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Yes

"Criminal justice bills signed." The Times, (Trenton, NJ), October 22, 2020: 013.

RWH/CL

§15 –
C.54:10A-5.46
§16 –
C.54:10A-34.1
§§18, 19 - T&E
§20 - Note

P.L. 2020, CHAPTER 118, *approved November 4, 2020*
Assembly, No. 4809 (*First Reprint*)

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

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 of a combined group may sell prior net operating loss conversion
2 carryover to other members of the combined group, if otherwise
3 applicable and allowable under section 2 of P.L.1997, c.334
4 (C.54:10A-4.2) and this section; provided, however, such sale of
5 prior net operating loss conversion carryover shall be made at arm's
6 length price at the same rate as though the sale was to an unrelated
7 taxpayer.

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

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

46 (2) an eligible applicant with more than \$250,000 of transferable
47 tax benefits shall be authorized to surrender a minimum of
48 \$250,000 of its transferable tax benefits;

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

2 (4) an eligible applicant with more than \$250,000 shall also be
3 authorized to surrender additional transferable tax benefits
4 determined by multiplying the applicant's transferable tax benefits
5 less the minimum transferable tax benefits that company is
6 authorized to surrender under paragraph (2) of this subsection by a
7 fraction, the numerator of which is the total amount of transferable
8 tax benefits that the authority is authorized to approve less the total
9 amount of transferable tax benefits approved under paragraphs (1),
10 (2), and (5) of this subsection and the denominator of which is the
11 total amount of transferable tax benefits requested to be surrendered
12 by all eligible applicants less the total amount of transferable tax
13 benefits approved under paragraphs (1), (2), and (5) of this
14 subsection;

15 (5) The authority shall establish the boundaries for three
16 innovation zones to be geographically distributed in the northern,
17 central, and southern portions of this State. Of the \$60,000,000 of
18 transferable tax benefits authorized for each State fiscal year,
19 \$10,000,000 shall be allocated for the surrender of transferable tax
20 benefits exclusively by new and expanding emerging technology
21 and biotechnology companies that operate within the boundaries of
22 the innovation zones, except that any portion of the \$10,000,000
23 that is not so approved shall be available for that State fiscal year
24 for the surrender of transferable tax benefits by new and expanding
25 emerging technology and biotechnology companies that do not
26 operate within the boundaries of an innovation zone.

27 If the total amount of transferable tax benefits that would be
28 authorized using the above method exceeds \$60,000,000 for a State
29 fiscal year, then the authority, in cooperation with the Division of
30 Taxation in the Department of the Treasury, shall limit the total
31 amount of tax benefits authorized to be transferred to \$60,000,000
32 by applying the above method on an apportioned basis.

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

1 maximum amount of tax benefits that the applicant is eligible to
2 surrender.

3 No application for a corporation business tax benefit transfer
4 certificate shall be approved in which the new or expanding
5 emerging technology or biotechnology company (1) has
6 demonstrated positive net operating income in any of the two
7 previous full years of ongoing operations as determined on its
8 financial statements issued according to generally accepted
9 accounting standards endorsed by the Financial Accounting
10 Standards Board; or (2) is directly or indirectly at least 50 percent
11 owned or controlled by another corporation that has demonstrated
12 positive net operating income in any of the two previous full years
13 of ongoing operations as determined on its financial statements
14 issued according to generally accepted accounting standards
15 endorsed by the Financial Accounting Standards Board or is part of
16 a consolidated group of affiliated corporations, as filed for federal
17 income tax purposes, that in the aggregate has demonstrated
18 positive net operating income in any of the two previous full years
19 of ongoing operations as determined on its combined financial
20 statements issued according to generally accepted accounting
21 standards endorsed by the Financial Accounting Standards Board.

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

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

33 The authority, in consultation with the Division of Taxation,
34 shall establish rules for the recapture of all, or a portion of, the
35 amount of a grant of a corporation business tax benefit certificate
36 from the new or expanding emerging technology and biotechnology
37 company having surrendered tax benefits pursuant to this section in
38 the event the taxpayer fails to use the private financial assistance
39 received for the surrender of tax benefits as required by this section
40 or fails to maintain a headquarters or a base of operation in this
41 State during the five years following receipt of the private financial
42 assistance; except if the failure to maintain a headquarters or a base
43 of operation in this State is due to the liquidation of the new or
44 expanding emerging technology and biotechnology company.

45 c. The authority, in cooperation with the Division of Taxation
46 in the Department of the Treasury, shall review and approve
47 applications by taxpayers under the Corporation Business Tax Act
48 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire

1 surrendered tax benefits approved pursuant to subsection b. of this
2 section which shall be issued in the form of corporation business
3 tax benefit transfer certificates, in exchange for private financial
4 assistance to be made by the taxpayer in an amount equal to at least
5 80% of the amount of the surrendered tax benefit of an emerging
6 technology or biotechnology company in the State. A corporation
7 business tax benefit transfer certificate shall not be issued unless the
8 applicant certifies that as of the date of the exchange of the
9 corporation business tax benefit certificate it is operating as a new
10 or expanding emerging technology or biotechnology company and
11 has no current intention to cease operating as a new or expanding
12 emerging technology or biotechnology company.

13 The managerial member of a combined group shall be the
14 member that acquires a corporation business tax benefit certificate
15 on behalf of the combined group for use on the combined return.

16 The private financial assistance shall assist in funding expenses
17 incurred in connection with the operation of the new or expanding
18 emerging technology or biotechnology company in the State,
19 including but not limited to the expenses of fixed assets, such as the
20 construction and acquisition and development of real estate,
21 materials, start-up, tenant fit-out, working capital, salaries, research
22 and development expenditures and any other expenses determined
23 by the authority to be necessary to carry out the purposes of the
24 New Jersey Emerging Technology and Biotechnology Financial
25 Assistance Program.

26 The authority shall require a corporation business taxpayer that
27 acquires a corporation business tax benefit certificate to enter into a
28 written agreement with the new or expanding emerging technology
29 or biotechnology company concerning the terms and conditions of
30 the private financial assistance made in exchange for the certificate.
31 The written agreement may contain terms concerning the
32 maintenance by the new or expanding emerging technology or
33 biotechnology company of a headquarters or a base of operation in
34 this State.

35 d. (Deleted by amendment, P.L.2009, c.90.)

36 (cf: P.L.2009, c.90, s.29)

37

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

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

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

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

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

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

6 (4) that is classified pursuant to the requirements of
7 N.J.A.C.18:12-2.2 as Class 4A "commercial properties"
8 that is transferred for consideration in excess of \$1,000,000 recited
9 in the deed, which fee shall be an amount equal to 1 percent of the
10 entire amount of such consideration, which fee shall be collected by
11 the county recording officer at the time the deed is offered for
12 recording and remitted to the State Treasurer not later than the 10th
13 day of the month following the month of collection for deposit into
14 the General Fund.

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

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

40 (3) The fee imposed by subsection a. of this section shall not
41 apply to a deed if the transfer of real property is entered into on or
42 after ¹【July 31, 2020】 January 1, 2021¹ and is an intercompany
43 transfer between combined group members as part of the unitary
44 business, as those terms are used in section 4 of P.L.1945, c.162
45 (C.54:10A-4).

46 c. The fee imposed by subsection a. of this section shall be
47 subject to the provisions of the State Uniform Tax Procedure Law,
48 R.S.54:48-1 et seq.; provided however, that notwithstanding the

1 provisions of subsection a. of R.S.54:49-14, a taxpayer may file a
2 claim under oath for refund at any time within 90 days after the
3 payment of any original fee and that subsection b. of R.S.54:49-14
4 shall not apply to any additional fee assessed.

5 d. (1) If a transfer includes property classified pursuant to the
6 requirements of N.J.A.C.18:12-2.2 as Class 4 property of any type,
7 an affidavit of consideration shall be filed by one or more of the
8 grantor parties named in the deed or by the grantor's legal
9 representative declaring the consideration and shall be annexed to
10 and recorded with the deed as a prerequisite for the recording of the
11 deed. The filing of an affidavit of consideration pursuant to this
12 paragraph shall be in addition to the filing, if any, pursuant to
13 paragraph (2) of this subsection.

14 (2) Whether or not the transfer is exempt, pursuant to subsection
15 b. of this section or any other provision of law, from payment of the
16 fee pursuant to subsection a. of this section, if a transfer includes
17 property otherwise subject to subsection a. of this section, then an
18 affidavit of consideration shall be filed by one or more of the
19 grantee parties named in the deed or by the grantee's legal
20 representative declaring the consideration and shall be annexed to
21 and recorded with the deed as a prerequisite for the recording of the
22 deed. The filing of an affidavit of consideration pursuant to this
23 paragraph shall be in addition to the filing, if any, pursuant to
24 paragraph (1) of this subsection.

25 (3) An affidavit of consideration filed pursuant to paragraph (1)
26 or paragraph (2) of this subsection shall clearly and entirely state
27 the consideration, the county and municipality in which the
28 property is situate, and the block and lot description of the real
29 property conveyed.

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

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

36

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

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

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

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

46 (c) "Corporation" shall mean any corporation, joint-stock
47 company or association and any business conducted by a trustee or
48 trustees wherein interest or ownership is evidenced by a certificate

1 of interest or ownership or similar written instrument, any other
2 entity classified as a corporation for federal income tax purposes,
3 and any state or federally chartered building and loan association or
4 savings and loan association.

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

35 In the case of banking corporations which have international
36 banking facilities as defined in subsection (n), the foregoing
37 aggregate of values shall also be reduced by retained earnings of the
38 international banking facility. Retained earnings means the
39 earnings accumulated over the life of such facility and shall not
40 include the distributive share of dividends paid and federal income
41 taxes paid or payable during the tax year.

42 If in the opinion of the director, the corporation's books do not
43 disclose fair valuations the director may make a reasonable
44 determination of the net worth which, in his opinion, would reflect
45 the fair value of the assets, exclusive of subsidiary investments as
46 defined aforesaid, carried on the books of the corporation, in
47 accordance with sound accounting principles, and such
48 determination shall be used as net worth for the purpose of this act.

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

2 (f) "Investment company" shall mean any corporation whose
3 business during the period covered by its report consisted, to the
4 extent of at least 90% thereof of holding, investing and reinvesting
5 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
6 and other securities for its own account, but this shall not include
7 any corporation which: (1) is a merchant or a dealer of stocks,
8 bonds and other securities, regularly engaged in buying the same
9 and selling the same to customers; or (2) had less than 90% of its
10 average gross assets in New Jersey, at cost, invested in stocks,
11 bonds, debentures, mortgages, notes, patents, patent rights or other
12 securities or consisting of cash on deposit during the period covered
13 by its report; or (3) is a banking corporation, a savings institution,
14 or a financial business corporation as defined in the Corporation
15 Business Tax Act.

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

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

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

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

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

36 For the purpose of this act, the amount of a taxpayer's entire net
37 income shall be deemed prima facie to be equal in amount to the
38 taxable income, before net operating loss deduction and special
39 deductions, which the taxpayer is required to report, or, if the
40 taxpayer is classified as a partnership for federal tax purposes,
41 would otherwise be required to report, to the United States Treasury
42 Department for the purpose of computing its federal income tax,
43 provided however, that in the determination of such entire net
44 income,

45 (1) Entire net income shall exclude for the periods set forth in
46 paragraph (2)(F)(i) of this subsection, any amount, except with
47 respect to qualified mass commuting vehicles as described in
48 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect

1 immediately prior to January 1, 1984, which is included in a
2 taxpayer's federal taxable income solely as a result of an election
3 made pursuant to the provisions of paragraph (8) of that section.

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

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

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

12 (C) Taxes paid or accrued to the United States, a possession or
13 territory of the United States, a state, a political subdivision thereof,
14 or the District of Columbia, or to any foreign country, state,
15 province, territory or subdivision thereof, on or measured by profits
16 or income, or business presence or business activity, or the tax
17 imposed by this act, or any tax paid or accrued with respect to
18 subsidiary dividends excluded from entire net income as provided
19 in paragraph (5) of subsection (k) of this section.

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

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

22 (F) (i) The amount by which depreciation reported to the United
23 States Treasury Department for property placed in service on and
24 after January 1, 1981, but prior to taxpayer fiscal or calendar
25 accounting years beginning on and after the effective date of
26 P.L.1993, c.172, for purposes of computing federal taxable income
27 in accordance with section 168 of the Internal Revenue Code in
28 effect after December 31, 1980, exceeds the amount of depreciation
29 determined in accordance with the Internal Revenue Code
30 provisions in effect prior to January 1, 1981, but only with respect
31 to a taxpayer's accounting period ending after December 31, 1981;
32 provided, however, that where a taxpayer's accounting period
33 begins in 1981 and ends in 1982, no modification shall be required
34 with respect to this paragraph (F) for the report filed for such period
35 with respect to property placed in service during that part of the
36 accounting period which occurs in 1981. The provisions of this
37 subparagraph shall not apply to assets placed in service prior to
38 January 1, 1998 of a gas, gas and electric, and electric public utility
39 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-
40 49 et seq.) prior to 1998.

41 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
42 (2) of this subsection, any amount, except with respect to qualified
43 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
44 the Internal Revenue Code as in effect immediately prior to January
45 1, 1984, which the taxpayer claimed as a deduction in computing
46 federal income tax pursuant to a qualified lease agreement under
47 paragraph (8) of that section.

1 The director shall promulgate rules and regulations necessary to
2 carry out the provisions of this section, which rules shall provide,
3 among others, the manner in which the remaining life of property
4 shall be reported.

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

22 (ii) The amount of treble damages paid to the Department of
23 Environmental Protection pursuant to subsection a. of section 7 of
24 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the
25 department in removing, or arranging for the removal of, an
26 unauthorized discharge upon failure of the discharger to comply
27 with a directive from the department to remove, or arrange for the
28 removal of, the discharge.

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

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

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

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

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

47 (ii) For privilege periods beginning after December 31, 2017,
48 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-

1 1 et seq.) or any other law to the contrary, for the purposes of
2 determining the amount of income pursuant to P.L.1945, c.162
3 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be
4 taken as a deduction pursuant to section 199A of the Internal
5 Revenue Code (26 U.S.C. s.199A).

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

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

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

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

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

28 (i) Making, arranging for, placing or carrying loans to foreign
29 persons, provided, however, that in the case of a foreign person
30 which is an individual, or which is a foreign branch of a domestic
31 corporation (other than a bank), or which is a foreign corporation or
32 foreign partnership which is controlled by one or more domestic
33 corporations (other than banks), domestic partnerships or resident
34 individuals, all the proceeds of the loan are for use outside of the
35 United States;

36 (ii) Making or placing deposits with foreign persons which are
37 banks or foreign branches of banks (including foreign subsidiaries)
38 or foreign branches of the taxpayers or with other international
39 banking facilities;

40 (iii) Entering into foreign exchange trading or hedging
41 transactions related to any of the transactions described in this
42 paragraph; or

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

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

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

7 (ii) For privilege periods beginning after December 31, 2016
8 and before January 1, 2019, entire net income shall exclude 95% of
9 dividends which were included in computing such taxable income
10 for federal income tax purposes, paid or deemed paid, to the
11 taxpayer by one or more subsidiaries owned by the taxpayer to the
12 extent of the 80% or more ownership of investment described in
13 subsection (d) of this section. For the purposes of calculating the
14 tax liability owed for the paid or deemed paid dividends included in
15 entire net income by this **subsection** subsubparagraph (ii), the
16 taxpayer shall use either their three-year average allocation factor
17 for the taxpayer's 2014 through 2016 tax years reported on the
18 taxpayer's tax returns or 3.5 percent, whichever is lower.

19 (iii) For privilege periods beginning on and after January 1,
20 2019, entire net income shall exclude 95% of dividends which were
21 included in computing such taxable income for federal income tax
22 purposes, paid or deemed paid to the taxpayer by one or more
23 subsidiaries owned by the taxpayer to the extent of the 80% or more
24 ownership of investment described in subsection (d) of this section.

25 (B) Entire net income shall exclude 50% of dividends which
26 were included in computing such taxable income for federal income
27 tax purposes, paid or deemed paid to the taxpayer by one or more
28 subsidiaries owned by the taxpayer to the extent of 50% or more
29 ownership of investment, such ownership of investment calculated
30 in the same manner as the 80% or more of ownership of investment
31 is calculated as described in subsection (d) of this section.

32 (C) To the extent a subsidiary received dividends from other
33 subsidiaries and included those dividends in its entire net income
34 for the purposes of determining its tax liability pursuant to section 5
35 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,
36 the taxpayer receiving those same dividends from the subsidiary
37 shall exclude those dividends from its entire net income based on
38 the subsidiary's allocation factor used by the subsidiary in
39 determining its tax liability pursuant to section 5 of P.L.1945, c.162
40 (C.54:10A-5). This subparagraph (C) shall not apply to privilege
41 periods ending on and after July 31, 2019.

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

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

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

10 (B) Net operating loss carryover. A net operating loss for any
11 privilege period ending after June 30, 1984 shall be a net operating
12 loss carryover to each of the seven privilege periods following the
13 period of the loss and a net operating loss for any privilege period
14 ending after June 30, 2009 shall be a net operating loss carryover to
15 each of the twenty privilege periods following the period of the
16 loss. The entire amount of the net operating loss for any privilege
17 period (the "loss period") shall be carried to the earliest of the
18 privilege periods to which the loss may be carried. The portion of
19 the loss which shall be carried to each of the other privilege periods
20 shall be the excess, if any, of the amount of the loss over the sum of
21 the entire net income, computed without the exclusions permitted in
22 paragraphs (4) and (5) of this subsection or the net operating loss
23 deduction provided by subparagraph (A) of this paragraph, for each
24 of the prior privilege periods to which the loss may be carried.

25 (C) Net operating loss. For purposes of this paragraph the term
26 "net operating loss" means the excess of the deductions over the
27 gross income used in computing entire net income without the net
28 operating loss deduction provided for in subparagraph (A) of this
29 paragraph and the exclusions in paragraphs (4) and (5) of this
30 subsection.

31 (D) Change in ownership. Where there is a change in 50% or
32 more of the ownership of a corporation because of redemption or
33 sale of stock and the corporation changes the trade or business
34 giving rise to the loss, no net operating loss sustained before the
35 changes may be carried over to be deducted from income earned
36 after such changes. In addition where the facts support the premise
37 that the corporation was acquired under any circumstances for the
38 primary purpose of the use of its net operating loss carryover, the
39 director may disallow the carryover.

40 (E) Notwithstanding the provisions of this paragraph (6) of
41 subsection (k) of this section to the contrary, for privilege periods
42 beginning during calendar year 2002 and calendar year 2003, no
43 deduction for any net operating loss carryover shall be allowed and
44 for privilege periods beginning during calendar year 2004 and
45 calendar year 2005, there shall be allowed as a deduction for the
46 privilege period so much of the net operating loss carryover as
47 reduces entire net income otherwise calculated by 50%. If and only
48 to the extent that any net operating loss carryover deduction is

1 disallowed by reason of this subparagraph (E), the date on which
2 the amount of the disallowed net operating loss carryover deduction
3 would otherwise expire shall be extended by a period equal to the
4 period for which application of the net operating loss was
5 disallowed by this subparagraph.

6 Provided, that this subparagraph (E) shall not restrict the
7 surrender or acquisition of corporation business tax benefit
8 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
9 7.42a) and shall not restrict the application of corporation business
10 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
11 (C.54:10A-4.2).

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

19 (7) The entire net income of gas, electric and gas and electric
20 public utilities that were subject to, or would have been subject to
21 tax if doing business in this State, the provisions of P.L.1940, c.5
22 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
23 substituting the New Jersey depreciation allowance for federal tax
24 depreciation with respect to assets placed in service prior to January
25 1, 1998. For gas, electric, and gas and electric public utilities that
26 were subject to, or would have been subject to tax if doing business
27 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
28 prior to 1998, the New Jersey depreciation allowance shall be
29 computed as follows: All depreciable assets placed in service prior
30 to January 1, 1998 shall be considered a single asset account. The
31 New Jersey tax basis of this depreciable asset account shall be an
32 amount equal to the carryover adjusted basis for federal income tax
33 purposes on December 31, 1997 of all depreciable assets in service
34 on December 31, 1997, increased by the excess, of the "net carrying
35 value," defined to be adjusted book basis of all assets and liabilities,
36 excluding deferred income taxes, recorded on the public utility's
37 books of account on December 31, 1997, over the carryover
38 adjusted basis for federal income tax purposes on December 31,
39 1997 of all assets and liabilities owned by the gas, electric, or gas
40 and electric public utility as of December 31, 1997. "Books of
41 account" for gas, gas and electric, and electric public utilities means
42 the uniform system of accounts as promulgated by the Federal
43 Energy Regulatory Commission and adopted by the Board of Public
44 Utilities. The following adjustments to entire net income shall be
45 made pursuant to this section:

46 (A) Depreciation for property placed in service prior to January
47 1, 1998 shall be adjusted as follows:

1 (i) Depreciation for federal income tax purposes shall be
2 disallowed in full.

3 (ii) A deduction shall be allowed for the New Jersey
4 depreciation allowance. The New Jersey depreciation allowance
5 shall be computed for the single asset account described above
6 based on the New Jersey tax basis as adjusted above as if all assets
7 in the single asset account were first placed in service on January 1,
8 1998. Depreciation shall be computed using the straight line method
9 over a thirty-year life. A full year's depreciation shall be allowed in
10 the initial tax year. No half-year convention shall apply. The
11 depreciable basis of the single account shall be reduced by the
12 adjusted federal tax basis of assets sold, retired, or otherwise
13 disposed of during any year on which gain or loss is recognized for
14 federal income tax purposes as described in subparagraph (B) of
15 this paragraph.

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

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

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

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

37 (10) Entire net income shall exclude all income of an alien
38 corporation the activities of which are limited in this State to
39 investing or trading in stocks and securities for its own account,
40 investing or trading in commodities for its own account, or any
41 combination of those activities, within the meaning of section 864
42 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
43 effect on December 31, 1998. Notwithstanding the previous
44 sentence, if an alien corporation undertakes one or more infrequent,
45 extraordinary or non-recurring activities, including but not limited
46 to the sale of tangible property, only the income from such
47 infrequent, extraordinary or non-recurring activity shall be subject
48 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-

1 1 et seq.), and that amount of income subject to tax shall be
2 determined without regard to the allocation to that specific
3 transaction of any general business expense of the taxpayer and
4 shall be specifically assigned to this State for taxation by this State
5 without regard to section 6 of P.L.1945, c.162 (C.54:10A-6). For
6 the purposes of this paragraph, "alien corporation" means a
7 corporation organized under the laws of a jurisdiction other than the
8 United States or its political subdivisions.

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

17 (12) (A) Notwithstanding the provisions of subsection (k) of
18 section 168 of the federal Internal Revenue Code of 1986,
19 26 U.S.C. s.168, subsection (b) of section 1400L of the federal
20 Internal Revenue Code of 1986, 26 U.S.C. s.1400L, or any other
21 federal law, for property acquired after September 10, 2001, the
22 depreciation deduction otherwise allowed pursuant to section 167 of
23 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
24 be determined pursuant to the provisions of the federal Internal
25 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
26 December 31, 2001.

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 (13) (A) Notwithstanding the provisions of section 179 of the
33 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
34 property placed in service on or after January 1, 2004, the costs that
35 a taxpayer may otherwise elect to treat as an expense which is not
36 chargeable to a capital account shall be determined pursuant to the
37 provisions of the federal Internal Revenue Code of 1986
38 (26 U.S.C. s.1 et seq.) in effect on December 31, 2002.

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

44 (14) Notwithstanding the provisions of subsection (i) of section
45 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
46 for privilege periods beginning after December 31, 2008 and before
47 January 1, 2011, entire net income shall include the amount of
48 discharge of indebtedness income excluded for federal income tax

1 purposes pursuant to subsection (i) of section 108 of the federal
2 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
3 periods beginning on or after January 1, 2014 and before January 1,
4 2019, entire net income shall exclude the amount of discharge of
5 indebtedness income included for federal income tax purposes,
6 pursuant to subsection (i) of section 108 of the federal Internal
7 Revenue Code of 1986 (26 U.S.C. s.108).

8 (15) Entire net income shall exclude the gain or income derived
9 from the sale or assignment of a tax credit transfer certificate
10 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
11 10 of P.L.2014, c.63 (C.34:1B-251).

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

14 (B) For purposes of this paragraph, "net deferred tax liability"
15 means deferred tax liabilities that exceed the deferred tax assets of
16 the combined group, as computed in accordance with generally
17 accepted accounting principles, and "net deferred tax asset" means
18 that deferred tax assets exceed the deferred tax liabilities of the
19 combined group, as computed in accordance with generally
20 accepted accounting principles.

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

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

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

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

4 (i) the deferred tax impact determined in subparagraph (E) of
5 this paragraph shall be divided by the rate determined under section
6 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
7 c.48 (C.54:10A-5.41 et al.);

8 (ii) the resulting amount shall be further divided by the New
9 Jersey unitary business allocation factor that was used by the
10 combined group in the calculation of the deferred tax assets and
11 deferred tax liabilities as described in subparagraph (E) of this
12 paragraph;

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

16 (G) The deduction calculated under this paragraph shall not be
17 adjusted as a result of any events happening subsequent to such
18 calculation, including, but not limited to, any disposition or
19 abandonment of assets. Such deduction shall be calculated without
20 regard to the federal tax effect and shall not alter the tax basis of
21 any asset. If the deduction under this section is greater than
22 combined group entire net income, any excess deduction shall be
23 carried forward and applied as a deduction to combined group entire
24 net income in future privilege periods until fully utilized.

25 (H) Any combined group intending to claim a deduction under
26 this paragraph shall file a statement with the director on or before
27 July 1 of the year subsequent to the first privilege period for which
28 a combined return is required. Such statement shall specify the
29 total amount of the deduction which the combined group claims on
30 such form and in such manner as prescribed by the director. No
31 deduction shall be allowed under this paragraph for any privilege
32 period except to the extent claimed on such timely filed statement
33 in accordance with this paragraph.

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

37 (m) "Financial business corporation" shall mean any corporate
38 enterprise which is (1) in substantial competition with the business
39 of national banks and which (2) employs moneyed capital with the
40 object of making profit by its use as money, through discounting
41 and negotiating promissory notes, drafts, bills of exchange and
42 other evidences of debt; buying and selling exchange; making of or
43 dealing in secured or unsecured loans and discounts; dealing in
44 securities and shares of corporate stock by purchasing and selling
45 such securities and stock without recourse, solely upon the order
46 and for the account of customers; or investing and reinvesting in
47 marketable obligations evidencing indebtedness of any person,
48 copartnership, association or corporation in the form of bonds,

1 notes or debentures commonly known as investment securities; or
2 dealing in or underwriting obligations of the United States, any
3 state or any political subdivision thereof, or of a corporate
4 instrumentality of any of them. This shall include, without
5 limitation of the foregoing, business commonly known as industrial
6 banks, dealers in commercial paper and acceptances, sales finance,
7 personal finance, small loan and mortgage financing businesses, as
8 well as any other enterprise employing moneyed capital coming
9 into competition with the business of national banks; provided that
10 the holding of bonds, notes, or other evidences of indebtedness by
11 individual persons not employed or engaged in the banking or
12 investment business and representing merely personal investments
13 not made in competition with the business of national banks, shall
14 not be deemed financial business. Nor shall "financial business"
15 include national banks, production credit associations organized
16 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
17 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
18 insurance companies duly authorized to transact business in this
19 State, security brokers or dealers or investment companies or
20 bankers not employing moneyed capital coming into competition
21 with the business of national banks, real estate investment trusts, or
22 any of the following entities organized under the laws of this State:
23 credit unions, savings banks, savings and loan and building and
24 loan associations, pawnbrokers, and State banks and trust
25 companies.

26 (n) "International banking facility" shall mean a set of asset and
27 liability accounts segregated on the books and records of a
28 depository institution, United States branch or agency of a foreign
29 bank, or an Edge or Agreement Corporation that includes only
30 international banking facility time deposits and international
31 banking facility extensions of credit as such terms are defined in
32 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
33 board of governors of the Federal Reserve System, 12 CFR Part
34 204, effective December 3, 1981. In the event that the United
35 States enacts a law, or the board of governors of the Federal
36 Reserve System adopts a regulation which amends the present
37 definition of international banking facility or of such facilities' time
38 deposits or extensions of credit, the Commissioner of Banking and
39 Insurance shall forthwith adopt regulations defining such terms in
40 the same manner as such terms are set forth in the laws of the
41 United States or the regulations of the board of governors of the
42 Federal Reserve System. The regulations of the Commissioner of
43 Banking and Insurance shall thereafter provide the applicable
44 definitions.

