

SENATE, No. 3240

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED DECEMBER 10, 2020

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Decouples State tax provisions from federal prohibition on cannabis business deductions, but only for businesses with less than \$15 million of gross receipts.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning business deductions incurred in carrying on a
2 cannabis business, amending P.L.1945, c.162 and P.L.1993,
3 c.173, and supplementing Title 54A of the New Jersey Statutes.

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

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

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

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

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

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

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

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

Matter underlined thus is new matter.

1 (but not by way of sole examples) for the purpose of supplying
2 deemed paid foreign tax credits or for the purpose of status as a
3 controlled foreign corporation. In calculating the net worth of a
4 taxpayer entitled to reduction for investment in subsidiaries, the
5 amount of liabilities of the taxpayer shall be reduced by such
6 proportion of the liabilities as corresponds to the ratio which the
7 excluded portion of the subsidiary values bears to the total assets of
8 the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (F) (i) The amount by which depreciation reported to the United
47 States Treasury Department for property placed in service on and

1 after January 1, 1981, but prior to taxpayer fiscal or calendar
2 accounting years beginning on and after the effective date of
3 P.L.1993, c.172, for purposes of computing federal taxable income
4 in accordance with section 168 of the Internal Revenue Code in
5 effect after December 31, 1980, exceeds the amount of depreciation
6 determined in accordance with the Internal Revenue Code
7 provisions in effect prior to January 1, 1981, but only with respect
8 to a taxpayer's accounting period ending after December 31, 1981;
9 provided, however, that where a taxpayer's accounting period
10 begins in 1981 and ends in 1982, no modification shall be required
11 with respect to this paragraph (F) for the report filed for such period
12 with respect to property placed in service during that part of the
13 accounting period which occurs in 1981. The provisions of this
14 subparagraph shall not apply to assets placed in service prior to
15 January 1, 1998 of a gas, gas and electric, and electric public utility
16 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-
17 49 et seq.) prior to 1998.

18 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
19 (2) of this subsection, any amount, except with respect to qualified
20 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
21 the Internal Revenue Code as in effect immediately prior to January
22 1, 1984, which the taxpayer claimed as a deduction in computing
23 federal income tax pursuant to a qualified lease agreement under
24 paragraph (8) of that section.

25 The director shall promulgate rules and regulations necessary to
26 carry out the provisions of this section, which rules shall provide,
27 among others, the manner in which the remaining life of property
28 shall be reported.

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

46 (ii) The amount of treble damages paid to the Department of
47 Environmental Protection pursuant to subsection a. of section 7 of

1 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
2 department in removing, or arranging for the removal of, an
3 unauthorized discharge upon failure of the discharger to comply
4 with a directive from the department to remove, or arrange for the
5 removal of, the discharge.

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

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

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

33 A deduction shall also be permitted to the extent that the
34 taxpayer establishes by a preponderance of the evidence, as
35 determined by the director, that the interest is directly or indirectly
36 paid, accrued or incurred to (i) a related member in a foreign nation
37 which has in force a comprehensive income tax treaty with the
38 United States and the related member (aa) was subject to tax in the
39 foreign nation on a tax base that included the payment paid,
40 accrued, or incurred; and (bb) under which the related member's
41 income received from the transaction was taxed at an effective tax
42 rate equal to or greater than a rate of three percentage points less
43 than the rate of tax applied to taxable interest by the State of New
44 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
45 provided however that the taxpayer shall disclose on its return for
46 the privilege period the name of the related member, the amount of
47 the interest, the relevant foreign nation, and such other information

1 as the director may prescribe or (ii) to an independent lender and
2 the taxpayer guarantees the debt on which the interest is required.
3 The adjustments required by this subparagraph shall not apply to
4 transactions between related members included in a combined
5 group reported on a New Jersey combined return.

