

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:

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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)

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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)

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

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STATEMENT

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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.