

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2018 **CHAPTER:** 48

NJSA:	54:10A-5.41 et al.	(Imposes surtax on corporation business tax liability; decouples certain provisions from Internal Revenue Code; imposes tax on certain dividends.)
--------------	--------------------	----------------------------------------------------------------------------------------------------------------------------------------------------

BILL NO: A4202 (Substituted for S2746)

SPONSOR(S) Pintor Marin and others

DATE INTRODUCED: 6/18/2018

COMMITTEE: **ASSEMBLY:** Budget

SENATE: ---

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 6/30/2018

SENATE: 7/1/2018

DATE OF APPROVAL: 7/1/2018

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First Reprint enacted) Yes

A4202

SPONSOR'S STATEMENT: (Begins on page 23 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

S2746

SPONSOR'S STATEMENT: (Begins on page 23 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

(continued)

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government
Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"How New Jersey almost made a \$7b tax mistake - corporations would have paid way more under bill,"
The Record, 6-28-2018

RWH

§1 –
C.54:10A-5.41
§2 - C.54:10A-6.5
§§18-24, 28, 29-
C.54:10A-4.6 to
54:10A-4.14
§32 - Repealer
§33 - Note

P.L. 2018, CHAPTER 48, *approved July 1, 2018*
Assembly, No. 4202 (*First Reprint*)

1 AN ACT concerning taxation, supplementing P.L.1945, c.162,
2 ¹**[and]**¹ amending various parts of the statutory law ¹, and
3 repealing section 30 of P.L.2002, c.40 (C.54:10A-18.1) and section
4 7 of P.L.2002, c.40 (C.54:10A-5a)¹.
5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:
8
9 1. (New section). a. In addition to the tax paid by each taxpayer
10 determined pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
11 each taxpayer, except for a public utility, shall be assessed and shall
12 pay a surtax as follows:
13 (1) For a taxpayer, except a public utility, that has ¹**[entire]**
14 allocated¹ net income in excess of \$1 million ¹**[**, but less than \$25
15 million¹ for the privilege ¹**[period]** periods, beginning on or after
16 January 1, 2018 through December 31, 2019¹, the surtax imposed shall
17 be 2.5%;
18 (2) For a taxpayer, except a public utility, that has ¹**[entire]**
19 allocated¹ net income in excess of ¹**[\$25]** \$1¹ million for the privilege
20 ¹**[period]** periods, beginning on or after January 1, 2020 through
21 December 31, 2021¹, the surtax imposed shall be ¹**[4%]** 1.5%¹.
22 b. ¹**[The surtax imposed pursuant to this section shall be upon a**
23 **taxpayer's allocated net income for the privilege period ending on or**
24 **after January 1, 2018 and upon a taxpayer's allocated net income for**
25 **the next following privilege period.]** For purposes of this section,
26 "taxpayer" shall mean any business entity required to report and pay
27 tax for federal income tax purposes, and shall include any business
28 entity subject to tax as provided in the Corporation Business Tax
29 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).¹
30 The surtax imposed under this section shall be due and payable in
31 accordance with section 15 of P.L.1945, c.162 (C.54:10A-15), and the

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 amendments adopted in accordance with Governor's recommendations June 30, 2018.

1 surtax shall be administered pursuant to the provisions of P.L.1945,
2 c.162 (C.54:10A-1 et seq.). Notwithstanding the provisions of any
3 other law to the contrary, no credits shall be allowed against the surtax
4 liability computed under this section except for credits for installment
5 payments, estimated payments made with a request for an extension of
6 time for filing a return, or overpayments from prior privilege periods.
7

8 2. (New section) For privilege periods beginning on and after
9 January 1, 2017, for the purposes of computing entire net income
10 pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer
11 shall not be allowed the amount of any deduction, exemption, or
12 credit allowed under the Internal Revenue Code for income reported
13 pursuant to section 965 of the Internal Revenue Code (26 U.S.C.
14 s.965).
15

16 ¹3. (New section) a. Notwithstanding the provisions of section
17 4 of P.L.1945, c.162 (C.54:10A-4) or any other law to the contrary,
18 as used in this section only:

19 “Dividends” means all dividends, including but not limited to
20 dividends actually paid, deemed dividends, and all other
21 distributions treated as dividends, under the Internal Revenue Code
22 or under the laws of the State of New Jersey.

23 “Gross domestic product” means the nominal gross domestic
24 product for the prior calendar year.

25 “Subsidiary” means a business entity of which the taxpayer has a
26 direct or indirect ownership interest regardless of its percentage of
27 ownership.

28 “Taxpayer” means a business entity required to report and pay
29 tax on dividends for federal income tax purposes and either (1) is
30 subject to tax pursuant to section 2 of P.L.1945, c.162 (C.54:10A-
31 2); or (2) has taxable premiums subject to the taxes imposed
32 pursuant to R.S.54:16-1 et seq., R.S.54:18-1 et seq., and P.L.1945,
33 c.132 (C.54:18A-1 et seq.), or any other law of this State imposing
34 a tax on insurance companies for insuring risks in this State.

35 b. For tax years beginning on or after January 1, 2017 and
36 ending before December 31, 2018, in addition to the tax paid by a
37 taxpayer pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a
38 taxpayer shall pay a tax equal to a rate of 9% applied to all of the
39 taxpayer’s dividends included in the taxpayer’s income for federal
40 income tax purposes pursuant to the Internal Revenue Code without
41 any deduction, exemption, or credit allowed under the Internal
42 Revenue Code or any credits, grants, or net operating losses
43 allowed under the laws of the State of New Jersey.

44 c. A taxpayer shall not be liable for the tax imposed by this
45 section, if so prohibited by any federal law, or if the total amount of
46 dividends which were included in computing such taxable income
47 for federal income tax purposes, paid to the taxpayer by one or

1 more subsidiaries owned by the taxpayer, are in aggregate less than
2 \$1,000,000 for the tax year.

3 d. In order for a taxpayer to determine its tax liability under
4 this section, the taxpayer shall use an allocation factor based on the
5 gross domestic product of the State over the total gross domestic
6 product of every state within the United States, the District of
7 Columbia, and every United States territory, regardless of how such
8 amounts taxed by this section are classified under section 5 of
9 P.L.1993, c.173 (C.54:10A-6.1); provided, however, the director
10 may adjust and provide relief pursuant to section 8 of P.L.1945,
11 c.162 (C.54:10A-8).

12 e. The tax imposed pursuant to this section shall not be deemed
13 a tax on capital stock or property and shall be added back for the
14 purposes of subparagraph (C) of paragraph (2) of subsection (k) of
15 section 4 of P.L. 1945, c.162 (C.54:10A-4).

16 f. Except as provided in subsection c. of this section, a
17 taxpayer shall be liable to pay the tax imposed by this section if the
18 taxpayer is subject to tax pursuant to section 2 of P.L.1945, c.162
19 (C.54:10A-2), or if the taxpayer is an insurance company licensed
20 to insure risks in this State.

21 g. The tax imposed pursuant to this section shall be due and
22 payable on or before May 15, 2019 on amounts which the taxpayer
23 reports for federal income tax purposes for tax years beginning on
24 or after January 1, 2017 and ending before December 31, 2018
25 pursuant to the Internal Revenue Code. The tax shall be reported on
26 a form prescribed by the director and shall be due and payable
27 regardless of whether the taxpayer elects to pay its federal tax
28 liability for the amount in installment payments.

29 h. A taxpayer paying the tax imposed pursuant to this section
30 shall be allowed a credit against the taxpayer's tax liability under
31 subsection b. of this section in an amount equal to the tax, if any,
32 paid on the same dividends under section 5 of P.L.1945, c.162
33 (C.54:10A-5). The credit allowed by this subsection shall only be
34 allowed to the extent the taxpayer paid tax on the dividends under
35 both this section and section 5 of P.L.1945, c.162 (C.54:10A-5). A
36 taxpayer shall not transfer the credit allowed pursuant to this
37 subsection to any other taxpayer.

38 i. The tax imposed pursuant to this section shall be
39 administered pursuant to the provisions of the State Uniform Tax
40 Procedure Law, R.S.54:48-1. Penalties and interest shall be applied
41 for failure to file and pay the tax imposed pursuant to this section.
42 No penalties or interest shall be imposed upon payment of the tax
43 imposed pursuant to this section if payment is made on or before
44 May 15, 2019.】¹

45
46 ¹【4.】 3. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended
47 to read as follows:

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

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

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

8 (c) "Corporation" shall mean any corporation, joint-stock company
9 or association and any business conducted by a trustee or trustees
10 wherein interest or ownership is evidenced by a certificate of interest
11 or ownership or similar written instrument, any other entity classified
12 as a corporation for federal income tax purposes, and any state or
13 federally chartered building and loan association or savings and loan
14 association.

15 (d) "Net worth" shall mean the aggregate of the values disclosed
16 by the books of the corporation for (1) issued and outstanding capital
17 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided
18 profits, and (4) surplus reserves which can reasonably be expected to
19 accrue to holders or owners of equitable shares, not including
20 reasonable valuation reserves, such as reserves for depreciation or
21 obsolescence or depletion. Notwithstanding the foregoing, net worth
22 shall not include any deduction for the amount of the excess
23 depreciation described in paragraph (2) (F) of subsection (k) of this
24 section. The foregoing aggregate of values shall be reduced by
25 ~~'[50%]~~ 100%¹ of the amount disclosed by the books of the
26 corporation for investment in the capital stock of one or more
27 subsidiaries, which investment is defined as ownership (1) of at least
28 80% of the total combined voting power of all classes of stock of the
29 subsidiary entitled to vote and (2) of at least 80% of the total number
30 of shares of all other classes of stock except nonvoting stock which is
31 limited and preferred as to dividends. In the case of investment in an
32 entity organized under the laws of a foreign country, the foregoing
33 requisite degree of ownership shall effect a like reduction of such
34 investment from the net worth of the taxpayer, if the foreign entity is
35 considered a corporation for any purpose under the United States
36 federal income tax laws, such as (but not by way of sole examples) for
37 the purpose of supplying deemed paid foreign tax credits or for the
38 purpose of status as a controlled foreign corporation. In calculating
39 the net worth of a taxpayer entitled to reduction for investment in
40 subsidiaries, the amount of liabilities of the taxpayer shall be reduced
41 by such proportion of the liabilities as corresponds to the ratio which
42 the excluded portion of the subsidiary values bears to the total assets of
43 the taxpayer.

44 In the case of banking corporations which have international
45 banking facilities as defined in subsection (n), the foregoing aggregate
46 of values shall also be reduced by retained earnings of the international
47 banking facility. Retained earnings means the earnings accumulated
48 over the life of such facility and shall not include the distributive share

1 of dividends paid and federal income taxes paid or payable during the
2 tax year.

3 If in the opinion of the [commissioner] director, the corporation's
4 books do not disclose fair valuations the [commissioner] director may
5 make a reasonable determination of the net worth which, in his
6 opinion, would reflect the fair value of the assets, exclusive of
7 subsidiary investments as defined aforesaid, carried on the books of
8 the corporation, in accordance with sound accounting principles, and
9 such determination shall be used as net worth for the purpose of this
10 act.

