be 1.33%,

26 for privilege periods ending on or after July 1, 2006, but on or
27 before June 30, 2007, the rate shall be 0.67%, and

28 for privilege periods ending on or after July 1, 2007 there shall
29 be no rate of tax imposed under this paragraph; and

30 (iii) For a taxpayer that has entire net income of \$100,000 or less
31 for privilege periods ending on or after July 1, 1998, but on or
32 before June 30, 2001, the rate for that privilege period shall be
33 0.5%, and for privilege periods ending on or after July 1, 2001,
34 there shall be no rate of tax imposed under this paragraph.

35 (iv) The taxpayer's rate determined under subparagraph (i), (ii)
36 or (iii) of this paragraph shall be multiplied by its entire net income
37 that is not subject to federal income taxation or such portion thereof
38 as may be allocable to this State pursuant to sections 6 through 10
39 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10) plus such
40 portion thereof as is specifically assigned to this State as provided
41 in section 5 of P.L.1993, c.173 (C.54:10A-6.1). For privilege
42 periods ending on or after July 31, 2019, the tax rate shall be
43 applied against taxable net income.

44 (3) For a taxpayer that is a New Jersey S corporation, in
45 addition to the amount, if any, determined under paragraph (2) of
46 this subsection, the tax rate that would otherwise be applicable to
47 the taxpayer's entire net income for the privilege period if the
48 taxpayer were not an S corporation provided under paragraph (1) of

1 this subsection for the privilege period multiplied by its entire net
2 income that is subject to federal income taxation or such portion
3 thereof as may be allocable to this State pursuant to sections 6
4 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).
5 For privilege periods ending on or after July 31, 2019, the tax rate
6 shall be applied against taxable net income.

7 (d) Provided, however, that the franchise tax to be annually
8 assessed to and paid by any investment company or real estate
9 investment trust, which has elected to report as such and has filed
10 its return in the form and within the time provided in this act and
11 the rules and regulations promulgated in connection therewith,
12 shall, in the case of an investment company, be measured by 40% of
13 its entire net income and 40% of its entire net worth, and in the case
14 of a real estate investment trust, by 4% of its entire net income and
15 15% of its entire net worth, at the rates hereinbefore set forth for the
16 computation of tax on net income and net worth, respectively, but in
17 no case less than \$250, and further provided, however, that the
18 franchise tax to be annually assessed to and paid by a regulated
19 investment company which for a period covered by its report
20 satisfies the requirements of Chapter 1, Subchapter M, Part I,
21 Section 852(a) of the federal Internal Revenue Code shall be \$250.
22 For privilege periods ending on or after July 31, 2019, ~~the tax rate~~
23 ~~shall be applied against taxable net income~~ the tax rate shall be
24 applied against 40% of its taxable net income in the case of an
25 investment company, and against 4% of its taxable net income in
26 the case of a real estate investment trust.

27 (e) The tax assessed to any taxpayer pursuant to this section
28 shall not be less than \$25 in the case of a domestic corporation, \$50
29 in the case of a foreign corporation, or \$250 in the case of an
30 investment company or regulated investment company. Provided
31 however, that for privilege periods beginning in calendar year 1994
32 and thereafter the minimum taxes for taxpayers other than an
33 investment company or a regulated investment company shall be as
34 provided in the following schedule:

35	Period Beginning	Domestic	Foreign
36	In Calendar Year	Corporation	Corporation
37		Minimum Tax	Minimum Tax
38	1994	\$ 50	\$100
39	1995	\$100	\$200
40	1996	\$150	\$200
41	1997	\$200	\$200
42	1998	\$200	\$200
43	1999	\$200	\$200
44	2000	\$200	\$200
45	2001	\$210	\$210

46 and for calendar years 2002 through 2005 the minimum tax for all
47 taxpayers shall be \$500, and for calendar year 2006 through
48 calendar year 2011 the minimum tax for all corporations, and for

1 privilege periods beginning in calendar year 2012 and thereafter the
2 minimum tax for corporations that are not New Jersey S
3 corporations shall be based on the New Jersey gross receipts of the
4 taxpayer pursuant to the following schedule:

5	New Jersey Gross Receipts:	Minimum Tax:
6	Less than \$100,000	.....\$500
7	\$100,000 or more but	
8	less than \$250,000	..... \$750
9	\$250,000 or more but	
10	less than \$500,000	..... \$1,000
11	\$500,000 or more but	
12	less than \$1,000,000	..... \$1,500
13	\$1,000,000 or more	..... \$2,000

14 and for privilege periods beginning in calendar year 2012 and
15 thereafter the minimum tax for corporations that are New Jersey S
16 corporations shall be based on the New Jersey gross receipts of the
17 taxpayer pursuant to the following schedule:

18	New Jersey Gross Receipts:	Minimum Tax:
19	Less than \$100,000	.....\$375
20	\$100,000 or more but	
21	less than \$250,000	..... \$562.50
22	\$250,000 or more but	
23	less than \$500,000	..... \$750
24	\$500,000 or more but	
25	less than \$1,000,000	..... \$1,125
26	\$1,000,000 or more	..... \$1,500

27 provided however, that for a taxpayer that is a member of an
28 affiliated group or a controlled group pursuant to section 1504 or
29 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
30 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
31 more for the privilege period, the minimum tax shall be \$2,000 for
32 the privilege period **【. For】** ; provided, however, for privilege
33 periods ending on and after July 31, 2019, the minimum tax of each
34 taxable member of a combined group filing a mandatory or elective
35 New Jersey combined return shall be \$2,000 for the group privilege
36 period.