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

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

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

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

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

- 1 (A) The eligible net income of an international banking facility
2 shall be the amount remaining after subtracting from the eligible
3 gross income the applicable expenses;
- 4 (B) Eligible gross income shall be the gross income derived by
5 an international banking facility, which shall include, but not be
6 limited to, gross income derived from:
- 7 (i) Making, arranging for, placing or carrying loans to foreign
8 persons, provided, however, that in the case of a foreign person
9 which is an individual, or which is a foreign branch of a domestic
10 corporation (other than a bank), or which is a foreign corporation or
11 foreign partnership which is controlled by one or more domestic
12 corporations (other than banks), domestic partnerships or resident
13 individuals, all the proceeds of the loan are for use outside of the
14 United States;
- 15 (ii) Making or placing deposits with foreign persons which are
16 banks or foreign branches of banks (including foreign subsidiaries)
17 or foreign branches of the taxpayers or with other international
18 banking facilities;
- 19 (iii) Entering into foreign exchange trading or hedging
20 transactions related to any of the transactions described in this
21 paragraph; or
- 22 (iv) Such other activities as an international banking facility
23 may, from time to time, be authorized to engage in;
- 24 (C) Applicable expenses shall be any expense or other
25 deductions attributable, directly or indirectly, to the eligible gross
26 income described in subparagraph (B) of this paragraph.
- 27 (5) (A) (i) Entire net income shall exclude 100% of dividends
28 which were included in computing such taxable income for federal
29 income tax purposes, paid to the taxpayer by one or more
30 subsidiaries owned by the taxpayer to the extent of the 80% or more
31 ownership of investment described in subsection (d) of this section
32 for privilege periods beginning on or before December 31, 2016.
- 33 (ii) For privilege periods beginning after December 31, 2016
34 and before January 1, 2019, entire net income shall exclude 95% of
35 dividends which were included in computing such taxable income
36 for federal income tax purposes, paid or deemed paid, to the
37 taxpayer by one or more subsidiaries owned by the taxpayer to the
38 extent of the 80% or more ownership of investment described in
39 subsection (d) of this section. For the purposes of calculating the
40 tax liability owed for the paid or deemed paid dividends included in
41 entire net income by this subsection, the taxpayer shall use either
42 their three-year average allocation factor for the taxpayer's 2014
43 through 2016 tax years reported on the taxpayer's tax returns or 3.5
44 percent, whichever is lower.
- 45 (iii) For privilege periods beginning on and after January 1,
46 2019, entire net income shall exclude 95% of dividends which were
47 included in computing such taxable income for federal income tax

1 purposes, paid or deemed paid to the taxpayer by one or more
2 subsidiaries owned by the taxpayer to the extent of the 80% or more
3 ownership of investment described in subsection (d) of this section.

4 (B) Entire net income shall exclude 50% of dividends which
5 were included in computing such taxable income for federal income
6 tax purposes, paid or deemed paid to the taxpayer by one or more
7 subsidiaries owned by the taxpayer to the extent of 50% or more
8 ownership of investment, such ownership of investment calculated
9 in the same manner as the 80% or more of ownership of investment
10 is calculated as described in subsection (d) of this section.

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

20 (6) (A) Net operating loss deduction. For privilege periods
21 ending before July 31, 2019, there shall be allowed as a deduction
22 for the privilege period the net operating loss carryover to that
23 period.

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

39 (C) Net operating loss. For purposes of this paragraph the term
40 "net operating loss" means the excess of the deductions over the
41 gross income used in computing entire net income without the net
42 operating loss deduction provided for in subparagraph (A) of this
43 paragraph and the exclusions in paragraphs (4) and (5) of this
44 subsection.

45 (D) 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

1 giving rise to the loss, no net operating loss sustained before the
2 changes may be carried over to be deducted from income earned
3 after such changes. In addition where the facts support the premise
4 that the corporation was acquired under any circumstances for the
5 primary purpose of the use of its net operating loss carryover, the
6 director may disallow the carryover.