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

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

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

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

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

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

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

44 For the purpose of this act, the amount of a taxpayer's entire net
45 income shall be deemed prima facie to be equal in amount to the
46 taxable income, before net operating loss deduction and special
47 deductions, which the taxpayer is required to report, or, if the taxpayer
48 is classified as a partnership for federal tax purposes, would otherwise

1 be required to report, to the United States Treasury Department for the
2 purpose of computing its federal income tax, provided however, that in
3 the determination of such entire net income,

4 (1) Entire net income shall exclude for the periods set forth in
5 paragraph (2)(F)(i) of this subsection, any amount, except with respect
6 to qualified mass commuting vehicles as described in section
7 168(f)(8)(D)(v) of the Internal Revenue Code as in effect immediately
8 prior to January 1, 1984, which is included in a taxpayer's federal
9 taxable income solely as a result of an election made pursuant to the
10 provisions of paragraph (8) of that section.

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

13 (A) The amount of any **[specific]** exemption or credit allowed in
14 any law of the United States imposing any tax on or measured by the
15 income of corporations.

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

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

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

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

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

47 (ii) For the periods set forth in subparagraph (F)(i) of paragraph (2)
48 of this subsection, any amount, except with respect to qualified mass

1 commuting vehicles as described in section 168(f)(8)(D)(v) of the
2 Internal Revenue Code as in effect immediately prior to January 1,
3 1984, which the taxpayer claimed as a deduction in computing federal
4 income tax pursuant to a qualified lease agreement under paragraph (8)
5 of that section.

6 The director shall promulgate rules and regulations necessary to
7 carry out the provisions of this section, which rules shall provide,
8 among others, the manner in which the remaining life of property shall
9 be reported.

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

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

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

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

1 related member is equal to or greater than a rate three percentage
2 points less than the rate of tax applied to taxable interest by this State.

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

11 A deduction shall also be permitted to the extent that the taxpayer
12 establishes by a preponderance of the evidence, as determined by the
13 director, that the interest is directly or indirectly paid, accrued or
14 incurred to (i) a related member in a foreign nation which has in force
15 a comprehensive income tax treaty with the United States ¹["containing
16 an express exemption from state income taxation"] and the related
17 member (aa) was subject to tax in the foreign nation on a tax base that
18 included the payment paid, accrued, or incurred; and (bb) under which
19 the related member's income received from the transaction was taxed
20 at an effective tax rate equal to or greater than a rate of three
21 percentage points less than the rate of tax applied to taxable interest by
22 the State of New Jersey¹, provided however that the taxpayer shall
23 disclose on its return for the privilege period the name of the related
24 member, the amount of the interest, the relevant foreign nation, and
25 such other information as the director may prescribe or (ii) to an
26 independent lender and the taxpayer guarantees the debt on which the
27 interest is required. ¹Transactions between members of a combined
28 group are eliminated in the computation of the entire net income of the
29 members of the combined group; therefore, this subparagraph only
30 applies to interest paid, accrued or incurred by a taxable member of a
31 combined group to related parties that are not members of the
32 combined group.¹

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

1 substantial change, and result in a transformation of property into a
2 different or substantially more usable product.

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

10 (K) For privilege periods beginning after December 31, 2017, the
11 interest deduction limitation in subsection (j) of section 163 of the
12 Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-rata
13 basis to interest paid to both related and unrelated parties, regardless of
14 whether the related parties are subject to the add-back provision of
15 either subparagraph (I) of paragraph (2) of this subsection or in section
16 5 of P.L.2002, c.40 (C.54:10A-4.4).

17 (3) The **【commissioner】** director may, whenever necessary to
18 properly reflect the entire net income of any taxpayer, determine the
19 year or period in which any item of income or deduction shall be
20 included, without being limited to the method of accounting employed
21 by the taxpayer.

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

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

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

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

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

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

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

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

(5) (A) ¹(i) ¹Entire net income shall exclude 100% of dividends which were included in computing such taxable income for federal income tax purposes, paid to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section **[and]** for privilege periods ending on or before December 31, ¹**[2018]** 2016.

(ii) For the privilege period beginning after December 31, 2016, entire net income shall exclude 95% of dividends which were included in computing such taxable income for federal income tax purposes, paid or deemed paid, to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section. For the purposes of calculating the tax liability owed for the deemed dividends included in entire net income by this subsection, the taxpayer shall use either their three year average allocation factor for the taxpayer's 2015 through 2017 tax years reported on the taxpayer's tax returns or 3.5 percent, whichever is lower¹.

¹[(B)] (iii) ¹For privilege periods beginning on and after January 1, ¹**[2019]** 2018¹, entire net income shall exclude 95% of dividends which were included in computing such taxable income for federal income tax purposes, paid ¹or deemed paid¹ to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section.

¹(B) ¹Entire net income shall exclude 50% of dividends which were included in computing such taxable income for federal income tax purposes, paid ¹or deemed paid¹ to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of 50% or more ownership of investment, such ownership of investment calculated in the same manner as the 80% or more of ownership of investment is calculated as described in subsection (d) of this section.

¹(C) To the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income based on the subsidiary's allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).¹

(6) (A) Net operating loss deduction. ¹**[There]** For privilege periods before the effective date of P.L. , c. (pending before the Legislature as this bill), there¹ shall be allowed as a deduction for the privilege period the net operating loss carryover to that period.

1 (B) Net operating loss carryover. A net operating loss for any
2 privilege period ending after June 30, 1984 shall be a net operating
3 loss carryover to each of the seven privilege periods following the
4 period of the loss and a net operating loss for any privilege period
5 ending after June 30, 2009 shall be a net operating loss carryover to
6 each of the twenty privilege periods following the period of the loss.
7 The entire amount of the net operating loss for any privilege period
8 (the "loss period") shall be carried to the earliest of the privilege
9 periods to which the loss may be carried. The portion of the loss which
10 shall be carried to each of the other privilege periods shall be the
11 excess, if any, of the amount of the loss over the sum of the entire net
12 income, computed without the ¹~~["exclusions"]~~ exclusion¹ permitted in
13 ¹~~["paragraphs"]~~ paragraph¹ (4) ¹~~["and (5)"]~~¹ of this subsection or the net
14 operating loss deduction provided by subparagraph (A) of this
15 paragraph, for each of the prior privilege periods to which the loss may
16 be carried.

17 (C) Net operating loss. For purposes of this paragraph the term
18 "net operating loss" means the excess of the deductions over the gross
19 income used in computing entire net income without the net operating
20 loss deduction provided for in subparagraph (A) of this paragraph and
21 the ¹~~["exclusions in paragraphs (4) and (5)"]~~ exclusion in paragraph
22 (4)¹ of this subsection.

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

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

45 Provided, that this subparagraph (E) shall not restrict the surrender
46 or acquisition of corporation business tax benefit certificates pursuant
47 to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall not restrict

1 the application of corporation business tax benefit certificates pursuant
2 to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

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

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

36 (A) Depreciation for property placed in service prior to January 1,
37 1998 shall be adjusted as follows:

38 (i) Depreciation for federal income tax purposes shall be
39 disallowed in full.

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

1 sold, retired, or otherwise disposed of during any year on which gain
2 or loss is recognized for federal income tax purposes as described in
3 subparagraph (B) of this paragraph.

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

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

12 (8) In the case of taxpayers that are gas, electric, gas and electric,
13 or telecommunications public utilities as defined pursuant to
14 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 P.L.1997,
17 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 the
23 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 investing
26 or trading in stocks and securities for its own account, investing or
27 trading in commodities for its own account, or any combination of
28 those activities, within the meaning of section 864 of the federal
29 Internal Revenue Code of 1986, 26 U.S.C. s.864, as in effect on
30 December 31, 1998. Notwithstanding the previous sentence, if an alien
31 corporation undertakes one or more infrequent, extraordinary or non-
32 recurring activities, including but not limited to the sale of tangible
33 property, only the income from such infrequent, extraordinary or non-
34 recurring activity shall be subject to the tax imposed pursuant to
35 P.L.1945, c.162 (C.54:10A-1 et seq.), and that amount of income
36 subject to tax shall be determined without regard to the allocation to
37 that specific transaction of any general business expense of the
38 taxpayer and shall be specifically assigned to this State for taxation by
39 this State without regard to section 6 of P.L.1945, c.162 (C.54:10A-6).
40 For the purposes of this paragraph, "alien corporation" means a
41 corporation organized under the laws of a jurisdiction other than the
42 United States or its political subdivisions.

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

1 claimed pursuant to section 41 of the federal Internal Revenue Code of
2 1986, 26 U.S.C. s.41.

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

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

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

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

29 (14) Notwithstanding the provisions of subsection (i) of section
30 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
31 for privilege periods beginning after December 31, 2008 and before
32 January 1, 2011, entire net income shall include the amount of
33 discharge of indebtedness income excluded for federal income tax
34 purposes pursuant to subsection (i) of section 108 of the federal
35 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
36 periods beginning on or after January 1, 2014 and before January 1,
37 2019, entire net income shall exclude the amount of discharge of
38 indebtedness income included for federal income tax purposes,
39 pursuant to subsection (i) of section 108 of the federal Internal
40 Revenue Code of 1986 (26 U.S.C. s.108).

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

45 (16.) ¹Entire net income shall be determined without the
46 exclusion, exemption, deduction, or credit of any income exempt from
47 federal taxable income under any treaty obligation of the United
48 States, unless such exclusion, exemption, deduction, or credit is

1 explicitly made applicable to states under the express terms of a tax
2 treaty entered into by the United States.】 (A) There shall be allowed
3 as a deduction an amount computed in accordance with this paragraph.

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

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

16 (D) If the provisions of sections 18 through 22 of P.L. , c.
17 (C.) (pending before the Legislature as this bill) result in an
18 aggregate increase to the members' net deferred tax liability or an
19 aggregate decrease to the members' net deferred tax asset, or an
20 aggregate change from a net deferred tax asset to a net deferred tax
21 liability, the combined group shall be entitled to a deduction, as
22 determined in this paragraph.

23 (E) For 10 years beginning with the combined group's first
24 privilege period beginning on or after January 1 of the fifth year after
25 the effective date of P.L. , c. (C.) (pending before the
26 Legislature as this bill) becomes effective, a combined group shall be
27 entitled to a deduction from combined group entire net income equal
28 to one-tenth of the amount necessary to offset the increase in the net
29 deferred tax liability or decrease in the net deferred tax asset, or
30 aggregate change from a net deferred tax asset to a net deferred tax
31 liability. Such increase in the net deferred tax liability or decrease in
32 the net deferred tax asset or the aggregate change from a net deferred
33 tax asset to a net deferred tax liability shall be computed based on the
34 change that would result from the imposition of the unitary reporting
35 requirements under sections 1 through 17-21 of P.L. , c. (C.)
36 (pending before the Legislature as this bill) but for the deduction
37 provided under this paragraph as of the effective date of this
38 paragraph.

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

42 (i) the deferred tax impact determined in subparagraph (E) of this
43 paragraph shall be divided by the rate determined under section 5 of
44 P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L. , c.
45 (C.) (pending before the Legislature as this bill);

46 (ii) the resulting amount shall be further divided by the New Jersey
47 unitary business allocation factor that was used by the combined group

1 in the calculation of the deferred tax assets and deferred tax liabilities
2 as described in subparagraph (E) of this paragraph;

3 (iii) the resulting amount represents the total net Deferred Tax
4 Deduction available over the ten year period as described in
5 subparagraph (E) of this paragraph.

6 (G) The deduction calculated under this paragraph shall not be
7 adjusted as a result of any events happening subsequent to such
8 calculation, including, but not limited to, any disposition or
9 abandonment of assets. Such deduction shall be calculated without
10 regard to the federal tax effect and shall not alter the tax basis of any
11 asset. If the deduction under this section is greater than combined
12 group entire net income, any excess deduction shall be carried forward
13 and applied as a deduction to combined group entire net income in
14 future privilege periods until fully utilized.