37 (f) In lieu of the portion of the tax based on net worth and to be
38 computed under subsection (a) of this section, any taxpayer, the
39 value of whose total assets everywhere, less reasonable reserves for
40 depreciation, as of the close of the period covered by its report,
41 amounts to less than \$150,000, may elect to pay the tax shown in a
42 table which shall be promulgated by the director.

43 (g) Provided however, that for privilege periods beginning on or
44 after January 1, 2001 but before January 1, 2002 the franchise tax
45 annually assessed to and paid by a taxpayer:

46 (1) that is a limited liability company or foreign limited liability
47 company classified as a partnership for federal income tax purposes

1 shall be the amount determined pursuant to the provisions of section
2 3 of P.L.2001, c.136 (C.54:10A-15.6); or

3 (2) that is a limited partnership or foreign limited partnership
4 classified as a partnership for federal income tax purposes shall be
5 the amount determined pursuant to the provisions of section 4 of
6 P.L.2001, c.136 (C.54:10A-15.7).

7 (h) Provided however, that for privilege periods beginning on or
8 after January 1, 2002 the franchise tax annually assessed to and paid
9 by a taxpayer that is a partnership shall be the amount determined
10 pursuant to the provisions of section 12 of P.L.2002, c.40
11 (C.54:10A-15.11).

12 (i) (Deleted by amendment, P.L.2008, c.120)
13 (cf: P.L.2018, c.131, s.6)
14

15 10. Section 1 of P.L.1993, c.175 (C.54:10A-5.24) is amended to
16 read as follows:

17 1. a. A taxpayer shall be allowed a credit, subject to the
18 provisions of subsection b. of this section, against the tax imposed
19 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an
20 amount equal to

21 (1) 10% of the excess of the qualified research expenses for the
22 privilege period over the base amount; and

23 (2) 10% of the basic research payments for the privilege period
24 determined in accordance with section 41 of the federal Internal
25 Revenue Code of 1986, 26 U.S.C. s.41. Provided however, that the
26 terms "qualified research expenses," "base amount," "qualified
27 organization base amount period," "basic research" and any other
28 terms determined by the Director of the Division of Taxation to
29 affect the calculation of the credit shall include only expenditures
30 for research conducted in this State. For privilege periods beginning
31 on and after January 1, 2018, amounts paid or incurred by the
32 taxpayer in carrying on any trade or business of the taxpayer during
33 the privilege period, including as contributions, to an energy
34 research consortium for energy research shall also qualify as a basic
35 research payment for purposes of this subsection.

36 b. No credit shall be allowed under section 42 of P.L.1987,
37 c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and
38 Employment Investment Tax Credit Act," P.L.1993, c.171
39 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et
40 seq.), for property or expenditures for which a credit is allowed, or
41 which are includable in the calculation of a credit allowed, under
42 this section.

43 The order of priority of the application of the credit allowed
44 pursuant to this section and any other credits allowed by law shall
45 be as prescribed by the director. Credits allowable pursuant to this
46 section shall be applied in the order of the privilege periods for
47 which the credits were allowed.

1 For privilege periods beginning before January 1, 2012, the
2 amount of the credits applied under this section against the tax
3 imposed pursuant to section 5 of P.L.1945, c.162, for the privilege
4 period shall not exceed 50% of the tax liability otherwise due and
5 shall not reduce the tax liability to an amount less than the statutory
6 minimum provided in subsection (e) of section 5 of P.L.1945,
7 c.162.

8 For privilege periods beginning on or after January 1, 2012, the
9 amount of the credits applied under this section against the tax
10 imposed pursuant to section 5 of P.L.1945, c.162, for the privilege
11 period shall not reduce the tax liability to an amount less than the
12 statutory minimum provided in subsection (e) of section 5 of
13 P.L.1945, c.162.

14 For privilege periods beginning on or after January 1, 2018, the
15 credit taken under this section shall not be refundable.

16 The amount of credit otherwise allowable under this section
17 which cannot be applied for the privilege period due to the
18 limitations of this subsection may be carried over, if necessary, to
19 the seven privilege periods following a credit's privilege period.

20 c. No provision terminating section 41 of the federal Internal
21 Revenue Code, 26 U.S.C. s.41, shall apply.

22 d. For privilege periods beginning on and after January 1,
23 2020, the portion of qualified research expenses and qualified
24 payments of a taxpayer that is a qualified small business within the
25 meaning of section 41(h)(3) of the federal Internal Revenue Code
26 (26 U.S.C. s.41) that were disallowed for the section 41(h) tax
27 credit because the taxpayer made an election pursuant to sections
28 41(h) and 3111(f) of the federal Internal Revenue Code (26 U.S.C.
29 s.41 and s.3111) to take the 3111(f) credit in lieu of the 41(h) credit,
30 shall be allowed for the purposes of calculating the New Jersey
31 credit provided for by this section.