7 (E) Notwithstanding the provisions of this paragraph (6) of
8 subsection (k) of this section to the contrary, for privilege periods
9 beginning during calendar year 2002 and calendar year 2003, no
10 deduction for any net operating loss carryover shall be allowed and
11 for privilege periods beginning during calendar year 2004 and
12 calendar year 2005, there shall be allowed as a deduction for the
13 privilege period so much of the net operating loss carryover as
14 reduces entire net income otherwise calculated by 50%. If and only
15 to the extent that any net operating loss carryover deduction is
16 disallowed by reason of this subparagraph (E), the date on which
17 the amount of the disallowed net operating loss carryover deduction
18 would otherwise expire shall be extended by a period equal to the
19 period for which application of the net operating loss was
20 disallowed by this subparagraph.

21 Provided, that this subparagraph (E) shall not restrict the
22 surrender or acquisition of corporation business tax benefit
23 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
24 7.42a) and shall not restrict the application of corporation business
25 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
26 (C.54:10A-4.2).

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

34 (7) The entire net income of gas, electric and gas and electric
35 public utilities that were subject to, or would have been subject to
36 tax if doing business in this State, the provisions of P.L.1940, c.5
37 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
38 substituting the New Jersey depreciation allowance for federal tax
39 depreciation with respect to assets placed in service prior to January
40 1, 1998. For gas, electric, and gas and electric public utilities that
41 were subject to, or would have been subject to tax if doing business
42 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
43 prior to 1998, the New Jersey depreciation allowance shall be
44 computed as follows: All depreciable assets placed in service prior
45 to January 1, 1998 shall be considered a single asset account. The
46 New Jersey tax basis of this depreciable asset account shall be an
47 amount equal to the carryover adjusted basis for federal income tax

1 purposes on December 31, 1997 of all depreciable assets in service
2 on December 31, 1997, increased by the excess, of the "net carrying
3 value," defined to be adjusted book basis of all assets and liabilities,
4 excluding deferred income taxes, recorded on the public utility's
5 books of account on December 31, 1997, over the carryover
6 adjusted basis for federal income tax purposes on December 31,
7 1997 of all assets and liabilities owned by the gas, electric, or gas
8 and electric public utility as of December 31, 1997. "Books of
9 account" for gas, gas and electric, and electric public utilities means
10 the uniform system of accounts as promulgated by the Federal
11 Energy Regulatory Commission and adopted by the Board of Public
12 Utilities. The following adjustments to entire net income shall be
13 made pursuant to this section:

14 (A) Depreciation for property placed in service prior to January
15 1, 1998 shall be adjusted as follows:

16 (i) Depreciation for federal income tax purposes shall be
17 disallowed in full.

18 (ii) A deduction shall be allowed for the New Jersey
19 depreciation allowance. The New Jersey depreciation allowance
20 shall be computed for the single asset account described above
21 based on the New Jersey tax basis as adjusted above as if all assets
22 in the single asset account were first placed in service on January 1,
23 1998. Depreciation shall be computed using the straight line method
24 over a thirty-year life. A full year's depreciation shall be allowed in
25 the initial tax year. No half-year convention shall apply. The
26 depreciable basis of the single account shall be reduced by the
27 adjusted federal tax basis of assets sold, retired, or otherwise
28 disposed of during any year on which gain or loss is recognized for
29 federal income tax purposes as described in subparagraph (B) of
30 this paragraph.

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

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

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

46 (9) Notwithstanding paragraph (1) of this subsection, entire net
47 income shall not include the income derived by a corporation

1 organized in a foreign country from the international operation of a
2 ship or ships, or from the international operation of aircraft, if such
3 income is exempt from federal taxation pursuant to section 883 of
4 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