15 (H) Any combined group intending to claim a deduction under this
16 paragraph shall file a statement with the director on or before July 1 of
17 the year subsequent to the first privilege period for which a combined
18 return is required. Such statement shall specify the total amount of the
19 deduction which the combined group claims on such form and in such
20 manner as prescribed by the director. No deduction shall be allowed
21 under this paragraph for any privilege period except to the extent
22 claimed on such timely filed statement in accordance with this
23 paragraph.¹

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

27 (m) "Financial business corporation" shall mean any corporate
28 enterprise which is (1) in substantial competition with the business of
29 national banks and which (2) employs moneyed capital with the object
30 of making profit by its use as money, through discounting and
31 negotiating promissory notes, drafts, bills of exchange and other
32 evidences of debt; buying and selling exchange; making of or dealing
33 in secured or unsecured loans and discounts; dealing in securities and
34 shares of corporate stock by purchasing and selling such securities and
35 stock without recourse, solely upon the order and for the account of
36 customers; or investing and reinvesting in marketable obligations
37 evidencing indebtedness of any person, copartnership, association or
38 corporation in the form of bonds, notes or debentures commonly
39 known as investment securities; or dealing in or underwriting
40 obligations of the United States, any state or any political subdivision
41 thereof, or of a corporate instrumentality of any of them. This shall
42 include, without limitation of the foregoing, business commonly
43 known as industrial banks, dealers in commercial paper and
44 acceptances, sales finance, personal finance, small loan and mortgage
45 financing businesses, as well as any other enterprise employing
46 moneyed capital coming into competition with the business of national
47 banks; provided that the holding of bonds, notes, or other evidences of
48 indebtedness by individual persons not employed or engaged in the

1 banking or investment business and representing merely personal
2 investments not made in competition with the business of national
3 banks, shall not be deemed financial business. Nor shall "financial
4 business" include national banks, production credit associations
5 organized under the Farm Credit Act of 1933 or the Farm Credit Act
6 of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
7 insurance companies duly authorized to transact business in this State,
8 security brokers or dealers or investment companies or bankers not
9 employing moneyed capital coming into competition with the business
10 of national banks, real estate investment trusts, or any of the following
11 entities organized under the laws of this State: credit unions, savings
12 banks, savings and loan and building and loan associations,
13 pawnbrokers, and State banks and trust companies.

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

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

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

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

42 (r) "Qualified investment partnership" means a partnership under
43 this act that has more than 10 members or partners with no member or
44 partner owning more than a 50% interest in the entity and that derives
45 at least 90% of its gross income from dividends, interest, payments
46 with respect to securities loans, and gains from the sale or other
47 disposition of stocks or securities or foreign currencies or commodities
48 or other similar income (including but not limited to gains from swaps,

options, futures or forward contracts) derived with respect to its business of investing or trading in those stocks, securities, currencies or commodities, but "investment partnership" shall not include a "dealer in securities" within the meaning of section 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

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

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

¹(u) "Prior net operating loss conversion carryover" means a net operating loss incurred in a privilege period prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) and converted from a pre-allocation net operating loss to a post-allocation net operating loss as follows:

(1) As used in this subsection:

"Base year" means the last privilege period prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

"Base year BAF" means the taxpayer's business allocation factor as provided in sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

"UNOL" means the unabsorbed portion of net operating loss as calculated under paragraph (6) of subsection (k) of this section as such paragraph was in effect for the last privilege period prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year subject to the limitations for deduction under such subsection, including any net operating loss sustained by the taxpayer during the base year.

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

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

(B) The taxpayer shall continue to carry over its prior net operating loss conversion carryover to offset its allocated entire net income as provided in sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) for privilege periods beginning on and after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). Such carryover periods shall not exceed the twenty privilege periods following the privilege period of the initial loss. The entire amount of the prior net operating loss conversion carryover for any

1 privilege period shall be carried to the earliest of the privilege periods
2 to which the loss may be carried. The portion of the prior net
3 operating loss conversion carryover which shall be carried to each of
4 the other privilege periods shall be the excess, if any, of the amount of
5 the prior net operating loss conversion carryover over the sum of the
6 entire net income, computed without the exclusion permitted in
7 paragraph (4) of subsection (k) of this section allocated to this state.

8 (C) The prior net operating loss conversion carryover computed
9 under this subsection shall be applied against the entire net income
10 allocated to this State before the net operating loss carryover computed
11 under subsection (v) of this section.

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

15 (1) Net operating loss carryover. A net operating loss for any
16 privilege period beginning on or after the effective date of this Act
17 shall be a net operating loss carryover to each of the twenty privilege
18 periods following the period of the loss. The entire amount of the net
19 operating loss for any privilege period shall be carried to the earliest of
20 the privilege periods to which the loss may be carried. The portion of
21 the loss which shall be carried to each of the other privilege periods
22 shall be the excess, if any, of the amount of the loss over the sum of
23 the entire net income, computed without the exclusion permitted in
24 paragraph (4) of subsection (k) of this section allocated to this State.

25 (2) Net operating loss. For purposes of this paragraph the term "net
26 operating loss" means the excess of the deductions over the gross
27 income used in computing entire net income, without regard to any net
28 operating loss carryover, and computed without the exclusion in
29 paragraph (4) of subsection (k) of this section, allocated to this State
30 pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6
31 through 54:10A-8).

32 (3) Reduction for discharge of indebtedness. A net operating loss
33 for any privilege period beginning after the effective date of this act,
34 and any net operating loss carryover to such privilege period, shall be
35 reduced by the amount excluded from federal taxable income under
36 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
37 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108, for
38 the privilege period of the discharge of indebtedness.

39 (4) A net operating loss carryover shall not include any net
40 operating loss incurred during any privilege period beginning prior to
41 the effective date of P.L. , c. (C.) (pending before the Legislature
42 as this bill).

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

1 (x) "Affiliated group" means an affiliated group as defined in
2 section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504,
3 except such affiliated group shall include all domestic corporations
4 that are commonly owned, directly or indirectly, by any member of
5 such affiliated group, without regard to whether the affiliated group
6 includes (1) corporations included in more than one federal
7 consolidated return, (2) corporations engaged in one or more unitary
8 businesses, or (3) corporations that are not engaged in a unitary
9 business with any other member of the affiliated group.

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

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

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

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

22 (4) 50% or less of whose gross receipts for the privilege period
23 consist of premiums from arrangements that constitute insurance for
24 federal income tax purposes.

25 For purposes of this definition:

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

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

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

44 (z) "Combined group" means the group of all companies that have
45 common ownership and are engaged in a unitary business, where at
46 least one company is subject to tax under this chapter, except as
47 provided in paragraph k of section 17 of P.L. , c. (C.) (pending
48 before the Legislature as this bill).

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

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

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

21 (dd) “Member” means a corporation that is a part of a combined
22 group.

23 (ee) “Nontaxable member” means a member that is not subject to
24 tax pursuant to the Corporation Business Tax Act (1945), P.L.1945,
25 c.162 (C.54:10A-1 et seq.) and is not a corporation exempted from the
26 tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3) except for a
27 combinable captive insurance company. (ii) a New Jersey S
28 Corporation which does not elect to be included in the combine group.

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

32 (gg) “Unitary business” means a single economic enterprise that is
33 made up either of separate parts of a single business entity or of a
34 group of business entities under common ownership that are
35 sufficiently interdependent, integrated, and interrelated through their
36 activities so as to provide a synergy and mutual benefit that produces a
37 sharing or exchange of value among them and a significant flow of
38 value among the separate parts. “Unitary business” shall be construed
39 to the broadest extent permitted under the Constitution of the United
40 States. A business conducted by a partnership which is in a unitary
41 business with the combined group shall be treated as the business of
42 the partners that are members of the combined group, whether the
43 partnership interest is held directly or indirectly through a series of
44 partnerships, to the extent of a partner’s distributive share of
45 partnership income. The amount of partnership income to be included
46 in the partner’s entire net income shall be determined in accordance
47 with section 3 of P.L.2001, c. 136 (C.54:10A-15.6(a)). A business
48 conducted directly or indirectly by one corporation is unitary with that

1 portion of a business conducted by another corporation through its
2 direct or indirect interest in a partnership.¹

3 (cf: P.L.2017, c.313, s.4)

4
5 ¹**[5.] 4.**¹ Section 5 of P.L.2002, c.40 (C.54:10A-4.4) is amended
6 to read as follows:

7 5. a. For the purposes of this section:

8 "Intangible expenses and costs" includes (1) expenses, losses and
9 costs for, related to, or in connection directly or indirectly with the
10 direct or indirect acquisition, use, maintenance or management,
11 ownership, sale, exchange, or any other disposition of intangible
12 property to the extent such amounts are allowed as deductions or costs
13 in determining taxable income before operating loss deduction and
14 special deductions for the taxable year under the federal Internal
15 Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses related to, or
16 incurred in connection directly or indirectly with, factoring
17 transactions or discounting transactions; (3) royalty, patent, technical
18 and copyright fees; (4) licensing fees; and (5) other similar expenses
19 and costs.

20 "Intangible property" means patents, patent applications, trade
21 names, trademarks, service marks, copyrights, mask works, trade
22 secrets and similar types of intangible assets.

23 "Interest expenses and costs" means amounts directly or indirectly
24 allowed as deductions under section 163 of the federal Internal
25 Revenue Code of 1986, 26 U.S.C. s.163, for purposes of determining
26 taxable income under the code to the extent such expenses and costs
27 are directly or indirectly for, related to, or in connection with the direct
28 or indirect acquisition, maintenance, management, ownership, sale,
29 exchange or disposition of intangible property.

30 "Related member" means a person that, with respect to the
31 taxpayer during all or any portion of the privilege period, is: (1) a
32 related entity, (2) a component member as defined in subsection (b) of
33 section 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
34 s.1563, (3) is a person to or from whom there is attribution of stock
35 ownership in accordance with subsection (e) of section 1563 of the
36 federal Internal Revenue Code of 1986, 26 U.S.C. s.1563, or (4) is a
37 person that, notwithstanding its form of organization, bears the same
38 relationship to the taxpayer as a person described in (1) through (3) of
39 this definition.

40 "Related entity" means (1) a stockholder who is an individual, or a
41 member of the stockholder's family enumerated in section 318 of the
42 federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
43 stockholder and the members of the stockholder's family own, directly,
44 indirectly, beneficially or constructively, in the aggregate, **[at least]**
45 50% or more of the value of the taxpayer's outstanding stock; (2) a
46 stockholder, or a stockholder's partnership, limited liability company,
47 estate, trust or corporation, if the stockholder and the stockholder's
48 partnerships, limited liability companies, estates, trusts and

1 corporations own directly, indirectly, beneficially or constructively, in
2 the aggregate, **[at least]** 50% or more per cent of the value of the
3 taxpayer's outstanding stock; or (3) a corporation, or a party related to
4 the corporation in a manner that would require an attribution of stock
5 from the corporation to the party or from the party to the corporation
6 under the attribution rules of the federal Internal Revenue Code of
7 1986, 26 U.S.C. s.318, if the taxpayer owns, directly, indirectly,
8 beneficially or constructively, **[at least]** 50% or more percent of the
9 value of the corporation's outstanding stock. The attribution rules of
10 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, shall
11 apply for purposes of determining whether the ownership requirements
12 of this definition have been met.

13 b. For purposes of computing its entire net income under section
14 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add back
15 otherwise deductible interest expenses and costs and intangible
16 expenses and costs directly or indirectly paid, accrued or incurred to,
17 or in connection directly or indirectly with one or more direct or
18 indirect transactions with, one or more related members.