32 (cf: P.L.2018, c.48, s.6)

33
34 11. Section 14 of P.L.1945, c.162 (C.54:10A-14) is amended to
35 read as follows:

36 14. (a) The director **【may by regulation or by special notice】**
37 shall require any taxpayer or managerial member to submit, as part
38 of a full and complete New Jersey return, copies or pertinent
39 extracts of its federal income tax returns, or of any other tax return
40 filed with any agency of the federal government, or of this or any
41 other state, or of any statement or registration made pursuant to any
42 state or federal law pertaining to securities or securities exchange
43 regulation. The director shall issue regulations describing which
44 federal extracts are required and which extracts are optional.

45 (b) The director may require all taxpayers to keep such records
46 as the director may prescribe, and the director may require the
47 production of books, papers, documents and other data, to provide
48 or secure information pertinent to the determination of the tax

1 hereunder and the enforcement and collection thereof. The director
2 may, also, by general rule or by special notice require any taxpayer
3 to make and file information returns, under oath, of facts pertinent
4 to the determination of the tax or liability for tax hereunder,
5 pursuant to such regulations, at such times and in such form and
6 manner and to such extent as the director may prescribe
7 pursuant to law.

8 (c) Each taxpayer filing a return that is a member of **【a**
9 **commonly owned group】** an affiliated group filing an elective New
10 Jersey combined return or a combined group shall, upon the request
11 of the director and 90 days' notice thereof, disclose **【in its return for**
12 **the privilege period】** the amount of all inter-member costs or
13 expenses reflected in the return for the privilege period, including
14 but not limited to management fees, rents, and other services, for
15 the privilege period. If the taxpayer acquires products or services
16 from another member of its **【commonly owned】** affiliated group or
17 a combined group, which it re-sells or otherwise uses to generate
18 revenue, the taxpayer shall, upon the request of the director and 90
19 days' notice thereof, disclose the amount of revenue generated from
20 those products or services. The director shall promulgate rules and
21 procedures for the manner of disclosure. A failure to file such a
22 disclosure shall be deemed the filing of an incomplete tax return,
23 subject to the penalties of the State Uniform Tax Procedure Law,
24 R.S.54:48-1 et seq.

25 (d) For privilege periods ending on and after ¹【July 31, 2020】
26 July 31, 2021¹, the director shall create a simplified standardized
27 return for combined groups, banking corporations, financial
28 business corporations, and separate return filers, but shall maintain
29 the New Jersey S Corporations returns for New Jersey S
30 Corporations that file separate returns. The standardized return shall
31 include the accompanying forms and schedules to administer and
32 implement the various requirements of the Corporation Business
33 Tax Act (1945), or such accompanying schedules shall be made
34 inconspicuously and readily available on the Division of Taxation's
35 website, and the instructions for the standardized return shall
36 clearly indicate which schedules are required to be completed by
37 combined groups, banking corporations, financial business
38 corporations, and separate return filers respectively.

39 (cf: P.L.2018, c.48, s.10)

40
41 12. Section 15 of P.L.1945, c.162 (C.54:10A-15) is amended to
42 read as follows:

43 15. The tax imposed by this act shall be due and payable
44 annually hereafter, commencing with the calendar year 1959, in the
45 manner provided under subsection (a), (b) or (c) of this section,
46 whichever shall be applicable.

1 (a) Every taxpayer shall annually pay a franchise tax, with
2 respect to all or any part of each of its fiscal or calendar accounting
3 years beginning after January 1, 1959, to be computed as herein
4 provided, for such fiscal or calendar accounting year or part thereof,
5 on a report which shall be filed on or before April 15 next
6 succeeding the close of each such accounting year, or, if any such
7 fiscal year ends after the last day of December and prior to July 1,
8 on or before the fifteenth day of the fourth month after the close of
9 such fiscal year, and the full amount of the tax hereunder shall be
10 due and payable on or before the date prescribed herein for the
11 filing of the return.

12 (b) Every taxpayer shall pay a like franchise tax with respect to
13 all or any part of the period beginning January 1, 1959 and
14 extending through any subsequent part of its first fiscal or calendar
15 accounting year ending after said date. Such tax shall be computed
16 as herein provided, for each and every fiscal or calendar accounting
17 year or part thereof begun not earlier than July 2, 1957 and ending
18 not later than December 31, 1959 on the basis of which a franchise
19 tax has not accrued under this act prior to January 1, 1959. The tax
20 imposed pursuant to this subsection shall be deemed a single tax for
21 such period but shall be computed separately with respect to each
22 such fiscal or calendar accounting year or part thereof on the basis
23 of which a franchise tax has not previously accrued as aforesaid, on
24 a report which shall be filed on or before April 15, next succeeding
25 the close of each such accounting year, or, if any such fiscal year
26 ends after the last day of December and prior to July 1, on or before
27 the fifteenth day of the fourth month after the close of such fiscal
28 year, and the full amount of the tax hereunder shall be due and
29 payable on or before the date prescribed herein for the filing of the
30 report.