5 (10) Entire net income shall exclude all income of an alien
6 corporation the activities of which are limited in this State to
7 investing or trading in stocks and securities for its own account,
8 investing or trading in commodities for its own account, or any
9 combination of those activities, within the meaning of section 864
10 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
11 effect on December 31, 1998. Notwithstanding the previous
12 sentence, if an alien corporation undertakes one or more infrequent,
13 extraordinary or non-recurring activities, including but not limited
14 to the sale of tangible property, only the income from such
15 infrequent, extraordinary or non-recurring activity shall be subject
16 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-
17 1 et seq.), and that amount of income subject to tax shall be
18 determined without regard to the allocation to that specific
19 transaction of any general business expense of the taxpayer and
20 shall be specifically assigned to this State for taxation by this State
21 without regard to section 6 of P.L.1945, c.162 (C.54:10A-6). For
22 the purposes of this paragraph, "alien corporation" means a
23 corporation organized under the laws of a jurisdiction other than the
24 United States or its political subdivisions.

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

33 (12) (A) Notwithstanding the provisions of subsection (k) of
34 section 168 of the federal Internal Revenue Code of 1986, 26
35 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
36 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
37 law, for property acquired after September 10, 2001, the
38 depreciation deduction otherwise allowed pursuant to section 167 of
39 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
40 be determined pursuant to the provisions of the federal Internal
41 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
42 December 31, 2001.

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

1 (13) (A) Notwithstanding the provisions of section 179 of the
2 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
3 property placed in service on or after January 1, 2004, the costs that
4 a taxpayer may otherwise elect to treat as an expense which is not
5 chargeable to a capital account shall be determined pursuant to the
6 provisions of the federal Internal Revenue Code of 1986
7 (26 U.S.C. s.1 et seq.) in effect on December 31, 2002.

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

13 (14) Notwithstanding the provisions of subsection (i) of section
14 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
15 for privilege periods beginning after December 31, 2008 and before
16 January 1, 2011, entire net income shall include the amount of
17 discharge of indebtedness income excluded for federal income tax
18 purposes pursuant to subsection (i) of section 108 of the federal
19 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
20 periods beginning on or after January 1, 2014 and before January 1,
21 2019, entire net income shall exclude the amount of discharge of
22 indebtedness income included for federal income tax purposes,
23 pursuant to subsection (i) of section 108 of the federal Internal
24 Revenue Code of 1986 (26 U.S.C. s.108).

25 (15) Entire net income shall exclude the gain or income derived
26 from the sale or assignment of a tax credit transfer certificate
27 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
28 10 of P.L.2014, c.63 (C.34:1B-251).

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

31 (B) For purposes of this paragraph, "net deferred tax liability"
32 means deferred tax liabilities that exceed the deferred tax assets of
33 the combined group, as computed in accordance with generally
34 accepted accounting principles, and "net deferred tax asset" means
35 that deferred tax assets exceed the deferred tax liabilities of the
36 combined group, as computed in accordance with generally
37 accepted accounting principles.

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

43 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48
44 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to
45 the members' net deferred tax liability or an aggregate decrease to
46 the members' net deferred tax asset, or an aggregate change from a
47 net deferred tax asset to a net deferred tax liability, the combined

1 group shall be entitled to a deduction, as determined in this
2 paragraph.

3 (E) For 10 years beginning with the combined group's first
4 privilege period beginning on or after January 1 of the fifth year
5 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a
6 combined group shall be entitled to a deduction from combined
7 group entire net income equal to one-tenth of the amount necessary
8 to offset the increase in the net deferred tax liability or decrease in
9 the net deferred tax asset, or aggregate change from a net deferred
10 tax asset to a net deferred tax liability. Such increase in the net
11 deferred tax liability or decrease in the net deferred tax asset or the
12 aggregate change from a net deferred tax asset to a net deferred tax
13 liability shall be computed based on the change that would result
14 from the imposition of the unitary reporting requirements under
15 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and
16 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided
17 under this paragraph as of the effective date of this paragraph.