19 c. (1) The adjustments required in subsection b. of this section
20 shall not apply if: (a) the interest expenses and costs and intangible
21 expenses and costs are directly or indirectly paid, accrued or incurred
22 to a related member in a foreign nation which has in force a
23 comprehensive income tax treaty with the United States ¹**[containing**
24 **an express exemption from state income taxation]** **and the (i) related**
25 **member was subject to tax in the foreign nation on a tax base that**
26 **included the payment paid, accrued, or incurred and (ii) the related**
27 **member's income received from the transaction was taxed at an**
28 **effective tax rate equal to or greater than a rate of three percentage**
29 **points less than the rate of tax applied to taxable interest by the State**
30 **of New Jersey**¹ ; or (b) the taxpayer establishes by clear and
31 convincing evidence, as determined by the director, that the
32 adjustments are unreasonable; or (c) the taxpayer and the director
33 agree in writing to the application or use of an alternative method of
34 apportionment under section 8 of P.L.1945, c.162 (C.54:10A-8).
35 Nothing in this subsection shall be construed to limit or negate the
36 director's authority to otherwise enter into agreements and
37 compromises otherwise allowed by law.

38 (2) For the purposes of qualifying for the exception provided by
39 subparagraph (a) of paragraph (1) of this subsection, the taxpayer shall
40 disclose on its return for the privilege period the name of the related
41 member, the amount of the interest expenses and costs and intangible
42 expenses and costs deducted, the relevant foreign nation, and such
43 other information as the director may prescribe.

44 (3) The adjustments required in subsection b. of this section shall
45 not apply to the portion of interest expenses and costs and intangible
46 expenses and costs that the taxpayer establishes by a preponderance of
47 the evidence meets both of the following: (a) the related member

1 during the same income year directly or indirectly paid, received,
2 accrued or incurred the portion to or from a person that is not a related
3 member, and (b) the transaction giving rise to the interest expenses and
4 costs or the intangible expenses and costs between the taxpayer and
5 the related member did not have as a principal purpose the avoidance
6 of any portion of the tax due under Title 54 of the Revised Statutes or
7 Title 54A of the New Jersey Statutes.

8 d. Nothing in this section shall require a taxpayer to add to its net
9 income more than once any amount of interest expenses and costs and
10 intangible expenses and costs that the taxpayer pays, accrues or incurs
11 to a related member described in subsection b. of this section.

12 e. Nothing in this section shall be construed to limit or negate the
13 director's authority to make adjustments under paragraph (3) of
14 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section 8
15 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
16 (C.54:10A-10).

17 (cf: P.L.2002, c.40, s.5)

18
19 ¹5. Section 5 of P.L.1945, c.162 (C.54:10A-5) is amended to read
20 as follows:

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

34 The amount computed pursuant to this section shall be the sum of
35 the amount computed under subsection (a) hereof, or in the alternative
36 to the amount computed under subsection (a) hereof, the amount
37 computed under subsection (f) hereof, and the amount computed under
38 subsection (c) hereof:

39 (a) That portion of its entire net worth as may be allocable to this
40 State as provided in section 6, multiplied by the following rates: 2
41 mills per dollar on the first \$100,000,000.00 of allocated net worth;
42 4/10 of a mill per dollar on the second \$100,000,000.00; 3/10 of a mill
43 per dollar on the third \$100,000,000.00; and 2/10 of a mill per dollar
44 on all amounts of allocated net worth in excess of \$300,000,000.00;
45 provided, however, that with respect to reports covering accounting or
46 privilege periods set forth below, the rate shall be that percentage of
47 the rate set forth in this subsection for the appropriate year:

1	Accounting or Privilege	
2	Periods Beginning on or	The Percentage of the Rate
3	after:	to be Imposed Shall be:
4	April 1, 1983	75%
5	July 1, 1984	50%
6	July 1, 1985	25%
7	July 1, 1986	0
8	(b) (Deleted by amendment, P.L.1968, c.250, s.2.)	
9	(c) (1) For a taxpayer that is not a New Jersey S corporation, 3	
10	1/4% of its entire net income or such portion thereof as may be	
11	allocable to this State as provided in section sections 6 through 8 of	
12	P.L.1945, c.162 [(C.54:10A-6)] (C.54:10A-6 through C.54:10A-8),	
13	plus such portion thereof as is specifically assigned to this State as	
14	provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided,	
15	however, that with respect to reports covering accounting or privilege	
16	periods or parts thereof ending after December 31, 1967, the rate shall	
17	be 4 1/4%; and that with respect to reports covering accounting or	
18	privilege periods or parts thereof ending after December 31, 1971, the	
19	rate shall be 5 1/2%; and that with respect to reports covering	
20	accounting or privilege periods or parts thereof ending after December	
21	31, 1974, the rate shall be 7 1/2%; and that with respect to reports	
22	covering privilege periods or parts thereof ending after December 31,	
23	1979, the rate shall be 9%; provided however, that for a taxpayer that	
24	has entire net income of \$100,000 or less for a privilege period and is	
25	not a partnership the rate for that privilege period shall be 7 1/2% and	
26	provided further that for a taxpayer that has entire net income of	
27	\$50,000 or less for a privilege period and is not a partnership the rate	
28	for that privilege period shall be 6 1/2%.	
29	<u>For privilege periods beginning on or after the effective date of</u>	
30	<u>P.L. _____, c. (pending before the Legislature as this bill), the tax rate</u>	
31	<u>shall be applied against the net income.</u>	
32	(2) For a taxpayer that is a New Jersey S corporation:	
33	(i) for privilege periods ending on or before June 30, 1998 the rate	
34	determined by subtracting the maximum tax bracket rate provided	
35	under N.J.S.54A:2-1 for the privilege period from the tax rate that	
36	would otherwise be applicable to the taxpayer's entire net income for	
37	the privilege period if the taxpayer were not an S corporation provided	
38	under paragraph (1) of this subsection for the privilege period; and	
39	(ii) For a taxpayer that has entire net income in excess of \$100,000	
40	for the privilege period, for privilege periods ending on or after July 1,	
41	1998, but on or before June 30, 2001, the rate shall be 2%,	
42	for privilege periods ending on or after July 1, 2001, but on or before	
43	June 30, 2006, the rate shall be 1.33%,	
44	for privilege periods ending on or after July 1, 2006, but on or before	
45	June 30, 2007, the rate shall be 0.67%, and	
46	for privilege periods ending on or after July 1, 2007 there shall be no	
47	rate of tax imposed under this paragraph; and	

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

6 (iv) The taxpayer's rate determined under subparagraph (i), (ii) or
7 (iii) of this paragraph shall be multiplied by its entire net income that
8 is not subject to federal income taxation or such portion thereof as may
9 be allocable to this State pursuant to sections 6 through ~~10~~ 8 of
10 P.L.1945, c.162 (C.54:10A-6 through ~~54:10A-10~~ 54:10A-8) plus
11 such portion thereof as is specifically assigned to this State as provided
12 in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

13 (3) For a taxpayer that is a New Jersey S corporation, in addition
14 to the amount, if any, determined under paragraph (2) of this
15 subsection, the tax rate that would otherwise be applicable to the
16 taxpayer's entire net income for the privilege period if the taxpayer
17 were not an S corporation provided under paragraph (1) of this
18 subsection for the privilege period multiplied by its entire net income
19 that is subject to federal income taxation or such portion thereof as
20 may be allocable to this State pursuant to sections 6 through ~~10~~ 8 of
21 P.L.1945, c.162 (C.54:10A-6 through ~~54:10A-10~~ 54:10A-8). For
22 privilege periods beginning on or after the effective date of P.L. , c.
23 (C.) (pending before the Legislature as this bill), the tax rate shall be
24 applied against taxable net income.

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

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

1 a regulated investment company shall be as provided in the following
2 schedule:

3	Period Beginning	Domestic	Foreign
4	In Calendar Year	Corporation	Corporation
5		Minimum Tax	Minimum Tax
6	1994	\$ 50	\$100
7	1995	\$100	\$200
8	1996	\$150	\$200
9	1997	\$200	\$200
10	1998	\$200	\$200
11	1999	\$200	\$200
12	2000	\$200	\$200
13	2001	\$210	\$210

14 and for calendar years 2002 through 2005 the minimum tax for all
15 taxpayers shall be \$500, and for calendar year 2006 through calendar
16 year 2011 the minimum tax for all corporations, and for privilege
17 periods beginning in calendar year 2012 and thereafter the minimum
18 tax for corporations that are not New Jersey S corporations shall be
19 based on the New Jersey gross receipts【, as defined for the purposes of
20 this section pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a),】 of
21 the taxpayer pursuant to the following schedule:

22	New Jersey Gross Receipts:	Minimum Tax:
23	Less than \$100,000	.....\$500
24	\$100,000 or more but	
25	less than \$250,000	.....\$750
26	\$250,000 or more but	
27	less than \$500,000	.....\$1,000
28	\$500,000 or more but	
29	less than \$1,000,000	.....\$1,500
30	\$1,000,000 or more	.....\$2,000

31 and for privilege periods beginning in calendar year 2012 and
32 thereafter the minimum tax for corporations that are New Jersey S
33 corporations shall be based on the New Jersey gross receipts 【, as
34 defined for the purposes of this section pursuant to section 7 of
35 P.L.2002, c.40 (C.54:10A-5a),】 of the taxpayer pursuant to the
36 following schedule:

37	New Jersey Gross Receipts:	Minimum Tax:
38	Less than \$100,000	.....\$375
39	\$100,000 or more but	
40	less than \$250,000	.....\$562.50
41	\$250,000 or more but	
42	less than \$500,000	.....\$750
43	\$500,000 or more but	
44	less than \$1,000,000	.....\$1,125
45	\$1,000,000 or more	.....\$1,500

46 provided however, that for a taxpayer that is a member of an affiliated
47 group or a controlled group pursuant to section 1504 or 1563 of the
48 federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, and

1 whose group has total payroll of \$5,000,000 or more for the privilege
2 period, the minimum tax shall be \$2,000 for the privilege 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 value
5 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 3
15 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 the
18 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 (C.54:10A-
24 15.11).

25 (i) (Deleted by amendment, P.L.2008, c.120)¹
26 (cf: P.L.2011, c.84, s.1)

27
28 ¹6. 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 amount
33 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], as in effect on June 30, 1992,
39 and provided that subsection (h) of 26 U.S.C. s.41 relating to
40 termination shall not apply]. Provided however, that the terms
41 “qualified research expenses,” “base amount,” “qualified organization
42 base amount period,” “basic research” and any other terms determined
43 by the Director of the Division of Taxation to affect the calculation of
44 the credit shall include only expenditures for research conducted in
45 this State.

46 b. No credit shall be allowed under section 42 of P.L.1987, c.102
47 (C.54:10A-5.3), or under the “Manufacturing Equipment and
48 Employment Investment Tax Credit Act,” P.L.1993, c.171 (C.54:10A-

1 5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for
2 property or expenditures for which a credit is allowed, or which are
3 includable in the calculation of a credit allowed, under this section.

