

**SENATE, No. 4068**

---

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

---

INTRODUCED NOVEMBER 8, 2021

**Sponsored by:**

**Senator PAUL A. SARLO**

**District 36 (Bergen and Passaic)**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**Co-Sponsored by:**

**Senators Singleton, O'Scanlon and Testa**

**SYNOPSIS**

Revises calculation of elective pass-through business alternative income tax.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/8/2021)**

1 AN ACT concerning the elective pass-through business alternative  
2 income tax, amending Title 54A of the New Jersey Statutes.

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

6  
7 1. Section 2 of P.L.2019, c.320 (C.54A:12-2) is amended to  
8 read as follows:

9 2. As used in P.L.2019, c.320 (C.54A:12-1 et al.):

10 "Direct share of the tax paid" means the portion of pass-through  
11 business alternative income tax calculated on the distributive  
12 proceeds that is also included in the gross income of a member of  
13 the electing pass-through entity pursuant to the "New Jersey Gross  
14 Income Tax Act," N.J.S.54A:1-1 et seq.

15 "Director" means the Director of the Division of Taxation in the  
16 Department of the Treasury.

17 "Distributive proceeds" means all items of income, gain, loss, or  
18 deduction of a pass-through entity to the extent the amounts are  
19 included in the New Jersey gross income as set forth in  
20 N.J.S.54A:5-1 **the net income, dividends, royalties, interest, rents,**  
21 **guaranteed payments, and gains of a pass-through entity, derived**  
22 **from or connected with sources within the State, and upon which**  
23 **tax is imposed and due on a member of the pass-through entity**  
24 **pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1**  
25 **et seq., in a taxable year**. For a nonresident, this means New Jersey  
26 source income as set forth in N.J.S.54A:5-8.

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

34 "Member" means a shareholder of an S corporation; a partner in  
35 a general, limited, or limited liability partnership; or a member of a  
36 limited liability company.

37 "Partnership" means a syndicate, group, pool, joint venture, or  
38 other unincorporated organization, through or by means of which  
39 any business, financial operation, or venture is carried on in this  
40 State.

41 "Pass-through business alternative income tax" means the tax set  
42 forth in subsection b. of section 3 of P.L.2019, c.320 (C.54A:12-3).

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

**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 "Share of distributive proceeds" means the portion of distributive  
2 proceeds attributable to a member of a pass-through entity in a  
3 taxable year.

4 "Taxable year" means the same as in N.J.S.54A:1-2.

5 "Taxed at the business entity level" means taxed pursuant to an  
6 election made under P.L.2019, c.320 (C.54A:12-1 et al.).  
7 (cf: P.L.2019, c.320, s.2)

8  
9 2. Section 5 of P.L.2019, c.320 (C.54A:12-5) is amended to  
10 read as follows:

11 5. a. Except as otherwise provided in paragraph (3) of  
12 subsection b. of section 3 of P.L.2019, c.320 (C.54A:12-3), a  
13 taxpayer shall be allowed a refundable gross income tax credit,  
14 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1  
15 et seq., if the taxpayer is a member of a pass-through entity that  
16 elects to owe and pay the pass-through business alternative income  
17 tax determined pursuant to section 3 of P.L.2019, c.320 (C.54A:12-  
18 3) for the taxable year.

19 For each pass-through entity of which the taxpayer is a member,  
20 the amount of the credit shall equal the member's **【pro rata】** direct  
21 share of the tax paid pursuant to section 3 of P.L.2019, c.320  
22 (C.54A:12-3), which credit shall be applied against the gross  
23 income tax liability of the member in the taxable year.

24 b. The credit allowed by this section shall be available after the  
25 application of all other credits allowed by law and claimed by the  
26 taxpayer in the taxable year.

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

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

37 (cf: P.L.2019, c.320, s.5)

38  
39 3. This act shall take effect immediately and apply  
40 retroactively to taxable years beginning on and after January 1,  
41 2020.

42  
43  
44 STATEMENT

45  
46 This bill revises how to calculate the elective pass-through  
47 business alternative income tax.

1       Currently, when a pass-through entity chooses to pay the  
2 business alternative income tax, the pass-through entity's tax is  
3 calculated based on the portion of the entity's income that is  
4 derived from business conducted in New Jersey. The owners of the  
5 entity are then allowed a gross income tax credit based on the  
6 amount of tax the entity paid. Because the tax is calculated using  
7 only the entity's income derived from New Jersey, the tax is  
8 sometimes lower than it otherwise may be and therefore the entity's  
9 owners' tax credit is lower than it may otherwise be.

10       Under this bill, for owners of the entity that are New Jersey  
11 residents, the pass-through entity's tax is calculated based on all  
12 income of the entity as long as the income would be taxable under  
13 the gross income tax. Resident owners of pass-through entities will  
14 therefore be able to obtain a larger gross income tax credit. For  
15 owners of the entity that are non-residents, the pass-through entity's  
16 tax will continue to be based on income derived from business  
17 conducted in New Jersey.

18       The changes made by this bill will apply retroactively to taxable  
19 year 2020, the first year that the elective pass-through business  
20 alternative income tax was in effect.