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

21 (i) the deferred tax impact determined in subparagraph (E) of
22 this paragraph shall be divided by the rate determined under section
23 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
24 c.48 (C.54:10A-5.41 et al.);

25 (ii) the resulting amount shall be further divided by the New
26 Jersey unitary business allocation factor that was used by the
27 combined group in the calculation of the deferred tax assets and
28 deferred tax liabilities as described in subparagraph (E) of this
29 paragraph;

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

33 (G) The deduction calculated under this paragraph shall not be
34 adjusted as a result of any events happening subsequent to such
35 calculation, including, but not limited to, any disposition or
36 abandonment of assets. Such deduction shall be calculated without
37 regard to the federal tax effect and shall not alter the tax basis of
38 any asset. If the deduction under this section is greater than
39 combined group entire net income, any excess deduction shall be
40 carried forward and applied as a deduction to combined group entire
41 net income in future privilege periods until fully utilized.

42 (H) Any combined group intending to claim a deduction under
43 this paragraph shall file a statement with the director on or before
44 July 1 of the year subsequent to the first privilege period for which
45 a combined return is required. Such statement shall specify the
46 total amount of the deduction which the combined group claims on
47 such form and in such manner as prescribed by the director. No

1 deduction shall be allowed under this paragraph for any privilege
2 period except to the extent claimed on such timely filed statement
3 in accordance with this paragraph.

4 (17) (A) In the case of a taxpayer that is a cannabis licensee,
5 there shall be allowed as a deduction an amount equal to any
6 expenditure that is eligible to be claimed as a federal income tax
7 deduction but is disallowed because cannabis is a controlled
8 substance under federal law.

9 (B) Subparagraph (A) of this paragraph shall only apply to a
10 taxpayer with less than \$15,000,000 of gross receipts, as gross
11 receipts are calculated in accordance with the gross receipts test of
12 subsection (c) of section 448 of the Internal Revenue Code
13 (26 U.S.C. s.448), but without regard to the \$25,000,000 maximum
14 or the adjustment for inflation of that subsection.

15 (C) For purposes of this paragraph, "licensee" means the same
16 as defined in section 3 of P.L. c. (C.) (pending before the
17 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of
18 2020).

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

22 (m) "Financial business corporation" shall mean any corporate
23 enterprise which is (1) in substantial competition with the business
24 of national banks and which (2) employs moneyed capital with the
25 object of making profit by its use as money, through discounting
26 and negotiating promissory notes, drafts, bills of exchange and
27 other evidences of debt; buying and selling exchange; making of or
28 dealing in secured or unsecured loans and discounts; dealing in
29 securities and shares of corporate stock by purchasing and selling
30 such securities and stock without recourse, solely upon the order
31 and for the account of customers; or investing and reinvesting in
32 marketable obligations evidencing indebtedness of any person,
33 copartnership, association or corporation in the form of bonds,
34 notes or debentures commonly known as investment securities; or
35 dealing in or underwriting obligations of the United States, any
36 state or any political subdivision thereof, or of a corporate
37 instrumentality of any of them. This shall include, without
38 limitation of the foregoing, business commonly known as industrial
39 banks, dealers in commercial paper and acceptances, sales finance,
40 personal finance, small loan and mortgage financing businesses, as
41 well as any other enterprise employing moneyed capital coming
42 into competition with the business of national banks; provided that
43 the holding of bonds, notes, or other evidences of indebtedness by
44 individual persons not employed or engaged in the banking or
45 investment business and representing merely personal investments
46 not made in competition with the business of national banks, shall
47 not be deemed financial business. Nor shall "financial business"

1 include national banks, production credit associations organized
2 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
3 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
4 insurance companies duly authorized to transact business in this
5 State, security brokers or dealers or investment companies or
6 bankers not employing moneyed capital coming into competition
7 with the business of national banks, real estate investment trusts, or
8 any of the following entities organized under the laws of this State:
9 credit unions, savings banks, savings and loan and building and
10 loan associations, pawnbrokers, and State banks and trust
11 companies.