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

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

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

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

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

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

29 (cf: P.L.2011, c.83, s.1)

30
31 ¹7. Section 6 of P.L.1945, c.162 (C.54:10A-6) is amended to read
32 as follows:

33 6. The portion of a taxpayer's entire net worth to be used as a
34 measure of the tax imposed by subsection (a) of section 5 of P.L.1945,
35 c.162 (C.54:10A-5), and the portion of its entire net income to be used
36 as a measure of the tax imposed by subsection (c) of section 5 of
37 P.L.1945, c.162 (C.54:10A-5), shall be determined by multiplying
38 such entire net worth and entire net income, respectively, by an
39 allocation factor which is the property fraction, plus twice the sales
40 fraction plus the payroll fraction and the denominator of which is
41 four, and which, for privilege periods beginning on or after January 1,
42 2012, is the sum of the portions of the property fraction, the sales
43 fraction, and the payroll fraction determined in accordance with the
44 following schedule:

45 for privilege periods beginning on or after January 1, 2012 but
46 before January 1, 2013, 15% of the property fraction plus 70% of the
47 sales fraction plus 15% of the payroll fraction, for privilege periods
48 beginning on or after January 1, 2013 but before January 1, 2014, 5%

1 of the property fraction plus 90% of the sales fraction plus 5% of the
2 payroll fraction, and for privilege periods beginning on or after
3 January 1, 2014, 100% of the sales fraction, except as the director may
4 determine pursuant to section 8 of P.L.1945, c.162 (C.54:10A-8), that
5 is:

6 (A) The property fraction is the average value of the taxpayer's real
7 and tangible personal property within the State during the period
8 covered by its report divided by the average value of all the taxpayer's
9 real and tangible personal property wherever situated during such
10 period; provided, however, that for the purpose of determining average
11 value, the provisions with respect to depreciation as set forth in
12 subparagraph (F) of paragraph (2) of subsection (k) of section 4 of
13 P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving
14 at such value.

15 (B) The sales fraction is the receipts of the taxpayer, computed on
16 the cash or accrual basis according to the method of accounting used in
17 the computation of its net income for federal tax purposes, arising
18 during such period from:

19 (1) sales of its tangible personal property located within this State
20 at the time of the receipt of or appropriation to the orders where
21 shipments are made to points within this State,

22 (2) sales of tangible personal property located without the State at
23 the time of the receipt of or appropriation to the orders where shipment
24 is made to points within the State,

25 (3) (Deleted by amendment.)

26 (4) **【services performed within the State,】** (i) sales of services, if
27 the benefit of the service is received at a location in this State. If the
28 benefit of the service is received both at a location within and outside
29 this State, the portion of the sale that is allocated to this State is based
30 on the percentage of the total value of the benefit of the service
31 received at a location in this State or a reasonable approximation to the
32 total value of the benefit of the service received in all locations both
33 within and outside this State; (ii) if the state or states of assignment of
34 services under subparagraph (i) of this paragraph cannot be determined
35 for a customer who is an individual that is not a sole proprietor, the
36 benefit of the service is deemed to be received at the customer's billing
37 address; (iii) if the state or states of assignment of services under
38 subparagraph (i) cannot be determined for a customer, except for a
39 customer under subparagraph (ii) of this paragraph, the benefit of the
40 service is deemed to be received at the location from which the
41 services were ordered in the customer's regular course of operations.
42 If the location from which the services were ordered in the customer's
43 regular course of operations cannot be determined, the benefit of the
44 service is deemed to be received at the customer's billing address,

45 (5) rentals from property situated, and royalties from the use of
46 patents or copyrights, within the State,

47 (6) all other business receipts (excluding dividends excluded from
48 entire net income by paragraph (1) of subsection (k) of section 4 of

1 P.L.1945, c.162 (C.54:10A-4)) earned within the State, divided by the
2 total amount of the taxpayer's receipts, similarly computed, arising
3 during such period from all sales of its tangible personal property,
4 services, rentals, royalties and all other business receipts, whether
5 within or without the State.

6 (C) The payroll fraction is the total wages, salaries and other
7 personal service compensation, similarly computed, during such
8 period of officers and employees within the State divided by the total
9 wages, salaries and other personal service compensation, similarly
10 computed, during such period of all the taxpayer's officers and
11 employees within and without the State.

12 In the case of a banking corporation which maintains a regular place of
13 business outside this State other than a statutory office, and which
14 elects to take the exclusion from net worth provided in subsection (d)
15 of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from
16 entire net income provided in paragraph (4) of subsection (k) of
17 section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall
18 be computed and applied in accordance with section 6 of P.L.1945,
19 c.162 (C.54:10A-6); provided, however, that the numerators and the
20 denominators of the fractions described in (A), (B) or (C) above shall
21 include all amounts attributable, directly or indirectly, to the
22 production of the eligible net income of an international banking
23 facility as defined in paragraph (4) of subsection (k) of section 4 of
24 P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are
25 otherwise attributable to this State.¹

26 (cf: P.L.2011, c.59, s.1)

27
28 ¹8. Section 26 of P.L. 2002, c. 40 (C.54:10A-6.2) is amended to
29 read as follows:

30 26. a. (1) For the purposes of determining the receipts from
31 services **【performed】** within the State under paragraph (4) of
32 subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6), **【and for**
33 **the purposes of paragraph (3) of the definition of New Jersey gross**
34 **receipts pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a),】** the
35 receipts from the services of a registered securities or commodities
36 broker or dealer and the receipts from asset management services shall
37 be from services **【performed】** within the State if the customer is
38 located within this State.

39 b. For purposes of this subsection:

40 "Asset management services" means the rendering of investment
41 advice, making determinations as to when sales and purchases are to
42 be made, or the selling or purchasing of assets, and related activities;

43 "Securities" has the meaning provided by paragraph (2) of
44 subsection (c) of section 475 of the federal Internal Revenue Code of
45 1986, 26 U.S.C. s.475;

1 “Commodities” has the meaning provided by paragraph (2) of
2 subsection (e) of section 475 of the federal Internal Revenue Code of
3 1986, 26 U.S.C. s.475; and

4 “Registered securities or commodities broker or dealer” means a
5 broker or dealer registered as such by the federal Securities and
6 Exchange Commission or the federal Commodities Futures Trading
7 Commission.¹

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

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

12 10. a. Whenever it shall appear to the director that any taxpayer
13 fails to maintain its records in accordance with sound accounting
14 principles or conducts its business or maintains its records in such
15 manner as either directly or indirectly to distort its true entire net
16 income or its true entire net worth under this act or the proportion
17 thereof properly allocable to this State, or whenever any taxpayer
18 maintains a place of business outside this State, or whenever any
19 agreement, understanding or arrangement exists between a taxpayer
20 and any other corporation or any person or firm, for the purpose of
21 evading tax under this act, or whereby the activity, business, receipts,
22 expenses, assets, liabilities, income or net worth of the taxpayer are
23 improperly or inaccurately reflected, the director is authorized and
24 empowered, in the director’s discretion and in such manner as the
25 director may determine, to adjust and redetermine such items, and to
26 adjust items of gross receipts, tangible or intangible property and
27 payrolls within and without the State and the allocation of entire net
28 income or entire net worth or to make any other adjustments in any tax
29 report or tax returns as may be necessary to make a fair and reasonable
30 determination of the amount of tax payable under this act.

31 b. Where (1) any taxpayer conducts its activity or business under
32 any agreement, arrangement or understanding in such manner as either
33 directly or indirectly to benefit its members or stockholders, or any of
34 them, or any person or persons directly or indirectly interested in such
35 activity or business, by entering into any transaction at more or less
36 than a fair price which, but for such agreement, arrangement or
37 understanding, might have been paid or received therefor, or (2) any
38 taxpayer, a substantial portion of whose capital stock is owned either
39 directly or indirectly by or through another corporation, enters into any
40 transaction with such other corporation on such terms as to create an
41 improper loss or net income, the director may include in the entire net
42 income of the taxpayer the fair profits which, but for such agreement,
43 arrangement or understanding, the taxpayer might have derived from
44 such transaction. The director may require any person or corporation
45 to submit such information under oath or affirmation, or to permit such
46 examination of its books, papers and documents, as may be necessary
47 to enable the director to determine the existence, nature or extent of an
48 agreement, understanding or arrangement to which this section relates,

1 whether or not such person or corporation is subject to the tax imposed
2 by this act.

3 c. **【**The entire net income of a taxpayer exercising its franchise in
4 this State that is a member of an affiliated group or a controlled group
5 pursuant to section 1504 or 1563 of the federal Internal Revenue Code
6 of 1986, 26 U.S.C. s.1504 or 1563, shall be determined by eliminating
7 all payments to, or charges by, other members of the affiliated or
8 controlled group in excess of fair compensation in all inter-group
9 transactions of any kind. Notwithstanding the elimination of all inter-
10 group transactions in excess of fair compensation, if the taxpayer
11 cannot demonstrate by clear and convincing evidence that a report by a
12 taxpayer discloses the true earnings of the taxpayer on its business
13 carried on in this State, the director may, at the director's discretion,
14 require the taxpayer to file a consolidated return of the entire
15 operations of the affiliated group or controlled group, including its
16 own operations and income to the extent permitted under the
17 Constitution and statutes of the United States. The director shall
18 determine the true amount of entire net income earned by the taxpayer
19 in this State. The consolidated entire net income of the taxpayer and
20 of the other members of its affiliated group or controlled group shall
21 be allocated to this State by use of the applicable allocation formula
22 that the director requires pursuant to P.L.1945, c.162 (C.54A:10A-1 et
23 seq.) be used by the taxpayer. The return shall include in the
24 allocation formula the property, payrolls, and sales of all corporations
25 for which the return is made. The director may require a consolidated
26 return under this section without regard to whether the other members
27 of the affiliated or controlled group, other than the taxpayer, are or are
28 not exercising their franchises in this State.

29 A consolidated return required by this section shall be filed within 60
30 days after it is demanded, subject to the penalties of the State Uniform
31 Tax Procedure Law, R.S.54:48-1 et seq.

32 The member of an affiliated group or a controlled group shall
33 incorporate in its return required under this section information needed
34 to determine under this section its taxable entire net income, and shall
35 furnish any additional information the director requires, subject to the
36 penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.
37 A taxpayer shall furnish any additional information requested within
38 30 days after it is demanded, subject to the penalties of the State
39 Uniform Tax Procedure Law, R.S.54:48-1 et seq.**】** (Deleted by
40 amendment, P.L. , c. (pending before the Legislature as this bill))¹
41 (cf: P.L.2002, c.40, s.10)

42
43 ¹10. Section 14 of P.L.1945, c.162 (C.54:10A-14) is amended to
44 read as follows:

45 (a) The director may by **【**general rule**】** regulation or by special
46 notice require any taxpayer to submit copies or pertinent extracts of its
47 federal income tax returns, or of any other tax return **【**made to**】** filed

1 with any agency of the federal government, or of this or any other
 2 state, or of any statement or registration made pursuant to any state or
 3 federal law pertaining to securities or securities exchange regulation.

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

14 (c) Each taxpayer filing a return that is a member of **an affiliated**
 15 **group or a controlled group pursuant to section 1504 or 1563 of the**
 16 **federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563** a
 17 commonly owned group or a combined group shall, upon the request
 18 of the director and 90 days' notice thereof, disclose in its return for the
 19 privilege period the amount of all inter-member costs or expenses,
 20 including but not limited to management fees, rents, and other
 21 services, for the privilege period. If the taxpayer acquires products or
 22 services from another member of its **affiliated group or controlled**
 23 **group** commonly owned group or a combined group, which it re-sells
 24 or otherwise uses to generate revenue, the taxpayer shall, upon the
 25 request of the director and 90 days' notice thereof, disclose the amount
 26 of revenue generated from those products or services. The director
 27 shall promulgate rules and procedures for the manner of disclosure. A
 28 failure to file such a disclosure shall be deemed the filing of an
 29 incomplete tax return, subject to the penalties of the State Uniform Tax
 30 Procedure Law, R.S.54:48-1 et seq.¹

31 (cf: P.L.2002, c.40, s.11)

32
 33 ¹**[6.] 11.**¹ Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is
 34 amended to read as follows:

35 49. Every domestic or foreign corporation subject to the tax or
 36 to filing requirements imposed under the Corporation Business Tax
 37 Act (1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), shall keep all
 38 records used to determine its tax liability and such other records as
 39 the Director of the Division of Taxation may by regulation require.
 40 The records shall be available for inspection and examination at any
 41 time upon demand by the director or his duly authorized agent or
 42 employee and shall be preserved for a period of five years, except
 43 that the director may consent to their destruction within that period
 44 or may require that they be kept longer.