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

1 (p) "New Jersey S corporation" means a corporation that is an S
2 corporation; which has made a valid election pursuant to section 3
3 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
4 corporation continuously since the effective date of the valid
5 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
6 5.22).

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

9 (r) "Qualified investment partnership" means a partnership
10 under this act that has more than 10 members or partners with no
11 member or partner owning more than a 50% interest in the entity
12 and that derives at least 90% of its gross income from dividends,
13 interest, payments with respect to securities loans, and gains from
14 the sale or other disposition of stocks or securities or foreign
15 currencies or commodities or other similar income (including but
16 not limited to gains from swaps, options, futures or forward
17 contracts) derived with respect to its business of investing or
18 trading in those stocks, securities, currencies or commodities, but
19 "investment partnership" shall not include a "dealer in securities"
20 within the meaning of section 1236 of the federal Internal Revenue
21 Code of 1986, 26 U.S.C. s.1236.

22 (s) "Savings institution" means a state or federally chartered
23 building and loan association, savings and loan association, or
24 savings bank.

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

27 (u) "Prior net operating loss conversion carryover" means a net
28 operating loss incurred in a privilege period ending prior to July 31,
29 2019 and converted from a pre-allocation net operating loss to a
30 post-allocation net operating loss as follows:

31 (1) As used in this subsection:

32 "Base year" means the last privilege period ending prior to July
33 31, 2019.

34 "Base year BAF" means the taxpayer's business allocation factor
35 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
36 6 through C.54:10A-10) for purposes of calculating entire net
37 income for the base year, as such section was in effect for the last
38 privilege period ending prior to July 31, 2019.

39 "UNOL" means the unabsorbed portion of net operating loss as
40 calculated under paragraph (6) of subsection (k) of this section as
41 such paragraph was in effect for the last privilege period ending
42 prior to July 31, 2019, that was not deductible in previous privilege
43 periods and was eligible for carryover on the last day of the base
44 year subject to the limitations for deduction under such subsection,
45 including any net operating loss sustained by the taxpayer during
46 the base year.

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

1 (A) The taxpayer shall first calculate the tax value of its UNOL
2 for the base year and for each preceding privilege period for which
3 there is a UNOL. The value of the UNOL for each privilege period
4 is equal to the product of (I) the amount of the taxpayer's UNOL for
5 a privilege period, and (II) the taxpayer's base year BAF. This result
6 shall equal the taxpayer's prior net operating loss conversion
7 carryover.

8 (B) The taxpayer shall continue to carry over its prior net
9 operating loss conversion carryover to offset its allocated entire net
10 income as provided in sections 6 through 10 of P.L.1945, c.162
11 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
12 and after July 31, 2019. Such carryover periods shall not exceed
13 the twenty privilege periods following the privilege period of the
14 initial loss. The entire amount of the prior net operating loss
15 conversion carryover for any privilege period shall be carried to the
16 earliest of the privilege periods to which the loss may be carried.
17 The portion of the prior net operating loss conversion carryover
18 which shall be carried to each of the other privilege periods shall be
19 the excess, if any, of the amount of the prior net operating loss
20 conversion carryover over the sum of the entire net income,
21 computed without the exclusions permitted in paragraphs (4) and
22 (5) of subsection (k) of this section allocated to this State.

23 (C) The prior net operating loss conversion carryover computed
24 under this subsection shall be applied against the entire net income
25 allocated to this State before the net operating loss carryover
26 computed under subsection (v) of this section.

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

30 (1) Net operating loss carryover. A net operating loss for any
31 privilege period ending on or after July 31, 2019, shall be a net
32 operating loss carryover to each of the twenty privilege periods
33 following the period of the loss. The entire amount of the net
34 operating loss for any privilege period shall be carried to the earliest
35 of the privilege periods to which the loss may be carried. The
36 portion of the loss which shall be carried to each of the other
37 privilege periods shall be the excess, if any, of the amount of the
38 loss over the sum of the entire net income, computed without the
39 exclusions permitted in paragraphs (4) and (5) of subsection (k) of
40 this section allocated to this State.

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

1 (3) Reduction for discharge of indebtedness. A net operating
2 loss for any privilege period ending on or after July 31, 2019, and
3 any net operating loss carryover to such privilege period, shall be
4 reduced 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 (4) A net operating loss carryover shall not include any net
9 operating loss incurred during any privilege period ending prior to
10 July 31, 2019.

11 (5) Change in ownership. Where there is a change in 50% or
12 more of the ownership of a corporation because of redemption or
13 sale of stock and the corporation changes the trade or business
14 giving rise to the loss, no net operating loss sustained before the
15 changes may be carried over to be deducted from income earned
16 after such changes. In addition, where the facts support the premise
17 that the corporation was acquired under any circumstances for the
18 primary purpose of the use of its net operating loss carryover, the
19 director may disallow the carryover; provided, however, this
20 paragraph shall not apply between members of a combined group
21 reported on a New Jersey combined return.

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

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

38 For purposes of this subsection:

39 "U.S. domestic corporations" means: (1) business entities
40 wherever incorporated or formed that are U.S. domestic
41 corporations, are deemed to be, or are treated as U.S. domestic
42 corporations under the provisions of the federal Internal Revenue
43 Code; or (2) any entities incorporated or formed under the laws of a
44 foreign nation that are required to file federal tax returns if such
45 entities have effectively connected income within the meaning of
46 the federal Internal Revenue Code; and

47 "commonly owned" means that more than 50 percent of the
48 voting control of each member of an affiliated group is directly or

1 indirectly owned by a common owner or owners, either corporate or
2 non-corporate, whether or not the owner or owners are members of
3 the affiliated group. Whether voting control is indirectly owned
4 shall be determined in accordance with section 318 of the federal
5 Internal Revenue Code (26 U.S.C. s.318).

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

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

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

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

18 (4) 50% or less of whose gross receipts for the privilege period
19 consist of premiums from arrangements that constitute insurance for
20 federal income tax purposes.

21 A combinable captive insurance company shall not be exempt
22 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
23 insurance company that does not meet the definition of combinable
24 captive insurance company shall be excluded as provided in
25 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
26 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

27 For purposes of this definition:

28 "Affiliated group" shall have the same meaning as that term is
29 given by section 1504 of the federal Internal Revenue Code, 26
30 U.S.C. s.1504, except that the term "common parent corporation" as
31 used in section 1504 of the federal Internal Revenue Code, 26
32 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
33 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
34 to "at least 80%" in section 1504 of the federal Internal Revenue
35 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
36 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
37 be read without regard to the exclusions provided for in subsection
38 (b) of that section.

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

43 "Premiums" includes consideration for annuity contracts and
44 excludes any part of the consideration for insurance, reinsurance, or
45 annuity contracts that do not provide bona fide insurance,
46 reinsurance, or annuity benefits.

47 (z) "Combined group" means the group of all companies that
48 have common ownership and are engaged in a unitary business,

1 where at least one company is subject to tax under this chapter, and
2 shall include all business entities, except as provided for under any
3 section of the Corporation Business Tax Act (1945), P.L.1945,
4 c.162 (C.54:10A-1 et seq.).

5 A combined group shall be treated, for privilege periods ending
6 on and after July 31, 2020, as one taxpayer for purposes of
7 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162
8 (C.54:10A-5) ¹and section 1 of P.L.2018, c.48 (C.54:10A-5.41)¹ for
9 the income derived from the unitary business ¹], and a combined
10 group shall be treated as one taxpayer for transactions entered into
11 on and after July 31, 2020 that are intercompany transfers between
12 combined group members as part of the unitary business the
13 transfers of which would otherwise be subject to the realty transfer
14 fee imposed under section 8 of P.L.2004, c.66 (C.46:15-7.2), the
15 controlling interest transfer tax imposed under section 3 of
16 P.L.2006, c.33 (C.54:15C-1), or the bulk sales notice requirements
17 of section 5 of P.L.2007, c.100 (C.54:50-38)] ; provided however,
18 with regard to the surtax imposed pursuant to section 1 of P.L.2018,
19 c.48 (C.54:10A-5.41) and for that purpose only, the portion of
20 income that is attributable to a member which is a public utility
21 exempt from the surtax shall not be included when computing the
22 surtax due¹.

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

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

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

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

45 A corporation exempt pursuant to section 3 of P.L.1945, c.162
46 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-
47 1 et seq.) shall not be a member of a combined group.

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

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

12 A New Jersey S corporation shall only be included as a taxable
13 member of a combined group filing a New Jersey combined return
14 if the New Jersey S Corporation elects to be included as a member
15 and taxed at the same rate as the other members of the combined
16 group. A New Jersey S corporation that does not elect to be
17 included shall be excluded as a member of the combined return and
18 shall file a separate return.

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

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

41
42 4. Section 2 of P.L.1997, c.334 (C.54:10A-4.2) is amended to
43 read as follows:

44 2. a. Notwithstanding the provisions of paragraph (6) of
45 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) to the
46 contrary, a taxpayer that has acquired a corporation business tax
47 benefit certificate pursuant to the provisions of section 1 of
48 P.L.1997, c.334 (C.34:1B-7.42a), that includes the right to a net

1 operating loss carryover deduction shall attach that certificate to
2 any return the taxpayer is required to file under P.L.1945, c.162
3 (C.54:10A-1 et seq.), and shall determine the amount of its net
4 operating loss carryover deduction by multiplying the surrendered
5 net operating loss by the new or expanding emerging technology or
6 biotechnology company's anticipated allocation factor determined
7 pursuant to subsection b. of section 1 of P.L.1997, c.334 (C.34:1B-
8 7.42a) and subsequently dividing the amount by the taxpayer's
9 allocation factor determined pursuant to section 6 of P.L.1945,
10 c.162 (C.54:10A-6) for the tax year in which the surrendered tax
11 benefit is used. The taxpayer shall otherwise apply the net
12 operating loss carryover deduction as evidenced by the certificate
13 according to the provisions of subsection (k) of section 4 of
14 P.L.1945, c.162 and any rules or regulations the director may adopt
15 to carry out the provisions of this section.

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

24 c. The unused prior net operating loss conversion carryover
25 deduction and unused net operating loss carryover deduction of a
26 taxpayer under subsections (u) and (v) of section 4 of P.L.1945,
27 c.162 (C.54:10A-4) shall also qualify to be surrendered for the
28 purposes of this section and section 1 of P.L.1997, c.334
29 (C.34:1B-7.42a) by a new or expanding emerging technology or
30 biotechnology company. A taxpayer or combined group that has
31 acquired a corporation business tax benefit certificate pursuant to
32 the provisions of section 1 of P.L.1997, c.334 (C.34:1B-7.42a), that
33 includes the right to a prior net operating loss conversion carryover
34 deduction or a net operating loss carryover deduction shall attach
35 that certificate to any return the taxpayer or the combined group is
36 required to file under P.L.1945, c.162 (C.54:10A-1 et seq.) and
37 shall determine the amount of its net operating loss carryover
38 deduction in a manner prescribed by the director by regulation for
39 the tax year in which the surrendered tax benefit is used.

40 The managerial member of a combined group shall be the
41 member acquiring the prior net operating loss conversion carryover
42 deduction and net operating loss carryover deduction on behalf of
43 the combined group. The taxpayer or combined group shall apply
44 the prior net operating loss conversion carryover deduction and net
45 operating loss carryover deduction, as evidenced by the certificate,
46 according to the provisions of section 4 of P.L.1945, c.162
47 (C.54:10A-4) or section 18 of P.L.2018, c.48 (C.54:10A-4.6) and

1 any rules or regulations the director adopts to carry out the
2 provisions of this section.

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

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

11

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

14 27. a. Notwithstanding any provision of subsection (k) of
15 section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal
16 Revenue Code, including but not limited to 26 U.S.C. s.381 or any
17 successor or equivalent provision, that permits a corporation to use
18 the net operating losses of another for federal income tax purposes
19 following certain transactions, including but not limited to those
20 qualifying as reorganizations under the provisions of subparagraph
21 (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of
22 section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368,
23 a net operating loss for a privilege period ending after June 30,
24 1984, may be carried over and allowed as a deduction only by the
25 corporation that sustained the loss; provided, however, that in the
26 case of a merger of two or more corporations pursuant to statute of
27 this State or any other jurisdiction, the net operating loss may be
28 carried over only by the corporation that sustained the loss and that
29 is also the surviving corporation following the merger. The net
30 operating loss may not be carried over by a taxpayer that changes
31 its state of incorporation.

32 b. Subsection a. of this section shall not apply: (1) between
33 members of a combined group reported on a combined return in
34 New Jersey, or (2) between members of [a commonly owned] an
35 affiliated group reported on the elective combined return in New
36 Jersey, or (3) if corporations that were parties to the merger would
37 be members of the combined group reported on a combined return
38 in New Jersey within one group privilege period subsequent to the
39 date of the merger, unless there is an unforeseen delay due to
40 required approvals from federal or other state regulatory authorities
41 that delays the finality of the merger or acquisition. In a situation
42 where there is delay due to the regulatory approval requirements of
43 federal or other state regulatory authorities, the corporations may
44 petition the director, in a form and manner prescribed by the
45 director, documenting that the corporations' plan to be a combined
46 group filing a New Jersey combined return upon approval of the
47 merger or acquisition by the federal or other state regulatory
48 authorities. Within 180 days of approval by the federal or other

1 state regulatory authorities of the merger or acquisition, the
2 corporations shall notify the Division of Taxation of the approval
3 and the director shall issue a stamped certificate of attestation
4 attesting that the net operating loss carryovers are not extinguished.
5 The provisions of this paragraph (3) shall only apply to mergers and
6 acquisitions occurring on or after ¹【January 1, 2020】 the effective
7 date of P.L. , c. (C.) (pending before the Legislature as this
8 bill)¹ and shall not apply to a binding agreement in effect prior to
9 ¹【January 1, 2020】 the effective date of P.L. , c. (C.)
10 (pending before the Legislature as this bill)¹.

11 c. For privilege periods beginning on and after January 1,
12 2020, the provisions of the federal Internal Revenue Code, the
13 federal rules, limitations, and restrictions, thereto, governing federal
14 net operating losses, federal net operating loss carryovers with
15 regard but not limited to: mergers, acquisitions, reorganizations,
16 spin-offs, split-offs, dissolution, bankruptcy, or any form of
17 cessation of a business, or any other provision that limits or reduces
18 federal net operating losses and federal net operating loss
19 carryovers, shall apply to New Jersey net operating loss carryovers
20 under subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4)
21 and the New Jersey net operating loss carryover provisions of
22 subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

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

32

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

35 18. A taxable member of a combined group shall determine its
36 entire net income from the unitary business as its share of the entire
37 net income of the combined group in accordance with a combined
38 unitary tax return made pursuant to this section and sections 19, 20,
39 and 23 of P.L.2018, c.48 **【(C.54:18A-4.7, C.54:18A-4.8, and**
40 **C.54:10A-4.11)】** (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-
41 4.11). The entire net income from the unitary business of a
42 combined group is the sum of the entire net incomes of each taxable
43 member and each nontaxable member of the combined group
44 derived from the unitary business, which shall be determined as
45 follows:

46 a. For a member incorporated in the United States, the income
47 to be included in the entire net income of the combined group shall

1 be the member's entire net income otherwise determined pursuant to
2 the Corporation Business Tax Act (1945), P.L.1945, c.162
3 (C.54:10A-1 et seq.).

4 b. For a member not incorporated in the United States, the
5 income to be included in the entire net income of the combined
6 group shall be determined from a profit and loss statement that shall
7 be prepared for each foreign branch or corporation in the currency
8 in which the books of account of the branch or corporation are
9 regularly maintained, adjusted to conform it to the accounting
10 principles generally accepted in the United States for the
11 presentation of those statements and further adjusted to take into
12 account any book-tax differences required by federal or State law.
13 The profit and loss statement of each foreign member of the
14 combined group and the allocation factors related thereto, whether
15 United States or foreign, shall be translated into or from the
16 currency in which the parent company maintains its books and
17 records on any reasonable basis consistently applied on a year-to-
18 year or entity-by-entity basis. Income shall be expressed in United
19 States dollars. In lieu of these procedures and subject to the
20 determination of the director that the income to be reported
21 reasonably approximates income as determined under the
22 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-
23 1 et seq.), income may be determined on any reasonable basis
24 consistently applied on a year-to-year or entity-by-entity basis.

25 c. (1) If a member of a combined group receives income from
26 the unitary business from a partnership, the combined group's entire
27 net income shall include the member's direct and indirect
28 distributive share of the partnership's unitary business income.

29 (2) The distributive share of income received by a limited
30 partner from a qualified investment partnership shall not be
31 considered to be derived from a unitary business unless the general
32 partner of such investment partnership and such limited partner
33 have common ownership. To the extent that the limited partner is
34 otherwise carrying on or doing business in New Jersey, it shall
35 allocate its distributive share of income from a qualified investment
36 partnership in accordance with subsection a. of section 3 of
37 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
38 P.L.2001, c.136 (C.54:10A-15.7) as applicable. If the limited
39 partner is not otherwise carrying on or doing business in New
40 Jersey, its distributive share of income from an investment
41 partnership is not subject to tax under this chapter.

42 d. All dividends paid by one member to another member of the
43 combined group shall be eliminated from the income of the
44 recipient.

45 e. Except as otherwise provided by regulation, business income
46 from an intercompany transaction among members of the same
47 combined group shall be deferred in a manner similar to the deferral
48 under 26 C.F.R. s.1.1502-13, as determined by the director. Upon

1 the occurrence of either of the events set forth in **【subparagraphs】**
2 paragraphs (1) and (2) of this subsection, deferred income resulting
3 from an intercompany transaction among members of a combined
4 group shall be restored to the income of the seller and shall be
5 included in the net income of the combined group as if the seller
6 had earned the income immediately before the event:

7 (1) The object of a deferred intercompany transaction is: (a)
8 resold by the buyer to an entity that is not a member of the
9 combined group, (b) resold by the buyer to an entity that is a
10 member of the combined group for use outside the unitary business
11 in which the buyer and seller are engaged, or (c) converted by the
12 buyer to a use outside the unitary business in which the buyer and
13 seller are engaged; or

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

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

23 f. A charitable expense incurred by a member of a combined
24 group shall, to the extent allowable as a deduction pursuant to
25 section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170,
26 be subtracted first from the combined group's entire net income,
27 subject to the income limitations of that section applied to the entire
28 **【business】** net income of the group. A charitable deduction
29 disallowed under section 170 of the federal Internal Revenue Code,
30 26 U.S.C. s.170, but allowed as a carryover deduction in a
31 subsequent privilege period, shall be treated as originally incurred
32 in the subsequent year by the same member and the provisions of
33 this section shall apply in the subsequent privilege period in
34 determining the allowable deduction for that privilege period.

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

39 (1) Such prior net operating loss conversion carryover deduction
40 shall be allowed to offset only the entire net income allocated to
41 this state of the corporation that created the prior net operating loss;
42 the prior net operating loss conversion carryover cannot be shared
43 with other members of the combined group.

44 (2) The prior net operating loss conversion carryover deduction
45 computed under subsection (u) of section 4 of P.L.1945, c.162
46 (C.54:10A-4) shall be applied against the entire net income
47 allocated to this state of the corporation that created the prior net

1 operating loss before the net operating loss carryover computed
2 under subsection h. of this section.

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

7 A member of a combined group may sell prior net operating loss
8 conversion carryover to other members of the combined group, if
9 otherwise applicable and allowable under section 2 of P.L.1997,
10 c.334 (C.54:10A-4.2) and section 1 of P.L.1997, c.334 (C.34:1B-
11 7.42a); provided, however, such sale of prior net operating loss
12 conversion carryover must be made at arm's length price at the
13 same rate as though the sale was to an unrelated taxpayer.

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

18 (1) For privilege periods beginning on or after the first day of
19 the initial privilege period for which a combined unitary tax return
20 is required under this section and sections 19, 20, and 23 of
21 P.L.2018, c.48 [(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
22 4.11)] (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), if the
23 computation of a combined group's entire net income allocated to
24 this state results in a net operating loss, a taxable member of such
25 group may carry over the net operating loss allocated to this state,
26 as calculated under this section and sections 19 and 23 of P.L.2018,
27 c.48 [(C.54:18A-4.7 and C.54:18A-4.11)] (C.54:10A-4.7 and
28 C.54:10A-4.11), and shall be deductible from entire net income
29 derived from the unitary business in a future privilege period to the
30 extent that the carryover and deduction is otherwise consistent with
31 subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4).

32 (2) Where a taxable member of a combined group has a net
33 operating loss carryover derived from a loss incurred by a combined
34 group in a privilege period beginning on or after the first day of the
35 initial privilege period for which a combined unitary tax return is
36 required under this section and sections 19, 20, and 23 of P.L.2018,
37 c.48 [(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11)]
38 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable
39 member may share the net operating loss carryover with other
40 taxable members of the combined group if such other taxable
41 members were members of the combined group in the privilege
42 period that the loss was incurred. Any amount of net operating loss
43 carryover that is deducted by another taxable member of the
44 combined group shall reduce the amount of net operating loss
45 carryover that may be carried over by the taxable member that
46 originally incurred the loss.

47 (3) Where a taxable member of a combined group has a net
48 operating loss carryover derived from a loss incurred in a privilege

1 period during which the taxable member was not a member of such
2 combined group, the carryover shall remain available to be
3 deducted by that taxable member or other group members that, in
4 the year the loss was incurred, were part of the same combined
5 group as such taxable member. Such carryover shall not be
6 deductible by any other members of the combined group.

7 (4) A net operating loss carryover shall not include any net
8 operating loss incurred during any privilege period beginning prior
9 to the first day of the initial privilege period for which a combined
10 unitary tax return is required under this section and sections 19 and
11 23 of P.L.2018, c.48 [(C.54:18A-4.7 and C.54:18A-4.11)]
12 (C.54:10A-4.7 and C.54:10A-4.11).

13 (5) Where a taxable member of a combined group has a net
14 operating loss carryover derived from a loss incurred by a combined
15 group in a privilege period beginning on or after the first day of the
16 initial privilege period for which a combined unitary tax return is
17 required under this section and sections 19, 20, and 23 of P.L.2018,
18 c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), and the
19 taxable member departs the combined group and continues to be a
20 taxpayer for the purposes of the Corporation Business Tax Act
21 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the taxable member
22 shall be entitled to take its respective portion of the combined group
23 net operating loss carryover and the combined group shall not be
24 entitled to use such portion of the net operating loss carryover.

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

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

45 (2) If a taxable member of a combined group has a tax credit
46 carryover derived from a privilege period beginning prior to the
47 first day of the initial privilege period for which a combined unitary
48 tax return is required under this section and sections 19, 20, and 23

1 of P.L.2018, c.48 [(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
2 4.11)] (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the
3 taxable member may share the carryover credit with other taxable
4 members of the combined group.

5 (3) If a taxable member of a combined group has a tax credit
6 carryover derived from a privilege period during which the taxable
7 member was not a member of such combined group, the credit
8 carryover shall remain available to be utilized by such taxable
9 member or other group members.

10 (4) To the extent a taxable member has more than one
11 corporation business tax credit that it may utilize in a privilege
12 period, whether such credits were earned by said member or are
13 available to said member in accordance with paragraphs (1), (2) and
14 (3) of this subsection, the order of priority of the application of the
15 credits shall be as prescribed by the director.

16 j. An expense of a member of the combined group that is
17 directly or indirectly attributable to the income of any member of
18 the combined group, which income this State is prohibited from
19 taxing pursuant to the laws or Constitution of the United States,
20 shall be disallowed as a deduction for purposes of determining the
21 combined group's entire net income.

22 k. Nothing in this section shall apply to:

23 (1) A corporation or combined group which is licensed, in
24 whole or in part, as an insurance company under the laws of this
25 State or of another state, including corporations which are surplus
26 lines insurers declared eligible by the Commissioner of Banking
27 and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-
28 6.45) to insure risks within this State that is not a combinable
29 captive insurance company. Notwithstanding a provision, if any, to
30 the contrary in this section, the income of an insurance company
31 that is not a combinable captive insurance company, the allocation
32 or apportionment of income related thereto and the apportionment
33 factors of an insurance company that is not a combinable captive
34 insurance company shall not be included in a combined unitary tax
35 return filed under this section and sections 19, 20, and 23 of
36 P.L.2018, c.48 [(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
37 4.11)] (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11). In
38 addition, the dividend exclusion provisions of paragraph (5) of
39 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating
40 to dividends paid by insurance companies to non-insurance
41 companies included in the unitary group shall not be affected by
42 P.L.2018, c.48 (C.54:10A-5.41 et al.).

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

1 l. **【**The director shall promulgate rules and regulations
2 necessary to carry out the provisions of this section.**】** (deleted by
3 amendment, P.L. , c.) (pending before the Legislature as this
4 bill)

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

13 n. The principles and provisions set forth in federal regulations
14 promulgated pursuant to section 1502 of the Internal Revenue Code
15 (26 U.S.C. s.1502), shall apply to the extent consistent with the
16 Corporation Business Tax Act (1945), New Jersey combined group
17 membership principles, New Jersey combined unitary return
18 principles, and regulations set forth by the director.

19 o. For purposes of the deduction allowed in paragraph (4) of
20 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a
21 combined group shall be treated as one taxpayer; provided,
22 however, a combined group shall only be eligible for the deduction
23 if at least one of the taxable members is a banking corporation and
24 the taxable member has an international banking facility. The
25 income of the combined group shall not be eligible for the
26 deduction allowed in paragraph (4) of subsection (k) of section 4 of
27 P.L.1945, c.162 (C.54:10A-4) if such income was already
28 eliminated pursuant to other subsections of this section.

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

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

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

38

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

41 21. A combined group filing a combined return that has any
42 outstanding alternative minimum assessment credit or credits at the
43 time of the effective date of the repeal of section 7 of P.L.2002,
44 c.40 (C.54:10A-5a) shall be allowed to use the credit to offset the
45 combined group's **【**net deferred tax liability resulting from the
46 transition to a mandatory unitary combined return. For purposes of
47 this section, "net deferred tax liability" shall mean the net increase,

1 if any, in deferred tax liabilities minus the net increase, if any, in
2 deferred tax assets of the combined group, as computed in
3 accordance with generally accepted accounting principles, that is
4 the result of the transition from filing separate returns to filing a
5 mandatory unitary combined return] tax liability under paragraph
6 (1) of subsection c. of section 5 of P.L.1945, c.165 (C.54:10A-5)
7 for the group privilege period. The remaining balance of the credit
8 carryovers of members of the combined group from prior to the
9 effective date of the repeal of section 7 of P.L.2002, c.40
10 (C.54:10A-5a) shall not reduce the combined tax liability below
11 50% of the tax owed by the group. The remaining balance of the
12 credit may be carried over until used by the combined group.
13 (cf: P.L.2018, c.48)

14

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

17 22. a. Determination of Managerial Member. If the combined
18 group has a common parent corporation within the meaning of the
19 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
20 et seq.), and that common parent corporation is a taxable member of
21 the corporate group, the managerial member shall be the common
22 parent corporation. In other cases, the combined group shall select
23 a taxable member as its managerial member or, in the discretion of
24 the director or upon failure of the combined group to select its
25 managerial member, the director shall designate a taxable member
26 of the combined group as managerial member. Once the election of
27 the managerial member is made, the election shall be binding for 10
28 successive privilege periods, except as otherwise provided for by
29 the director.

30 b. A combined group shall file a mandatory combined return
31 under this section in the form and manner prescribed by the
32 director. The managerial member of the combined group shall file
33 the mandatory combined return on behalf of the taxable members of
34 the combined group. The managerial member shall be required to
35 file taxable member returns; file taxable member extensions for
36 filing tax returns and other documents with the director; pay taxable
37 member liabilities; receive taxable member findings, assessments,
38 and notices; make and receive taxable member claims, or file
39 taxable member protests and appeals; and shall be the responsible
40 party liable for filing and paying the tax on behalf of the combined
41 group.

42 c. The privilege period for the combined group is the privilege
43 period of the managerial member. If a member of a combined group
44 has a different fiscal or calendar accounting period from the
45 combined group's privilege period, that member with a different
46 period shall report amounts from its return for its fiscal or calendar
47 accounting year that ends during the group privilege period.