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

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

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

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

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

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

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

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

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

17 (1) As used in this subsection:

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

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

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

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

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

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

1 giving rise to the loss, no net operating loss sustained before the
2 changes may be carried over to be deducted from income earned
3 after such changes. In addition, where the facts support the premise
4 that the corporation was acquired under any circumstances for the
5 primary purpose of the use of its net operating loss carryover, the
6 director may disallow the carryover; provided, however, this
7 paragraph shall not apply between members of a combined group
8 reported on a New Jersey combined return.

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

15 (x) "Affiliated group" means 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 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 (y) "Combinable captive insurance company" means an entity
25 that is treated as an association taxable as a corporation under the
26 federal Internal Revenue Code:

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

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

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

36 (4) 50% or less of whose gross receipts for the privilege period
37 consist of premiums from arrangements that constitute insurance for
38 federal income tax purposes.

39 A combinable captive insurance company shall not be exempt
40 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
41 insurance company that does not meet the definition of combinable
42 captive insurance company shall be excluded as provided in
43 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
44 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

45 For purposes of this definition:

46 "Affiliated group" shall have the same meaning as that term is
47 given by section 1504 of the federal Internal Revenue Code,

1 26 U.S.C. s.1504, except that the term "common parent
2 corporation" as used in section 1504 of the federal Internal Revenue
3 Code, 26 U.S.C. s.1504, shall mean any person, as defined in
4 section 7701 of the federal Internal Revenue Code, 26 U.S.C.
5 s.7701, and references to "at least 80%" in section 1504 of the
6 federal Internal Revenue Code, 26 U.S.C. s.1504, shall be read as
7 "50% or more." Section 1504 of the federal Internal Revenue Code,
8 26 U.S.C. s.1504, shall be read without regard to the exclusions
9 provided for in subsection (b) of that section.

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

14 "Premiums" includes consideration for annuity contracts and
15 excludes any part of the consideration for insurance, reinsurance, or
16 annuity contracts that do not provide bona fide insurance,
17 reinsurance, or annuity benefits.

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

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

31 (bb) "Group privilege period" means, if two or more members
32 in the combined group file in the same federal consolidated tax
33 return, the same income year as that used on the federal
34 consolidated tax return and, in all other cases, the privilege period
35 of the managerial member.

36 (cc) "Managerial member" means if the combined group has a
37 common parent corporation and that common parent corporation is
38 a taxable member, the managerial member shall be the common
39 parent corporation. In other cases, the combined group shall select
40 a taxable member as its managerial member or, in the discretion of
41 the director or upon failure of the combined group to select its
42 managerial member, the director shall designate a taxable member
43 of the combined group as managerial member.

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

46 (ee) "Nontaxable member" means a member that is: (i) not
47 subject to tax pursuant to the Corporation Business Tax Act (1945),

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21

1 P.L.1945, c.162 (C.54:10A-1 et seq.) and is not a corporation
2 exempted from the tax pursuant to section 3 of P.L.1945, c.162
3 (C.54:10A-3) except for a combinable captive insurance company;
4 or (ii) a New Jersey S Corporation which does not elect to be
5 included in the combined group.

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

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

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

31

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

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

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

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

3 For a New Jersey S corporation, the S corporation income
4 allocated to this State of all New Jersey S corporations; and the S
5 corporation income not allocated to this State.

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

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

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

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

18 (2) taxes paid or accrued to the United States, a possession or
19 territory of the United States, a state including this State, a political
20 subdivision thereof, or the District of Columbia on or measured by
21 profits or income, or business presence or business activity, of the
22 corporation;

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

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

32 (5) interest on indebtedness incurred or continued, expenses
33 paid and incurred to purchase, carry, manage or conserve, and
34 expenses of collection of the income or gain from obligations the
35 income or gain from which is deductible pursuant to subsection b.
36 of this definition; and

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

38 (1) any gains or income derived from obligations which are
39 referred to in N.J.S.54A:6-14 or from securities which evidence
40 ownership in a qualified investment fund as defined in section 2 of
41 P.L.1987, c.310 (C.54A:6-14.1), and any interest excluded from
42 gross income pursuant to N.J.S.54A:6-14, or distributions excluded
43 from income pursuant to section 2 of P.L.1987, c.310 (C.54A:6-
44 14.1); and