45 (cf: P.L.1987, c.76, s.49)

1 ¹**[7.]** 12.¹ Section 17 of P.L.1945, c.162 (C.54:10A-17) is
2 amended to read as follows:

3 17. (a) If the period covered by the report under this act is other
4 than the period covered by the report to the United States Treasury
5 Department or is a period of less than 12 calendar months, the
6 **[commissioner]** director may, under regulations prescribed by him,
7 determine the entire net worth and entire net income of the
8 taxpayer in such manner as shall properly reflect its entire net worth
9 and entire net income for the period covered by its report under this
10 act.

11 (b) Any taxpayer which shall fail to file its return when due or
12 to pay any tax when the same becomes due, as herein provided,
13 shall be subject to such penalties and interest as provided in the
14 State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the
15 Revised Statutes. The **[commissioner]** director, if satisfied that
16 the failure to comply with any provision of this act was excusable,
17 may abate or remit the whole or part of any penalty.

18 (cf: P.L.1975, c.177, s.9)

19

20 ¹**[8.]** 13.¹ Section 20 of P.L.1945, c.162 (C.54:10A-20) is
21 amended to read as follows:

22 20. In addition to other remedies for the collection of the tax
23 imposed by this chapter, the Attorney-General may of his own
24 motion or upon the request of the **[commissioner]** director,
25 whenever any tax due under this chapter shall have remained in
26 arrears for a period of three months after the tax shall have become
27 payable, bring an action in the Superior Court in the name of the
28 State, against such corporation for injunctive relief to restrain it
29 from the exercise of any franchise, or the transaction of any
30 business within this State until the payment of such tax and
31 penalties and interest due thereon, and the costs of such
32 application, to be fixed by the court. The court may proceed in the
33 action in a summary manner or otherwise and may grant the
34 injunctive relief, if a proper case appear. Upon the granting and
35 service of the order or judgment giving injunctive relief, it shall not
36 be lawful for such company thereafter to exercise any franchise or
37 transact any business in this State until such injunction be
38 dissolved.

39 (cf: P.L.1953, c.51, s.116)

40

41 ¹**[9.]** 14.¹ Section 21 of P.L.1945, c.162 (C.54:10A-21) is
42 amended to read as follows:

43 21. In the event of failure or neglect of any taxpayer which is a
44 foreign corporation to pay the tax imposed by this chapter, on or
45 before the first day of December in each year, immediate notice
46 thereof may be given by the **[commissioner]** director to the
47 Secretary of State who shall immediately revoke the certificate of

1 authority of said corporation to do business in the State of New
2 Jersey and notice of such revocation shall be given by the Secretary
3 of State to the corporation affected and thereafter such corporation,
4 so far as the further transaction of business in the State of New
5 Jersey is concerned, shall be in the same condition as if no
6 certificate of authority had ever been issued to it by the Secretary
7 of State, but remedies provided by this chapter for the collection of
8 the tax and interest and penalties shall remain unimpaired. After
9 the revocation of any such certificate of authority, no new
10 certificate shall be issued by the Secretary of State to such
11 defaulting corporation until the payment of all assessments
12 imposed hereunder and remaining unpaid with penalties and
13 interest and any costs that may have accrued, such payment to be
14 evidenced by a certificate of the **【commissioner】** director.

15 (cf: P.L.1945, c.162, s.21)

16
17 ¹**【10.】** 15.¹ Section 28 of P.L.1945, c.162 (C.54:10A-27) is
18 amended to read as follows:

19 28. The **【commissioner】** director shall prescribe and issue such
20 rules and regulations, not inconsistent herewith, for the
21 interpretation and application of the provisions of this act, as he
22 may deem necessary.

23 (cf: P.L.1945, c.162, s.28)

24
25 ¹**【11.】** 16.¹ Section 29 of P.L.1945, c.162 (C.54:10A-28) is
26 amended to read as follows:

27 29. This act shall take effect January first, one thousand nine
28 hundred and forty-six, except that the **【commissioner】** director may
29 prior thereto take such action as he may deem appropriate in
30 anticipation of or in preparation for the operation of the provisions
31 hereof, and except further that the appropriation contained herein
32 for the reduction of the State school tax shall be first made for the
33 fiscal year beginning July first, one thousand nine hundred and
34 forty-six.

35 (cf: P.L.1945, c.162, s.29)

36
37 ¹**【12.】** 17.¹ Section 4 of P.L.1947, c.51 (C.54:10A-30) is
38 amended to read as follows:

39 4. The **【Commissioner】** director upon written application made
40 to him and upon the payment of a fee of five dollars (\$5.00), may
41 release any property from the lien of any tax, interest or penalty
42 imposed upon any corporation in accordance with the provisions of
43 this act or of chapters thirteen or thirty-two-A of Title 54 of the
44 Revised Statutes, or of any certificate, judgment or levy procured
45 by him; provided, payment be made to the **【commissioner】**
46 director of such sum as he shall deem adequate consideration for
47 such release or deposit be made of such security or such bond be

1 filed as the **【commissioner】 director** shall deem proper to secure
2 payment of any debt evidenced by any such tax, interest, penalty,
3 certificate, judgment or levy, the lien of which is sought to be
4 released, or provided the **【commissioner】 director** is satisfied that
5 payment of the tax is otherwise provided for. The application for
6 such release shall be in such form as shall be prescribed by the
7 **【commissioner】 director** and shall contain an accurate description
8 of the property to be released together with such other information
9 as the **【commissioner】 director** may require. Such release shall be
10 given under the seal of the **【commissioner】 director**, and may be
11 recorded in any office in which conveyances of real estate may be
12 recorded.

13 (cf: P.L.1947, c.51, s.4)

14
15 ¹18. (New section) A taxable member of a combined group shall
16 determine its entire net income from the unitary business as its share of
17 the entire net income of the combined group in accordance with a
18 combined unitary tax return made pursuant to this section and sections
19 19, 20, and 23 of P.L. , c. (C.) (pending before the Legislature
20 as this bill). The entire net income from the unitary business of a
21 combined group is the sum of the entire net incomes of each taxable
22 member and each nontaxable member of the combined group derived
23 from the unitary business, which shall be determined as follows:

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

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

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

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

17 d. All dividends paid by one member to another member of the
18 combined group shall be eliminated from the income of the 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 the
23 occurrence of either of the events set forth in subparagraphs (1) and (2)
24 of this subsection, deferred income resulting from an intercompany
25 transaction among members of a combined group shall be restored to
26 the income of the seller and shall be included in the net income of the
27 combined group as if the seller had earned the income immediately
28 before the event:

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

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

40 f. A charitable expense incurred by a member of a combined
41 group shall, to the extent allowable as a deduction pursuant to section
42 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, be
43 subtracted first from the combined group's entire net income, subject
44 to the income limitations of that section applied to the entire business
45 income of the group. A charitable deduction disallowed under section
46 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, but
47 allowed as a carryover deduction in a subsequent privilege period,
48 shall be treated as originally incurred in the subsequent year by the

1 same member and the provisions of this section shall apply in the
2 subsequent privilege period in determining the allowable deduction for
3 that privilege period.

4 g. A prior net operating loss conversion carryover incurred by a
5 member of a combined group shall be deducted from the entire net
6 income or loss allocated to this state pursuant to section 19 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill) as follows:

8 (1) Such prior net operating loss conversion carryover deduction
9 shall be allowed to offset only the entire net income allocated to this
10 state of the corporation that created the prior net operating loss; the
11 prior net operating loss conversion carryover cannot be shared with
12 other members of the combined group.

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

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

23 h. A net operating loss carryover incurred by a member of a
24 combined group shall be deducted from entire net income or loss
25 allocated to this state pursuant to section 19 of P.L. , c. (C.)
26 (pending before the Legislature as this bill) as follows:

27 (1) For privilege periods beginning on or after the first day of the
28 initial privilege period for which a combined unitary tax return is
29 required under this section and sections 19, 20, and 23 of P.L. , c.
30 (C.) (pending before the Legislature as this bill), if the computation
31 of a combined group's entire net income allocated to this state results
32 in a net operating loss, a taxable member of such group may carry over
33 the net operating loss allocated to this state, as calculated under this
34 section and sections 19 and 23 of P.L. , c. (C.) (pending before
35 the Legislature as this bill), and shall be deductible from entire net
36 income derived from the unitary business in a future privilege period
37 to the extent that the carryover and deduction is otherwise consistent
38 with subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4).

39 (2) Where a taxable member of a combined group has a net
40 operating loss carryover derived from a loss incurred by a combined
41 group in a privilege period beginning on or after the first day of the
42 initial privilege period for which a combined unitary tax return is
43 required under this section and sections 19, 20, and 23 of P.L. , c.
44 (C.) (pending before the Legislature as this bill), then the taxable
45 member may share the net operating loss carryover with other taxable
46 members of the combined group if such other taxable members were
47 members of the combined group in the privilege period that the loss
48 was incurred. Any amount of net operating loss carryover that is

1 deducted by another taxable member of the combined group shall
2 reduce the amount of net operating loss carryover that may be carried
3 over by the taxable member that originally incurred the loss.

4 (3) Where a taxable member of a combined group has a net
5 operating loss carryover derived from a loss incurred in a privilege
6 period during which the taxable member was not a member of such
7 combined group, the carryover shall remain available to be deducted
8 by that taxable member or other group members that, in the year the
9 loss was incurred, were part of the same combined group as such
10 taxable member. Such carryover shall not be deductible by any other
11 members of the combined group.

12 (4) A net operating loss carryover shall not include any net
13 operating loss incurred during any privilege period beginning prior to
14 the first day of the initial privilege period for which a combined
15 unitary tax return is required under this section and sections 19 and 23
16 of P.L. , c. (C.) (pending before the legislature as this bill).

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

19 (1) If a taxable member of a combined group earns a tax credit in
20 a privilege period beginning on or after the first day of the initial
21 privilege period for which a combined unitary tax return is required
22 under this section and sections 19, 20, and 23 of P.L. , c. (C.)
23 (pending before the Legislature as this bill), then the taxable member
24 may share the credit with other taxable members of the combined
25 group. Any amount of credit that is utilized by another taxable member
26 of the combined group shall reduce the amount of credit carryover that
27 may be carried over by the taxable member that originally earned the
28 credit. If a taxable member of a combined group has a tax credit
29 carryover derived from a privilege period beginning on or after the
30 first day of the initial privilege period for which a combined unitary
31 tax return is required under this section and sections 19, 20, and 23 of
32 P.L. , c. (C.) (pending before the Legislature as this bill), then
33 the taxable member may share the carryover credit with other taxable
34 members of the combined group.

35 (2) If a taxable member of a combined group has a tax credit
36 carryover derived from a privilege period beginning prior to the first
37 day of the initial privilege period for which a combined unitary tax
38 return is required under this section and sections 19, 20, and 23 of
39 P.L. , c. (C.) (pending before the Legislature as this bill), then
40 the taxable member may share the carryover credit with other taxable
41 members of the combined group.