31 (c) With respect to all or any part of each of its privilege periods
32 ending after June 30, 1967, every taxpayer shall annually pay a
33 franchise tax on a report which shall be filed on or before the
34 fifteenth day of the fourth month after the close of such privilege
35 period, or part thereof, and the full amount of the tax hereunder
36 shall be due and payable on or before the date prescribed herein for
37 the filing of the return; provided, however, that for privilege periods
38 ending on and after July 31, 2020, the due date of the New Jersey
39 return shall be 30 days after the original due date for filing the
40 taxpayer's federal corporate income tax return for such privilege
41 period, or part thereof, and the full amount of the tax hereunder
42 shall be due and payable on or before the date prescribed herein for
43 the filing of the return.

44 (d) With respect to its fiscal or calendar accounting years ending
45 after February 29, 1968 and prior to March 1, 1969, every taxpayer
46 shall pay as a partial payment of franchise tax in addition to the tax
47 payable under subsection (c) of this section, an amount equal to
48 one-quarter of the tax payable under said subsection (c). With

1 respect to each of its fiscal or calendar accounting years ending
2 after February 28, 1969, every taxpayer shall annually pay as a
3 partial payment of franchise tax in addition to the tax payable under
4 subsection (c) of this section, an amount equal to one-half of the tax
5 payable under said subsection (c). In the calculation of the tax
6 pertaining to each succeeding accounting period, due in accordance
7 with subsection (c) hereof, every taxpayer shall be entitled to a
8 credit in the amount of the tax paid under this subsection (d) as a
9 partial payment and shall be entitled to the return of any amount so
10 paid which shall be found in excess of the total amount payable in
11 accordance with said subsection (c) and this subsection (d).

12 (e) With respect to its fiscal or calendar accounting years ending
13 on or after June 30, 1974, every taxpayer shall annually pay as a
14 partial payment of franchise tax in addition to the tax payable under
15 subsection (c) of this section, an amount equal to 60% of the tax
16 payable under said subsection (c). In the calculation of the tax
17 pertaining to each succeeding accounting period, due in accordance
18 with subsection (c) hereof, every taxpayer shall be entitled to a
19 credit in the amount of the tax paid under this subsection (e) as a
20 partial payment and shall be entitled to the return of any amount so
21 paid which shall be found to be in excess of the total amount
22 payable in accordance with said subsection (c) and this subsection
23 (e).

24 (f) With respect to its privilege periods ending on or after
25 December 31, 1984, in addition to the tax payable under subsection
26 (c) of this section, every taxpayer, except a taxpayer with gross
27 receipts of \$50,000,000 or more for the prior privilege period,
28 which shall make installment payments pursuant to subsection (g)
29 of this section, shall make installment payments of its franchise tax
30 at the following times and in the following amounts of its estimated
31 tax for its current fiscal or calendar accounting year:

32 (1) 25% thereof paid on or before the fifteenth day of the fourth
33 month thereof;

34 (2) 25% thereof paid on or before the fifteenth day of the sixth
35 month thereof;

36 (3) 25% thereof paid on or before the fifteenth day of the ninth
37 month thereof; and

38 (4) the balance thereof paid on or before the fifteenth day of the
39 twelfth month thereof.

40 (g) With respect to its privilege periods beginning on or after
41 January 1, 2003, in addition to the tax payable under subsection (c)
42 of this section, every taxpayer with gross receipts of \$50,000,000 or
43 more for the prior privilege period shall make installment payments
44 of its franchise tax at the following times and in the following
45 amounts of its estimated tax for its current privilege period:

46 (1) 25% thereof paid on or before the fifteenth day of the fourth
47 month thereof;

1 (2) 50% thereof paid on or before the fifteenth day of the sixth
2 month thereof; and

3 (3) the balance thereof paid on or before the fifteenth day of the
4 twelfth month thereof.

5 (h) In the calculation of the tax due in accordance with
6 subsection (c) hereof, a taxpayer shall be entitled to a credit in the
7 amount of the tax paid under subsection (f) or subsection (g) of this
8 section as a partial payment and shall be entitled to the return of any
9 amount so paid which is in excess of the total amount payable in
10 accordance with subsection (c) and this subsection.

11 (i) For the purpose of this act, every taxpayer shall use the same
12 calendar or fiscal year upon which it reports to the United States
13 Treasury Department for Federal Income Tax purposes.

14 (cf: P.L.2002, c.40, s.13)

15

16 13. Section 3 of P.L.2006, c.33 (C.54:15C-1) is amended to read
17 as follows:

18 3. a. (1) There is imposed and shall be paid a tax upon the sale
19 or transfer for consideration in excess of \$1,000,000 of a controlling
20 interest in an entity which possesses, directly or indirectly, a
21 controlling interest in classified real property, which shall be paid
22 by the purchaser of the controlling interest and which shall be equal
23 to 1% of the consideration paid on the sale or transfer; provided
24 however that in the case of the sale or transfer of a controlling
25 interest in an entity which possesses, directly or indirectly, an
26 interest in classified real property and an interest in other property,
27 real or personal, there shall be paid a tax upon the sale only if the
28 equalized assessed value of the classified real property exceeds
29 \$1,000,000 which shall be paid by the purchaser of the controlling
30 interest and which shall be equal to 1% of that percentage of the
31 equalized assessed value of the classified real property that is equal
32 to the percentage of the ownership interest transferred.

33 (2) The sale or transfer of a controlling interest subject to
34 taxation pursuant to paragraph (1) of this subsection may occur in
35 one transaction or in a series of transactions. Transactions which
36 occur within six months of each other are presumed, unless shown
37 to the contrary, to be a series of transactions constituting a single
38 sale or transfer.