- 1 d. Each taxable member of a combined group shall be jointly
2 and severally liable for the tax due from any taxable member
3 pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), whether or not
4 that tax has been self-assessed, and for any interest, penalties, or
5 additions to tax due.
- 6 e. If a combined group is eligible to elect the managerial
7 member of the combined group, notice of the election shall be
8 submitted in writing to the director not later than the due date or, if
9 an extension of time to file has been requested and granted, not later
10 than the extended due date of the mandatory combined return for
11 the initial privilege period for which a return is required. The
12 managerial member shall be the designated agent and the
13 responsible person for filing the combined return and paying the tax
14 for the combined group. If another taxable member is subsequently
15 designated as the managerial member, the subsequent designation
16 shall be subject to the approval of the director.
- 17 f. The director is authorized to promulgate regulations with
18 regards to installment payments, estimated payments,
19 overpayments, refunds and any other filing or payment matters
20 related to combined groups filing combined returns.
- 21 g. For privilege periods ending on and after July 31, 2019, a
22 combined group must file a mandatory combined return. However,
23 if privilege periods of the members of the combined group differ,
24 the first mandatory combined return for the combined group shall
25 be required for the privilege period of the managerial member.
- 26 h. The members of a combined group shall notify the director
27 **【within 90 days】** of a change in the combined group where a
28 member dissolves, a merger of any kind occurs, a member
29 withdraws from the group, a member ceases doing business, a
30 member of the group is acquired by a third party not in the group,
31 or additional members enter the group which are required to be
32 included. Such notice shall be submitted in written form, as
33 determined by the director, not later than the due date, or, if an
34 extension of time to file has been requested and granted, not later
35 than the extended due date of the combined unitary tax return for
36 the privilege period in which a change in the combined group
37 occurs.
- 38 i. Any notice shall be sent to the managerial member of the
39 combined group at the last known address of the managerial
40 member as indicated on either the last filing required or made under
41 this Chapter or a subsequent electronic or written notice provided
42 by the managerial member under rules prescribed by the director.
- 43 j. The director may, at the director's sole discretion:
- 44 (1) make any deficiency assessment against either the
45 managerial member or a taxable member of the combined group;
- 46 (2) refund or credit any overpayment to either the managerial
47 member or a taxable member of the combined group;

1 (3) require any payment to be made by electronic funds transfer;
2 and

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

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

6
7 9. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to
8 read as follows:

9 5. The franchise tax to be annually assessed to and paid by
10 each taxpayer shall be the greater of the amount computed pursuant
11 to this section or the alternative minimum assessment computed
12 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
13 however, that in the case of a taxpayer that is a New Jersey S
14 corporation, an investment company, a professional corporation
15 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a
16 similar corporation for profit organized for the purpose of rendering
17 professional services under the laws of another state, or a person
18 operating on a cooperative basis under Part I of Subchapter T of the
19 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
20 there shall be no alternative minimum assessment computed
21 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

22 The amount computed pursuant to this section shall be the sum
23 of the amount computed under subsection (a) hereof, or in the
24 alternative to the amount computed under subsection (a) hereof, the
25 amount computed under subsection (f) hereof, and the amount
26 computed under subsection (c) hereof:

27 (a) That portion of its entire net worth as may be allocable to
28 this State as provided in section 6, multiplied by the following
29 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
30 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
31 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
32 mill per dollar on all amounts of allocated net worth in excess of
33 \$300,000,000.00; provided, however, that with respect to reports
34 covering accounting or privilege periods set forth below, the rate
35 shall be that percentage of the rate set forth in this subsection for
36 the appropriate year:

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

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

45 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
46 1/4% of its entire net income or such portion thereof as may be
47 allocable to this State as provided in sections 6 through 10 of
48 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), plus such

1 portion thereof as is specifically assigned to this State as provided
2 in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided, however,
3 that with respect to reports covering accounting or privilege periods
4 or parts thereof ending after December 31, 1967, the rate shall be 4
5 1/4%; and that with respect to reports covering accounting or
6 privilege periods or parts thereof ending after December 31, 1971,
7 the rate shall be 5 1/2%; and that with respect to reports covering
8 accounting or privilege periods or parts thereof ending after
9 December 31, 1974, the rate shall be 7 1/2%; and that with respect
10 to reports covering privilege periods or parts thereof ending after
11 December 31, 1979, the rate shall be 9%; provided however, that
12 for a taxpayer that has entire net income of \$100,000 or less for a
13 privilege period and is not a partnership the rate for that privilege
14 period shall be 7 1/2% and provided further that for a taxpayer that
15 has entire net income of \$50,000 or less for a privilege period and is
16 not a partnership the rate for that privilege period shall be 6 1/2%.

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

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

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

34 (ii) For a taxpayer that has entire net income in excess of
35 \$100,000 for the privilege period,

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

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

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

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

44 (iii) For a taxpayer that has entire net income of \$100,000 or less
45 for privilege periods ending on or after July 1, 1998, but on or
46 before June 30, 2001, the rate for that privilege period shall be
47 0.5%, and for privilege periods ending on or after July 1, 2001,
48 there shall be no rate of tax imposed under this paragraph.

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

10 (3) For a taxpayer that is a New Jersey S corporation, in
11 addition to the amount, if any, determined under paragraph (2) of
12 this subsection, the tax rate that would otherwise be applicable to
13 the taxpayer's entire net income for the privilege period if the
14 taxpayer were not an S corporation provided under paragraph (1) of
15 this subsection for the privilege period multiplied by its entire net
16 income that is subject to federal income taxation or such portion
17 thereof as may be allocable to this State pursuant to sections 6
18 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).
19 For privilege periods ending on or after July 31, 2019, the tax rate
20 shall be applied against taxable net income.

21 (d) Provided, however, that the franchise tax to be annually
22 assessed to and paid by any investment company or real estate
23 investment trust, which has elected to report as such and has filed
24 its return in the form and within the time provided in this act and
25 the rules and regulations promulgated in connection therewith,
26 shall, in the case of an investment company, be measured by 40% of
27 its entire net income and 40% of its entire net worth, and in the case
28 of a real estate investment trust, by 4% of its entire net income and
29 15% of its entire net worth, at the rates hereinbefore set forth for the
30 computation of tax on net income and net worth, respectively, but in
31 no case less than \$250, and further provided, however, that the
32 franchise tax to be annually assessed to and paid by a regulated
33 investment company which for a period covered by its report
34 satisfies the requirements of Chapter 1, Subchapter M, Part I,
35 Section 852(a) of the federal Internal Revenue Code shall be \$250.
36 For privilege periods ending on or after July 31, 2019, **the tax rate**
37 **shall be applied against taxable net income** the tax rate shall be
38 applied against 40% of its taxable net income in the case of an
39 investment company, and against 4% of its taxable net income in
40 the case of a real estate investment trust.

41 (e) The tax assessed to any taxpayer pursuant to this section
42 shall not be less than \$25 in the case of a domestic corporation, \$50
43 in the case of a foreign corporation, or \$250 in the case of an
44 investment company or regulated investment company. Provided
45 however, that for privilege periods beginning in calendar year 1994
46 and thereafter the minimum taxes for taxpayers other than an
47 investment company or a regulated investment company shall be as
48 provided in the following schedule:

1	Period Beginning	Domestic	Foreign
2	In Calendar Year	Corporation	Corporation
3		Minimum Tax	Minimum Tax
4	1994	\$ 50	\$100
5	1995	\$100	\$200
6	1996	\$150	\$200
7	1997	\$200	\$200
8	1998	\$200	\$200
9	1999	\$200	\$200
10	2000	\$200	\$200
11	2001	\$210	\$210

12 and for calendar years 2002 through 2005 the minimum tax for all
 13 taxpayers shall be \$500, and for calendar year 2006 through
 14 calendar year 2011 the minimum tax for all corporations, and for
 15 privilege periods beginning in calendar year 2012 and thereafter the
 16 minimum tax for corporations that are not New Jersey S
 17 corporations shall be based on the New Jersey gross receipts of the
 18 taxpayer pursuant to the following schedule:

19	New Jersey Gross Receipts:	Minimum Tax:
20	Less than \$100,000	.....\$500
21	\$100,000 or more but	
22	less than \$250,000	..... \$750
23	\$250,000 or more but	
24	less than \$500,000	..... \$1,000
25	\$500,000 or more but	
26	less than \$1,000,000	..... \$1,500
27	\$1,000,000 or more	..... \$2,000

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

32	New Jersey Gross Receipts:	Minimum Tax:
33	Less than \$100,000	.....\$375
34	\$100,000 or more but	
35	less than \$250,000	..... \$562.50
36	\$250,000 or more but	
37	less than \$500,000	..... \$750
38	\$500,000 or more but	
39	less than \$1,000,000	..... \$1,125
40	\$1,000,000 or more	..... \$1,500

41 provided however, that for a taxpayer that is a member of an
 42 affiliated group or a controlled group pursuant to section 1504 or
 43 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
 44 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
 45 more for the privilege period, the minimum tax shall be \$2,000 for
 46 the privilege period **[. For]** ; provided, however, for privilege
 47 periods ending on and after July 31, 2019, the minimum tax of each
 48 taxable member of a combined group filing a mandatory or elective

1 New Jersey combined return shall be \$2,000 for the group privilege
2 period.

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

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

12 (1) that is a limited liability company or foreign limited liability
13 company classified as a partnership for federal income tax purposes
14 shall be the amount determined pursuant to the provisions of section
15 3 of P.L.2001, c.136 (C.54:10A-15.6); or

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

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

25 (i) (Deleted by amendment, P.L.2008, c.120)
26 (cf: P.L.2018, c.131, s.6)

27
28 10. Section 1 of P.L.1993, c.175 (C.54:10A-5.24) is amended to
29 read as follows:

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

34 (1) 10% of the excess of the qualified research expenses for the
35 privilege period over the base amount; and

36 (2) 10% of the basic research payments for the privilege period
37 determined in accordance with section 41 of the federal Internal
38 Revenue Code of 1986, 26 U.S.C. s.41. Provided however, that the
39 terms "qualified research expenses," "base amount," "qualified
40 organization base amount period," "basic research" and any other
41 terms determined by the Director of the Division of Taxation to
42 affect the calculation of the credit shall include only expenditures
43 for research conducted in this State. For privilege periods beginning
44 on and after January 1, 2018, amounts paid or incurred by the
45 taxpayer in carrying on any trade or business of the taxpayer during
46 the privilege period, including as contributions, to an energy
47 research consortium for energy research shall also qualify as a basic
48 research payment for purposes of this subsection.

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

8 The order of priority of the application of the credit allowed
9 pursuant to this section and any other credits allowed by law shall
10 be as prescribed by the director. Credits allowable pursuant to this
11 section shall be applied in the order of the privilege periods for
12 which the credits were allowed.

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

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

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

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

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

34 d. For privilege periods beginning on and after January 1,
35 2020, the portion of qualified research expenses and qualified
36 payments of a taxpayer that is a qualified small business within the
37 meaning of section 41(h)(3) of the federal Internal Revenue Code
38 (26 U.S.C. s.41) that were disallowed for the section 41(h) tax
39 credit because the taxpayer made an election pursuant to sections
40 41(h) and 3111(f) of the federal Internal Revenue Code (26 U.S.C.
41 s.41 and s.3111) to take the 3111(f) credit in lieu of the 41(h) credit,
42 shall be allowed for the purposes of calculating the New Jersey
43 credit provided for by this section.

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

45

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

1 14. (a) The director **【may by regulation or by special notice】**
2 shall require any taxpayer or managerial member to submit, as part
3 of a full and complete New Jersey return, copies or pertinent
4 extracts of its federal income tax returns, or of any other tax return
5 filed with any agency of the federal government, or of this or any
6 other state, or of any statement or registration made pursuant to any
7 state or federal law pertaining to securities or securities exchange
8 regulation. The director shall issue regulations describing which
9 federal extracts are required and which extracts are optional.

10 (b) The director may require all taxpayers to keep such records
11 as the director may prescribe, and the director may require the
12 production of books, papers, documents and other data, to provide
13 or secure information pertinent to the determination of the tax
14 hereunder and the enforcement and collection thereof. The director
15 may, also, by general rule or by special notice require any taxpayer
16 to make and file information returns, under oath, of facts pertinent
17 to the determination of the tax or liability for tax hereunder,
18 pursuant to such regulations, at such times and in such form and
19 manner and to such extent as the director may prescribe
20 pursuant to law.

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

38 (d) For privilege periods ending on and after ¹【July 31, 2020】
39 July 31, 2021¹, the director shall create a simplified standardized
40 return for combined groups, banking corporations, financial
41 business corporations, and separate return filers, but shall maintain
42 the New Jersey S Corporations returns for New Jersey S
43 Corporations that file separate returns. The standardized return shall
44 include the accompanying forms and schedules to administer and
45 implement the various requirements of the Corporation Business
46 Tax Act (1945), or such accompanying schedules shall be made
47 inconspicuously and readily available on the Division of Taxation's

1 website, and the instructions for the standardized return shall
2 clearly indicate which schedules are required to be completed by
3 combined groups, banking corporations, financial business
4 corporations, and separate return filers respectively.

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

6
7 12. Section 15 of P.L.1945, c.162 (C.54:10A-15) is amended to
8 read as follows:

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

13 (a) Every taxpayer shall annually pay a franchise tax, with
14 respect to all or any part of each of its fiscal or calendar accounting
15 years beginning after January 1, 1959, to be computed as herein
16 provided, for such fiscal or calendar accounting year or part thereof,
17 on a report which shall be filed on or before April 15 next
18 succeeding the close of each such accounting year, or, if any such
19 fiscal year ends after the last day of December and prior to July 1,
20 on or before the fifteenth day of the fourth month after the close of
21 such fiscal year, and the full amount of the tax hereunder shall be
22 due and payable on or before the date prescribed herein for the
23 filing of the return.

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

43 (c) With respect to all or any part of each of its privilege periods
44 ending after June 30, 1967, every taxpayer shall annually pay a
45 franchise tax on a report which shall be filed on or before the
46 fifteenth day of the fourth month after the close of such privilege
47 period, or part thereof, and the full amount of the tax hereunder
48 shall be due and payable on or before the date prescribed herein for

1 the filing of the return; provided, however, that for privilege periods
2 ending on and after July 31, 2020, the due date of the New Jersey
3 return shall be 30 days after the original due date for filing the
4 taxpayer's federal corporate income tax return for such privilege
5 period, or part thereof, and the full amount of the tax hereunder
6 shall be due and payable on or before the date prescribed herein for
7 the filing of the return.

8 (d) With respect to its fiscal or calendar accounting years ending
9 after February 29, 1968 and prior to March 1, 1969, every taxpayer
10 shall pay as a partial payment of franchise tax in addition to the tax
11 payable under subsection (c) of this section, an amount equal to
12 one-quarter of the tax payable under said subsection (c). With
13 respect to each of its fiscal or calendar accounting years ending
14 after February 28, 1969, every taxpayer shall annually pay as a
15 partial payment of franchise tax in addition to the tax payable under
16 subsection (c) of this section, an amount equal to one-half of the tax
17 payable under said subsection (c). In the calculation of the tax
18 pertaining to each succeeding accounting period, due in accordance
19 with subsection (c) hereof, every taxpayer shall be entitled to a
20 credit in the amount of the tax paid under this subsection (d) as a
21 partial payment and shall be entitled to the return of any amount so
22 paid which shall be found in excess of the total amount payable in
23 accordance with said subsection (c) and this subsection (d).

24 (e) With respect to its fiscal or calendar accounting years ending
25 on or after June 30, 1974, every taxpayer shall annually pay as a
26 partial payment of franchise tax in addition to the tax payable under
27 subsection (c) of this section, an amount equal to 60% of the tax
28 payable under said subsection (c). In the calculation of the tax
29 pertaining to each succeeding accounting period, due in accordance
30 with subsection (c) hereof, every taxpayer shall be entitled to a
31 credit in the amount of the tax paid under this subsection (e) as a
32 partial payment and shall be entitled to the return of any amount so
33 paid which shall be found to be in excess of the total amount
34 payable in accordance with said subsection (c) and this subsection
35 (e).

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

44 (1) 25% thereof paid on or before the fifteenth day of the fourth
45 month thereof;

46 (2) 25% thereof paid on or before the fifteenth day of the sixth
47 month thereof;

1 (3) 25% thereof paid on or before the fifteenth day of the ninth
2 month thereof; and

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

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

11 (1) 25% thereof paid on or before the fifteenth day of the fourth
12 month thereof;

13 (2) 50% thereof paid on or before the fifteenth day of the sixth
14 month thereof; and

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

17 (h) In the calculation of the tax due in accordance with
18 subsection (c) hereof, a taxpayer shall be entitled to a credit in the
19 amount of the tax paid under subsection (f) or subsection (g) of this
20 section as a partial payment and shall be entitled to the return of any
21 amount so paid which is in excess of the total amount payable in
22 accordance with subsection (c) and this subsection.

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

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

27
28 13. Section 3 of P.L.2006, c.33 (C.54:15C-1) is amended to read
29 as follows:

30 3. a. (1) There is imposed and shall be paid a tax upon the sale
31 or transfer for consideration in excess of \$1,000,000 of a controlling
32 interest in an entity which possesses, directly or indirectly, a
33 controlling interest in classified real property, which shall be paid
34 by the purchaser of the controlling interest and which shall be equal
35 to 1% of the consideration paid on the sale or transfer; provided
36 however that in the case of the sale or transfer of a controlling
37 interest in an entity which possesses, directly or indirectly, an
38 interest in classified real property and an interest in other property,
39 real or personal, there shall be paid a tax upon the sale only if the
40 equalized assessed value of the classified real property exceeds
41 \$1,000,000 which shall be paid by the purchaser of the controlling
42 interest and which shall be equal to 1% of that percentage of the
43 equalized assessed value of the classified real property that is equal
44 to the percentage of the ownership interest transferred.

45 (2) The sale or transfer of a controlling interest subject to
46 taxation pursuant to paragraph (1) of this subsection may occur in
47 one transaction or in a series of transactions. Transactions which
48 occur within six months of each other are presumed, unless shown

1 to the contrary, to be a series of transactions constituting a single
2 sale or transfer.

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

8 b. On or before the last day of the month following the month
9 in which the sale or transfer of a controlling interest which is
10 subject to the tax imposed by subsection a. of this section is
11 completed, the purchaser shall file a return with the director, in such
12 form as the director may prescribe. Payment of the tax shall
13 accompany the return.

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

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

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

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

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

26 (5) that is incidental to a corporate merger or acquisition if the
27 equalized assessed value of the real property transferred is less than
28 20% of the total value of all assets exchanged in the merger or
29 acquisition; or

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

34 d. Notwithstanding the provisions of subsection a. of this
35 section, the transfer of a controlling interest on or before November
36 15, 2006 in an entity which possesses, directly or indirectly, an
37 interest in classified real property shall not be subject to tax if the
38 interest was transferred pursuant to a contract or other binding
39 agreement that was fully executed before July 1, 2006.

40 e. (1) The director may require all purchasers subject to a tax
41 imposed under this section to keep such records as the director may
42 prescribe, and the director may require the production of books,
43 papers, documents and other data, to provide or secure information
44 pertinent to the determination of the taxes imposed by this section
45 and the enforcement and collection thereof.

46 (2) An entity with respect to which there is a sale or transfer of a
47 controlling interest in that entity, shall keep a record of every
48 transfer of a controlling interest in its stock or in its capital, profits

1 or beneficial interests, as the case may be, and such other
2 information as the director may prescribe. An entity shall report
3 that information to the director in such form and at such times as
4 the director may prescribe.

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

9 (4) The director shall collect and administer the tax imposed
10 pursuant to this section. The director is authorized to adopt rules
11 and regulations to effectuate the purposes of this section pursuant to
12 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
13 1 et seq.).

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

19 (6) The director may delegate the director's functions hereunder
20 to any officer or employee of the director's division such of the
21 director's powers as the director may deem necessary to carry out
22 efficiently the provisions of this section.

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

26 g. As used in this section:

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

30 "Director" means the Director of the Division of Taxation in the
31 Department of the Treasury.

32 "Consideration" means the actual amount of money and the
33 monetary value of any other thing of value constituting the entire
34 compensation paid or to be paid for the transfer including the
35 remaining amount of any prior mortgage to which the transfer is
36 subject or which is to be assumed and agreed to be paid by the
37 purchaser.

38 "Controlling interest" means, in the case of an entity that is a
39 corporation, more than fifty per cent of the total combined voting
40 power of all classes of stock of that corporation, and in the case of
41 an entity that is a partnership, association, trust or other
42 organization, more than fifty per cent of the beneficial ownership of
43 classified real property of that partnership, association, trust or
44 other organization.

45 "Related parties" means parties that have the relationship
46 necessary for attribution of constructive ownership of stock
47 pursuant to section 318 of the federal Internal Revenue Code of
48 1986, 26 U.S.C. s.318, and members of an affiliated group or a

1 controlled group pursuant to section 1504 or 1563 of the federal
2 Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563.

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

4
5 14. Section 5 of P.L.2007, c.100 (C.54:50-38) is amended to
6 read as follows:

7 5. a. (1) Whenever a person shall make a sale, transfer, or
8 assignment in bulk of any part or the whole of the person's business
9 assets, except as provided by **[paragraph]** paragraphs (2) and (3) of
10 this subsection, otherwise than in the ordinary course of business,
11 the purchaser, transferee or assignee shall, at least 10 days before
12 taking possession of the subject of the sale, transfer or assignment,
13 or paying therefor, notify the director by registered mail, or other
14 such method as the director may prescribe, of the proposed sale and
15 of the price, terms and conditions thereof whether or not the seller,
16 transferrer or assignor has represented to, or informed the
17 purchaser, transferee or assignee that the seller, transferrer or
18 assignor owes any State tax and whether or not the purchaser,
19 transferee, or assignee has knowledge that such taxes are owing,
20 and whether any such taxes are in fact owing. Within 10 days of
21 receiving such notice, the director shall notify the purchaser,
22 transferee or assignee by such means as the director may prescribe
23 that a possible claim for State taxes exists and include the amount
24 of the State's claim.

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

1 (b) Paragraph (1) of this subsection shall not apply to the sale,
2 transfer or assignment of a seasonal rental unit or the sale, transfer
3 or assignment of a lease for the seasonal use or rental of real
4 property if the seller, transferrer or assignor is an "individual,"
5 "estate," or "trust" as those terms are used for the purposes of the
6 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or any
7 combination thereof owning the seasonal rental unit or lease for the
8 seasonal use or rental of real property as joint tenants, tenants in
9 common or tenancy by the entirety; paragraph (1) shall apply to the
10 sale, transfer or assignment of a seasonal rental unit or the sale,
11 transfer or assignment of a lease for the seasonal use or rental of
12 real property if the seller, transferrer or assignor is a business entity,
13 including but not limited to a corporation or a partnership.

14 For the purposes of this paragraph:

15 "seasonal rental unit" means

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

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

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

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

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

27 Paragraph (1) of this subsection shall not apply to
28 transactions entered into on and after ¹July 31, 2020 January 1,
29 2021¹ that are intercompany transfers between combined group
30 members as part of the unitary business, as those terms are used in
31 section 4 of P.L.1945, c.162 (C.54:10A-4).

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

38 For purposes of this paragraph, "State or local business
39 assistance or incentive program or activity" includes but shall not
40 be limited to: the corporation business tax credit and insurance
41 premiums tax credit certificate transfer program established by
42 section 17 of P.L.2004, c.65 (C.34:1B-120.2); the Business
43 Retention and Relocation Assistance Program established by
44 P.L.1996, c.25 (C.34:1B-112 et seq.); the Business Employment
45 Incentive Program established by P.L.1996, c.26 (C.34:1B-
46 124 et al.); the Urban Transit Hub Tax Credit Program established
47 by P.L.2007, c.346 (C.34:1B-207 et seq.); the Grow New Jersey
48 Assistance Program established by section 3 of P.L.2011, c.149

1 (C.34:1B-244); and the State or local Economic Redevelopment and
2 Growth Grant program established by section 4 or section 5 of
3 P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e).

4 b. If, upon receiving timely notice of a sale, transfer or
5 assignment from a purchaser, transferee or assignee, the director
6 fails to provide timely notice to the purchaser, transferee or
7 assignee that a possible claim for such State tax or taxes exists, the
8 purchaser, transferee or assignee may transfer over to the seller,
9 transferrer or assignor any sums of money, property or choses in
10 action, or other consideration to the extent of the amount of the
11 State's claim. The purchaser, transferee or assignee shall not be
12 subject to the liabilities and remedies imposed under the provisions
13 of the uniform commercial code, Title 12A of the New Jersey
14 Statutes, and shall not be personally liable for the payment to the
15 State of any such taxes theretofore or thereafter determined to be
16 due to the State from the seller, transferrer or assignor.

17 c. If the purchaser, transferee or assignee shall fail to give
18 notice to the director as required by the preceding paragraph, or if
19 the director shall inform the purchaser, transferee or assignee that a
20 possible claim for such State tax or taxes exists, any sums of
21 money, property or choses in action, or other consideration, which
22 the purchaser, transferee or assignee is required to transfer over to
23 the seller, transferrer or assignor shall be subject to a first priority
24 right and lien for any such State taxes theretofore or thereafter
25 determined to be due from the seller, transferrer or assignor to the
26 State, and the purchaser, transferee or assignee is forbidden to
27 transfer to the seller, transferrer or assignor any such sums of
28 money, property or choses in action to the extent of the amount of
29 the State's claim. For failure to comply with the provisions of this
30 section the purchaser, transferee or assignee, in addition to being
31 subject to the liabilities and remedies imposed under the provisions
32 of the uniform commercial code, Title 12A of the New Jersey
33 Statutes, shall be personally liable for the payment to the State of
34 any such taxes theretofore or thereafter determined to be due to the
35 State from the seller, transferrer or assignor, and such liability may
36 be assessed and enforced in the same manner as the liability for any
37 State tax under the State Uniform Tax Procedure Law, R.S.54:48-
38 1 et seq.

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

40
41 15. (New section) For privilege periods ending on and after July
42 31, 2020, a taxpayer shall be allowed a credit against the tax
43 imposed by subsection c. of section 5 of P.L.1945, c.162
44 (C.54:10A-5) to the extent a subsidiary of the taxpayer received
45 dividends and deemed dividends from other subsidiaries and
46 included those dividends in its entire net income for the purposes of
47 determining its tax liability pursuant to section 5 of P.L.1945, c.162
48 (C.54:10A-5) and paid tax on those dividends and deemed

1 dividends to the State on a timely filed New Jersey corporation
2 business tax return; provided, however, the taxpayer received those
3 same dividends and deemed dividends from the subsidiary that paid
4 tax to the State.

5 For purposes of this section, the members of a combined group
6 filing a New Jersey combined return shall be treated as one
7 taxpayer.

8 For purposes of this section, “paid tax” means the amount that
9 the subsidiary paid to the State or would have paid but for the use of
10 other tax credits, or but for subsections (u) and (v) of section 4 of
11 P.L.1945, c.162 (C.54:10A-4), or, for a combined group filing a
12 combined return, but for subsections g. and h. of section 18 of
13 P.L.2018, c.48 (C.54:10A-4.6).

14 The credit allowed by ¹the¹ this section shall be claimed in a
15 form and manner prescribed by the director on a timely filed
16 corporation business tax return.

17

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

39 b. For a banking corporation that is not a member of a
40 combined group, which files a BFC-1 return reporting its calendar
41 year income in accordance with section 4 of P.L.1975, c.170
42 (C.54:10A-34), but which files on a fiscal federal tax year basis, the
43 banking corporation may elect to file separate returns in a manner
44 similar to subsection a. of this section, file a transitional short
45 period return, and subsequently file its New Jersey corporation
46 business tax returns on a fiscal year basis. Otherwise, such banking
47 corporations shall file transitional returns in order to subsequently
48 file in the same manner as other corporation business taxpayers. If a

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

8 c. For a banking corporation that is not a member of a
9 combined group, which files a BFC-1 return reporting its calendar
10 year income in accordance with section 4 of P.L.1975, c.170
11 (C.54:10A-34), and files on a calendar federal tax year basis, the
12 banking corporation shall file transitional returns in order to
13 subsequently file in the same manner as other corporation business
14 taxpayers. If a banking corporation, that would otherwise continue
15 to file the BFC-1 return reporting its calendar year income in
16 accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) but for
17 the transitional provisions provided for in this section, believes
18 that application of the filing requirements set forth will result in an
19 unfair or distorted reflection of income, the banking corporation
20 may request relief from the director, which may be granted at the
21 director's discretion.