42 (3) If a taxable member of a combined group has a tax credit
43 carryover derived from a privilege period during which the taxable
44 member was not a member of such combined group, the credit
45 carryover shall remain available to be utilized by such taxable member
46 or other group members.

47 (4) To the extent a taxable member has more than one corporation
48 business tax credit that it may utilize in a privilege period, whether

1 such credits were earned by said member or are available to said
2 member in accordance with paragraphs (1), (2) and (3) of this
3 subsection, the order of priority of the application of the credits shall
4 be as prescribed by the director.

5 j. An expense of a member of the combined group that is directly
6 or indirectly attributable to the income of any member of the combined
7 group, which income this State is prohibited from taxing pursuant to
8 the laws or Constitution of the United States, shall be disallowed as a
9 deduction for purposes of determining the combined group's entire net
10 income.

11 k. Nothing in this section shall apply to:

12 (1) A corporation or combined group which is licensed, in whole
13 or in part, as an insurance company under the laws of this State or of
14 another state, including corporations which are surplus lines insurers
15 declared eligible by the Commissioner of Banking and Insurance
16 pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks
17 within this State that is not a combinable captive insurance company.
18 Notwithstanding a provision, if any, to the contrary in this section, the
19 income of an insurance company that is not a combinable captive
20 insurance company, the allocation or apportionment of income related
21 thereto and the apportionment factors of an insurance company that is
22 not a combinable captive insurance company shall not be included in a
23 combined unitary tax return filed under this section and sections 19,
24 20, and 23 of P.L. , c. (C.) (pending before the Legislature as
25 this bill). In addition, the dividend exclusion provisions of paragraph
26 (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4)
27 relating to dividends paid by insurance companies to non-insurance
28 companies included in the unitary group shall not be affected by P.L. ,
29 c. (C.) (pending before the Legislature as this bill).

30 (2) A corporation that is regulated, in whole or in part, by the
31 Federal Energy Regulatory Commission, the New Jersey Board of
32 Public Utilities or similar regulatory body of another state, with
33 respect to rates charged to customers for electric or gas services.

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

37 ¹19. (New section) A taxable member of a combined group shall
38 determine its allocation factor for determining its share of the entire
39 net income of the combined group, as determined pursuant to the
40 provisions of section 18 of P.L. , c. (C.) (pending before the
41 Legislature as this bill), pursuant to sections 6 through 8 of P.L.1945,
42 c.162 (C.54:10A-6 through 54:10A-8); provided however:

43 a. In computing its denominator for the sales fraction, the taxable
44 member shall use the combined group's denominator for that fraction.
45 In computing the numerator of its sales fraction, each taxable member
46 shall be treated as a separate taxpayer and that taxable member's
47 numerator will include only that taxable member's receipts assignable
48 to this state.

1 b. All business income of a combined group engaged in the
2 transportation of freight by air or ground shall be apportioned to this
3 state by multiplying the income by a fraction, the numerator of which
4 is the ton miles traveled by the combined group's mobile assets in this
5 State by type of mobile asset and the denominator of which is the total
6 ton miles traveled by the combined group's mobile assets everywhere.
7 This section applies, if 50 per cent or more of the combined group's
8 entire net income is derived from the transportation of freight by air or
9 ground.

10 c. In determining the numerator and denominator of the allocation
11 factors of taxable members, transactions between or among members
12 of the combined group shall be eliminated.

13 d. The director shall promulgate rules and regulations necessary to
14 carry out the provisions of this section.¹

15
16 ¹20. (New section) a. A combined group shall file a combined
17 unitary tax return under this section in the form and manner prescribed
18 by the director. The managerial member of the combined group shall
19 file the combined unitary tax return on behalf of the taxable members
20 of the combined group and shall pay the tax on behalf of such taxable
21 members. The managerial member is authorized to file taxable
22 member returns, file taxable member extensions for filing, pay taxable
23 member liabilities, receive taxable member findings, assessments, and
24 notices, make and receive taxable member claims, or file taxable
25 member protests and appeals.

26 b. The privilege period for which the group shall file shall be
27 determined as the privilege period of the managerial member. If a
28 member of a combined group has a different fiscal or calendar
29 accounting period from the group privilege period, that member with a
30 different period shall report amounts from its return for its fiscal or
31 calendar accounting year that ends during the group privilege period,
32 provided no such reporting of amounts shall be required of such
33 member until its first privilege period beginning on or after the first
34 day of the initial privilege period of the managerial member for which
35 a combined unitary tax return is required under this section and
36 sections 18, 19 and 23 of P.L. , c. (C.) (pending before the
37 Legislature as this bill).

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

43 d. If a combined group is eligible to select the managerial
44 member of the combined group, notice of the selection shall be
45 submitted in written form to the director not later than the due date, or,
46 if an extension of time to file has been requested and granted, not later
47 than the extended due date of the combined unitary tax return for the
48 initial privilege period for which such return is required. The

1 subsequent selection of another designated taxable member shall be
2 subject to the approval of the director.

3 e. For purposes of this section:

4 (1) Any notice shall be sent to the managerial member of the
5 combined group at the last known address of the managerial member
6 as indicated on either the last filing required or made under this
7 Chapter or a subsequent electronic or written notice provided by the
8 managerial member under rules prescribed by the director;

9 (2) The director may, at the director's sole discretion: (a) make any
10 deficiency assessment against either the managerial member or a
11 taxable member of the combined group; (b) refund or credit any
12 overpayment to either the managerial member or a taxable member of
13 the combined group; (c) require any payment to be made by electronic
14 funds transfer; and (d) require the combined unitary tax return to be
15 electronically filed.

16 f. The director shall promulgate rules and regulations necessary to
17 carry out the provisions of this section.¹
18

19 ¹21. (New section) A combined group filing a combined return
20 that has any outstanding alternative minimum assessment credit or
21 credits at the time of the effective date of the repeal of section 7 of
22 P.L.2002, c.40 (C.54:10A-5a) shall be allowed to use the credit to
23 offset the combined group's net deferred tax liability resulting from
24 the transition to a mandatory unitary combined return. For purposes of
25 this section, "net deferred tax liability" shall mean the net increase, if
26 any, in deferred tax liabilities minus the net increase, if any, in
27 deferred tax assets of the combined group, as computed in accordance
28 with generally accepted accounting principles, that is the result of the
29 transition from filing separate returns to filing a mandatory unitary
30 combined return. The remaining balance of the credit carryovers of
31 members of the combined group from prior to the effective date of the
32 repeal of section 7 of P.L.2002, c.40 (C.54:10A-5a) shall not reduce
33 the combined tax liability below 50% of the tax owed by the group.
34 The remaining balance of the credit may be carried over until used by
35 the combined group¹
36

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

1 successive privilege periods, except as otherwise provided for by the
2 director.

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

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

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

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

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

39 g. For privilege periods beginning on and after January 1, 2019 a
40 combined group must file a mandatory combined return. However, if
41 privilege periods of the members of the combined group differ, the
42 first mandatory combined return for the combined group shall be
43 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 member
46 dissolves, a merger of any kind occurs, a member withdraws from the
47 group, a member ceases doing business, a member of the group is

1 acquired by a third party not in the group, or additional members enter
2 group which are required to be included.

3 i. Any notice shall be sent to the managerial member of the
4 combined group at the last known address of the managerial member
5 as indicated on either the last filing required or made under this
6 Chapter or a subsequent electronic or written notice provided by the
7 managerial member under rules prescribed by the director.

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

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

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

13 (3) require any payment to be made by electronic funds transfer;

14 and

15 (4) require the mandatory combined return to be filed
16 electronically.¹

17
18 ¹23. (New section) a. The managerial member of a combined
19 group may elect to have the combined group determined on a world-
20 wide basis or an affiliated group basis. If no such election is made, the
21 combined group shall be determined on a water's-edge basis and will
22 take into account the incomes and allocation factors of only the
23 following members of the combined group:

24 (1) each member incorporated in the United States, or formed
25 under the laws of the United States, any state, the District of
26 Columbia, or any territory or possession of the United States,
27 excluding such a member if eighty per cent or more of both its
28 property and payroll during the privilege period are located outside the
29 United States, the District of Columbia, and any territory or possession
30 of the United States;

31 (2) each member, wherever incorporated or formed, if twenty per
32 cent or more of both its property and payroll during the privilege
33 period are located in the United States, the District of Columbia, or
34 any territory or possession of the United States;

35 (3) any member that earns more than 20% of its income, directly
36 or indirectly, from intangible property or related service activities that
37 are deductible against the income of other members of the combined
38 group;

39 (4) each member that has income as defined under the Corporation
40 Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and
41 has sufficient nexus in New Jersey pursuant to section 2 of P.L.1945,
42 c.162 (C.54:10A-2).

43 b. A world-wide election or an affiliated group election is
44 effective only if made on a timely filed, original return for a privilege
45 period by the managerial member of the combined group. Such
46 election is binding for, and applicable to, the privilege period for
47 which it is made and for the five immediately succeeding privilege
48 periods. Provided however, the election can be revoked prior to the

1 expiration of the binding period by written request to the Director of
2 Taxation for reasonable cause including but not limited to a substantial
3 change in ownership, members of the combined group or principal
4 business, or changes in tax law, regulation or policy.

5 c. If the managerial member elects to determine the members of a
6 combined group on an affiliated group basis, the taxable members
7 shall take into account the entire net income or loss and allocation
8 factors of all of the members of its affiliated group, regardless of
9 whether such members are engaged in a unitary business, that are
10 subject to tax or would be subject to tax under this chapter, if doing
11 business in this State.

12 d. The director shall promulgate rules and regulations necessary to
13 carry out the provisions of this section.¹
14

15 ¹24. (New section) Following the enactment of P.L. , c.
16 (C.)(pending before the Legislature as this bill), no penalties or
17 interest shall accrue for underpayment of tax for the provisions of
18 P.L., c. (C.)(pending before the Legislature as this bill) applying
19 retroactively to tax years beginning on or after January 1, 2017, that
20 create an additional tax liability due to the provisions of P.L. , c.
21 (C.)(pending before the Legislature as this bill), provided, however,
22 the additional payments must be made by either the second next
23 estimated payment subsequent to the enactment of P.L. ,c.
24 (C.)(pending before the Legislature as this bill), by December 31,
25 2018 for tax years beginning on or after January 1, 2017, or by the first
26 estimated payment due after January 1, 2019 for tax years beginning
27 on or after January 1, 2018. In the first tax year that a mandatory
28 combined return is due pursuant to P.L. , c. (C.)(pending before
29 the Legislature as this bill), no penalties or interest shall accrue due to
30 underpayment that may result from the switch from separate returns to
31 mandatory combined returns, and any overpayment by a member of
32 the combined group from the prior tax year will be credited as an
33 overpayment of the tax owed by the combined group, credited toward
34 future estimated payments by the combined group.¹
35

36 ¹25. Section 27 of P.L.2002, c.40 (C.54:10A-4.5) is amended as
37 follows:

38 27. a. Notwithstanding any provision of subsection (k) of section
39 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal Revenue
40 Code, including but not limited to 26 U.S.C. s.381 or any successor or
41 equivalent provision, that permits a corporation to use the net
42 operating losses of another for federal income tax purposes following
43 certain transactions, including but not limited to those qualifying as
44 reorganizations under the provisions of subparagraph (A), (C), (D), (F)
45 or (G) of paragraph (1) of subsection (a) of section 368 of the federal
46 Internal Revenue Code, 26 U.S.C. s.368, a net operating loss for a
47 privilege period ending after June 30, 1984, may be carried over and
48 allowed as a deduction only by the corporation that sustained the loss;

1 provided, however, that in the case of a merger of two or more
2 corporations pursuant to statute of this State or any other jurisdiction,
3 the net operating loss may be carried over only by the corporation that
4 sustained the loss and that is also the surviving corporation following
5 the merger. The net operating loss may not be carried over by a
6 taxpayer that changes its state of incorporation. **【No net operating loss**
7 **shall be allowed as a deduction by a corporation resulting from a**
8 **consolidation pursuant to statute of this State or of any other**
9 **jurisdiction.】**

10 b. Subsection a. of this section shall not apply between members
11 of a combined group reported on a combined return in New Jersey, or
12 between members of a commonly owned group reported on the
13 elective combined return in New Jersey.¹

14 (cf: P.L.2002, c.40, s.27).
15

16 ¹26. N.J.S.54A:5-1 is amended to read as follows:

17 54A:5-1. New Jersey Gross Income Defined. New Jersey gross
18 income shall consist of the following categories of income:

19 a. Salaries, wages, tips, fees, commissions, bonuses, and other
20 remuneration received for services rendered whether in cash or in
21 property, and amounts paid or distributed, or deemed paid or
22 distributed, out of a medical savings account that are not excluded
23 from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-
24 27).

