

[First Reprint]

SENATE, No. 4068

STATE OF NEW JERSEY
219th LEGISLATURE

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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 amended by the Senate on December 2, 2021.



(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 ¹(1)¹ all items of income, gain,
18 loss, or deduction of a pass-through entity to the extent the amounts
19 are included in the New Jersey gross income ¹of a resident member¹
20 as set forth in N.J.S.54A:5-1 **【**the net income, dividends, royalties,
21 interest, rents, guaranteed payments, and gains of a pass-through
22 entity, derived from or connected with sources within the State, and
23 upon which tax is imposed and due on a member of the pass-
24 through entity pursuant to the "New Jersey Gross Income Tax Act,"
25 N.J.S.54A:1-1 et seq., in a taxable year **】** ¹, and (2) with regard to all
26 other members the net income, dividends, royalties, interest, rents,
27 guaranteed payments, and gains of a pass-through entity, derived
28 from or connected with sources within the State, and upon which
29 tax is imposed and due on such members of the pass-through entity
30 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
31 et seq., in a taxable year¹. For a nonresident, this means New Jersey
32 source income as set forth in N.J.S.54A:5-8.

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

40 "Member" means a shareholder of an S corporation; a partner in
41 a general, limited, or limited liability partnership; or a member of a
42 limited liability company.

43 "Partnership" means a syndicate, group, pool, joint venture, or
44 other unincorporated organization, through or by means of which

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:

¹Senate floor amendments adopted December 2, 2021.

1 any business, financial operation, or venture is carried on in this
2 State.

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

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

9 "Share of distributive proceeds" means the portion of distributive
10 proceeds attributable to a member of a pass-through entity in a
11 taxable year.

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

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

16
17 2. Section 5 of P.L.2019, c.320 (C.54A:12-5) is amended to
18 read as follows:

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

27 For each pass-through entity of which the taxpayer is a member,
28 the amount of the credit shall equal the member's **[pro rata]** direct
29 share of the tax paid pursuant to section 3 of P.L.2019, c.320
30 (C.54A:12-3), which credit shall be applied against the gross
31 income tax liability of the member in the taxable year.

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

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

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

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

46

47 3. This act shall take effect immediately and apply
48 retroactively to taxable years beginning on and after January 1,
49 **'[2020] 2021'**.