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

25

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

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

29 (a) For a consideration, as defined in section 1(c), of less than
30 \$100.00;

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

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

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

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

37 (f) On partition;

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

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

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

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

44 (k) Conveying a cemetery lot or plot;

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

46 (m) Releasing a right of reversion;

47 (n) Previously recorded in another county and full realty transfer
48 fee paid or accounted for, as evidenced by written instrument,

1 attested by the grantee and acknowledged by the county recording
 2 officer of the county of such prior recording, specifying the county,
 3 book, page, date of prior recording, and amount of realty transfer
 4 fee previously paid;

5 (o) By an executor or administrator of a decedent to a devisee or
 6 heir to effect distribution of the decedent's estate in accordance with
 7 the provisions of the decedent's will or the intestate laws of this
 8 State;

9 (p) Recorded within 90 days following the entry of a divorce
 10 decree which dissolves the marriage between the grantor and
 11 grantee;

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

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

23 (cf: P.L.1999, c.357, s.1)
 24

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

40
 41 ¹【17.】 19.¹ (New section) Notwithstanding the provisions of
 42 the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1
 43 et seq.), to the contrary, the director may adopt, immediately, upon
 44 filing with the Office of Administrative Law, regulations that the
 45 director deems necessary to implement the provisions of P.L. _____, c.
 46 (pending before the Legislature as this bill), which regulations shall
 47 be effective for a period not to exceed 360 days from the date of the
 48 filing. The director may thereafter amend, adopt, or readopt the

1 regulations in accordance with the requirements of P.L.1968, c.410
2 (C.52:14B-1 et seq.).

3

4 **1[18] 20**¹. This act shall take effect immediately and, unless the
5 context provides otherwise, shall apply **1retroactively**¹ to privilege
6 periods ending on and after December 31, 2019, except that:

7 **1[section] sections**¹ 11 **1and 16**¹ shall apply **1retroactively**¹ to
8 privilege periods ending on and after July 31, 2020;

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

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

17

18

19

20

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

ASSEMBLY, No. 4809

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED OCTOBER 8, 2020

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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.

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 and is an intercompany transfer between
33 combined group members as part of the unitary business, as those
34 terms are used in section 4 of P.L.1945, c.162 (C.54:10A-4).

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

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

1 paragraph shall be in addition to the filing, if any, pursuant to
2 paragraph (2) of this subsection.

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

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

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

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

25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (G) (i) The amount of any civil, civil administrative, or criminal
42 penalty or fine, including a penalty or fine under an administrative
43 consent order, assessed and collected for a violation of a State or
44 federal environmental law, an administrative consent order, or an
45 environmental ordinance or resolution of a local governmental
46 entity, and any interest earned on the penalty or fine, and any
47 economic benefits having accrued to the violator as a result of a
48 violation, which benefits are assessed and recovered in a civil, civil

1 administrative, or criminal action, or pursuant to an administrative
2 consent order. The provisions of this paragraph shall not apply to a
3 penalty or fine assessed or collected for a violation of a State or
4 federal environmental law, or local environmental ordinance or
5 resolution, if the penalty or fine was for a violation that resulted
6 from fire, riot, sabotage, flood, storm event, natural cause, or other
7 act of God beyond the reasonable control of the violator, or caused
8 by an act or omission of a person who was outside the reasonable
9 control of the violator.

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

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

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

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

44 A deduction shall also be permitted to the extent that the
45 taxpayer establishes by a preponderance of the evidence, as
46 determined by the director, that the interest is directly or indirectly
47 paid, accrued or incurred to (i) a related member in a foreign nation
48 which has in force a comprehensive income tax treaty with the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (ii) For privilege periods beginning after December 31, 2016 and
43 before January 1, 2019, entire net income shall exclude 95% of
44 dividends which were included in computing such taxable income
45 for federal income tax purposes, paid or deemed paid, to the
46 taxpayer by one or more subsidiaries owned by the taxpayer to the
47 extent of the 80% or more ownership of investment described in
48 subsection (d) of this section. For the purposes of calculating the

1 tax liability owed for the paid or deemed paid dividends included in
2 entire net income by this **【subsection】** subsubparagraph (ii), the
3 taxpayer shall use either their three-year average allocation factor
4 for the taxpayer's 2014 through 2016 tax years reported on the
5 taxpayer's tax returns or 3.5 percent, whichever is lower.

6 (iii) For privilege periods beginning on and after January 1,
7 2019, entire net income shall exclude 95% of dividends which were
8 included in computing such taxable income for federal income tax
9 purposes, paid or deemed paid to the taxpayer by one or more
10 subsidiaries owned by the taxpayer to the extent of the 80% or more
11 ownership of investment described in subsection (d) of this section.

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

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

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

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

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

45 (B) Net operating loss carryover. A net operating loss for any
46 privilege period ending after June 30, 1984 shall be a net operating
47 loss carryover to each of the seven privilege periods following the
48 period of the loss and a net operating loss for any privilege period

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

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

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

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

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

47 (F) Reduction for discharge of indebtedness. A net operating
48 loss for any privilege period ending after June 30, 2014, and any net

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

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

33 (A) Depreciation for property placed in service prior to January
34 1, 1998 shall be adjusted as follows:

35 (i) Depreciation for federal income tax purposes shall be
36 disallowed in full.

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

1 federal income tax purposes as described in subparagraph (B) of
2 this paragraph.

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

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

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

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

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

44 (11) No deduction shall be allowed for research and
45 experimental expenditures, to the extent that those research and
46 experimental expenditures are qualified research expenses or basic
47 research payments for which an amount of credit is claimed
48 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless

1 those research and experimental expenditures are also used to
2 compute a federal credit claimed pursuant to section 41 of the
3 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (ii) the resulting amount shall be further divided by the New
43 Jersey unitary business allocation factor that was used by the
44 combined group in the calculation of the deferred tax assets and
45 deferred tax liabilities as described in subparagraph (E) of this
46 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 (l) "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) for the income derived from the unitary business, and
43 a combined group shall be treated as one taxpayer for transactions
44 entered into on and after July 31, 2020 that are intercompany
45 transfers between combined group members as part of the unitary
46 business the transfers of which would otherwise be subject to the
47 realty transfer fee imposed under section 8 of P.L.2004, c.66
48 (C.46:15-7.2), the controlling interest transfer tax imposed under

1 section 3 of P.L.2006, c.33 (C.54:15C-1), or the bulk sales notice
2 requirements of section 5 of P.L.2007, c.100 (C.54:50-38).

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

10 (bb) "Group privilege period" means, if two or more members in
11 the combined group file in the same federal consolidated tax return,
12 the same income year as that used on the federal consolidated tax
13 return and, in all other cases, the privilege period of the managerial
14 member.

15 (cc) "Managerial member" means if the combined group has a
16 common parent corporation and that common parent corporation is
17 a taxable member, the managerial member shall be the common
18 parent corporation. In other cases, the combined group shall select
19 a taxable member as its managerial member or, in the discretion of
20 the director or upon failure of the combined group to select its
21 managerial member, the director shall designate a taxable member
22 of the combined group as managerial member.

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

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

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

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

39 A New Jersey S corporation shall only be included as a taxable
40 member of a combined group filing a New Jersey combined return
41 if the New Jersey S Corporation elects to be included as a member
42 and taxed at the same rate as the other members of the combined
43 group. A New Jersey S corporation that does not elect to be
44 included shall be excluded as a member of the combined return and
45 shall file a separate return.

46 (gg) "Unitary business" means a single economic enterprise that
47 is made up either of separate parts of a single business entity or of a
48 group of business entities under common ownership that are

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

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

20

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

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

43 b. A new or expanding emerging technology or biotechnology
44 company that has surrendered an unused net operating loss
45 carryover pursuant to the provisions of section 1 of P.L.1997, c.334
46 (C.34:1B-7.42a), shall not be allowed a net operating loss carryover
47 deduction based upon the right to such a deduction as evidenced by
48 the corporation business tax benefit certificate and shall attach a

1 copy of the certificate to any return the taxpayer is required to file
2 under P.L.1945, c.162 (C.54:10A-1 et seq.).

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

19 The managerial member of a combined group shall be the
20 member acquiring the prior net operating loss conversion carryover
21 deduction and net operating loss carryover deduction on behalf of
22 the combined group. The taxpayer or combined group shall apply
23 the prior net operating loss conversion carryover deduction and net
24 operating loss carryover deduction, as evidenced by the certificate,
25 according to the provisions of section 4 of P.L.1945, c.162
26 (C.54:10A-4) or section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
27 any rules or regulations the director adopts to carry out the
28 provisions of this section.

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

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

37

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

40 27. a. Notwithstanding any provision of subsection (k) of
41 section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal
42 Revenue Code, including but not limited to 26 U.S.C. s.381 or any
43 successor or equivalent provision, that permits a corporation to use
44 the net operating losses of another for federal income tax purposes
45 following certain transactions, including but not limited to those
46 qualifying as reorganizations under the provisions of subparagraph
47 (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of
48 section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368,

1 a net operating loss for a privilege period ending after June 30,
2 1984, may be carried over and allowed as a deduction only by the
3 corporation that sustained the loss; provided, however, that in the
4 case of a merger of two or more corporations pursuant to statute of
5 this State or any other jurisdiction, the net operating loss may be
6 carried over only by the corporation that sustained the loss and that
7 is also the surviving corporation following the merger. The net
8 operating loss may not be carried over by a taxpayer that changes
9 its state of incorporation.

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

34 c. For privilege periods beginning on and after January 1,
35 2020, the provisions of the federal Internal Revenue Code, the
36 federal rules, limitations, and restrictions, thereto, governing federal
37 net operating losses, federal net operating loss carryovers with
38 regard but not limited to: mergers, acquisitions, reorganizations,
39 spin-offs, split-offs, dissolution, bankruptcy, or any form of
40 cessation of a business, or any other provision that limits or reduces
41 federal net operating losses and federal net operating loss
42 carryovers, shall apply to New Jersey net operating loss carryovers
43 under subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4)
44 and the New Jersey net operating loss carryover provisions of
45 subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

46 The federal rules and regulations governing federal consolidated
47 return net operating losses and net operating loss carryovers shall
48 apply to New Jersey net operating loss carryover provisions of

1 subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) as
2 though the combined group filed a federal consolidated return,
3 regardless of how the members of the combined group filed for
4 federal purposes to the extent consistent with the Corporation
5 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).
6 (cf: P.L.2018, c.48, s.25)

7
8 6. Section 18 of P.L.2018, c.48 (C.54:10A-4.6) is amended to
9 read as follows:

10 18. A taxable member of a combined group shall determine its
11 entire net income from the unitary business as its share of the entire
12 net income of the combined group in accordance with a combined
13 unitary tax return made pursuant to this section and sections 19, 20,
14 and 23 of P.L.2018, c.48 [(C.54:18A-4.7, C.54:18A-4.8, and
15 C.54:10A-4.11)] (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-
16 4.11). The entire net income from the unitary business of a
17 combined group is the sum of the entire net incomes of each taxable
18 member and each nontaxable member of the combined group
19 derived from the unitary business, which shall be determined as
20 follows:

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

26 b. For a member not incorporated in the United States, the
27 income to be included in the entire net income of the combined
28 group shall be determined from a profit and loss statement that shall
29 be prepared for each foreign branch or corporation in the currency
30 in which the books of account of the branch or corporation are
31 regularly maintained, adjusted to conform it to the accounting
32 principles generally accepted in the United States for the
33 presentation of those statements and further adjusted to take into
34 account any book-tax differences required by federal or State law.
35 The profit and loss statement of each foreign member of the
36 combined group and the allocation factors related thereto, whether
37 United States or foreign, shall be translated into or from the
38 currency in which the parent company maintains its books and
39 records on any reasonable basis consistently applied on a year-to-
40 year or entity-by-entity basis. Income shall be expressed in United
41 States dollars. In lieu of these procedures and subject to the
42 determination of the director that the income to be reported
43 reasonably approximates income as determined under the
44 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
45 et seq.), income may be determined on any reasonable basis
46 consistently applied on a year-to-year or entity-by-entity basis.

47 c. (1) If a member of a combined group receives income from
48 the unitary business from a partnership, the combined group's entire

1 net income shall include the member's direct and indirect
2 distributive share of the partnership's unitary business income.

3 (2) The distributive share of income received by a limited
4 partner from a qualified investment partnership shall not be
5 considered to be derived from a unitary business unless the general
6 partner of such investment partnership and such limited partner
7 have common ownership. To the extent that the limited partner is
8 otherwise carrying on or doing business in New Jersey, it shall
9 allocate its distributive share of income from a qualified investment
10 partnership in accordance with subsection a. of section 3 of
11 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
12 P.L.2001, c.136 (C.54:10A-15.7) as applicable. If the limited
13 partner is not otherwise carrying on or doing business in New
14 Jersey, its distributive share of income from an investment
15 partnership is not subject to tax under this chapter.

16 d. All dividends paid by one member to another member of the
17 combined group shall be eliminated from the income of the
18 recipient.

19 e. Except as otherwise provided by regulation, business income
20 from an intercompany transaction among members of the same
21 combined group shall be deferred in a manner similar to the deferral
22 under 26 C.F.R. s.1.1502-13, as determined by the director. Upon
23 the occurrence of either of the events set forth in **[subparagraphs]**
24 paragraphs (1) and (2) of this subsection, deferred income resulting
25 from an intercompany transaction among members of a combined
26 group shall be restored to the income of the seller and shall be
27 included in the net income of the combined group as if the seller
28 had earned the income immediately before the event:

29 (1) The object of a deferred intercompany transaction is: (a)
30 resold by the buyer to an entity that is not a member of the
31 combined group, (b) resold by the buyer to an entity that is a
32 member of the combined group for use outside the unitary business
33 in which the buyer and seller are engaged, or (c) converted by the
34 buyer to a use outside the unitary business in which the buyer and
35 seller are engaged; or

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

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

45 f. A charitable expense incurred by a member of a combined
46 group shall, to the extent allowable as a deduction pursuant to
47 section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170,
48 be subtracted first from the combined group's entire net income,

1 subject to the income limitations of that section applied to the entire
2 **【business】** net income of the group. A charitable deduction
3 disallowed under section 170 of the federal Internal Revenue Code,
4 26 U.S.C. s.170, but allowed as a carryover deduction in a
5 subsequent privilege period, shall be treated as originally incurred
6 in the subsequent year by the same member and the provisions of
7 this section shall apply in the subsequent privilege period in
8 determining the allowable deduction for that privilege period.

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

13 (1) Such prior net operating loss conversion carryover deduction
14 shall be allowed to offset only the entire net income allocated to
15 this state of the corporation that created the prior net operating loss;
16 the prior net operating loss conversion carryover cannot be shared
17 with other members of the combined group.

18 (2) The prior net operating loss conversion carryover deduction
19 computed under subsection (u) of section 4 of P.L.1945, c.162
20 (C.54:10A-4) shall be applied against the entire net income
21 allocated to this state of the corporation that created the prior net
22 operating loss before the net operating loss carryover computed
23 under subsection h. of this section.

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

28 A member of a combined group may sell prior net operating loss
29 conversion carryover to other members of the combined group, if
30 otherwise applicable and allowable under section 2 of P.L.1997,
31 c.334 (C.54:10A-4.2) and section 1 of P.L.1997, c.334 (C.34:1B-
32 7.42a); provided, however, such sale of prior net operating loss
33 conversion carryover must be made at arm's length price at the
34 same rate as though the sale was to an unrelated taxpayer.

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

39 (1) For privilege periods beginning on or after the first day of
40 the initial privilege period for which a combined unitary tax return
41 is required under this section and sections 19, 20, and 23 of
42 P.L.2018, c.48 **【(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-**
43 **4.11)】** (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), if the
44 computation of a combined group's entire net income allocated to
45 this state results in a net operating loss, a taxable member of such
46 group may carry over the net operating loss allocated to this state,
47 as calculated under this section and sections 19 and 23 of P.L.2018,
48 c.48 **【(C.54:18A-4.7 and C.54:18A-4.11)】** (C.54:10A-4.7 and

1 C.54:10A-4.11), and shall be deductible from entire net income
2 derived from the unitary business in a future privilege period to the
3 extent that the carryover and deduction is otherwise consistent with
4 subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4).

5 (2) Where a taxable member of a combined group has a net
6 operating loss carryover derived from a loss incurred by a combined
7 group in a privilege period beginning on or after the first day of the
8 initial privilege period for which a combined unitary tax return is
9 required under this section and sections 19, 20, and 23 of P.L.2018,
10 c.48 [(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11)]
11 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable
12 member may share the net operating loss carryover with other
13 taxable members of the combined group if such other taxable
14 members were members of the combined group in the privilege
15 period that the loss was incurred. Any amount of net operating loss
16 carryover that is deducted by another taxable member of the
17 combined group shall reduce the amount of net operating loss
18 carryover that may be carried over by the taxable member that
19 originally incurred the loss.

20 (3) Where a taxable member of a combined group has a net
21 operating loss carryover derived from a loss incurred in a privilege
22 period during which the taxable member was not a member of such
23 combined group, the carryover shall remain available to be
24 deducted by that taxable member or other group members that, in
25 the year the loss was incurred, were part of the same combined
26 group as such taxable member. Such carryover shall not be
27 deductible by any other members of the combined group.

28 (4) A net operating loss carryover shall not include any net
29 operating loss incurred during any privilege period beginning prior
30 to the first day of the initial privilege period for which a combined
31 unitary tax return is required under this section and sections 19 and
32 23 of P.L.2018, c.48 [(C.54:18A-4.7 and C.54:18A-4.11)]
33 (C.54:10A-4.7 and C.54:10A-4.11).

34 (5) Where a taxable member of a combined group has a net
35 operating loss carryover derived from a loss incurred by a combined
36 group in a privilege period beginning on or after the first day of the
37 initial privilege period for which a combined unitary tax return is
38 required under this section and sections 19, 20, and 23 of P.L.2018,
39 c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), and the
40 taxable member departs the combined group and continues to be a
41 taxpayer for the purposes of the Corporation Business Tax Act
42 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the taxable member
43 shall be entitled to take its respective portion of the combined group
44 net operating loss carryover and the combined group shall not be
45 entitled to use such portion of the net operating loss carryover.

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

1 (1) If a taxable member of a combined group earns a tax credit
2 in a privilege period beginning on or after the first day of the initial
3 privilege period for which a combined unitary tax return is required
4 under this section and sections 19, 20, and 23 of P.L.2018, c.48
5 **[(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11)]** (C.54:10A-
6 4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable member
7 may share the credit with other taxable members of the combined
8 group. Any amount of credit that is utilized by another taxable
9 member of the combined group shall reduce the amount of credit
10 carryover that may be carried over by the taxable member that
11 originally earned the credit. If a taxable member of a combined
12 group has a tax credit carryover derived from a privilege period
13 beginning on or after the first day of the initial privilege period for
14 which a combined unitary tax return is required under this section
15 and sections 19, 20, and 23 of P.L.2018, c.48 **[(C.54:18A-4.7,**
16 **C.54:18A-4.8, and C.54:18A-4.11)]** (C.54:10A-4.7, C.54:10A-4.8,
17 and C.54:10A-4.11), then the taxable member may share the
18 carryover credit with other taxable members of the combined group.

19 (2) If a taxable member of a combined group has a tax credit
20 carryover derived from a privilege period beginning prior to the
21 first day of the initial privilege period for which a combined unitary
22 tax return is required under this section and sections 19, 20, and 23
23 of P.L.2018, c.48 **[(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-**
24 **4.11)]** (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the
25 taxable member may share the carryover credit with other taxable
26 members of the combined group.

27 (3) If a taxable member of a combined group has a tax credit
28 carryover derived from a privilege period during which the taxable
29 member was not a member of such combined group, the credit
30 carryover shall remain available to be utilized by such taxable
31 member or other group members.

32 (4) To the extent a taxable member has more than one
33 corporation business tax credit that it may utilize in a privilege
34 period, whether such credits were earned by said member or are
35 available to said member in accordance with paragraphs (1), (2) and
36 (3) of this subsection, the order of priority of the application of the
37 credits shall be as prescribed by the director.

38 j. An expense of a member of the combined group that is
39 directly or indirectly attributable to the income of any member of
40 the combined group, which income this State is prohibited from
41 taxing pursuant to the laws or Constitution of the United States,
42 shall be disallowed as a deduction for purposes of determining the
43 combined group's entire net income.

44 k. Nothing in this section shall apply to:

45 (1) A corporation or combined group which is licensed, in
46 whole or in part, as an insurance company under the laws of this
47 State or of another state, including corporations which are surplus

1 lines insurers declared eligible by the Commissioner of Banking
2 and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-
3 6.45) to insure risks within this State that is not a combinable
4 captive insurance company. Notwithstanding a provision, if any, to
5 the contrary in this section, the income of an insurance company
6 that is not a combinable captive insurance company, the allocation
7 or apportionment of income related thereto and the apportionment
8 factors of an insurance company that is not a combinable captive
9 insurance company shall not be included in a combined unitary tax
10 return filed under this section and sections 19, 20, and 23 of
11 P.L.2018, c.48 [(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
12 4.11)] (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11). In
13 addition, the dividend exclusion provisions of paragraph (5) of
14 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating
15 to dividends paid by insurance companies to non-insurance
16 companies included in the unitary group shall not be affected by
17 P.L.2018, c.48 (C.54:10A-5.41 et al.).

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

23 1. [The director shall promulgate rules and regulations
24 necessary to carry out the provisions of this section.] (deleted by
25 amendment, P.L. , c.) (pending before the Legislature as this
26 bill)

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

35 n. The principles and provisions set forth in federal regulations
36 promulgated pursuant to section 1502 of the Internal Revenue Code
37 (26 U.S.C. s.1502), shall apply to the extent consistent with the
38 Corporation Business Tax Act (1945), New Jersey combined group
39 membership principles, New Jersey combined unitary return
40 principles, and regulations set forth by the director.

41 o. For purposes of the deduction allowed in paragraph (4) of
42 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a
43 combined group shall be treated as one taxpayer; provided,
44 however, a combined group shall only be eligible for the deduction
45 if at least one of the taxable members is a banking corporation and
46 the taxable member has an international banking facility. The
47 income of the combined group shall not be eligible for the
48 deduction allowed in paragraph (4) of subsection (k) of section 4 of

1 P.L.1945, c.162 (C.54:10A-4) if such income was already
2 eliminated pursuant to other subsections of this section.

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

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

10

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

13 21. A combined group filing a combined return that has any
14 outstanding alternative minimum assessment credit or credits at the
15 time of the effective date of the repeal of section 7 of P.L.2002,
16 c.40 (C.54:10A-5a) shall be allowed to use the credit to offset the
17 combined group's **net** deferred tax liability resulting from the
18 transition to a mandatory unitary combined return. For purposes of
19 this section, "net deferred tax liability" shall mean the net increase,
20 if any, in deferred tax liabilities minus the net increase, if any, in
21 deferred tax assets of the combined group, as computed in
22 accordance with generally accepted accounting principles, that is
23 the result of the transition from filing separate returns to filing a
24 mandatory unitary combined return **tax liability under paragraph**
25 **(1) of subsection c. of section 5 of P.L.1945, c.165 (C.54:10A-5)**
26 **for the group privilege period.** The remaining balance of the credit
27 carryovers of members of the combined group from prior to the
28 effective date of the repeal of section 7 of P.L.2002, c.40
29 (C.54:10A-5a) shall not reduce the combined tax liability below
30 50% of the tax owed by the group. The remaining balance of the
31 credit may be carried over until used by the combined group.

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

33

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

36 22. a. Determination of Managerial Member. If the combined
37 group has a common parent corporation within the meaning of the
38 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
39 et seq.), and that common parent corporation is a taxable member of
40 the corporate group, the managerial member shall be the common
41 parent corporation. In other cases, the combined group shall select
42 a taxable member as its managerial member or, in the discretion of
43 the director or upon failure of the combined group to select its
44 managerial member, the director shall designate a taxable member
45 of the combined group as managerial member. Once the election of
46 the managerial member is made, the election shall be binding for 10
47 successive privilege periods, except as otherwise provided for by
48 the director.

1 b. A combined group shall file a mandatory combined return
2 under this section in the form and manner prescribed by the
3 director. The managerial member of the combined group shall file
4 the mandatory combined return on behalf of the taxable members of
5 the combined group. The managerial member shall be required to
6 file taxable member returns; file taxable member extensions for
7 filing tax returns and other documents with the director; pay taxable
8 member liabilities; receive taxable member findings, assessments,
9 and notices; make and receive taxable member claims, or file
10 taxable member protests and appeals; and shall be the responsible
11 party liable for filing and paying the tax on behalf of the combined
12 group.

13 c. The privilege period for the combined group is the privilege
14 period of the managerial member. If a member of a combined group
15 has a different fiscal or calendar accounting period from the
16 combined group's privilege period, that member with a different
17 period shall report amounts from its return for its fiscal or calendar
18 accounting year that ends during the group privilege period.

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

24 e. If a combined group is eligible to elect the managerial
25 member of the combined group, notice of the election shall be
26 submitted in writing to the director not later than the due date or,
27 if an extension of time to file has been requested and granted, not later
28 than the extended due date of the mandatory combined return for
29 the initial privilege period for which a return is required. The
30 managerial member shall be the designated agent and the
31 responsible person for filing the combined return and paying the tax
32 for the combined group. If another taxable member is subsequently
33 designated as the managerial member, the subsequent designation
34 shall be subject to the approval of the director.

35 f. The director is authorized to promulgate regulations with
36 regards to installment payments, estimated payments,
37 overpayments, refunds and any other filing or payment matters
38 related to combined groups filing combined returns.

39 g. For privilege periods ending on and after July 31, 2019, a
40 combined group must file a mandatory combined return. However,
41 if privilege periods of the members of the combined group differ,
42 the first mandatory combined return for the combined group shall
43 be required for the privilege period of the managerial member.

44 h. The members of a combined group shall notify the director
45 **【within 90 days】** of a change in the combined group where a
46 member dissolves, a merger of any kind occurs, a member
47 withdraws from the group, a member ceases doing business, a
48 member of the group is acquired by a third party not in the group,

1 or additional members enter the group which are required to be
2 included. Such notice shall be submitted in written form, as
3 determined by the director, not later than the due date, or, if an
4 extension of time to file has been requested and granted, not later
5 than the extended due date of the combined unitary tax return for
6 the privilege period in which a change in the combined group
7 occurs.

8 i. Any notice shall be sent to the managerial member of the
9 combined group at the last known address of the managerial
10 member as indicated on either the last filing required or made under
11 this Chapter or a subsequent electronic or written notice provided
12 by the managerial member under rules prescribed by the director.

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

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

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

18 (3) require any payment to be made by electronic funds transfer;
19 and

20 (4) require the mandatory combined return to be filed
21 electronically.

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

23

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

26 5. The franchise tax to be annually assessed to and paid by
27 each taxpayer shall be the greater of the amount computed pursuant
28 to this section or the alternative minimum assessment computed
29 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
30 however, that in the case of a taxpayer that is a New Jersey S
31 corporation, an investment company, a professional corporation
32 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a
33 similar corporation for profit organized for the purpose of rendering
34 professional services under the laws of another state, or a person
35 operating on a cooperative basis under Part I of Subchapter T of the
36 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
37 there shall be no alternative minimum assessment computed
38 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

39 The amount computed pursuant to this section shall be the sum
40 of the amount computed under subsection (a) hereof, or in the
41 alternative to the amount computed under subsection (a) hereof, the
42 amount computed under subsection (f) hereof, and the amount
43 computed under subsection (c) hereof:

44 (a) That portion of its entire net worth as may be allocable to
45 this State as provided in section 6, multiplied by the following
46 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
47 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
48 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a

1 mill per dollar on all amounts of allocated net worth in excess of
 2 \$300,000,000.00; provided, however, that with respect to reports
 3 covering accounting or privilege periods set forth below, the rate
 4 shall be that percentage of the rate set forth in this subsection for
 5 the appropriate year:

6 Accounting or Privilege	7 The Percentage of the Rate
8 Periods Beginning on or after:	9 to be Imposed Shall be:
10 April 1, 1983	75%
11 July 1, 1984	50%
12 July 1, 1985	25%
13 July 1, 1986	0

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

14 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
 15 1/4% of its entire net income or such portion thereof as may be
 16 allocable to this State as provided in sections 6 through 10 of
 17 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), plus such
 18 portion thereof as is specifically assigned to this State as provided
 19 in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided, however,
 20 that with respect to reports covering accounting or privilege periods
 21 or parts thereof ending after December 31, 1967, the rate shall be 4
 22 1/4%; and that with respect to reports covering accounting or
 23 privilege periods or parts thereof ending after December 31, 1971,
 24 the rate shall be 5 1/2%; and that with respect to reports covering
 25 accounting or privilege periods or parts thereof ending after
 26 December 31, 1974, the rate shall be 7 1/2%; and that with respect
 27 to reports covering privilege periods or parts thereof ending after
 28 December 31, 1979, the rate shall be 9%; provided however, that
 29 for a taxpayer that has entire net income of \$100,000 or less for a
 30 privilege period and is not a partnership the rate for that privilege
 31 period shall be 7 1/2% and provided further that for a taxpayer that
 32 has entire net income of \$50,000 or less for a privilege period and is
 33 not a partnership the rate for that privilege period shall be 6 1/2%.