45 (2) (a) in the case of a taxpayer that is a cannabis licensee, an
46 amount equal to any expenditure that is eligible to be claimed as a

1 federal income tax deduction but is disallowed because cannabis is
2 a controlled substance under federal law;

3 (b) subparagraph (a) of this paragraph shall only apply to a
4 taxpayer with less than \$15,000,000 of gross receipts, as gross
5 receipts are calculated in accordance with the gross receipts test of
6 subsection (c) of section 448 of the Internal Revenue Code
7 (26 U.S.C. s.448), but without regard to the \$25,000,000 maximum
8 or the adjustment for inflation of that subsection;

9 (c) for purposes of this paragraph, "licensee" means the same as
10 defined in section 3 of P.L. c. (C.) (pending before the
11 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of
12 2020); and

13 c. The character of any S corporation item taken into account
14 by a shareholder of an S corporation shall be determined as if such
15 items were received or incurred by the S corporation and not its
16 shareholder.

17 "S corporation income allocated to this State" means that portion
18 of the S corporation income that is allocated to this State by the
19 allocation factor of the corporation for the fiscal or calendar
20 accounting period pursuant to sections 6 through 10 of P.L.1945,
21 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax
22 imposed pursuant to paragraph (3) of subsection (c) of section 5 of
23 P.L.1945, c.162 (C. 54:10A-5).

24 "S corporation income not allocated to this State" means S
25 corporation income less S corporation income allocated to
26 this State.

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

28

29 3. (New section) New Jersey gross income under subsections
30 b. and k. of N.J.S.54A:5-1 shall be determined without regard to
31 section 280E of the Internal Revenue Code (26 U.S.C. 280E).

32

33 4. (New section) Notwithstanding the provisions of the
34 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
35 1 et seq.), to the contrary, the director may adopt, immediately,
36 upon filing with the Office of Administrative Law, regulations that
37 the director deems necessary to implement the provisions of
38 P.L. , c. (C.) (pending before the Legislature as this bill),
39 which regulations shall be effective for a period not to exceed 360
40 days from the date of the filing. The director may thereafter amend,
41 adopt, or readopt the regulations in accordance with the
42 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

43

44 5. This act shall take effect immediately or upon the enactment
45 into law of P.L. , c. (C.) (pending before the Legislature as
46 Assembly Bill No. 21 and Senate Bill No. 21 of 2020), whichever
47 occurs later.

STATEMENT

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This bill decouples the corporation business tax from the federal income tax provision that prohibits deductions and credits for cannabis businesses. The bill also decouples S corporation income under the gross income tax from the federal provision. In both instances, the bill only decouples from the federal provision for taxpayers with less than \$15 million of gross receipts.

Under the State’s corporation business tax, and for S corporation income under the gross income tax, the starting point for calculating income that is taxable is that which is taxable under the federal income tax. Federal law (26 U.S.C. s.280E) prohibits deductions and credits for businesses trafficking in federally defined schedule I and II controlled substances, which includes cannabis. Deductions for business expenses are therefore not available to cannabis businesses, which results in a higher federal income tax liability than other businesses with similar amounts of income. Because the corporation business tax is currently linked by State law to federal law in this respect, cannabis businesses subject to the corporation business tax would also have a higher tax liability than other businesses with similar amounts of income. The same is true for S corporation income under the gross income tax. In contrast, other forms of business income under the gross income tax are not linked to the federal provision by State law, but this bill nevertheless includes a provision to state explicitly that the federal provision does not apply.

As a result of enactment of this bill, a business with less than \$15 million of gross receipts and subject to the corporation business tax will be allowed to deduct from income all ordinary and necessary business expenses incurred in carrying on a licensed cannabis business. The deduction will also be allowed when calculating S corporation income from S corporations with less than \$15 million of gross receipts, and will continue to be allowed for other forms of business income under the gross income tax regardless of total gross receipts.