39 Sale or transfer of a controlling interest subject to taxation
40 pursuant to paragraph (1) of this subsection may be accomplished
41 by one purchaser or may be made by a group of purchasers acting in
42 concert. Purchasers who are related parties are presumed, unless
43 shown to the contrary, to be acting in concert.

44 b. On or before the last day of the month following the month
45 in which the sale or transfer of a controlling interest which is
46 subject to the tax imposed by subsection a. of this section is
47 completed, the purchaser shall file a return with the director, in such

1 form as the director may prescribe. Payment of the tax shall
2 accompany the return.

3 c. The tax imposed by subsection a. of this section shall not
4 apply to any sale or transfer:

5 (1) by or to the United States of America, this State, or any
6 instrumentality, agency, or subdivision thereof;

7 (2) to a purchaser that is an organization determined by the
8 federal Internal Revenue Service to be exempt from federal income
9 taxation pursuant to paragraph (3) of subsection (c) of section 501
10 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.501;

11 (3) having the underlying characteristics of the transactions
12 enumerated in section 6 of P.L.1968, c.49 (C.46:15-10);

13 (4) that is subject to the fee imposed tax pursuant to section 8 of
14 P.L.2004, c.66 (C.46:15-7.2); **[or]**

15 (5) that is incidental to a corporate merger or acquisition if the
16 equalized assessed value of the real property transferred is less than
17 20% of the total value of all assets exchanged in the merger or
18 acquisition; or

19 (6) entered into on and after ¹**[July 31, 2020]** January 1, 2021¹
20 if it is an intercompany transfer between combined group members
21 as part of the unitary business, as those terms are used in section 4
22 of P.L.1945, c.162 (C.54:10A-4).

23 d. Notwithstanding the provisions of subsection a. of this
24 section, the transfer of a controlling interest on or before November
25 15, 2006 in an entity which possesses, directly or indirectly, an
26 interest in classified real property shall not be subject to tax if the
27 interest was transferred pursuant to a contract or other binding
28 agreement that was fully executed before July 1, 2006.

29 e. (1) The director may require all purchasers subject to a tax
30 imposed under this section to keep such records as the director may
31 prescribe, and the director may require the production of books,
32 papers, documents and other data, to provide or secure information
33 pertinent to the determination of the taxes imposed by this section
34 and the enforcement and collection thereof.

35 (2) An entity with respect to which there is a sale or transfer of a
36 controlling interest in that entity, shall keep a record of every
37 transfer of a controlling interest in its stock or in its capital, profits
38 or beneficial interests, as the case may be, and such other
39 information as the director may prescribe. An entity shall report
40 that information to the director in such form and at such times as
41 the director may prescribe.

42 (3) The director may examine the books, papers, records and
43 equipment of an entity with respect to which there is a sale or
44 transfer of a controlling interest in that entity or of a purchaser
45 liable under the provisions of this section.

46 (4) The director shall collect and administer the tax imposed
47 pursuant to this section. The director is authorized to adopt rules
48 and regulations to effectuate the purposes of this section pursuant to

1 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
2 1 et seq.).

3 (5) The director may extend, for cause shown by general
4 regulation or individual authorization, the time of filing any return
5 on such terms and conditions as the director may require, and may,
6 for cause shown, remit or waive penalties and interest as provided
7 for in the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

8 (6) The director may delegate the director's functions hereunder
9 to any officer or employee of the director's division such of the
10 director's powers as the director may deem necessary to carry out
11 efficiently the provisions of this section.

12 f. The tax imposed pursuant to this section shall be governed
13 by the provisions of the State Uniform Tax Procedure Law,
14 R.S.54:48-1 et seq.

15 g. As used in this section:

16 "Classified real property" means property that is classified
17 pursuant to the requirements of N.J.A.C.18:12-2.2 as Class 4A
18 "commercial properties".

19 "Director" means the Director of the Division of Taxation in the
20 Department of the Treasury.

21 "Consideration" means the actual amount of money and the
22 monetary value of any other thing of value constituting the entire
23 compensation paid or to be paid for the transfer including the
24 remaining amount of any prior mortgage to which the transfer is
25 subject or which is to be assumed and agreed to be paid by the
26 purchaser.

27 "Controlling interest" means, in the case of an entity that is a
28 corporation, more than fifty per cent of the total combined voting
29 power of all classes of stock of that corporation, and in the case of
30 an entity that is a partnership, association, trust or other
31 organization, more than fifty per cent of the beneficial ownership of
32 classified real property of that partnership, association, trust or
33 other organization.

34 "Related parties" means parties that have the relationship
35 necessary for attribution of constructive ownership of stock
36 pursuant to section 318 of the federal Internal Revenue Code of
37 1986, 26 U.S.C. s.318, and members of an affiliated group or a
38 controlled group pursuant to section 1504 or 1563 of the federal
39 Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563.