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

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

44 (i) for privilege periods ending on or before June 30, 1998 the
 45 rate determined by subtracting the maximum tax bracket rate
 46 provided under N.J.S.54A:2-1 for the privilege period from the tax
 47 rate that would otherwise be applicable to the taxpayer's entire net
 48 income for the privilege period if the taxpayer were not an S

1 corporation provided under paragraph (1) of this subsection for the
2 privilege period; and

3 (ii) For a taxpayer that has entire net income in excess of
4 \$100,000 for the privilege period,

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

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

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

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

13 (iii) For a taxpayer that has entire net income of \$100,000 or less
14 for privilege periods ending on or after July 1, 1998, but on or
15 before June 30, 2001, the rate for that privilege period shall be
16 0.5%, and for privilege periods ending on or after July 1, 2001,
17 there shall be no rate of tax imposed under this paragraph.

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

27 (3) For a taxpayer that is a New Jersey S corporation, in
28 addition to the amount, if any, determined under paragraph (2) of
29 this subsection, the tax rate that would otherwise be applicable to
30 the taxpayer's entire net income for the privilege period if the
31 taxpayer were not an S corporation provided under paragraph (1) of
32 this subsection for the privilege period multiplied by its entire net
33 income that is subject to federal income taxation or such portion
34 thereof as may be allocable to this State pursuant to sections 6
35 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).
36 For privilege periods ending on or after July 31, 2019, the tax rate
37 shall be applied against taxable net income.

38 (d) Provided, however, that the franchise tax to be annually
39 assessed to and paid by any investment company or real estate
40 investment trust, which has elected to report as such and has filed
41 its return in the form and within the time provided in this act and
42 the rules and regulations promulgated in connection therewith,
43 shall, in the case of an investment company, be measured by 40% of
44 its entire net income and 40% of its entire net worth, and in the case
45 of a real estate investment trust, by 4% of its entire net income and
46 15% of its entire net worth, at the rates hereinbefore set forth for the
47 computation of tax on net income and net worth, respectively, but in
48 no case less than \$250, and further provided, however, that the

1 franchise tax to be annually assessed to and paid by a regulated
 2 investment company which for a period covered by its report
 3 satisfies the requirements of Chapter 1, Subchapter M, Part I,
 4 Section 852(a) of the federal Internal Revenue Code shall be \$250.
 5 For privilege periods ending on or after July 31, 2019, ~~the tax rate~~
 6 ~~shall be applied against taxable net income~~ the tax rate shall be
 7 applied against 40% of its taxable net income in the case of an
 8 investment company, and against 4% of its taxable net income in
 9 the case of a real estate investment trust.

10 (e) The tax assessed to any taxpayer pursuant to this section
 11 shall not be less than \$25 in the case of a domestic corporation, \$50
 12 in the case of a foreign corporation, or \$250 in the case of an
 13 investment company or regulated investment company. Provided
 14 however, that for privilege periods beginning in calendar year 1994
 15 and thereafter the minimum taxes for taxpayers other than an
 16 investment company or a regulated investment company shall be as
 17 provided in the following schedule:

18	Period Beginning	Domestic	Foreign
19	In Calendar Year	Corporation	Corporation
20		Minimum Tax	Minimum Tax
21	1994	\$ 50	\$100
22	1995	\$100	\$200
23	1996	\$150	\$200
24	1997	\$200	\$200
25	1998	\$200	\$200
26	1999	\$200	\$200
27	2000	\$200	\$200
28	2001	\$210	\$210

29 and for calendar years 2002 through 2005 the minimum tax for all
 30 taxpayers shall be \$500, and for calendar year 2006 through
 31 calendar year 2011 the minimum tax for all corporations, and for
 32 privilege periods beginning in calendar year 2012 and thereafter the
 33 minimum tax for corporations that are not New Jersey S
 34 corporations shall be based on the New Jersey gross receipts of the
 35 taxpayer pursuant to the following schedule:

36	New Jersey Gross Receipts:	Minimum Tax:
37	Less than \$100,000	.....\$500
38	\$100,000 or more but	
39	less than \$250,000	..... \$750
40	\$250,000 or more but	
41	less than \$500,000	..... \$1,000
42	\$500,000 or more but	
43	less than \$1,000,000	..... \$1,500
44	\$1,000,000 or more	..... \$2,000

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

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	New Jersey Gross Receipts:	Minimum Tax:
1		
2	Less than \$100,000\$375
3	\$100,000 or more but	
4	less than \$250,000	..... \$562.50
5	\$250,000 or more but	
6	less than \$500,000	..... \$750
7	\$500,000 or more but	
8	less than \$1,000,000	..... \$1,125
9	\$1,000,000 or more	..... \$1,500

10 provided however, that for a taxpayer that is a member of an
11 affiliated group or a controlled group pursuant to section 1504 or
12 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
13 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
14 more for the privilege period, the minimum tax shall be \$2,000 for
15 the privilege period **[. For]** ; provided, however, for privilege
16 periods ending on and after July 31, 2019, the minimum tax of each
17 taxable member of a combined group filing a mandatory or elective
18 New Jersey combined return shall be \$2,000 for the group privilege
19 period.

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

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

29 (1) that is a limited liability company or foreign limited liability
30 company classified as a partnership for federal income tax purposes
31 shall be the amount determined pursuant to the provisions of section
32 3 of P.L.2001, c.136 (C.54:10A-15.6); or

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

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

42 (i) (Deleted by amendment, P.L.2008, c.120)
43 (cf: P.L.2018, c.131, s.6)

44
45 10. Section 1 of P.L.1993, c.175 (C.54:10A-5.24) is amended to
46 read as follows:

47 1. a. A taxpayer shall be allowed a credit, subject to the
48 provisions of subsection b. of this section, against the tax imposed

1 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an
2 amount equal to

3 (1) 10% of the excess of the qualified research expenses for the
4 privilege period over the base amount; and

5 (2) 10% of the basic research payments for the privilege period
6 determined in accordance with section 41 of the federal Internal
7 Revenue Code of 1986, 26 U.S.C. s.41. Provided however, that the
8 terms "qualified research expenses," "base amount," "qualified
9 organization base amount period," "basic research" and any other
10 terms determined by the Director of the Division of Taxation to
11 affect the calculation of the credit shall include only expenditures
12 for research conducted in this State. For privilege periods beginning
13 on and after January 1, 2018, amounts paid or incurred by the
14 taxpayer in carrying on any trade or business of the taxpayer during
15 the privilege period, including as contributions, to an energy
16 research consortium for energy research shall also qualify as a basic
17 research payment for purposes of this subsection.

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

25 The order of priority of the application of the credit allowed
26 pursuant to this section and any other credits allowed by law shall
27 be as prescribed by the director. Credits allowable pursuant to this
28 section shall be applied in the order of the privilege periods for
29 which the credits were allowed.

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

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

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

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

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

3 d. For privilege periods beginning on and after January 1,
4 2020, the portion of qualified research expenses and qualified
5 payments of a taxpayer that is a qualified small business within the
6 meaning of section 41(h)(3) of the federal Internal Revenue Code
7 (26 U.S.C. s.41) that were disallowed for the section 41(h) tax
8 credit because the taxpayer made an election pursuant to sections
9 41(h) and 3111(f) of the federal Internal Revenue Code (26 U.S.C.
10 s.41 and s.3111) to take the 3111(f) credit in lieu of the 41(h) credit,
11 shall be allowed for the purposes of calculating the New Jersey
12 credit provided for by this section.

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

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

17 14. (a) The director **【may by regulation or by special notice】**
18 shall require any taxpayer or managerial member to submit, as part
19 of a full and complete New Jersey return, copies or pertinent
20 extracts of its federal income tax returns, or of any other tax return
21 filed with any agency of the federal government, or of this or any
22 other state, or of any statement or registration made pursuant to any
23 state or federal law pertaining to securities or securities exchange
24 regulation. The director shall issue regulations describing which
25 federal extracts are required and which extracts are optional.

26 (b) The director may require all taxpayers to keep such records
27 as the director may prescribe, and the director may require the
28 production of books, papers, documents and other data, to provide
29 or secure information pertinent to the determination of the tax
30 hereunder and the enforcement and collection thereof. The director
31 may, also, by general rule or by special notice require any taxpayer
32 to make and file information returns, under oath, of facts pertinent
33 to the determination of the tax or liability for tax hereunder,
34 pursuant to such regulations, at such times and in such form and
35 manner and to such extent as the director may prescribe pursuant to
36 law.

37 (c) Each taxpayer filing a return that is a member of **【a**
38 **commonly owned group】** an affiliated group filing an elective New
39 Jersey combined return or a combined group shall, upon the request
40 of the director and 90 days' notice thereof, disclose **【in its return for**
41 **the privilege period】** the amount of all inter-member costs or
42 expenses reflected in the return for the privilege period, including
43 but not limited to management fees, rents, and other services, for
44 the privilege period. If the taxpayer acquires products or services
45 from another member of its **【commonly owned】** affiliated group or
46 a combined group, which it re-sells or otherwise uses to generate
47 revenue, the taxpayer shall, upon the request of the director and 90

1 days' notice thereof, disclose the amount of revenue generated from
2 those products or services. The director shall promulgate rules and
3 procedures for the manner of disclosure. A failure to file such a
4 disclosure shall be deemed the filing of an incomplete tax return,
5 subject to the penalties of the State Uniform Tax Procedure Law,
6 R.S.54:48-1 et seq.

7 (d) For privilege periods ending on and after July 31, 2020, the
8 director shall create a simplified standardized return for combined
9 groups, banking corporations, financial business corporations, and
10 separate return filers, but shall maintain the New Jersey S
11 Corporations returns for New Jersey S Corporations that file
12 separate returns. The standardized return shall include the
13 accompanying forms and schedules to administer and implement
14 the various requirements of the Corporation Business Tax Act
15 (1945), or such accompanying schedules shall be made
16 inconspicuously and readily available on the Division of Taxation's
17 website, and the instructions for the standardized return shall
18 clearly indicate which schedules are required to be completed by
19 combined groups, banking corporations, financial business
20 corporations, and separate return filers respectively.

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

22
23 12. Section 15 of P.L.1945, c.162 (C.54:10A-15) is amended to
24 read as follows:

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

29 (a) Every taxpayer shall annually pay a franchise tax, with
30 respect to all or any part of each of its fiscal or calendar accounting
31 years beginning after January 1, 1959, to be computed as herein
32 provided, for such fiscal or calendar accounting year or part thereof,
33 on a report which shall be filed on or before April 15 next
34 succeeding the close of each such accounting year, or, if any such
35 fiscal year ends after the last day of December and prior to July 1,
36 on or before the fifteenth day of the fourth month after the close of
37 such fiscal year, and the full amount of the tax hereunder shall be
38 due and payable on or before the date prescribed herein for the
39 filing of the return.

40 (b) Every taxpayer shall pay a like franchise tax with respect to
41 all or any part of the period beginning January 1, 1959 and
42 extending through any subsequent part of its first fiscal or calendar
43 accounting year ending after said date. Such tax shall be computed
44 as herein provided, for each and every fiscal or calendar accounting
45 year or part thereof begun not earlier than July 2, 1957 and ending
46 not later than December 31, 1959 on the basis of which a franchise
47 tax has not accrued under this act prior to January 1, 1959. The tax
48 imposed pursuant to this subsection shall be deemed a single tax for

1 such period but shall be computed separately with respect to each
2 such fiscal or calendar accounting year or part thereof on the basis
3 of which a franchise tax has not previously accrued as aforesaid, on
4 a report which shall be filed on or before April 15, next succeeding
5 the close of each such accounting year, or, if any such fiscal year
6 ends after the last day of December and prior to July 1, on or before
7 the fifteenth day of the fourth month after the close of such fiscal
8 year, and the full amount of the tax hereunder shall be due and
9 payable on or before the date prescribed herein for the filing of the
10 report.

11 (c) With respect to all or any part of each of its privilege periods
12 ending after June 30, 1967, every taxpayer shall annually pay a
13 franchise tax on a report which shall be filed on or before the
14 fifteenth day of the fourth month after the close of such privilege
15 period, or part thereof, and the full amount of the tax hereunder
16 shall be due and payable on or before the date prescribed herein for
17 the filing of the return; provided, however, that for privilege periods
18 ending on and after July 31, 2020, the due date of the New Jersey
19 return shall be 30 days after the original due date for filing the
20 taxpayer's federal corporate income tax return for such privilege
21 period, or part thereof, and the full amount of the tax hereunder
22 shall be due and payable on or before the date prescribed herein for
23 the filing of the return.

24 (d) With respect to its fiscal or calendar accounting years ending
25 after February 29, 1968 and prior to March 1, 1969, every taxpayer
26 shall pay as a partial payment of franchise tax in addition to the tax
27 payable under subsection (c) of this section, an amount equal to
28 one-quarter of the tax payable under said subsection (c). With
29 respect to each of its fiscal or calendar accounting years ending
30 after February 28, 1969, every taxpayer shall annually pay as a
31 partial payment of franchise tax in addition to the tax payable under
32 subsection (c) of this section, an amount equal to one-half of the tax
33 payable under said subsection (c). In the calculation of the tax
34 pertaining to each succeeding accounting period, due in accordance
35 with subsection (c) hereof, every taxpayer shall be entitled to a
36 credit in the amount of the tax paid under this subsection (d) as a
37 partial payment and shall be entitled to the return of any amount so
38 paid which shall be found in excess of the total amount payable in
39 accordance with said subsection (c) and this subsection (d).

40 (e) With respect to its fiscal or calendar accounting years ending
41 on or after June 30, 1974, every taxpayer shall annually pay as a
42 partial payment of franchise tax in addition to the tax payable under
43 subsection (c) of this section, an amount equal to 60% of the tax
44 payable under said subsection (c). In the calculation of the tax
45 pertaining to each succeeding accounting period, due in accordance
46 with subsection (c) hereof, every taxpayer shall be entitled to a
47 credit in the amount of the tax paid under this subsection (e) as a
48 partial payment and shall be entitled to the return of any amount so

1 paid which shall be found to be in excess of the total amount
2 payable in accordance with said subsection (c) and this subsection
3 (e).

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

12 (1) 25% thereof paid on or before the fifteenth day of the fourth
13 month thereof;

14 (2) 25% thereof paid on or before the fifteenth day of the sixth
15 month thereof;

16 (3) 25% thereof paid on or before the fifteenth day of the ninth
17 month thereof; and

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

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

26 (1) 25% thereof paid on or before the fifteenth day of the fourth
27 month thereof;

28 (2) 50% thereof paid on or before the fifteenth day of the sixth
29 month thereof; and

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

32 (h) In the calculation of the tax due in accordance with
33 subsection (c) hereof, a taxpayer shall be entitled to a credit in the
34 amount of the tax paid under subsection (f) or subsection (g) of this
35 section as a partial payment and shall be entitled to the return of any
36 amount so paid which is in excess of the total amount payable in
37 accordance with subsection (c) and this subsection.

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

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

42

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

45 3. a. (1) There is imposed and shall be paid a tax upon the sale
46 or transfer for consideration in excess of \$1,000,000 of a controlling
47 interest in an entity which possesses, directly or indirectly, a
48 controlling interest in classified real property, which shall be paid

1 by the purchaser of the controlling interest and which shall be equal
2 to 1% of the consideration paid on the sale or transfer; provided
3 however that in the case of the sale or transfer of a controlling
4 interest in an entity which possesses, directly or indirectly, an
5 interest in classified real property and an interest in other property,
6 real or personal, there shall be paid a tax upon the sale only if the
7 equalized assessed value of the classified real property exceeds
8 \$1,000,000 which shall be paid by the purchaser of the controlling
9 interest and which shall be equal to 1% of that percentage of the
10 equalized assessed value of the classified real property that is equal
11 to the percentage of the ownership interest transferred.

12 (2) The sale or transfer of a controlling interest subject to
13 taxation pursuant to paragraph (1) of this subsection may occur in
14 one transaction or in a series of transactions. Transactions which
15 occur within six months of each other are presumed, unless shown
16 to the contrary, to be a series of transactions constituting a single
17 sale or transfer.

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

23 b. On or before the last day of the month following the month
24 in which the sale or transfer of a controlling interest which is
25 subject to the tax imposed by subsection a. of this section is
26 completed, the purchaser shall file a return with the director, in such
27 form as the director may prescribe. Payment of the tax shall
28 accompany the return.

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

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

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

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

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

41 (5) that is incidental to a corporate merger or acquisition if the
42 equalized assessed value of the real property transferred is less than
43 20% of the total value of all assets exchanged in the merger or
44 acquisition; or

45 (6) entered into on and after July 31, 2020 if it is an
46 intercompany transfer between combined group members as part of
47 the unitary business, as those terms are used in section 4 of
48 P.L.1945, c.162 (C.54:10A-4).

1 d. Notwithstanding the provisions of subsection a. of this
2 section, the transfer of a controlling interest on or before November
3 15, 2006 in an entity which possesses, directly or indirectly, an
4 interest in classified real property shall not be subject to tax if the
5 interest was transferred pursuant to a contract or other binding
6 agreement that was fully executed before July 1, 2006.

7 e. (1) The director may require all purchasers subject to a tax
8 imposed under this section to keep such records as the director may
9 prescribe, and the director may require the production of books,
10 papers, documents and other data, to provide or secure information
11 pertinent to the determination of the taxes imposed by this section
12 and the enforcement and collection thereof.

13 (2) An entity with respect to which there is a sale or transfer of a
14 controlling interest in that entity, shall keep a record of every
15 transfer of a controlling interest in its stock or in its capital, profits
16 or beneficial interests, as the case may be, and such other
17 information as the director may prescribe. An entity shall report
18 that information to the director in such form and at such times as
19 the director may prescribe.

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

24 (4) The director shall collect and administer the tax imposed
25 pursuant to this section. The director is authorized to adopt rules
26 and regulations to effectuate the purposes of this section pursuant to
27 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.).

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

34 (6) The director may delegate the director's functions hereunder
35 to any officer or employee of the director's division such of the
36 director's powers as the director may deem necessary to carry out
37 efficiently the provisions of this section.

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

41 g. As used in this section:

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

45 "Director" means the Director of the Division of Taxation in the
46 Department of the Treasury.

47 "Consideration" means the actual amount of money and the
48 monetary value of any other thing of value constituting the entire

1 compensation paid or to be paid for the transfer including the
2 remaining amount of any prior mortgage to which the transfer is
3 subject or which is to be assumed and agreed to be paid by the
4 purchaser.

5 "Controlling interest" means, in the case of an entity that is a
6 corporation, more than fifty per cent of the total combined voting
7 power of all classes of stock of that corporation, and in the case of
8 an entity that is a partnership, association, trust or other
9 organization, more than fifty per cent of the beneficial ownership of
10 classified real property of that partnership, association, trust or
11 other organization.

12 "Related parties" means parties that have the relationship
13 necessary for attribution of constructive ownership of stock
14 pursuant to section 318 of the federal Internal Revenue Code of
15 1986, 26 U.S.C. s.318, and members of an affiliated group or a
16 controlled group pursuant to section 1504 or 1563 of the federal
17 Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563.

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

19

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

22 5. a. (1) Whenever a person shall make a sale, transfer, or
23 assignment in bulk of any part or the whole of the person's business
24 assets, except as provided by **[paragraph]** paragraphs (2) and (3) of
25 this subsection, otherwise than in the ordinary course of business,
26 the purchaser, transferee or assignee shall, at least 10 days before
27 taking possession of the subject of the sale, transfer or assignment,
28 or paying therefor, notify the director by registered mail, or other
29 such method as the director may prescribe, of the proposed sale and
30 of the price, terms and conditions thereof whether or not the seller,
31 transferrer or assignor has represented to, or informed the
32 purchaser, transferee or assignee that the seller, transferrer or
33 assignor owes any State tax and whether or not the purchaser,
34 transferee, or assignee has knowledge that such taxes are owing,
35 and whether any such taxes are in fact owing. Within 10 days of
36 receiving such notice, the director shall notify the purchaser,
37 transferee or assignee by such means as the director may prescribe
38 that a possible claim for State taxes exists and include the amount
39 of the State's claim.

40 (2) (a) Paragraph (1) of this subsection shall not apply to the
41 sale, transfer or assignment of a simple dwelling house if the seller,
42 transferrer or assignor is an "individual," "estate," or "trust" as those
43 terms are used for the purposes of the "New Jersey Gross Income
44 Tax Act," N.J.S.54A:1-1 et seq. or any combination thereof owning
45 the simple dwelling house as joint tenants, tenants in common or
46 tenancy by the entirety; paragraph (1) shall apply to the sale,
47 transfer or assignment of a simple dwelling house if the seller,
48 transferrer or assignor is a business entity, including but not limited

1 to a corporation or a partnership. "Simple dwelling house" means a
2 dwelling unit, attached or detached, and land appurtenant thereto,
3 including but not limited to a one-family or two-family building or
4 structure, a unit of a horizontal property regime established
5 pursuant to the "Horizontal Property Act," P.L.1963, c.168
6 (C.46:8A-1 et seq.), a unit in a housing cooperative as defined
7 under "The Cooperative Recording Act of New Jersey," P.L.1987,
8 c.381 (C.46:8D-1 et seq.), or a unit of a condominium property
9 established pursuant to the "Condominium Act," P.L.1969, c.257
10 (C.46:8B-1 et seq.), but does not include a structure or structures
11 containing more than two units of dwelling space or containing,
12 according to the records of the municipal property tax assessor,
13 commercial property including, or in addition to, the units of
14 dwelling space.

15 (b) Paragraph (1) of this subsection shall not apply to the sale,
16 transfer or assignment of a seasonal rental unit or the sale, transfer
17 or assignment of a lease for the seasonal use or rental of real
18 property if the seller, transferrer or assignor is an "individual,"
19 "estate," or "trust" as those terms are used for the purposes of the
20 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or any
21 combination thereof owning the seasonal rental unit or lease for the
22 seasonal use or rental of real property as joint tenants, tenants in
23 common or tenancy by the entirety; paragraph (1) shall apply to the
24 sale, transfer or assignment of a seasonal rental unit or the sale,
25 transfer or assignment of a lease for the seasonal use or rental of
26 real property if the seller, transferrer or assignor is a business entity,
27 including but not limited to a corporation or a partnership.

28 For the purposes of this paragraph:

29 "seasonal rental unit" means

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

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

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

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

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

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

46 (3) Paragraph (1) of this subsection shall not apply to the sale,
47 transfer, or assignment of a grant, tax credit, or tax credit transfer
48 certificate that has been awarded, issued, or otherwise made

1 available to a person in connection with a State or local business
2 assistance or incentive program or activity authorized by law in
3 effect on the effective date of P.L.2017, c.12.

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

18 b. If, upon receiving timely notice of a sale, transfer or
19 assignment from a purchaser, transferee or assignee, the director
20 fails to provide timely notice to the purchaser, transferee or
21 assignee that a possible claim for such State tax or taxes exists, the
22 purchaser, transferee or assignee may transfer over to the seller,
23 transferrer or assignor any sums of money, property or choses in
24 action, or other consideration to the extent of the amount of the
25 State's claim. The purchaser, transferee or assignee shall not be
26 subject to the liabilities and remedies imposed under the provisions
27 of the uniform commercial code, Title 12A of the New Jersey
28 Statutes, and shall not be personally liable for the payment to the
29 State of any such taxes theretofore or thereafter determined to be
30 due to the State from the seller, transferrer or assignor.

31 c. If the purchaser, transferee or assignee shall fail to give
32 notice to the director as required by the preceding paragraph, or if
33 the director shall inform the purchaser, transferee or assignee that a
34 possible claim for such State tax or taxes exists, any sums of
35 money, property or choses in action, or other consideration, which
36 the purchaser, transferee or assignee is required to transfer over to
37 the seller, transferrer or assignor shall be subject to a first priority
38 right and lien for any such State taxes theretofore or thereafter
39 determined to be due from the seller, transferrer or assignor to the
40 State, and the purchaser, transferee or assignee is forbidden to
41 transfer to the seller, transferrer or assignor any such sums of
42 money, property or choses in action to the extent of the amount of
43 the State's claim. For failure to comply with the provisions of this
44 section the purchaser, transferee or assignee, in addition to being
45 subject to the liabilities and remedies imposed under the provisions
46 of the uniform commercial code, Title 12A of the New Jersey
47 Statutes, shall be personally liable for the payment to the State of
48 any such taxes theretofore or thereafter determined to be due to the

1 State from the seller, transferrer or assignor, and such liability may
2 be assessed and enforced in the same manner as the liability for any
3 State tax under the State Uniform Tax Procedure Law, R.S.54:48-1
4 et seq.
5 (cf: P.L.2017, c.307, s.1)

6
7 15. (New section) For privilege periods ending on and after July
8 31, 2020, a taxpayer shall be allowed a credit against the tax
9 imposed by subsection c. of section 5 of P.L.1945, c.162
10 (C.54:10A-5) to the extent a subsidiary of the taxpayer received
11 dividends and deemed dividends from other subsidiaries and
12 included those dividends in its entire net income for the purposes of
13 determining its tax liability pursuant to section 5 of P.L.1945, c.162
14 (C.54:10A-5) and paid tax on those dividends and deemed
15 dividends to the State on a timely filed New Jersey corporation
16 business tax return; provided, however, the taxpayer received those
17 same dividends and deemed dividends from the subsidiary that paid
18 tax to the State.

19 For purposes of this section, the members of a combined group
20 filing a New Jersey combined return shall be treated as one
21 taxpayer.

22 For purposes of this section, "paid tax" means the amount that
23 the subsidiary paid to the State or would have paid but for the use of
24 other tax credits, or but for subsections (u) and (v) of section 4 of
25 P.L.1945, c.162 (C.54:10A-4), or, for a combined group filing a
26 combined return, but for subsections g. and h. of section 18 of
27 P.L.2018, c.48 (C.54:10A-4.6).

28 The credit allowed by the this section shall be claimed in a form
29 and manner prescribed by the director on a timely filed corporation
30 business tax return.

31
32 16. (New section) a. For a banking corporation that is a
33 member of a combined group that has a fiscal group privilege
34 period, before the banking corporation is included as a member of
35 the New Jersey combined return, the banking corporation shall first
36 file the applicable BFC-1 return reporting their calendar year
37 income in accordance with section 4 of P.L. L.1975, c.170
38 (C.54:10A-34) for the applicable privilege period which ended
39 during the privilege period of the managerial member and then file
40 a transitional short period return covering January 1st through the
41 end of the month of the combined group's fiscal group privilege
42 period during the current calendar year. Subsequently, the banking
43 corporation shall file for the fiscal combined group's privilege
44 period and report all of its income on a fiscal basis with the
45 combined group. Thereafter, the banking corporation shall continue
46 reporting on a fiscal basis for future privilege periods. If a banking
47 corporation, that would otherwise be a member of a fiscal combined
48 group but for the transitional provisions of this section, believes

1 that application of the filing requirements set forth will result in an
2 unfair or distorted reflection of income, the banking corporation
3 may request relief from the director, which may be granted at the
4 director's discretion.

5 b. For a banking corporation that is not a member of a
6 combined group, which files a BFC-1 return reporting its calendar
7 year income in accordance with section 4 of P.L.1975, c.170
8 (C.54:10A-34), but which files on a fiscal federal tax year basis, the
9 banking corporation may elect to file separate returns in a manner
10 similar to subsection a. of this section, file a transitional short
11 period return, and subsequently file its New Jersey corporation
12 business tax returns on a fiscal year basis. Otherwise, such banking
13 corporations shall file transitional returns in order to subsequently
14 file in the same manner as other corporation business taxpayers. If a
15 banking corporation, that would otherwise continue to file the BFC-
16 1 return reporting its calendar year income in accordance with
17 section 4 of P.L.1975, c.170 (C.54:10A-34) but for the transitional
18 provisions provided for in this section, believes that application of
19 the filing requirements set forth will result in an unfair or distorted
20 reflection of income, the banking corporation may request relief
21 from the director, which may be granted at the director's discretion.