40 (cf: P.L.2006, c.33, s.3)

41

42 14. Section 5 of P.L.2007, c.100 (C.54:50-38) is amended to
43 read as follows:

44 5. a. (1) Whenever a person shall make a sale, transfer, or
45 assignment in bulk of any part or the whole of the person's business
46 assets, except as provided by **[paragraph]** paragraphs (2) and (3) of
47 this subsection, otherwise than in the ordinary course of business,
48 the purchaser, transferee or assignee shall, at least 10 days before

1 taking possession of the subject of the sale, transfer or assignment,
2 or paying therefor, notify the director by registered mail, or other
3 such method as the director may prescribe, of the proposed sale and
4 of the price, terms and conditions thereof whether or not the seller,
5 transferrer or assignor has represented to, or informed the
6 purchaser, transferee or assignee that the seller, transferrer or
7 assignor owes any State tax and whether or not the purchaser,
8 transferee, or assignee has knowledge that such taxes are owing,
9 and whether any such taxes are in fact owing. Within 10 days of
10 receiving such notice, the director shall notify the purchaser,
11 transferee or assignee by such means as the director may prescribe
12 that a possible claim for State taxes exists and include the amount
13 of the State's claim.

14 (2) (a) Paragraph (1) of this subsection shall not apply to the
15 sale, transfer or assignment of a simple dwelling house if the seller,
16 transferrer or assignor is an "individual," "estate," or "trust" as those
17 terms are used for the purposes of the "New Jersey Gross Income
18 Tax Act," N.J.S.54A:1-1 et seq. or any combination thereof owning
19 the simple dwelling house as joint tenants, tenants in common or
20 tenancy by the entirety; paragraph (1) shall apply to the sale,
21 transfer or assignment of a simple dwelling house if the seller,
22 transferrer or assignor is a business entity, including but not limited
23 to a corporation or a partnership. "Simple dwelling house" means a
24 dwelling unit, attached or detached, and land appurtenant thereto,
25 including but not limited to a one-family or two-family building or
26 structure, a unit of a horizontal property regime established
27 pursuant to the "Horizontal Property Act," P.L.1963, c.168
28 (C.46:8A-1 et seq.), a unit in a housing cooperative as defined
29 under "The Cooperative Recording Act of New Jersey," P.L.1987,
30 c.381 (C.46:8D-1 et seq.), or a unit of a condominium property
31 established pursuant to the "Condominium Act," P.L.1969, c.257
32 (C.46:8B-1 et seq.), but does not include a structure or structures
33 containing more than two units of dwelling space or containing,
34 according to the records of the municipal property tax assessor,
35 commercial property including, or in addition to, the units of
36 dwelling space.

37 (b) Paragraph (1) of this subsection shall not apply to the sale,
38 transfer or assignment of a seasonal rental unit or the sale, transfer
39 or assignment of a lease for the seasonal use or rental of real
40 property if the seller, transferrer or assignor is an "individual,"
41 "estate," or "trust" as those terms are used for the purposes of the
42 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or any
43 combination thereof owning the seasonal rental unit or lease for the
44 seasonal use or rental of real property as joint tenants, tenants in
45 common or tenancy by the entirety; paragraph (1) shall apply to the
46 sale, transfer or assignment of a seasonal rental unit or the sale,
47 transfer or assignment of a lease for the seasonal use or rental of

1 real property if the seller, transferrer or assignor is a business entity,
2 including but not limited to a corporation or a partnership.

3 For the purposes of this paragraph:

4 "seasonal rental unit" means

5 (i) a "timeshare estate" as that term is defined by section 2 of
6 P.L.2006, c.63 (C.45:15-16.51); and

7 (ii) a dwelling unit rented for a term of not more than 125
8 consecutive days for residential purposes by a person having a
9 permanent residence elsewhere; and

10 "lease for the seasonal use or rental of real property" means

11 (i) a "timeshare use" as that term is defined by section 2 of
12 P.L.2006, c.63 (C.45:15-16.51); and

13 (ii) the use or rental for a term of not more than 125 consecutive
14 days for residential purposes by a person having a permanent place
15 of residence elsewhere.

16 (c) Paragraph (1) of this subsection shall not apply to
17 transactions entered into on and after ¹July 31, 2020 January 1,
18 2021¹ that are intercompany transfers between combined group
19 members as part of the unitary business, as those terms are used in
20 section 4 of P.L.1945, c.162 (C.54:10A-4).

21 (3) Paragraph (1) of this subsection shall not apply to the sale,
22 transfer, or assignment of a grant, tax credit, or tax credit transfer
23 certificate that has been awarded, issued, or otherwise made
24 available to a person in connection with a State or local business
25 assistance or incentive program or activity authorized by law in
26 effect on the effective date of P.L.2017, c.12.

27 For purposes of this paragraph, "State or local business
28 assistance or incentive program or activity" includes but shall not
29 be limited to: the corporation business tax credit and insurance
30 premiums tax credit certificate transfer program established by
31 section 17 of P.L.2004, c.65 (C.34:1B-120.2); the Business
32 Retention and Relocation Assistance Program established by
33 P.L.1996, c.25 (C.34:1B-112 et seq.); the Business Employment
34 Incentive Program established by P.L.1996, c.26 (C.34:1B-
35 124 et al.); the Urban Transit Hub Tax Credit Program established
36 by P.L.2007, c.346 (C.34:1B-207 et seq.); the Grow New Jersey
37 Assistance Program established by section 3 of P.L.2011, c.149
38 (C.34:1B-244); and the State or local Economic Redevelopment and
39 Growth Grant program established by section 4 or section 5 of
40 P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e).

41 b. If, upon receiving timely notice of a sale, transfer or
42 assignment from a purchaser, transferee or assignee, the director
43 fails to provide timely notice to the purchaser, transferee or
44 assignee that a possible claim for such State tax or taxes exists, the
45 purchaser, transferee or assignee may transfer over to the seller,
46 transferrer or assignor any sums of money, property or choses in
47 action, or other consideration to the extent of the amount of the
48 State's claim. The purchaser, transferee or assignee shall not be

1 subject to the liabilities and remedies imposed under the provisions
2 of the uniform commercial code, Title 12A of the New Jersey
3 Statutes, and shall not be personally liable for the payment to the
4 State of any such taxes theretofore or thereafter determined to be
5 due to the State from the seller, transferrer or assignor.

6 c. If the purchaser, transferee or assignee shall fail to give
7 notice to the director as required by the preceding paragraph, or if
8 the director shall inform the purchaser, transferee or assignee that a
9 possible claim for such State tax or taxes exists, any sums of
10 money, property or choses in action, or other consideration, which
11 the purchaser, transferee or assignee is required to transfer over to
12 the seller, transferrer or assignor shall be subject to a first priority
13 right and lien for any such State taxes theretofore or thereafter
14 determined to be due from the seller, transferrer or assignor to the
15 State, and the purchaser, transferee or assignee is forbidden to
16 transfer to the seller, transferrer or assignor any such sums of
17 money, property or choses in action to the extent of the amount of
18 the State's claim. For failure to comply with the provisions of this
19 section the purchaser, transferee or assignee, in addition to being
20 subject to the liabilities and remedies imposed under the provisions
21 of the uniform commercial code, Title 12A of the New Jersey
22 Statutes, shall be personally liable for the payment to the State of
23 any such taxes theretofore or thereafter determined to be due to the
24 State from the seller, transferrer or assignor, and such liability may
25 be assessed and enforced in the same manner as the liability for any
26 State tax under the State Uniform Tax Procedure Law, R.S.54:48-
27 1 et seq.

28 (cf: P.L.2017, c.307, s.1)

29
30 15. (New section) For privilege periods ending on and after July
31 31, 2020, a taxpayer shall be allowed a credit against the tax
32 imposed by subsection c. of section 5 of P.L.1945, c.162
33 (C.54:10A-5) to the extent a subsidiary of the taxpayer received
34 dividends and deemed dividends from other subsidiaries and
35 included those dividends in its entire net income for the purposes of
36 determining its tax liability pursuant to section 5 of P.L.1945, c.162
37 (C.54:10A-5) and paid tax on those dividends and deemed
38 dividends to the State on a timely filed New Jersey corporation
39 business tax return; provided, however, the taxpayer received those
40 same dividends and deemed dividends from the subsidiary that paid
41 tax to the State.

42 For purposes of this section, the members of a combined group
43 filing a New Jersey combined return shall be treated as one
44 taxpayer.

45 For purposes of this section, "paid tax" means the amount that
46 the subsidiary paid to the State or would have paid but for the use of
47 other tax credits, or but for subsections (u) and (v) of section 4 of
48 P.L.1945, c.162 (C.54:10A-4), or, for a combined group filing a

1 combined return, but for subsections g. and h. of section 18 of
2 P.L.2018, c.48 (C.54:10A-4.6).

3 The credit allowed by ¹~~the~~¹ this section shall be claimed in a
4 form and manner prescribed by the director on a timely filed
5 corporation business tax return.

6
7 16. (New section) a. For a banking corporation that is a
8 member of a combined group that has a fiscal group privilege
9 period, before the banking corporation is included as a member of
10 the New Jersey combined return, the banking corporation shall first
11 file the applicable BFC-1 return reporting their calendar year
12 income in accordance with section 4 of ¹~~P.L. L.1975, c.170~~¹
13 P.L.1975, c.170¹ (C.54:10A-34) for the applicable privilege period
14 which ended during the privilege period of the managerial member
15 and then file a transitional short period return covering January 1st
16 through the end of the month of the combined group's fiscal group
17 privilege period during the current calendar year. Subsequently, the
18 banking corporation shall file for the fiscal combined group's
19 privilege period and report all of its income on a fiscal basis with
20 the combined group. Thereafter, the banking corporation shall
21 continue reporting on a fiscal basis for future privilege periods. If a
22 banking corporation, that would otherwise be a member of a fiscal
23 combined group but for the transitional provisions of this section,
24 believes that application of the filing requirements set forth will
25 result in an unfair or distorted reflection of income, the banking
26 corporation may request relief from the director, which may be
27 granted at the director's discretion.

28 b. For a banking corporation that is not a member of a
29 combined group, which files a BFC-1 return reporting its calendar
30 year income in accordance with section 4 of P.L.1975, c.170
31 (C.54:10A-34), but which files on a fiscal federal tax year basis, the
32 banking corporation may elect to file separate returns in a manner
33 similar to subsection a. of this section, file a transitional short
34 period return, and subsequently file its New Jersey corporation
35 business tax returns on a fiscal year basis. Otherwise, such banking
36 corporations shall file transitional returns in order to subsequently
37 file in the same manner as other corporation business taxpayers. If a
38 banking corporation, that would otherwise continue to file the BFC-
39 1 return reporting its calendar year income in accordance with
40 section 4 of P.L.1975, c.170 (C.54:10A-34) but for the transitional
41 provisions provided for in this section, believes that application of
42 the filing requirements set forth will result in an unfair or distorted
43 reflection of income, the banking corporation may request relief
44 from the director, which may be granted at the director's discretion.