22 c. For a banking corporation that is not a member of a
23 combined group, which files a BFC-1 return reporting its calendar
24 year income in accordance with section 4 of P.L.1975, c.170
25 (C.54:10A-34), and files on a calendar federal tax year basis, the
26 banking corporation shall file transitional returns in order to
27 subsequently file in the same manner as other corporation business
28 taxpayers. If a banking corporation, that would otherwise continue
29 to file the BFC-1 return reporting its calendar year income in
30 accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) but for
31 the transitional provisions provided for in this section, believes
32 that application of the filing requirements set forth will result in an
33 unfair or distorted reflection of income, the banking corporation
34 may request relief from the director, which may be granted at the
35 director's discretion.

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

39

40 17. (New section) Notwithstanding the provisions of the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
42 seq.), to the contrary, the director may adopt, immediately, upon
43 filing with the Office of Administrative Law, regulations that the
44 director deems necessary to implement the provisions of P.L. , c.
45 (pending before the Legislature as this bill), which regulations shall
46 be effective for a period not to exceed 360 days from the date of the

1 filing. The director may thereafter amend, adopt, or readopt the
2 regulations in accordance with the requirements of P.L.1968, c.410
3 (C.52:14B-1 et seq.).
4

5 18. This act shall take effect immediately and, unless the context
6 provides otherwise, shall apply to privilege periods ending on and
7 after December 31, 2019, except that:

8 section 11 shall apply to privilege periods ending on and after
9 July 31, 2020;

10 sections 6, 7, 9, and 16 shall apply retroactively to privilege
11 periods ending on and after July 31, 2019; and

12 section 3 shall apply retroactively to privilege periods ending on
13 and after July 31, 2019, but the amendment to subsubparagraph (ii)
14 of subparagraph (A) of paragraph (5) of subsection (k) of section 4
15 of P.L.1945, c.162 (C.54:10A-4) shall be retroactive to privilege
16 periods beginning after December 31, 2016 and before January 1,
17 2019.
18
19

20 STATEMENT
21

22 This bill amends the Corporation Business Tax Act by:

23 - clarifying the requirements for mandatory default combined
24 returns and elective combined returns;

25 - clarifying the research and development credit;

26 - clarifying the treatment of net operating losses that were part of
27 a merger or acquisition;

28 - clarifying the minimum tax;

29 - clarifying the dividends received exclusion;

30 - clarifying the tax base for combined groups and separate return
31 filers;

32 - clarifying the net operating loss carryover transfer program for
33 new or expanding emerging technology and biotechnology
34 companies;

35 - adding a corporation business tax credit for certain dividends
36 paid, in place of the current tiered dividend exclusion in order to
37 simplify the reduction of double taxation;

38 - clarifying that certain banking corporations must transition to,
39 or are permitted to transition to, a fiscal return filing basis;

40 - clarifying the treatment of the international banking facility in
41 relation to combined groups;

42 - clarifying return requirements for all corporation business
43 taxpayers; and

44 - requiring the Director of the Division of Taxation to modernize
45 and simplify return requirements for certain returns.

46 The bill makes numerous corrections and revisions to clarify and
47 simplify various aspects of the changes that were enacted as part of
48 P.L.2018, c.48 and P.L.2018, c.131. Those laws, among other

1 things, mandated mandatory unitary combined returns on a water's-
2 edge basis if no election for an affiliated group basis filing or
3 world-wide group basis filing had been made. The laws also
4 changed the application of the net operating losses from pre-
5 allocation (called pre-apportionment in other states) to post-
6 allocation (called post-apportionment in other states), updated the
7 research and development credit, and amended the dividend
8 received exclusion.

9 The bill requires, or permits, certain banking corporations to
10 transition to a fiscal reporting basis as opposed to the historic
11 calendar year basis, which will also help simplify reporting and
12 returns.

13 The bill corrects a citation in subparagraph (ii) of
14 subparagraph (A) of paragraph 5 of subsection (k) of
15 N.J.S.A.54:10A-4 so that it cites the subparagraph instead of the
16 whole subsection.

17 The bill prospectively repeals the dividend exclusion for certain
18 subsidiaries receiving dividends from other subsidiaries and
19 replaces it with a credit to simplify the reduction of double taxation
20 of tiered dividends. The bill prospectively adds a new subparagraph
21 which treats a combined group as one taxpayer to simplify and
22 make the application of the dividend exclusion more consistent.
23 This may result in more dividends and deemed dividends qualifying
24 for the 95 percent exclusion, but it will also ensure that the dividend
25 exclusion is more accurately calculated.

26 The bill makes technical corrections and clarifies the minimum
27 tax and the application of the tax rates under P.L.2018, c.48 and
28 P.L.2018, c.131. In addition to being taxed on the income from the
29 combined group, the bill clarifies that the income from the separate
30 activities will only be taxed if the member independently has nexus
31 with New Jersey. This is in line with United States Supreme Court
32 jurisprudence on the unitary business principle and combined
33 groups. Additionally, the bill clarifies that the rate applies to taxable
34 net income plus the non-operational income specifically assigned by
35 statute to New Jersey. The bill also clarifies that the minimum tax is
36 imposed on taxable members of the combined group, i.e. members
37 with nexus with New Jersey.

38 To provide for further simplification and modernization, the bill
39 requires taxpayers to include a copy of their federal return rather
40 than it be included at the director's discretion. This requirement is
41 part and parcel with the requirement mandated by this bill that the
42 director simplify and modernize the 2020 corporation business tax
43 returns. Currently there are four different returns: CBT-100, BFC-1,
44 CBT-100U, and CBT-100S.

45 The bill requires that for the 2020 returns, the director must
46 create a new simplified standardized return for separate return
47 filers, combined return filers, banking corporations, and financial
48 corporations, but the CBT-100S for New Jersey S Corporations that

1 do not elect to be included on a combined return will be maintained.
2 This is in line with other states who require submission of the
3 federal return, which facilitates simpler and more standardized
4 corporate tax returns. The bill also amends the due date of the
5 returns in order to facilitate the modernization and simplification of
6 the returns. In addition, there will be transitional returns for
7 banking corporations.

8 To simplify and clarify various aspects of combined reporting,
9 the bill specifically makes it clear that various provisions of the
10 federal Internal Revenue Code rules and regulations apply
11 regardless of how the members file, provided that such provisions
12 are consistent with the Corporation Business Tax Act.

13 The bill amends the New Jersey research and development credit
14 (N.J.S.A.54:10A-5.24) to make it consistent with the Division of
15 Taxation's position that as part of the changes under P.L.2018, c.48,
16 amounts paid or incurred by the taxpayer in carrying on any trade or
17 business of the taxpayer during the privilege period (including as
18 contributions) to an energy research consortium for energy research
19 also qualify as a basic research payment, since according to some
20 practitioners it had been ambiguous.

21 The bill further amends the New Jersey research and
22 development credit to allow certain expenses of a taxpayer that is a
23 qualified small business that had optionally taken a federal payroll
24 research and development credit in lieu of the regular corporate
25 income tax credit to qualify for the New Jersey credit. New Jersey
26 does not have a research payroll credit and these qualified small
27 business taxpayers would otherwise be penalized as a result of the
28 mechanics of the federal Internal Revenue Code (26 U.S.C. s.41(h)
29 and 26 U.S.C. s.3111(f)) merely because the federal research
30 payroll credit is a quicker option meant to help small businesses
31 continue developing their research.

32 The bill extends the treatment of a combined group as one
33 taxpayer to several other areas. Consistent with the unitary business
34 principle which originally stems from railroad property valuation
35 cases in the 1860's and subsequently extended to taxation of
36 multistate businesses and to combined reporting by the United
37 States Supreme Court over the past century, the bill extends the
38 unitary treatment to certain intercompany transfers that would be
39 subject to the realty transfer fee, the controlling interest transfer tax,
40 and certain bulk sales notification requirements.

41 Lastly, the bill ensures that the joint net operating loss carryover
42 transfer program for new or expanding emerging technology and
43 biotechnology companies continues (N.J.S.A.54:10A-4.2 and
44 N.J.S.A.34:1B-7.42a). Because of the changes that were part of
45 P.L.2018, c.48 and P.L.2018, c.131, the citation in that program to
46 paragraph (6) of subsection (k) of N.J.S.A.54:10A-4 is not accurate
47 for net operating losses and prior net operating losses conversion
48 carryover. Net operating loss carryovers are now calculated and

1 applied on a post-allocation basis pursuant to subsection (u), (v),
2 and (w) of N.J.S.A.54:10A-4. Changing the citation to reference
3 prior net operating loss conversion carryover as well as net
4 operating loss carryover ensures that the program in
5 N.J.S.A.54:10A-4.2 and N.J.S.A.34:1B-7.42a continues and the
6 transferred amount is calculated properly. The bill also makes a
7 change to permit the sale of prior net operating loss conversion
8 carryover between members of a combined group at arm's length
9 price as part of the program in N.J.S.A.54:10A-4.2 and
10 N.J.S.A.34:1B-7.42a.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4809

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 21, 2020

The Assembly Commerce and Economic Development Committee reports favorably and with committee amendments Assembly Bill No. 4809.

The bill makes numerous corrections and revisions to clarify and simplify various aspects of the changes that were enacted as part of P.L.2018, c.48 and P.L.2018, c.131. Those laws, among other things, mandated mandatory unitary combined returns on a water's-edge basis if no election for an affiliated group basis filing or world-wide group basis filing had been made. The laws also changed the application of the net operating losses from pre-allocation (called pre-apportionment in other states) to post-allocation (called post-apportionment in other states), updated the research and development credit, and amended the dividend received exclusion.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) revise the dates on which certain provisions of the bill will first apply;
- 2) correct typographical errors;
- 3) provide that no penalties or interest shall accrue for underpayment of tax due to the retroactivity of parts of the bill;
- 4) provide that certain transfers of real property are not subject to the realty transfer fee, which was neglected in the introduced version of the bill; and
- 5) eliminate a provision from a Corporation Business Tax section of law which as introduced stated that a combined group shall be treated as one taxpayer for intercompany transfers for purposes of the realty transfer fee, the controlling interest transfer tax, and the bulk sales notice requirements; for sake of clarity, the requirement to treat a combined group as one taxpayer for intercompany transfers is instead put directly in the provisions of law dealing with the realty transfer fee, the controlling interest transfer tax, and the bulk sales notice requirements.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4809

STATE OF NEW JERSEY

DATED: OCTOBER 26, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4809 (1R).

The bill makes numerous corrections and revisions to clarify and simplify various aspects of the changes that were enacted as part of P.L.2018, c.48 and P.L.2018, c.131. Those laws, among other things, mandated mandatory unitary combined returns on a water's-edge basis if no election for an affiliated group basis filing or world-wide group basis filing had been made. The laws also changed the application of the net operating losses from pre-allocation (called pre-apportionment in other states) to post-allocation (called post-apportionment in other states), updated the research and development credit, and amended the dividend received exclusion.

FISCAL IMPACT:

The Office of Legislative Services (OLS) is unable to determine the magnitude and direction of the bill's net impact on annual State revenues. The OLS notes that various changes proposed by the bill would codify existing administrative practices implemented by the Division of Taxation following the enactment of P.L.2018, c.48. Given that these changes are technical in nature and meant to clarify and conform to current practices, the OLS does not expect those changes to yield a discernible fiscal impact. Numerous other provisions in the bill, however will impact annual State revenue collections. The OLS cannot quantify these impacts due to a lack of available information and access to taxpayer data.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4809

STATE OF NEW JERSEY 219th LEGISLATURE

DATED: OCTOBER 29, 2020

SUMMARY

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

Type of Impact: Annual net impact on State revenues.

Agencies Affected: Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2021 and Thereafter</u>
Net State Revenue Impact	Indeterminate

- The Office of Legislative Services (OLS) is unable to determine the magnitude and direction of the bill's net impact on annual State revenues. The OLS notes that various changes proposed by the bill would codify existing administrative practices previously implemented by the Division of Taxation. Given that these changes are technical in nature and meant to clarify and conform to current practices, the OLS does not expect those changes to yield a discernible fiscal impact. Numerous other provisions in the bill, however, will impact annual State revenue collections. The OLS cannot quantify these impacts due to a lack of available information and access to taxpayer data.
- The bill's changes to the State's realty transfer fee (RTF), controlling interest transfer tax (CITT), and bulk sale laws could reduce annual State revenues by an indeterminate amount. The impact of changes to the treatment of net operating losses and dividends on State revenues will vary, since each taxpayer is unique. Certain taxpayers may end up paying less taxes because of the changes while other taxpayers may be required to pay more.

BILL DESCRIPTION

This bill makes numerous corrections and revisions to clarify and simplify various aspects of the changes that were enacted as part of P.L.2018, c.48 and P.L.2018, c.131. Those laws, among

other things, mandated mandatory unitary combined returns on a water's-edge basis if no election for an affiliated group basis filing or world-wide group basis filing had been made. The laws also changed the application of the net operating losses from pre-allocation (called pre-apportionment in other states) to post-allocation (called post-apportionment in other states), updated the research and development credit, and amended the dividend received exclusion.

The bill excludes certain intercompany transfers of real property between combined group members from the State's RTF and CITT. The bill also excludes transactions that are intercompany transfers between combined group members from the State's bulk sale notification requirements.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS is unable to determine the magnitude and direction of the bill's net impact on annual State revenues. The OLS notes that various changes proposed by the bill would codify existing administrative practices previously implemented by the Division of Taxation. Given that these changes are technical in nature and meant to clarify and conform to current practices, the OLS does not expect those changes to yield a discernible fiscal impact. Numerous other provisions in the bill, however, will impact annual State revenue collections. The OLS cannot quantify these impacts due to a lack of available information and access to taxpayer data.

The bill would exclude certain intercompany transfers of real property between combined group members from the State's RTF and from the CITT. The bill would also exclude transactions that are intercompany transfers between combined group members from the State's bulk sale notification requirements. The bill's changes to the State's RTF, CITT, and bulk sale laws could reduce State revenues by an indeterminate amount. The OLS assumes that some of these intercompany transfers have been subject to these taxes and notification requirements but notes that the fiscal impact from those transfers has likely been insignificant.

Lastly, the bill modifies the treatment of net operating losses and dividends under the corporation business tax, which will have an impact on the tax base. The impact of these changes on State revenues will vary, since each taxpayer is unique. Certain taxpayers may end up paying less taxes because of the changes while other taxpayers may be required to pay more.

Section: Revenue, Finance and Appropriations

*Analyst: Jordan M. DiGiovanni
Revenue Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 3007

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED OCTOBER 8, 2020

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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.

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 and is an intercompany transfer between
33 combined group members as part of the unitary business, as those
34 terms are used in section 4 of P.L.1945, c.162 (C.54:10A-4).

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

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

1 paragraph shall be in addition to the filing, if any, pursuant to
2 paragraph (2) of this subsection.

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

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

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

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

25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (G) (i) The amount of any civil, civil administrative, or criminal
42 penalty or fine, including a penalty or fine under an administrative
43 consent order, assessed and collected for a violation of a State or
44 federal environmental law, an administrative consent order, or an
45 environmental ordinance or resolution of a local governmental
46 entity, and any interest earned on the penalty or fine, and any
47 economic benefits having accrued to the violator as a result of a
48 violation, which benefits are assessed and recovered in a civil, civil

1 administrative, or criminal action, or pursuant to an administrative
2 consent order. The provisions of this paragraph shall not apply to a
3 penalty or fine assessed or collected for a violation of a State or
4 federal environmental law, or local environmental ordinance or
5 resolution, if the penalty or fine was for a violation that resulted
6 from fire, riot, sabotage, flood, storm event, natural cause, or other
7 act of God beyond the reasonable control of the violator, or caused
8 by an act or omission of a person who was outside the reasonable
9 control of the violator.

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

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

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

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

44 A deduction shall also be permitted to the extent that the
45 taxpayer establishes by a preponderance of the evidence, as
46 determined by the director, that the interest is directly or indirectly
47 paid, accrued or incurred to (i) a related member in a foreign nation
48 which has in force a comprehensive income tax treaty with the

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

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

34 (ii) For privilege periods beginning after December 31, 2017,
35 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-
36 1 et seq.) or any other law to the contrary, for the purposes of
37 determining the amount of income pursuant to P.L.1945, c.162
38 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be
39 taken as a deduction pursuant to section 199A of the Internal
40 Revenue Code (26 U.S.C. s.199A).

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

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

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

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

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

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

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

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

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

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

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

42 (ii) For privilege periods beginning after December 31, 2016
43 and before January 1, 2019, entire net income shall exclude 95% of
44 dividends which were included in computing such taxable income
45 for federal income tax purposes, paid or deemed paid, to the
46 taxpayer by one or more subsidiaries owned by the taxpayer to the
47 extent of the 80% or more ownership of investment described in
48 subsection (d) of this section. For the purposes of calculating the

1 tax liability owed for the paid or deemed paid dividends included in
2 entire net income by this **【subsection】** subsubparagraph (ii), the
3 taxpayer shall use either their three-year average allocation factor
4 for the taxpayer's 2014 through 2016 tax years reported on the
5 taxpayer's tax returns or 3.5 percent, whichever is lower.

6 (iii) For privilege periods beginning on and after January 1,
7 2019, entire net income shall exclude 95% of dividends which were
8 included in computing such taxable income for federal income tax
9 purposes, paid or deemed paid to the taxpayer by one or more
10 subsidiaries owned by the taxpayer to the extent of the 80% or more
11 ownership of investment described in subsection (d) of this section.

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

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

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

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

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

45 (B) Net operating loss carryover. A net operating loss for any
46 privilege period ending after June 30, 1984 shall be a net operating
47 loss carryover to each of the seven privilege periods following the
48 period of the loss and a net operating loss for any privilege period

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

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

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

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

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

47 (F) Reduction for discharge of indebtedness. A net operating
48 loss for any privilege period ending after June 30, 2014, and any net

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

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

33 (A) Depreciation for property placed in service prior to January
34 1, 1998 shall be adjusted as follows:

35 (i) Depreciation for federal income tax purposes shall be
36 disallowed in full.

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

1 federal income tax purposes as described in subparagraph (B) of
2 this paragraph.

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

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

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

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

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

44 (11) No deduction shall be allowed for research and
45 experimental expenditures, to the extent that those research and
46 experimental expenditures are qualified research expenses or basic
47 research payments for which an amount of credit is claimed
48 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless

1 those research and experimental expenditures are also used to
2 compute a federal credit claimed pursuant to section 41 of the
3 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (ii) the resulting amount shall be further divided by the New
43 Jersey unitary business allocation factor that was used by the
44 combined group in the calculation of the deferred tax assets and
45 deferred tax liabilities as described in subparagraph (E) of this
46 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 (l) "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) for the income derived from the unitary business, and
43 a combined group shall be treated as one taxpayer for transactions
44 entered into on and after July 31, 2020 that are intercompany
45 transfers between combined group members as part of the unitary
46 business the transfers of which would otherwise be subject to the
47 realty transfer fee imposed under section 8 of P.L.2004, c.66
48 (C.46:15-7.2), the controlling interest transfer tax imposed under

1 section 3 of P.L.2006, c.33 (C.54:15C-1), or the bulk sales notice
2 requirements of section 5 of P.L.2007, c.100 (C.54:50-38).

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

10 (bb) "Group privilege period" means, if two or more members
11 in the combined group file in the same federal consolidated tax
12 return, the same income year as that used on the federal
13 consolidated tax return and, in all other cases, the privilege period
14 of the managerial member.

15 (cc) "Managerial member" means if the combined group has a
16 common parent corporation and that common parent corporation is
17 a taxable member, the managerial member shall be the common
18 parent corporation. In other cases, the combined group shall select
19 a taxable member as its managerial member or, in the discretion of
20 the director or upon failure of the combined group to select its
21 managerial member, the director shall designate a taxable member
22 of the combined group as managerial member.

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

25 A corporation exempt pursuant to section 3 of P.L.1945, c.162
26 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-
27 1 et seq.) shall not be a member of a combined group.

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

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

39 A New Jersey S corporation shall only be included as a taxable
40 member of a combined group filing a New Jersey combined return
41 if the New Jersey S Corporation elects to be included as a member
42 and taxed at the same rate as the other members of the combined
43 group. A New Jersey S corporation that does not elect to be
44 included shall be excluded as a member of the combined return and
45 shall file a separate return.

46 (gg) "Unitary business" means a single economic enterprise that
47 is made up either of separate parts of a single business entity or of a
48 group of business entities under common ownership that are

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

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

20

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

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

43 b. A new or expanding emerging technology or biotechnology
44 company that has surrendered an unused net operating loss
45 carryover pursuant to the provisions of section 1 of P.L.1997, c.334
46 (C.34:1B-7.42a), shall not be allowed a net operating loss carryover
47 deduction based upon the right to such a deduction as evidenced by
48 the corporation business tax benefit certificate and shall attach a

1 copy of the certificate to any return the taxpayer is required to file
2 under P.L.1945, c.162 (C.54:10A-1 et seq.).

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

19 The managerial member of a combined group shall be the
20 member acquiring the prior net operating loss conversion carryover
21 deduction and net operating loss carryover deduction on behalf of
22 the combined group. The taxpayer or combined group shall apply
23 the prior net operating loss conversion carryover deduction and net
24 operating loss carryover deduction, as evidenced by the certificate,
25 according to the provisions of section 4 of P.L.1945, c.162
26 (C.54:10A-4) or section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
27 any rules or regulations the director adopts to carry out the
28 provisions of this section.

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

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

37

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

40 27. a. Notwithstanding any provision of subsection (k) of
41 section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal
42 Revenue Code, including but not limited to 26 U.S.C. s.381 or any
43 successor or equivalent provision, that permits a corporation to use
44 the net operating losses of another for federal income tax purposes
45 following certain transactions, including but not limited to those
46 qualifying as reorganizations under the provisions of subparagraph
47 (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of
48 section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368,

1 a net operating loss for a privilege period ending after June 30,
2 1984, may be carried over and allowed as a deduction only by the
3 corporation that sustained the loss; provided, however, that in the
4 case of a merger of two or more corporations pursuant to statute of
5 this State or any other jurisdiction, the net operating loss may be
6 carried over only by the corporation that sustained the loss and that
7 is also the surviving corporation following the merger. The net
8 operating loss may not be carried over by a taxpayer that changes
9 its state of incorporation.

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

34 c. For privilege periods beginning on and after January 1,
35 2020, the provisions of the federal Internal Revenue Code, the
36 federal rules, limitations, and restrictions, thereto, governing federal
37 net operating losses, federal net operating loss carryovers with
38 regard but not limited to: mergers, acquisitions, reorganizations,
39 spin-offs, split-offs, dissolution, bankruptcy, or any form of
40 cessation of a business, or any other provision that limits or reduces
41 federal net operating losses and federal net operating loss
42 carryovers, shall apply to New Jersey net operating loss carryovers
43 under subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4)
44 and the New Jersey net operating loss carryover provisions of
45 subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6).

46 The federal rules and regulations governing federal consolidated
47 return net operating losses and net operating loss carryovers shall
48 apply to New Jersey net operating loss carryover provisions of

1 subsection h. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) as
2 though the combined group filed a federal consolidated return,
3 regardless of how the members of the combined group filed for
4 federal purposes to the extent consistent with the Corporation
5 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).
6 (cf: P.L.2018, c.48, s.25)

7
8 6. Section 18 of P.L.2018, c.48 (C.54:10A-4.6) is amended to
9 read as follows:

10 18. A taxable member of a combined group shall determine its
11 entire net income from the unitary business as its share of the entire
12 net income of the combined group in accordance with a combined
13 unitary tax return made pursuant to this section and sections 19, 20,
14 and 23 of P.L.2018, c.48 ~~[(C.54:18A-4.7, C.54:18A-4.8, and~~
15 ~~C.54:10A-4.11)]~~ (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-
16 4.11). The entire net income from the unitary business of a
17 combined group is the sum of the entire net incomes of each taxable
18 member and each nontaxable member of the combined group
19 derived from the unitary business, which shall be determined as
20 follows:

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

26 b. For a member not incorporated in the United States, the
27 income to be included in the entire net income of the combined
28 group shall be determined from a profit and loss statement that shall
29 be prepared for each foreign branch or corporation in the currency
30 in which the books of account of the branch or corporation are
31 regularly maintained, adjusted to conform it to the accounting
32 principles generally accepted in the United States for the
33 presentation of those statements and further adjusted to take into
34 account any book-tax differences required by federal or State law.
35 The profit and loss statement of each foreign member of the
36 combined group and the allocation factors related thereto, whether
37 United States or foreign, shall be translated into or from the
38 currency in which the parent company maintains its books and
39 records on any reasonable basis consistently applied on a year-to-
40 year or entity-by-entity basis. Income shall be expressed in United
41 States dollars. In lieu of these procedures and subject to the
42 determination of the director that the income to be reported
43 reasonably approximates income as determined under the
44 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-
45 1 et seq.), income may be determined on any reasonable basis
46 consistently applied on a year-to-year or entity-by-entity basis.

47 c. (1) If a member of a combined group receives income from
48 the unitary business from a partnership, the combined group's entire

1 net income shall include the member's direct and indirect
2 distributive share of the partnership's unitary business income.

3 (2) The distributive share of income received by a limited
4 partner from a qualified investment partnership shall not be
5 considered to be derived from a unitary business unless the general
6 partner of such investment partnership and such limited partner
7 have common ownership. To the extent that the limited partner is
8 otherwise carrying on or doing business in New Jersey, it shall
9 allocate its distributive share of income from a qualified investment
10 partnership in accordance with subsection a. of section 3 of
11 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
12 P.L.2001, c.136 (C.54:10A-15.7) as applicable. If the limited
13 partner is not otherwise carrying on or doing business in New
14 Jersey, its distributive share of income from an investment
15 partnership is not subject to tax under this chapter.

16 d. All dividends paid by one member to another member of the
17 combined group shall be eliminated from the income of the
18 recipient.

19 e. Except as otherwise provided by regulation, business income
20 from an intercompany transaction among members of the same
21 combined group shall be deferred in a manner similar to the deferral
22 under 26 C.F.R. s.1.1502-13, as determined by the director. Upon
23 the occurrence of either of the events set forth in **[subparagraphs]**
24 paragraphs (1) and (2) of this subsection, deferred income resulting
25 from an intercompany transaction among members of a combined
26 group shall be restored to the income of the seller and shall be
27 included in the net income of the combined group as if the seller
28 had earned the income immediately before the event:

29 (1) The object of a deferred intercompany transaction is: (a)
30 resold by the buyer to an entity that is not a member of the
31 combined group, (b) resold by the buyer to an entity that is a
32 member of the combined group for use outside the unitary business
33 in which the buyer and seller are engaged, or (c) converted by the
34 buyer to a use outside the unitary business in which the buyer and
35 seller are engaged; or

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

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

45 f. A charitable expense incurred by a member of a combined
46 group shall, to the extent allowable as a deduction pursuant to
47 section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170,
48 be subtracted first from the combined group's entire net income,

1 subject to the income limitations of that section applied to the entire
2 **【business】** net income of the group. A charitable deduction
3 disallowed under section 170 of the federal Internal Revenue Code,
4 26 U.S.C. s.170, but allowed as a carryover deduction in a
5 subsequent privilege period, shall be treated as originally incurred
6 in the subsequent year by the same member and the provisions of
7 this section shall apply in the subsequent privilege period in
8 determining the allowable deduction for that privilege period.

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

13 (1) Such prior net operating loss conversion carryover deduction
14 shall be allowed to offset only the entire net income allocated to
15 this state of the corporation that created the prior net operating loss;
16 the prior net operating loss conversion carryover cannot be shared
17 with other members of the combined group.

18 (2) The prior net operating loss conversion carryover deduction
19 computed under subsection (u) of section 4 of P.L.1945, c.162
20 (C.54:10A-4) shall be applied against the entire net income
21 allocated to this state of the corporation that created the prior net
22 operating loss before the net operating loss carryover computed
23 under subsection h. of this section.

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

28 A member of a combined group may sell prior net operating loss
29 conversion carryover to other members of the combined group, if
30 otherwise applicable and allowable under section 2 of P.L.1997,
31 c.334 (C.54:10A-4.2) and section 1 of P.L.1997, c.334 (C.34:1B-
32 7.42a); provided, however, such sale of prior net operating loss
33 conversion carryover must be made at arm's length price at the
34 same rate as though the sale was to an unrelated taxpayer.