45 c. For a banking corporation that is not a member of a
46 combined group, which files a BFC-1 return reporting its calendar
47 year income in accordance with section 4 of P.L.1975, c.170
48 (C.54:10A-34), and files on a calendar federal tax year basis, the

1 banking corporation shall file transitional returns in order to
2 subsequently file in the same manner as other corporation business
3 taxpayers. If a banking corporation, that would otherwise continue
4 to file the BFC-1 return reporting its calendar year income in
5 accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) but for
6 the transitional provisions provided for in this section, believes
7 that application of the filing requirements set forth will result in an
8 unfair or distorted reflection of income, the banking corporation
9 may request relief from the director, which may be granted at the
10 director's discretion.

11 d. No penalties or interest shall be assessed on any
12 underpayment due to this section if the applicable returns are filed
13 within six months of enactment of this section.

14

15 ¹17. Section 6 of P.L.1968, c.49 (C.46:15-10) is amended to read
16 as follows:

17 6. The fee imposed by this act shall not apply to a deed:

18 (a) For a consideration, as defined in section 1(c), of less than
19 \$100.00;

20 (b) By or to the United States of America, this State, or any
21 instrumentality, agency, or subdivision thereof;

22 (c) Solely in order to provide or release security for a debt or
23 obligation;

24 (d) Which confirms or corrects a deed previously recorded;

25 (e) On a sale for delinquent taxes or assessments;

26 (f) On partition;

27 (g) By a receiver, trustee in bankruptcy or liquidation, or
28 assignee for the benefit of creditors;

29 (h) Eligible to be recorded as an "ancient deed" pursuant to
30 R.S.46:16-7;

31 (i) Acknowledged or proved on or before July 3, 1968;

32 (j) Between husband and wife, or parent and child;

33 (k) Conveying a cemetery lot or plot;

34 (l) In specific performance of a final judgment;

35 (m) Releasing a right of reversion;

36 (n) Previously recorded in another county and full realty transfer
37 fee paid or accounted for, as evidenced by written instrument,
38 attested by the grantee and acknowledged by the county recording
39 officer of the county of such prior recording, specifying the county,
40 book, page, date of prior recording, and amount of realty transfer
41 fee previously paid;

42 (o) By an executor or administrator of a decedent to a devisee or
43 heir to effect distribution of the decedent's estate in accordance with
44 the provisions of the decedent's will or the intestate laws of this
45 State;

46 (p) Recorded within 90 days following the entry of a divorce
47 decree which dissolves the marriage between the grantor and
48 grantee;

(q) Issued by a cooperative corporation, as part of a conversion of all of the assets of the cooperative corporation into a condominium, to a shareholder upon the surrender by the shareholder of all of the shareholder's stock in the cooperative corporation and the proprietary lease entitling the shareholder to exclusive occupancy of a portion of the property owned by the corporation.

(r) For transfer of real property that is entered into on and after January 1, 2021 that is an intercompany transfer between combined group members as part of the unitary business, as those terms are used in section 4 of P.L.1945, c.162 (C.54:10A-4).¹
(cf: P.L.1999, c.357, s.1)

¹18. (New section) Following the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), for the first privilege period of the taxpayer impacted by the enactment of P.L. , c. (C.) (pending before the Legislature as this bill) where such privilege period began before January 1, 2021, no penalties or interest shall accrue for underpayment of tax due to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) applying retroactively to privilege periods ending on or after July 31, 2020, that create an additional tax liability due to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill); provided however, the additional estimated payments shall be made by the later of the second next estimated payment subsequent to the enactment of P.L. , c. (C.) (pending before the Legislature as this bill) or the second estimated payment due after January 1, 2021.¹

¹**[17.] 19.**¹ (New section) Notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the director may adopt, immediately, upon filing with the Office of Administrative Law, regulations that the director deems necessary to implement the provisions of P.L. , c. (pending before the Legislature as this bill), which regulations shall be effective for a period not to exceed 360 days from the date of the filing. The director may thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

¹**[18] 20**¹. This act shall take effect immediately and, unless the context provides otherwise, shall apply ¹retroactively¹ to privilege periods ending on and after December 31, 2019, except that:

¹**[section] sections**¹ 11 ¹and 16¹ shall apply ¹retroactively¹ to privilege periods ending on and after July 31, 2020;

sections 6, 7, ¹and¹ 9, ¹**[and 16]**¹ shall apply retroactively to privilege periods ending on and after July 31, 2019; and

1 section 3 shall apply retroactively to privilege periods ending on
2 and after July 31, 2019, but the amendment to subsubparagraph (ii)
3 of subparagraph (A) of paragraph (5) of subsection (k) of section 4
4 of P.L.1945, c.162 (C.54:10A-4) shall be retroactive to privilege
5 periods beginning after December 31, 2016 and before
6 January 1, 2019.