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

39 (1) For privilege periods beginning on or after the first day of
40 the initial privilege period for which a combined unitary tax return
41 is required under this section and sections 19, 20, and 23 of
42 P.L.2018, c.48 **【(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-**
43 **4.11)】** (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), if the
44 computation of a combined group's entire net income allocated to
45 this state results in a net operating loss, a taxable member of such
46 group may carry over the net operating loss allocated to this state,
47 as calculated under this section and sections 19 and 23 of P.L.2018,
48 c.48 **【(C.54:18A-4.7 and C.54:18A-4.11)】** (C.54:10A-4.7 and

1 C.54:10A-4.11), and shall be deductible from entire net income
2 derived from the unitary business in a future privilege period to the
3 extent that the carryover and deduction is otherwise consistent with
4 subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4).

5 (2) Where a taxable member of a combined group has a net
6 operating loss carryover derived from a loss incurred by a combined
7 group in a privilege period beginning on or after the first day of the
8 initial privilege period for which a combined unitary tax return is
9 required under this section and sections 19, 20, and 23 of P.L.2018,
10 c.48 [(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11)]
11 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable
12 member may share the net operating loss carryover with other
13 taxable members of the combined group if such other taxable
14 members were members of the combined group in the privilege
15 period that the loss was incurred. Any amount of net operating loss
16 carryover that is deducted by another taxable member of the
17 combined group shall reduce the amount of net operating loss
18 carryover that may be carried over by the taxable member that
19 originally incurred the loss.

20 (3) Where a taxable member of a combined group has a net
21 operating loss carryover derived from a loss incurred in a privilege
22 period during which the taxable member was not a member of such
23 combined group, the carryover shall remain available to be
24 deducted by that taxable member or other group members that, in
25 the year the loss was incurred, were part of the same combined
26 group as such taxable member. Such carryover shall not be
27 deductible by any other members of the combined group.

28 (4) A net operating loss carryover shall not include any net
29 operating loss incurred during any privilege period beginning prior
30 to the first day of the initial privilege period for which a combined
31 unitary tax return is required under this section and sections 19 and
32 23 of P.L.2018, c.48 [(C.54:18A-4.7 and C.54:18A-4.11)]
33 (C.54:10A-4.7 and C.54:10A-4.11).

34 (5) Where a taxable member of a combined group has a net
35 operating loss carryover derived from a loss incurred by a combined
36 group in a privilege period beginning on or after the first day of the
37 initial privilege period for which a combined unitary tax return is
38 required under this section and sections 19, 20, and 23 of P.L.2018,
39 c.48 (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), and the
40 taxable member departs the combined group and continues to be a
41 taxpayer for the purposes of the Corporation Business Tax Act
42 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the taxable member
43 shall be entitled to take its respective portion of the combined group
44 net operating loss carryover and the combined group shall not be
45 entitled to use such portion of the net operating loss carryover.

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

1 (1) If a taxable member of a combined group earns a tax credit
2 in a privilege period beginning on or after the first day of the initial
3 privilege period for which a combined unitary tax return is required
4 under this section and sections 19, 20, and 23 of P.L.2018, c.48
5 **[(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-4.11)]** (C.54:10A-
6 4.7, C.54:10A-4.8, and C.54:10A-4.11), then the taxable member
7 may share the credit with other taxable members of the combined
8 group. Any amount of credit that is utilized by another taxable
9 member of the combined group shall reduce the amount of credit
10 carryover that may be carried over by the taxable member that
11 originally earned the credit. If a taxable member of a combined
12 group has a tax credit carryover derived from a privilege period
13 beginning on or after the first day of the initial privilege period for
14 which a combined unitary tax return is required under this section
15 and sections 19, 20, and 23 of P.L.2018, c.48 **[(C.54:18A-4.7,**
16 **C.54:18A-4.8, and C.54:18A-4.11)]** (C.54:10A-4.7, C.54:10A-4.8,
17 and C.54:10A-4.11), then the taxable member may share the
18 carryover credit with other taxable members of the combined group.

19 (2) If a taxable member of a combined group has a tax credit
20 carryover derived from a privilege period beginning prior to the
21 first day of the initial privilege period for which a combined unitary
22 tax return is required under this section and sections 19, 20, and 23
23 of P.L.2018, c.48 **[(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-**
24 **4.11)]** (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11), then the
25 taxable member may share the carryover credit with other taxable
26 members of the combined group.

27 (3) If a taxable member of a combined group has a tax credit
28 carryover derived from a privilege period during which the taxable
29 member was not a member of such combined group, the credit
30 carryover shall remain available to be utilized by such taxable
31 member or other group members.

32 (4) To the extent a taxable member has more than one
33 corporation business tax credit that it may utilize in a privilege
34 period, whether such credits were earned by said member or are
35 available to said member in accordance with paragraphs (1), (2) and
36 (3) of this subsection, the order of priority of the application of the
37 credits shall be as prescribed by the director.

38 j. An expense of a member of the combined group that is
39 directly or indirectly attributable to the income of any member of
40 the combined group, which income this State is prohibited from
41 taxing pursuant to the laws or Constitution of the United States,
42 shall be disallowed as a deduction for purposes of determining the
43 combined group's entire net income.

44 k. Nothing in this section shall apply to:

45 (1) A corporation or combined group which is licensed, in
46 whole or in part, as an insurance company under the laws of this
47 State or of another state, including corporations which are surplus

1 lines insurers declared eligible by the Commissioner of Banking
2 and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-
3 6.45) to insure risks within this State that is not a combinable
4 captive insurance company. Notwithstanding a provision, if any, to
5 the contrary in this section, the income of an insurance company
6 that is not a combinable captive insurance company, the allocation
7 or apportionment of income related thereto and the apportionment
8 factors of an insurance company that is not a combinable captive
9 insurance company shall not be included in a combined unitary tax
10 return filed under this section and sections 19, 20, and 23 of
11 P.L.2018, c.48 [(C.54:18A-4.7, C.54:18A-4.8, and C.54:18A-
12 4.11)] (C.54:10A-4.7, C.54:10A-4.8, and C.54:10A-4.11). In
13 addition, the dividend exclusion provisions of paragraph (5) of
14 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating
15 to dividends paid by insurance companies to non-insurance
16 companies included in the unitary group shall not be affected by
17 P.L.2018, c.48 (C.54:10A-5.41 et al.).

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

23 1. [The director shall promulgate rules and regulations
24 necessary to carry out the provisions of this section.] (deleted by
25 amendment, P.L. , c.) (pending before the Legislature as this
26 bill)

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

35 n. The principles and provisions set forth in federal regulations
36 promulgated pursuant to section 1502 of the Internal Revenue Code
37 (26 U.S.C. s.1502), shall apply to the extent consistent with the
38 Corporation Business Tax Act (1945), New Jersey combined group
39 membership principles, New Jersey combined unitary return
40 principles, and regulations set forth by the director.

41 o. For purposes of the deduction allowed in paragraph (4) of
42 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), a
43 combined group shall be treated as one taxpayer; provided,
44 however, a combined group shall only be eligible for the deduction
45 if at least one of the taxable members is a banking corporation and
46 the taxable member has an international banking facility. The
47 income of the combined group shall not be eligible for the
48 deduction allowed in paragraph (4) of subsection (k) of section 4 of

1 P.L.1945, c.162 (C.54:10A-4) if such income was already
2 eliminated pursuant to other subsections of this section.

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

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

10

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

13 21. A combined group filing a combined return that has any
14 outstanding alternative minimum assessment credit or credits at the
15 time of the effective date of the repeal of section 7 of P.L.2002,
16 c.40 (C.54:10A-5a) shall be allowed to use the credit to offset the
17 combined group's **net** deferred tax liability resulting from the
18 transition to a mandatory unitary combined return. For purposes of
19 this section, "net deferred tax liability" shall mean the net increase,
20 if any, in deferred tax liabilities minus the net increase, if any, in
21 deferred tax assets of the combined group, as computed in
22 accordance with generally accepted accounting principles, that is
23 the result of the transition from filing separate returns to filing a
24 mandatory unitary combined return **tax liability under paragraph**
25 **(1) of subsection c. of section 5 of P.L.1945, c.165 (C.54:10A-5)**
26 **for the group privilege period.** The remaining balance of the credit
27 carryovers of members of the combined group from prior to the
28 effective date of the repeal of section 7 of P.L.2002, c.40
29 (C.54:10A-5a) shall not reduce the combined tax liability below
30 50% of the tax owed by the group. The remaining balance of the
31 credit may be carried over until used by the combined group.

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

33

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

36 22. a. Determination of Managerial Member. If the combined
37 group has a common parent corporation within the meaning of the
38 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
39 et seq.), and that common parent corporation is a taxable member of
40 the corporate group, the managerial member shall be the common
41 parent corporation. In other cases, the combined group shall select
42 a taxable member as its managerial member or, in the discretion of
43 the director or upon failure of the combined group to select its
44 managerial member, the director shall designate a taxable member
45 of the combined group as managerial member. Once the election of
46 the managerial member is made, the election shall be binding for 10
47 successive privilege periods, except as otherwise provided for by
48 the director.

1 b. A combined group shall file a mandatory combined return
2 under this section in the form and manner prescribed by the
3 director. The managerial member of the combined group shall file
4 the mandatory combined return on behalf of the taxable members of
5 the combined group. The managerial member shall be required to
6 file taxable member returns; file taxable member extensions for
7 filing tax returns and other documents with the director; pay taxable
8 member liabilities; receive taxable member findings, assessments,
9 and notices; make and receive taxable member claims, or file
10 taxable member protests and appeals; and shall be the responsible
11 party liable for filing and paying the tax on behalf of the combined
12 group.

13 c. The privilege period for the combined group is the privilege
14 period of the managerial member. If a member of a combined group
15 has a different fiscal or calendar accounting period from the
16 combined group's privilege period, that member with a different
17 period shall report amounts from its return for its fiscal or calendar
18 accounting year that ends during the group privilege period.

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

24 e. If a combined group is eligible to elect the managerial
25 member of the combined group, notice of the election shall be
26 submitted in writing to the director not later than the due date or,
27 if an extension of time to file has been requested and granted, not later
28 than the extended due date of the mandatory combined return for
29 the initial privilege period for which a return is required. The
30 managerial member shall be the designated agent and the
31 responsible person for filing the combined return and paying the tax
32 for the combined group. If another taxable member is subsequently
33 designated as the managerial member, the subsequent designation
34 shall be subject to the approval of the director.

35 f. The director is authorized to promulgate regulations with
36 regards to installment payments, estimated payments,
37 overpayments, refunds and any other filing or payment matters
38 related to combined groups filing combined returns.

39 g. For privilege periods ending on and after July 31, 2019, a
40 combined group must file a mandatory combined return. However,
41 if privilege periods of the members of the combined group differ,
42 the first mandatory combined return for the combined group shall
43 be required for the privilege period of the managerial member.

44 h. The members of a combined group shall notify the director
45 **【within 90 days】** of a change in the combined group where a
46 member dissolves, a merger of any kind occurs, a member
47 withdraws from the group, a member ceases doing business, a
48 member of the group is acquired by a third party not in the group,

1 or additional members enter the group which are required to be
2 included. Such notice shall be submitted in written form, as
3 determined by the director, not later than the due date, or, if an
4 extension of time to file has been requested and granted, not later
5 than the extended due date of the combined unitary tax return for
6 the privilege period in which a change in the combined group
7 occurs.

8 i. Any notice shall be sent to the managerial member of the
9 combined group at the last known address of the managerial
10 member as indicated on either the last filing required or made under
11 this Chapter or a subsequent electronic or written notice provided
12 by the managerial member under rules prescribed by the director.

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

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

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

18 (3) require any payment to be made by electronic funds transfer;
19 and

20 (4) require the mandatory combined return to be filed
21 electronically.

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

23

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

26 5. The franchise tax to be annually assessed to and paid by
27 each taxpayer shall be the greater of the amount computed pursuant
28 to this section or the alternative minimum assessment computed
29 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a); provided
30 however, that in the case of a taxpayer that is a New Jersey S
31 corporation, an investment company, a professional corporation
32 organized pursuant to P.L.1969, c.232 (C.14A:17-1 et seq.) or a
33 similar corporation for profit organized for the purpose of rendering
34 professional services under the laws of another state, or a person
35 operating on a cooperative basis under Part I of Subchapter T of the
36 federal Internal Revenue Code of 1986, 26 U.S.C. s.1381 et seq.,
37 there shall be no alternative minimum assessment computed
38 pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a).

39 The amount computed pursuant to this section shall be the sum
40 of the amount computed under subsection (a) hereof, or in the
41 alternative to the amount computed under subsection (a) hereof, the
42 amount computed under subsection (f) hereof, and the amount
43 computed under subsection (c) hereof:

44 (a) That portion of its entire net worth as may be allocable to
45 this State as provided in section 6, multiplied by the following
46 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
47 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
48 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a

1 mill per dollar on all amounts of allocated net worth in excess of
 2 \$300,000,000.00; provided, however, that with respect to reports
 3 covering accounting or privilege periods set forth below, the rate
 4 shall be that percentage of the rate set forth in this subsection for
 5 the appropriate year:

6	Accounting or Privilege	
7	Periods Beginning on or	The Percentage of the Rate
8	after:	to be Imposed Shall be:
9	April 1, 1983	75%
10	July 1, 1984	50%
11	July 1, 1985	25%
12	July 1, 1986	0

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

14 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
 15 1/4% of its entire net income or such portion thereof as may be
 16 allocable to this State as provided in sections 6 through 10 of
 17 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), plus such
 18 portion thereof as is specifically assigned to this State as provided
 19 in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided, however,
 20 that with respect to reports covering accounting or privilege periods
 21 or parts thereof ending after December 31, 1967, the rate shall be 4
 22 1/4%; and that with respect to reports covering accounting or
 23 privilege periods or parts thereof ending after December 31, 1971,
 24 the rate shall be 5 1/2%; and that with respect to reports covering
 25 accounting or privilege periods or parts thereof ending after
 26 December 31, 1974, the rate shall be 7 1/2%; and that with respect
 27 to reports covering privilege periods or parts thereof ending after
 28 December 31, 1979, the rate shall be 9%; provided however, that
 29 for a taxpayer that has entire net income of \$100,000 or less for a
 30 privilege period and is not a partnership the rate for that privilege
 31 period shall be 7 1/2% and provided further that for a taxpayer that
 32 has entire net income of \$50,000 or less for a privilege period and is
 33 not a partnership the rate for that privilege period shall be 6 1/2%.

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

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

44 (i) for privilege periods ending on or before June 30, 1998 the
 45 rate determined by subtracting the maximum tax bracket rate
 46 provided under N.J.S.54A:2-1 for the privilege period from the tax
 47 rate that would otherwise be applicable to the taxpayer's entire net
 48 income for the privilege period if the taxpayer were not an S

1 corporation provided under paragraph (1) of this subsection for the
2 privilege period; and

3 (ii) For a taxpayer that has entire net income in excess of
4 \$100,000 for the privilege period,

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

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

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

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

13 (iii) For a taxpayer that has entire net income of \$100,000 or less
14 for privilege periods ending on or after July 1, 1998, but on or
15 before June 30, 2001, the rate for that privilege period shall be
16 0.5%, and for privilege periods ending on or after July 1, 2001,
17 there shall be no rate of tax imposed under this paragraph.

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

27 (3) For a taxpayer that is a New Jersey S corporation, in
28 addition to the amount, if any, determined under paragraph (2) of
29 this subsection, the tax rate that would otherwise be applicable to
30 the taxpayer's entire net income for the privilege period if the
31 taxpayer were not an S corporation provided under paragraph (1) of
32 this subsection for the privilege period multiplied by its entire net
33 income that is subject to federal income taxation or such portion
34 thereof as may be allocable to this State pursuant to sections 6
35 through 10 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).
36 For privilege periods ending on or after July 31, 2019, the tax rate
37 shall be applied against taxable net income.

38 (d) Provided, however, that the franchise tax to be annually
39 assessed to and paid by any investment company or real estate
40 investment trust, which has elected to report as such and has filed
41 its return in the form and within the time provided in this act and
42 the rules and regulations promulgated in connection therewith,
43 shall, in the case of an investment company, be measured by 40% of
44 its entire net income and 40% of its entire net worth, and in the case
45 of a real estate investment trust, by 4% of its entire net income and
46 15% of its entire net worth, at the rates hereinbefore set forth for the
47 computation of tax on net income and net worth, respectively, but in
48 no case less than \$250, and further provided, however, that the

1 franchise tax to be annually assessed to and paid by a regulated
 2 investment company which for a period covered by its report
 3 satisfies the requirements of Chapter 1, Subchapter M, Part I,
 4 Section 852(a) of the federal Internal Revenue Code shall be \$250.
 5 For privilege periods ending on or after July 31, 2019, ~~the tax rate~~
 6 ~~shall be applied against taxable net income~~ the tax rate shall be
 7 applied against 40% of its taxable net income in the case of an
 8 investment company, and against 4% of its taxable net income in
 9 the case of a real estate investment trust.

10 (e) The tax assessed to any taxpayer pursuant to this section
 11 shall not be less than \$25 in the case of a domestic corporation, \$50
 12 in the case of a foreign corporation, or \$250 in the case of an
 13 investment company or regulated investment company. Provided
 14 however, that for privilege periods beginning in calendar year 1994
 15 and thereafter the minimum taxes for taxpayers other than an
 16 investment company or a regulated investment company shall be as
 17 provided in the following schedule:

18	Period Beginning	Domestic	Foreign
19	In Calendar Year	Corporation	Corporation
20		Minimum Tax	Minimum Tax
21	1994	\$ 50	\$100
22	1995	\$100	\$200
23	1996	\$150	\$200
24	1997	\$200	\$200
25	1998	\$200	\$200
26	1999	\$200	\$200
27	2000	\$200	\$200
28	2001	\$210	\$210

29 and for calendar years 2002 through 2005 the minimum tax for all
 30 taxpayers shall be \$500, and for calendar year 2006 through
 31 calendar year 2011 the minimum tax for all corporations, and for
 32 privilege periods beginning in calendar year 2012 and thereafter the
 33 minimum tax for corporations that are not New Jersey S
 34 corporations shall be based on the New Jersey gross receipts of the
 35 taxpayer pursuant to the following schedule:

36	New Jersey Gross Receipts:	Minimum Tax:
37	Less than \$100,000	.....\$500
38	\$100,000 or more but	
39	less than \$250,000	..... \$750
40	\$250,000 or more but	
41	less than \$500,000	..... \$1,000
42	\$500,000 or more but	
43	less than \$1,000,000	..... \$1,500
44	\$1,000,000 or more	..... \$2,000

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

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	New Jersey Gross Receipts:	Minimum Tax:
1		
2	Less than \$100,000\$375
3	\$100,000 or more but	
4	less than \$250,000	..... \$562.50
5	\$250,000 or more but	
6	less than \$500,000	..... \$750
7	\$500,000 or more but	
8	less than \$1,000,000	..... \$1,125
9	\$1,000,000 or more	..... \$1,500

10 provided however, that for a taxpayer that is a member of an
11 affiliated group or a controlled group pursuant to section 1504 or
12 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
13 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
14 more for the privilege period, the minimum tax shall be \$2,000 for
15 the privilege period **【. For】** ; provided, however, for privilege
16 periods ending on and after July 31, 2019, the minimum tax of each
17 taxable member of a combined group filing a mandatory or elective
18 New Jersey combined return shall be \$2,000 for the group privilege
19 period.

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

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

29 (1) that is a limited liability company or foreign limited liability
30 company classified as a partnership for federal income tax purposes
31 shall be the amount determined pursuant to the provisions of section
32 3 of P.L.2001, c.136 (C.54:10A-15.6); or

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

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

42 (i) (Deleted by amendment, P.L.2008, c.120)
43 (cf: P.L.2018, c.131, s.6)

44
45 10. Section 1 of P.L.1993, c.175 (C.54:10A-5.24) is amended to
46 read as follows:

47 1. a. A taxpayer shall be allowed a credit, subject to the
48 provisions of subsection b. of this section, against the tax imposed

1 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an
2 amount equal to

3 (1) 10% of the excess of the qualified research expenses for the
4 privilege period over the base amount; and

5 (2) 10% of the basic research payments for the privilege period
6 determined in accordance with section 41 of the federal Internal
7 Revenue Code of 1986, 26 U.S.C. s.41. Provided however, that the
8 terms "qualified research expenses," "base amount," "qualified
9 organization base amount period," "basic research" and any other
10 terms determined by the Director of the Division of Taxation to
11 affect the calculation of the credit shall include only expenditures
12 for research conducted in this State. For privilege periods beginning
13 on and after January 1, 2018, amounts paid or incurred by the
14 taxpayer in carrying on any trade or business of the taxpayer during
15 the privilege period, including as contributions, to an energy
16 research consortium for energy research shall also qualify as a basic
17 research payment for purposes of this subsection.

18 b. No credit shall be allowed under section 42 of P.L.1987,
19 c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and
20 Employment Investment Tax Credit Act," P.L.1993, c.171
21 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-
22 5.4 et seq.), for property or expenditures for which a credit is
23 allowed, or which are includable in the calculation of a credit
24 allowed, under this section.

25 The order of priority of the application of the credit allowed
26 pursuant to this section and any other credits allowed by law shall
27 be as prescribed by the director. Credits allowable pursuant to this
28 section shall be applied in the order of the privilege periods for
29 which the credits were allowed.

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

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

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

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

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

3 d. For privilege periods beginning on and after January 1,
4 2020, the portion of qualified research expenses and qualified
5 payments of a taxpayer that is a qualified small business within the
6 meaning of section 41(h)(3) of the federal Internal Revenue Code
7 (26 U.S.C. s.41) that were disallowed for the section 41(h) tax
8 credit because the taxpayer made an election pursuant to sections
9 41(h) and 3111(f) of the federal Internal Revenue Code (26 U.S.C.
10 s.41 and s.3111) to take the 3111(f) credit in lieu of the 41(h) credit,
11 shall be allowed for the purposes of calculating the New Jersey
12 credit provided for by this section.

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

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

17 14. (a) The director **【may by regulation or by special notice】**
18 shall require any taxpayer or managerial member to submit, as part
19 of a full and complete New Jersey return, copies or pertinent
20 extracts of its federal income tax returns, or of any other tax return
21 filed with any agency of the federal government, or of this or any
22 other state, or of any statement or registration made pursuant to any
23 state or federal law pertaining to securities or securities exchange
24 regulation. The director shall issue regulations describing which
25 federal extracts are required and which extracts are optional.

26 (b) The director may require all taxpayers to keep such records
27 as the director may prescribe, and the director may require the
28 production of books, papers, documents and other data, to provide
29 or secure information pertinent to the determination of the tax
30 hereunder and the enforcement and collection thereof. The director
31 may, also, by general rule or by special notice require any taxpayer
32 to make and file information returns, under oath, of facts pertinent
33 to the determination of the tax or liability for tax hereunder,
34 pursuant to such regulations, at such times and in such form and
35 manner and to such extent as the director may prescribe
36 pursuant to law.

37 (c) Each taxpayer filing a return that is a member of **【a**
38 **commonly owned group】** an affiliated group filing an elective New
39 Jersey combined return or a combined group shall, upon the request
40 of the director and 90 days' notice thereof, disclose **【in its return for**
41 **the privilege period】** the amount of all inter-member costs or
42 expenses reflected in the return for the privilege period, including
43 but not limited to management fees, rents, and other services, for
44 the privilege period. If the taxpayer acquires products or services
45 from another member of its **【commonly owned】** affiliated group or
46 a combined group, which it re-sells or otherwise uses to generate
47 revenue, the taxpayer shall, upon the request of the director and 90

1 days' notice thereof, disclose the amount of revenue generated from
2 those products or services. The director shall promulgate rules and
3 procedures for the manner of disclosure. A failure to file such a
4 disclosure shall be deemed the filing of an incomplete tax return,
5 subject to the penalties of the State Uniform Tax Procedure Law,
6 R.S.54:48-1 et seq.

7 (d) For privilege periods ending on and after July 31, 2020, the
8 director shall create a simplified standardized return for combined
9 groups, banking corporations, financial business corporations, and
10 separate return filers, but shall maintain the New Jersey S
11 Corporations returns for New Jersey S Corporations that file
12 separate returns. The standardized return shall include the
13 accompanying forms and schedules to administer and implement
14 the various requirements of the Corporation Business Tax Act
15 (1945), or such accompanying schedules shall be made
16 inconspicuously and readily available on the Division of Taxation's
17 website, and the instructions for the standardized return shall
18 clearly indicate which schedules are required to be completed by
19 combined groups, banking corporations, financial business
20 corporations, and separate return filers respectively.

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

22
23 12. Section 15 of P.L.1945, c.162 (C.54:10A-15) is amended to
24 read as follows:

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

29 (a) Every taxpayer shall annually pay a franchise tax, with
30 respect to all or any part of each of its fiscal or calendar accounting
31 years beginning after January 1, 1959, to be computed as herein
32 provided, for such fiscal or calendar accounting year or part thereof,
33 on a report which shall be filed on or before April 15 next
34 succeeding the close of each such accounting year, or, if any such
35 fiscal year ends after the last day of December and prior to July 1,
36 on or before the fifteenth day of the fourth month after the close of
37 such fiscal year, and the full amount of the tax hereunder shall be
38 due and payable on or before the date prescribed herein for the
39 filing of the return.

40 (b) Every taxpayer shall pay a like franchise tax with respect to
41 all or any part of the period beginning January 1, 1959 and
42 extending through any subsequent part of its first fiscal or calendar
43 accounting year ending after said date. Such tax shall be computed
44 as herein provided, for each and every fiscal or calendar accounting
45 year or part thereof begun not earlier than July 2, 1957 and ending
46 not later than December 31, 1959 on the basis of which a franchise
47 tax has not accrued under this act prior to January 1, 1959. The tax
48 imposed pursuant to this subsection shall be deemed a single tax for

1 such period but shall be computed separately with respect to each
2 such fiscal or calendar accounting year or part thereof on the basis
3 of which a franchise tax has not previously accrued as aforesaid, on
4 a report which shall be filed on or before April 15, next succeeding
5 the close of each such accounting year, or, if any such fiscal year
6 ends after the last day of December and prior to July 1, on or before
7 the fifteenth day of the fourth month after the close of such fiscal
8 year, and the full amount of the tax hereunder shall be due and
9 payable on or before the date prescribed herein for the filing of the
10 report.

11 (c) With respect to all or any part of each of its privilege periods
12 ending after June 30, 1967, every taxpayer shall annually pay a
13 franchise tax on a report which shall be filed on or before the
14 fifteenth day of the fourth month after the close of such privilege
15 period, or part thereof, and the full amount of the tax hereunder
16 shall be due and payable on or before the date prescribed herein for
17 the filing of the return; provided, however, that for privilege periods
18 ending on and after July 31, 2020, the due date of the New Jersey
19 return shall be 30 days after the original due date for filing the
20 taxpayer's federal corporate income tax return for such privilege
21 period, or part thereof, and the full amount of the tax hereunder
22 shall be due and payable on or before the date prescribed herein for
23 the filing of the return.

24 (d) With respect to its fiscal or calendar accounting years ending
25 after February 29, 1968 and prior to March 1, 1969, every taxpayer
26 shall pay as a partial payment of franchise tax in addition to the tax
27 payable under subsection (c) of this section, an amount equal to
28 one-quarter of the tax payable under said subsection (c). With
29 respect to each of its fiscal or calendar accounting years ending
30 after February 28, 1969, every taxpayer shall annually pay as a
31 partial payment of franchise tax in addition to the tax payable under
32 subsection (c) of this section, an amount equal to one-half of the tax
33 payable under said subsection (c). In the calculation of the tax
34 pertaining to each succeeding accounting period, due in accordance
35 with subsection (c) hereof, every taxpayer shall be entitled to a
36 credit in the amount of the tax paid under this subsection (d) as a
37 partial payment and shall be entitled to the return of any amount so
38 paid which shall be found in excess of the total amount payable in
39 accordance with said subsection (c) and this subsection (d).

40 (e) With respect to its fiscal or calendar accounting years ending
41 on or after June 30, 1974, every taxpayer shall annually pay as a
42 partial payment of franchise tax in addition to the tax payable under
43 subsection (c) of this section, an amount equal to 60% of the tax
44 payable under said subsection (c). In the calculation of the tax
45 pertaining to each succeeding accounting period, due in accordance
46 with subsection (c) hereof, every taxpayer shall be entitled to a
47 credit in the amount of the tax paid under this subsection (e) as a
48 partial payment and shall be entitled to the return of any amount so

1 paid which shall be found to be in excess of the total amount
2 payable in accordance with said subsection (c) and this
3 subsection (e).

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

12 (1) 25% thereof paid on or before the fifteenth day of the fourth
13 month thereof;

14 (2) 25% thereof paid on or before the fifteenth day of the sixth
15 month thereof;

16 (3) 25% thereof paid on or before the fifteenth day of the ninth
17 month thereof; and

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

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

26 (1) 25% thereof paid on or before the fifteenth day of the fourth
27 month thereof;

28 (2) 50% thereof paid on or before the fifteenth day of the sixth
29 month thereof; and

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

32 (h) In the calculation of the tax due in accordance with
33 subsection (c) hereof, a taxpayer shall be entitled to a credit in the
34 amount of the tax paid under subsection (f) or subsection (g) of this
35 section as a partial payment and shall be entitled to the return of any
36 amount so paid which is in excess of the total amount payable in
37 accordance with subsection (c) and this subsection.

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

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

42

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

45 3. a. (1) There is imposed and shall be paid a tax upon the sale
46 or transfer for consideration in excess of \$1,000,000 of a controlling
47 interest in an entity which possesses, directly or indirectly, a
48 controlling interest in classified real property, which shall be paid

1 by the purchaser of the controlling interest and which shall be equal
2 to 1% of the consideration paid on the sale or transfer; provided
3 however that in the case of the sale or transfer of a controlling
4 interest in an entity which possesses, directly or indirectly, an
5 interest in classified real property and an interest in other property,
6 real or personal, there shall be paid a tax upon the sale only if the
7 equalized assessed value of the classified real property exceeds
8 \$1,000,000 which shall be paid by the purchaser of the controlling
9 interest and which shall be equal to 1% of that percentage of the
10 equalized assessed value of the classified real property that is equal
11 to the percentage of the ownership interest transferred.

12 (2) The sale or transfer of a controlling interest subject to
13 taxation pursuant to paragraph (1) of this subsection may occur in
14 one transaction or in a series of transactions. Transactions which
15 occur within six months of each other are presumed, unless shown
16 to the contrary, to be a series of transactions constituting a single
17 sale or transfer.

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

23 b. On or before the last day of the month following the month
24 in which the sale or transfer of a controlling interest which is
25 subject to the tax imposed by subsection a. of this section is
26 completed, the purchaser shall file a return with the director, in such
27 form as the director may prescribe. Payment of the tax shall
28 accompany the return.

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

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

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

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

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

41 (5) that is incidental to a corporate merger or acquisition if the
42 equalized assessed value of the real property transferred is less than
43 20% of the total value of all assets exchanged in the merger or
44 acquisition; or

45 (6) entered into on and after July 31, 2020 if it is an
46 intercompany transfer between combined group members as part of
47 the unitary business, as those terms are used in section 4 of
48 P.L.1945, c.162 (C.54:10A-4).

1 d. Notwithstanding the provisions of subsection a. of this
2 section, the transfer of a controlling interest on or before November
3 15, 2006 in an entity which possesses, directly or indirectly, an
4 interest in classified real property shall not be subject to tax if the
5 interest was transferred pursuant to a contract or other binding
6 agreement that was fully executed before July 1, 2006.

7 e. (1) The director may require all purchasers subject to a tax
8 imposed under this section to keep such records as the director may
9 prescribe, and the director may require the production of books,
10 papers, documents and other data, to provide or secure information
11 pertinent to the determination of the taxes imposed by this section
12 and the enforcement and collection thereof.

13 (2) An entity with respect to which there is a sale or transfer of a
14 controlling interest in that entity, shall keep a record of every
15 transfer of a controlling interest in its stock or in its capital, profits
16 or beneficial interests, as the case may be, and such other
17 information as the director may prescribe. An entity shall report
18 that information to the director in such form and at such times as
19 the director may prescribe.

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

24 (4) The director shall collect and administer the tax imposed
25 pursuant to this section. The director is authorized to adopt rules
26 and regulations to effectuate the purposes of this section pursuant to
27 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
28 1 et seq.).

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

34 (6) The director may delegate the director's functions hereunder
35 to any officer or employee of the director's division such of the
36 director's powers as the director may deem necessary to carry out
37 efficiently the provisions of this section.

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

41 g. As used in this section:

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

45 "Director" means the Director of the Division of Taxation in the
46 Department of the Treasury.

47 "Consideration" means the actual amount of money and the
48 monetary value of any other thing of value constituting the entire

1 compensation paid or to be paid for the transfer including the
2 remaining amount of any prior mortgage to which the transfer is
3 subject or which is to be assumed and agreed to be paid by the
4 purchaser.

5 "Controlling interest" means, in the case of an entity that is a
6 corporation, more than fifty per cent of the total combined voting
7 power of all classes of stock of that corporation, and in the case of
8 an entity that is a partnership, association, trust or other
9 organization, more than fifty per cent of the beneficial ownership of
10 classified real property of that partnership, association, trust or
11 other organization.

12 "Related parties" means parties that have the relationship
13 necessary for attribution of constructive ownership of stock
14 pursuant to section 318 of the federal Internal Revenue Code of
15 1986, 26 U.S.C. s.318, and members of an affiliated group or a
16 controlled group pursuant to section 1504 or 1563 of the federal
17 Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563.

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

19

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

22 5. a. (1) Whenever a person shall make a sale, transfer, or
23 assignment in bulk of any part or the whole of the person's business
24 assets, except as provided by **[paragraph]** paragraphs (2) and (3) of
25 this subsection, otherwise than in the ordinary course of business,
26 the purchaser, transferee or assignee shall, at least 10 days before
27 taking possession of the subject of the sale, transfer or assignment,
28 or paying therefor, notify the director by registered mail, or other
29 such method as the director may prescribe, of the proposed sale and
30 of the price, terms and conditions thereof whether or not the seller,
31 transferrer or assignor has represented to, or informed the
32 purchaser, transferee or assignee that the seller, transferrer or
33 assignor owes any State tax and whether or not the purchaser,
34 transferee, or assignee has knowledge that such taxes are owing,
35 and whether any such taxes are in fact owing. Within 10 days of
36 receiving such notice, the director shall notify the purchaser,
37 transferee or assignee by such means as the director may prescribe
38 that a possible claim for State taxes exists and include the amount
39 of the State's claim.

40 (2) (a) Paragraph (1) of this subsection shall not apply to the
41 sale, transfer or assignment of a simple dwelling house if the seller,
42 transferrer or assignor is an "individual," "estate," or "trust" as those
43 terms are used for the purposes of the "New Jersey Gross Income
44 Tax Act," N.J.S.54A:1-1 et seq. or any combination thereof owning
45 the simple dwelling house as joint tenants, tenants in common or
46 tenancy by the entirety; paragraph (1) shall apply to the sale,
47 transfer or assignment of a simple dwelling house if the seller,
48 transferrer or assignor is a business entity, including but not limited

1 to a corporation or a partnership. "Simple dwelling house" means a
2 dwelling unit, attached or detached, and land appurtenant thereto,
3 including but not limited to a one-family or two-family building or
4 structure, a unit of a horizontal property regime established
5 pursuant to the "Horizontal Property Act," P.L.1963, c.168
6 (C.46:8A-1 et seq.), a unit in a housing cooperative as defined
7 under "The Cooperative Recording Act of New Jersey," P.L.1987,
8 c.381 (C.46:8D-1 et seq.), or a unit of a condominium property
9 established pursuant to the "Condominium Act," P.L.1969, c.257
10 (C.46:8B-1 et seq.), but does not include a structure or structures
11 containing more than two units of dwelling space or containing,
12 according to the records of the municipal property tax assessor,
13 commercial property including, or in addition to, the units of
14 dwelling space.

15 (b) Paragraph (1) of this subsection shall not apply to the sale,
16 transfer or assignment of a seasonal rental unit or the sale, transfer
17 or assignment of a lease for the seasonal use or rental of real
18 property if the seller, transferrer or assignor is an "individual,"
19 "estate," or "trust" as those terms are used for the purposes of the
20 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. or any
21 combination thereof owning the seasonal rental unit or lease for the
22 seasonal use or rental of real property as joint tenants, tenants in
23 common or tenancy by the entirety; paragraph (1) shall apply to the
24 sale, transfer or assignment of a seasonal rental unit or the sale,
25 transfer or assignment of a lease for the seasonal use or rental of
26 real property if the seller, transferrer or assignor is a business entity,
27 including but not limited to a corporation or a partnership.

28 For the purposes of this paragraph:

29 "seasonal rental unit" means

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

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

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

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

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

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

46 (3) Paragraph (1) of this subsection shall not apply to the sale,
47 transfer, or assignment of a grant, tax credit, or tax credit transfer
48 certificate that has been awarded, issued, or otherwise made

1 available to a person in connection with a State or local business
2 assistance or incentive program or activity authorized by law in
3 effect on the effective date of P.L.2017, c.12.

4 For purposes of this paragraph, "State or local business
5 assistance or incentive program or activity" includes but shall not
6 be limited to: the corporation business tax credit and insurance
7 premiums tax credit certificate transfer program established by
8 section 17 of P.L.2004, c.65 (C.34:1B-120.2); the Business
9 Retention and Relocation Assistance Program established by
10 P.L.1996, c.25 (C.34:1B-112 et seq.); the Business Employment
11 Incentive Program established by P.L.1996, c.26 (C.34:1B-
12 124 et al.); the Urban Transit Hub Tax Credit Program established
13 by P.L.2007, c.346 (C.34:1B-207 et seq.); the Grow New Jersey
14 Assistance Program established by section 3 of P.L.2011, c.149
15 (C.34:1B-244); and the State or local Economic Redevelopment and
16 Growth Grant program established by section 4 or section 5 of
17 P.L.2009, c.90 (C.52:27D-489d or C.52:27D-489e).

18 b. If, upon receiving timely notice of a sale, transfer or
19 assignment from a purchaser, transferee or assignee, the director
20 fails to provide timely notice to the purchaser, transferee or
21 assignee that a possible claim for such State tax or taxes exists, the
22 purchaser, transferee or assignee may transfer over to the seller,
23 transferrer or assignor any sums of money, property or choses in
24 action, or other consideration to the extent of the amount of the
25 State's claim. The purchaser, transferee or assignee shall not be
26 subject to the liabilities and remedies imposed under the provisions
27 of the uniform commercial code, Title 12A of the New Jersey
28 Statutes, and shall not be personally liable for the payment to the
29 State of any such taxes theretofore or thereafter determined to be
30 due to the State from the seller, transferrer or assignor.

31 c. If the purchaser, transferee or assignee shall fail to give
32 notice to the director as required by the preceding paragraph, or if
33 the director shall inform the purchaser, transferee or assignee that a
34 possible claim for such State tax or taxes exists, any sums of
35 money, property or choses in action, or other consideration, which
36 the purchaser, transferee or assignee is required to transfer over to
37 the seller, transferrer or assignor shall be subject to a first priority
38 right and lien for any such State taxes theretofore or thereafter
39 determined to be due from the seller, transferrer or assignor to the
40 State, and the purchaser, transferee or assignee is forbidden to
41 transfer to the seller, transferrer or assignor any such sums of
42 money, property or choses in action to the extent of the amount of
43 the State's claim. For failure to comply with the provisions of this
44 section the purchaser, transferee or assignee, in addition to being
45 subject to the liabilities and remedies imposed under the provisions
46 of the uniform commercial code, Title 12A of the New Jersey
47 Statutes, shall be personally liable for the payment to the State of
48 any such taxes theretofore or thereafter determined to be due to the

1 State from the seller, transferrer or assignor, and such liability may
2 be assessed and enforced in the same manner as the liability for any
3 State tax under the State Uniform Tax Procedure Law, R.S.54:48-
4 1 et seq.
5 (cf: P.L.2017, c.307, s.1)

6
7 15. (New section) For privilege periods ending on and after July
8 31, 2020, a taxpayer shall be allowed a credit against the tax
9 imposed by subsection c. of section 5 of P.L.1945, c.162
10 (C.54:10A-5) to the extent a subsidiary of the taxpayer received
11 dividends and deemed dividends from other subsidiaries and
12 included those dividends in its entire net income for the purposes of
13 determining its tax liability pursuant to section 5 of P.L.1945, c.162
14 (C.54:10A-5) and paid tax on those dividends and deemed
15 dividends to the State on a timely filed New Jersey corporation
16 business tax return; provided, however, the taxpayer received those
17 same dividends and deemed dividends from the subsidiary that paid
18 tax to the State.

19 For purposes of this section, the members of a combined group
20 filing a New Jersey combined return shall be treated as one
21 taxpayer.

22 For purposes of this section, "paid tax" means the amount that
23 the subsidiary paid to the State or would have paid but for the use of
24 other tax credits, or but for subsections (u) and (v) of section 4 of
25 P.L.1945, c.162 (C.54:10A-4), or, for a combined group filing a
26 combined return, but for subsections g. and h. of section 18 of
27 P.L.2018, c.48 (C.54:10A-4.6).

28 The credit allowed by the this section shall be claimed in a form
29 and manner prescribed by the director on a timely filed corporation
30 business tax return.

31
32 16. (New section) a. For a banking corporation that is a
33 member of a combined group that has a fiscal group privilege
34 period, before the banking corporation is included as a member of
35 the New Jersey combined return, the banking corporation shall first
36 file the applicable BFC-1 return reporting their calendar year
37 income in accordance with section 4 of P.L. L.1975, c.170
38 (C.54:10A-34) for the applicable privilege period which ended
39 during the privilege period of the managerial member and then file
40 a transitional short period return covering January 1st through the
41 end of the month of the combined group's fiscal group privilege
42 period during the current calendar year. Subsequently, the banking
43 corporation shall file for the fiscal combined group's privilege
44 period and report all of its income on a fiscal basis with the
45 combined group. Thereafter, the banking corporation shall continue
46 reporting on a fiscal basis for future privilege periods. If a banking
47 corporation, that would otherwise be a member of a fiscal combined
48 group but for the transitional provisions of this section, believes

1 that application of the filing requirements set forth will result in an
2 unfair or distorted reflection of income, the banking corporation
3 may request relief from the director, which may be granted at the
4 director's discretion.

5 b. For a banking corporation that is not a member of a
6 combined group, which files a BFC-1 return reporting its calendar
7 year income in accordance with section 4 of P.L.1975, c.170
8 (C.54:10A-34), but which files on a fiscal federal tax year basis, the
9 banking corporation may elect to file separate returns in a manner
10 similar to subsection a. of this section, file a transitional short
11 period return, and subsequently file its New Jersey corporation
12 business tax returns on a fiscal year basis. Otherwise, such banking
13 corporations shall file transitional returns in order to subsequently
14 file in the same manner as other corporation business taxpayers. If a
15 banking corporation, that would otherwise continue to file the BFC-
16 1 return reporting its calendar year income in accordance with
17 section 4 of P.L.1975, c.170 (C.54:10A-34) but for the transitional
18 provisions provided for in this section, believes that application of
19 the filing requirements set forth will result in an unfair or distorted
20 reflection of income, the banking corporation may request relief
21 from the director, which may be granted at the director's discretion.

22 c. For a banking corporation that is not a member of a
23 combined group, which files a BFC-1 return reporting its calendar
24 year income in accordance with section 4 of P.L.1975, c.170
25 (C.54:10A-34), and files on a calendar federal tax year basis, the
26 banking corporation shall file transitional returns in order to
27 subsequently file in the same manner as other corporation business
28 taxpayers. If a banking corporation, that would otherwise continue
29 to file the BFC-1 return reporting its calendar year income in
30 accordance with section 4 of P.L.1975, c.170 (C.54:10A-34) but for
31 the transitional provisions provided for in this section, believes
32 that application of the filing requirements set forth will result in an
33 unfair or distorted reflection of income, the banking corporation
34 may request relief from the director, which may be granted at the
35 director's discretion.

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

39

40 17. (New section) Notwithstanding the provisions of the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
42 1 et seq.), to the contrary, the director may adopt, immediately,
43 upon filing with the Office of Administrative Law, regulations that
44 the director deems necessary to implement the provisions of
45 P.L. , c. (pending before the Legislature as this bill), which
46 regulations shall be effective for a period not to exceed 360 days
47 from the date of the filing. The director may thereafter amend,

1 adopt, or readopt the regulations in accordance with the
2 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

3

4 18. This act shall take effect immediately and, unless the context
5 provides otherwise, shall apply to privilege periods ending on and
6 after December 31, 2019, except that:

7 section 11 shall apply to privilege periods ending on and after
8 July 31, 2020;

9 sections 6, 7, 9, and 16 shall apply retroactively to privilege
10 periods ending on and after July 31, 2019; and

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

17

18

19

STATEMENT

20

21 This bill amends the Corporation Business Tax Act by:

22 - clarifying the requirements for mandatory default combined
23 returns and elective combined returns;

24 - clarifying the research and development credit;

25 - clarifying the treatment of net operating losses that were part of
26 a merger or acquisition;

27 - clarifying the minimum tax;

28 - clarifying the dividends received exclusion;

29 - clarifying the tax base for combined groups and separate return
30 filers;

31 - clarifying the net operating loss carryover transfer program for
32 new or expanding emerging technology and biotechnology
33 companies;

34 - adding a corporation business tax credit for certain dividends
35 paid, in place of the current tiered dividend exclusion in order to
36 simplify the reduction of double taxation;

37 - clarifying that certain banking corporations must transition to,
38 or are permitted to transition to, a fiscal return filing basis;

39 - clarifying the treatment of the international banking facility in
40 relation to combined groups;

41 - clarifying return requirements for all corporation business
42 taxpayers; and

43 - requiring the Director of the Division of Taxation to modernize
44 and simplify return requirements for certain returns.

45 The bill makes numerous corrections and revisions to clarify and
46 simplify various aspects of the changes that were enacted as part of
47 P.L.2018, c.48 and P.L.2018, c.131. Those laws, among other
48 things, mandated mandatory unitary combined returns on a water's-

1 edge basis if no election for an affiliated group basis filing or
2 world-wide group basis filing had been made. The laws also
3 changed the application of the net operating losses from pre-
4 allocation (called pre-apportionment in other states) to post-
5 allocation (called post-apportionment in other states), updated the
6 research and development credit, and amended the dividend
7 received exclusion.

8 The bill requires, or permits, certain banking corporations to
9 transition to a fiscal reporting basis as opposed to the historic
10 calendar year basis, which will also help simplify reporting and
11 returns.

12 The bill corrects a citation in subparagraph (ii) of
13 subparagraph (A) of paragraph 5 of subsection (k) of
14 N.J.S.A.54:10A-4 so that it cites the subparagraph instead of the
15 whole subsection.

16 The bill prospectively repeals the dividend exclusion for certain
17 subsidiaries receiving dividends from other subsidiaries and
18 replaces it with a credit to simplify the reduction of double taxation
19 of tiered dividends. The bill prospectively adds a new subparagraph
20 which treats a combined group as one taxpayer to simplify and
21 make the application of the dividend exclusion more consistent.
22 This may result in more dividends and deemed dividends qualifying
23 for the 95 percent exclusion, but it will also ensure that the dividend
24 exclusion is more accurately calculated.

25 The bill makes technical corrections and clarifies the minimum
26 tax and the application of the tax rates under P.L.2018, c.48 and
27 P.L.2018, c.131. In addition to being taxed on the income from the
28 combined group, the bill clarifies that the income from the separate
29 activities will only be taxed if the member independently has nexus
30 with New Jersey. This is in line with United States Supreme Court
31 jurisprudence on the unitary business principle and combined
32 groups. Additionally, the bill clarifies that the rate applies to taxable
33 net income plus the non-operational income specifically assigned by
34 statute to New Jersey. The bill also clarifies that the minimum tax is
35 imposed on taxable members of the combined group, i.e. members
36 with nexus with New Jersey.

37 To provide for further simplification and modernization, the bill
38 requires taxpayers to include a copy of their federal return rather
39 than it be included at the director's discretion. This requirement is
40 part and parcel with the requirement mandated by this bill that the
41 director simplify and modernize the 2020 corporation business tax
42 returns. Currently there are four different returns: CBT-100, BFC-1,
43 CBT-100U, and CBT-100S.

44 The bill requires that for the 2020 returns, the director must
45 create a new simplified standardized return for separate return
46 filers, combined return filers, banking corporations, and financial
47 corporations, but the CBT-100S for New Jersey S Corporations that
48 do not elect to be included on a combined return will be maintained.

1 This is in line with other states who require submission of the
2 federal return, which facilitates simpler and more standardized
3 corporate tax returns. The bill also amends the due date of the
4 returns in order to facilitate the modernization and simplification of
5 the returns. In addition, there will be transitional returns for
6 banking corporations.

7 To simplify and clarify various aspects of combined reporting,
8 the bill specifically makes it clear that various provisions of the
9 federal Internal Revenue Code rules and regulations apply
10 regardless of how the members file, provided that such provisions
11 are consistent with the Corporation Business Tax Act.

12 The bill amends the New Jersey research and development credit
13 (N.J.S.A.54:10A-5.24) to make it consistent with the Division of
14 Taxation's position that as part of the changes under P.L.2018, c.48,
15 amounts paid or incurred by the taxpayer in carrying on any trade or
16 business of the taxpayer during the privilege period (including as
17 contributions) to an energy research consortium for energy research
18 also qualify as a basic research payment, since according to some
19 practitioners it had been ambiguous.

20 The bill further amends the New Jersey research and
21 development credit to allow certain expenses of a taxpayer that is a
22 qualified small business that had optionally taken a federal payroll
23 research and development credit in lieu of the regular corporate
24 income tax credit to qualify for the New Jersey credit. New Jersey
25 does not have a research payroll credit and these qualified small
26 business taxpayers would otherwise be penalized as a result of the
27 mechanics of the federal Internal Revenue Code (26 U.S.C. s.41(h)
28 and 26 U.S.C. s.3111(f)) merely because the federal research
29 payroll credit is a quicker option meant to help small businesses
30 continue developing their research.

31 The bill extends the treatment of a combined group as one
32 taxpayer to several other areas. Consistent with the unitary business
33 principle which originally stems from railroad property valuation
34 cases in the 1860's and subsequently extended to taxation of
35 multistate businesses and to combined reporting by the United
36 States Supreme Court over the past century, the bill extends the
37 unitary treatment to certain intercompany transfers that would be
38 subject to the realty transfer fee, the controlling interest transfer tax,
39 and certain bulk sales notification requirements.

40 Lastly, the bill ensures that the joint net operating loss carryover
41 transfer program for new or expanding emerging technology and
42 biotechnology companies continues (N.J.S.A.54:10A-4.2 and
43 N.J.S.A.34:1B-7.42a). Because of the changes that were part of
44 P.L.2018, c.48 and P.L.2018, c.131, the citation in that program to
45 paragraph (6) of subsection (k) of N.J.S.A.54:10A-4 is not accurate
46 for net operating losses and prior net operating losses conversion
47 carryover. Net operating loss carryovers are now calculated and
48 applied on a post-allocation basis pursuant to subsection (u), (v),

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1 and (w) of N.J.S.A.54:10A-4. Changing the citation to reference
2 prior net operating loss conversion carryover as well as net
3 operating loss carryover ensures that the program in
4 N.J.S.A.54:10A-4.2 and N.J.S.A.34:1B-7.42a continues and the
5 transferred amount is calculated properly. The bill also makes a
6 change to permit the sale of prior net operating loss conversion
7 carryover between members of a combined group at arm's length
8 price as part of the program in N.J.S.A.54:10A-4.2 and
9 N.J.S.A.34:1B-7.42a.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3007

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 22, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3007, with committee amendments.

The bill makes numerous corrections and revisions to clarify and simplify various aspects of the changes that were enacted as part of P.L.2018, c.48 and P.L.2018, c.131. Those laws, among other things, mandated mandatory unitary combined returns on a water's-edge basis if no election for an affiliated group basis filing or world-wide group basis filing had been made. The laws also changed the application of the net operating losses from pre-allocation (called pre-apportionment in other states) to post-allocation (called post-apportionment in other states), updated the research and development credit, and amended the dividend received exclusion.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) revise the dates on which certain provisions of the bill will first apply;
- 2) correct typographical errors;
- 3) provide that no penalties or interest shall accrue for underpayment of tax due to the retroactivity of parts of the bill;
- 4) provide that certain transfers of real property are not subject to the realty transfer fee; and
- 5) eliminate a provision from a Corporation Business Tax section of law which as introduced stated that a combined group shall be treated as one taxpayer for intercompany transfers for purposes of the realty transfer fee, the controlling interest transfer tax, and the bulk sales notice requirements. For sake of clarity, the requirement to treat a combined group as one taxpayer for intercompany transfers is instead put directly in the provisions of law dealing with the realty transfer fee, the controlling interest transfer tax, and the bulk sales notice requirements.

FISCAL IMPACT:

The Office of Legislative Services (OLS) is unable to determine the magnitude and direction of the bill's net impact on annual State revenues. The OLS notes that various changes proposed by the bill

would codify existing administrative practices implemented by the Division of Taxation following the enactment of P.L.2018, c.48. Given that these changes are technical in nature and meant to clarify and conform to current practices, the OLS does not expect those changes to yield a discernible fiscal impact. Numerous other provisions in the bill, however will impact annual State revenue collections. The OLS cannot quantify these impacts due to a lack of available information and access to taxpayer data.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3007 STATE OF NEW JERSEY 219th LEGISLATURE

DATED: OCTOBER 29, 2020

SUMMARY

- Synopsis:** Revises, clarifies, corrects, and simplifies various aspects of CBT.
- Type of Impact:** Annual net impact on State revenues.
- Agencies Affected:** Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2021 and Thereafter</u>
Net State Revenue Impact	Indeterminate

- The Office of Legislative Services (OLS) is unable to determine the magnitude and direction of the bill's net impact on annual State revenues. The OLS notes that various changes proposed by the bill would codify existing administrative practices previously implemented by the Division of Taxation. Given that these changes are technical in nature and meant to clarify and conform to current practices, the OLS does not expect those changes to yield a discernible fiscal impact. Numerous other provisions in the bill, however, will impact annual State revenue collections. The OLS cannot quantify these impacts due to a lack of available information and access to taxpayer data.
- The bill's changes to the State's realty transfer fee (RTF), controlling interest transfer tax (CITT), and bulk sale laws could reduce annual State revenues by an indeterminate amount. The impact of changes to the treatment of net operating losses and dividends on State revenues will vary, since each taxpayer is unique. Certain taxpayers may end up paying less taxes because of the changes while other taxpayers may be required to pay more.

BILL DESCRIPTION

This bill makes numerous corrections and revisions to clarify and simplify various aspects of the changes that were enacted as part of P.L.2018, c.48 and P.L.2018, c.131. Those laws, among

other things, mandated mandatory unitary combined returns on a water's-edge basis if no election for an affiliated group basis filing or world-wide group basis filing had been made. The laws also changed the application of the net operating losses from pre-allocation (called pre-apportionment in other states) to post-allocation (called post-apportionment in other states), updated the research and development credit, and amended the dividend received exclusion.

The bill excludes certain intercompany transfers of real property between combined group members from the State's RTF and CITT. The bill also excludes transactions that are intercompany transfers between combined group members from the State's bulk sale notification requirements.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS is unable to determine the magnitude and direction of the bill's net impact on annual State revenues. The OLS notes that various changes proposed by the bill would codify existing administrative practices previously implemented by the Division of Taxation. Given that these changes are technical in nature and meant to clarify and conform to current practices, the OLS does not expect those changes to yield a discernible fiscal impact. Numerous other provisions in the bill, however, will impact annual State revenue collections. The OLS cannot quantify these impacts due to a lack of available information and access to taxpayer data.

The bill would exclude certain intercompany transfers of real property between combined group members from the State's RTF and from the CITT. The bill would also exclude transactions that are intercompany transfers between combined group members from the State's bulk sale notification requirements. The bill's changes to the State's RTF, CITT, and bulk sale laws could reduce State revenues by an indeterminate amount. The OLS assumes that some of these intercompany transfers have been subject to these taxes and notification requirements but notes that the fiscal impact from those transfers has likely been insignificant.

Lastly, the bill modifies the treatment of net operating losses and dividends under the corporation business tax, which will have an impact on the tax base. The impact of these changes on State revenues will vary, since each taxpayer is unique. Certain taxpayers may end up paying less taxes because of the changes while other taxpayers may be required to pay more.

Section: Revenue, Finance and Appropriations
Analyst: Jordan M. DiGiovanni
Revenue Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Takes Action on Legislation

11/4/2020

TRENTON – Today, Governor Phil Murphy signed the following bill:

A-4809/S-3007 (Pintor Marin, Sumter, DiMaso/Sarlo, Singleton) - Revises, clarifies, corrects, and simplifies various aspects of CBT.