25 b. Net profits from business. The net income from the operation
26 of a business, profession or other activity after provision for all costs
27 and expenses incurred in the conduct thereof, determined either on a
28 cash or accrual basis in accordance with the method of accounting
29 allowed for federal income tax purposes but without deduction of the
30 amount of:

31 (1) taxes based on income;

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

1 (3) treble damages paid to the Department of Environmental
2 Protection pursuant to subsection a. of section 7 of P.L.1976, c.141
3 (C.58:10-23.11f) for costs incurred by the department in removing, or
4 arranging for the removal of, an unauthorized discharge upon the
5 failure of the discharger to comply with a directive from the
6 department to remove, or arrange for the removal of, a discharge.

7 c. Net gains or income from disposition of property. Net gains or
8 net income, less net losses, derived from the sale, exchange or other
9 disposition of property, including real or personal, whether tangible or
10 intangible as determined in accordance with the method of accounting
11 allowed for federal income tax purposes. For the purpose of
12 determining gain or loss, the basis of property shall be the adjusted
13 basis used for federal income tax purposes, except as expressly
14 provided for under this act, but without a deduction for penalties, fines,
15 or economic benefits excepted pursuant to paragraph (2), or for treble
16 damages excepted pursuant to paragraph (3) of subsection b. of this
17 section.

18 A taxpayer's net gain or loss on the sale, exchange or other
19 disposition of a share of an S corporation shall be calculated by
20 increasing the adjusted basis of the share by an amount equal to the
21 shareholder's net losses and deductions in respect of the share allowed
22 and deducted from income for federal income tax purposes, not
23 including any personal net operating loss deductions, to the extent that
24 such net losses were not offset by the taxpayer's pro rata share of S
25 corporation income otherwise subject to taxation pursuant to
26 subsection p. of this section in respect of another S corporation,
27 subject to rules of priority and assignment determined by the director.

28 For the tax year 1976, any taxpayer with a tax liability under this
29 subsection, or under the "Tax on Capital Gains and Other Unearned
30 Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject
31 to payment of an amount greater than the amount he would have paid
32 if either return had covered all capital transactions during the full tax
33 year 1976; provided, however, that the rate which shall apply to any
34 capital gain shall be that in effect on the date of the transaction. To the
35 extent that any loss is used to offset any gain under P.L.1975, c.172, it
36 shall not be used to offset any gain under the "New Jersey Gross
37 Income Tax Act," N.J.S.54A:1-1 et seq.

38 The term "net gains or income" shall not include gains or income
39 derived from obligations which are referred to in clause (1) or (2) of
40 N.J.S.54A:6-14 of this act or from securities which evidence
41 ownership in a qualified investment fund as defined in section 2 of
42 P.L.1987, c.310 (C.54A:6-14.1). **【The term "net gains or income"**
43 **shall not include gains or income derived from the sale or assignment**
44 **of a tax credit transfer certificate pursuant to section 7 of P.L.2011,**
45 **c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).】**
46 The term "net gains or net income" shall not include gains or income
47 from transactions to the extent to which nonrecognition is allowed for
48 federal income tax purposes. The term "sale, exchange or other

1 disposition” shall not include the exchange of stock or securities in a
2 corporation a party to a reorganization in pursuance of a plan of
3 reorganization, solely for stock or securities in such corporation or in
4 another corporation a party to the reorganization and the transfer of
5 property to a corporation by one or more persons solely in exchange
6 for stock or securities in such corporation if immediately after the
7 exchange such person or persons are in control of the corporation. For
8 purposes of this clause, stock or securities issued for services shall not
9 be considered as issued in return for property.

10 For purposes of this clause, the term “reorganization” means--

11 (i) A statutory merger or consolidation;

12 (ii) The acquisition by one corporation, in exchange solely for all
13 or part of its voting stock (or in exchange solely for all or a part of the
14 voting stock of a corporation which is in control of the acquiring
15 corporation) of stock of another corporation if, immediately after the
16 acquisition, the acquiring corporation has control of such other
17 corporation (whether or not such acquiring corporation had control
18 immediately before the acquisition);

19 (iii) The acquisition by one corporation, in exchange solely for all
20 or part of its voting stock (or in exchange solely for all or a part of the
21 voting stock of a corporation which is in control of the acquiring
22 corporation), of substantially all of the properties of another
23 corporation, but in determining whether the exchange is solely for
24 stock the assumption by the acquiring corporation of a liability of the
25 other, or the fact that property acquired is subject to a liability, shall be
26 disregarded;

27 (iv) A transfer by a corporation of all or a part of its assets to
28 another corporation if immediately after the transfer the transferor, or
29 one or more of its shareholders (including persons who were
30 shareholders immediately before the transfer), or any combination
31 thereof, is in control of the corporation to which the assets are
32 transferred;

33 (v) A recapitalization;

34 (vi) A mere change in identity, form, or place of organization
35 however effected; or

36 (vii) The acquisition by one corporation, in exchange for stock of
37 a corporation (referred to in this subclause as “controlling
38 corporation”) which is in control of the acquiring corporation, of
39 substantially all of the properties of another corporation which in the
40 transaction is merged into the acquiring corporation shall not
41 disqualify a transaction under subclause (i) if such transaction would
42 have qualified under subclause (i) if the merger had been into the
43 controlling corporation, and no stock of the acquiring corporation is
44 used in the transaction;

45 (viii) A transaction otherwise qualifying under subclause (i) shall
46 not be disqualified by reason of the fact that stock of a corporation
47 (referred to in this subclause as the “controlling corporation”) which
48 before the merger was in control of the merged corporation is used in

1 the transaction, if after the transaction, the corporation surviving the
2 merger holds substantially all of its properties and of the properties of
3 the merged corporation (other than stock of the controlling corporation
4 distributed in the transaction); and in the transaction, former
5 shareholders of the surviving corporation exchanged, for an amount of
6 voting stock of the controlling corporation, an amount of stock in the
7 surviving corporation which constitutes control of such corporation.

8 For purposes of this clause, the term “control” means the
9 ownership of stock possessing at least 80% of the total combined
10 voting power of all classes of stock entitled to vote and at least 80% of
11 the total number of shares of all other classes of stock of the
12 corporation.

13 For purposes of this clause, the term “a party to a reorganization”
14 includes a corporation resulting from a reorganization, and both
15 corporations, in the case of a reorganization resulting from the
16 acquisition by one corporation of stock or properties of another. In the
17 case of a reorganization qualifying under subclause (i) by reason of
18 subclause (vii) the term “a party to a reorganization” includes the
19 controlling corporation referred to in such subclause (vii).

20 Notwithstanding any provisions hereof, upon every such exchange
21 or conversion, the taxpayer’s basis for the stock or securities received
22 shall be the same as the taxpayer’s actual or attributed basis for the
23 stock, securities or property surrendered in exchange therefor.

24 d. Net gains or net income derived from or in the form of rents,
25 royalties, patents, and copyrights.

26 e. Interest, except interest referred to in clause (1) or (2) of
27 N.J.S.54A:6-14, or distributions paid by a qualified investment fund as
28 defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent
29 provided in that section.

30 f. Dividends. “Dividends” means any distribution in cash or
31 property made by a corporation, association or business trust that is not
32 an S corporation, (1) out of accumulated earnings and profits, or (2)
33 out of earnings and profits of the year in which such dividend is paid
34 and any distribution in cash or property made by an S corporation, as
35 specifically determined pursuant to section 16 of P.L.1993, c.173
36 (C.54A:5-14).

37 The term “dividends” shall not include distributions paid by a
38 qualified investment fund as defined in section 2 of P.L.1987, c.310
39 (C.54A:6-14.1), to the extent provided in that section.

40 g. Gambling winnings.

41 h. Net gains or income derived through estates or trusts.

42 i. Income in respect of a decedent.

43 j. Amounts distributed or withdrawn from an employee trust
44 attributable to contributions to the trust which were excluded from
45 gross income under the provisions of chapter 6 of Title 54A of the
46 New Jersey Statutes, amounts rolled over from an IRA, as defined
47 pursuant to subsection (a) of section 408 of the federal Internal
48 Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as

1 defined pursuant to subsection b. of section 2 of P.L.1998,c.57
 2 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and annuities
 3 except to the extent of exclusions in N.J.S.54A:6-10 hereunder,
 4 notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140,
 5 s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944,
 6 c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45),
 7 R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310,
 8 s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964,
 9 c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13
 10 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

11 k. Distributive share of partnership income **■**, excluding the gain
 12 or income derived from the sale or assignment of a tax credit transfer
 13 certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and
 14 section 10 of P.L.2014, c.63 (C.34:1B-251)**■**.

15 l. Amounts received as prizes and awards, except as provided in
 16 N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

17 m. Rental value of a residence furnished by an employer or a
 18 rental allowance paid by an employer to provide a home.

19 n. Alimony and separate maintenance payments to the extent that
 20 such payments are required to be made under a decree of divorce or
 21 separate maintenance but not including payments for support of minor
 22 children.

23 o. Income, gain or profit derived from acts or omissions defined
 24 as crimes or offenses under the laws of this State or any other
 25 jurisdiction.

26 p. Net pro rata share of S corporation income **■**, excluding the
 27 gain or income derived from the sale or assignment of a tax credit
 28 transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-
 29 248) and section 10 of P.L.2014, c.63 (C.34:1B-251)**■**.¹
 30 (cf: P.L.2017, c.313, s.5)

31

32 ¹**■[13.] 27.**¹ Section 2 of P.L.2005, c.127 (C.54A:5-15) is
 33 amended to read as follows:

34 2. Notwithstanding the provisions of N.J.S.54A:5-1, if any, or
 35 any other law to the contrary, for the purposes of determining the
 36 amount of a category of income pursuant to N.J.S.54A:5-1 that is
 37 net of expenses, no amounts shall be taken as a deduction pursuant
 38 to section 199 of the federal Internal Revenue Code of 1986, 26
 39 U.S.C. s.199, and the deduction of any amounts pursuant to section
 40 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199
 41 shall be disallowed except that this disallowance shall not apply to
 42 amounts deducted pursuant to section 199 of the federal Internal
 43 Revenue Code of 1986 that are exclusively based upon domestic
 44 production gross receipts of the taxpayer or allocable to the
 45 taxpayer under that section which are derived only from any lease,
 46 rental, license, sale, exchange, or other disposition of qualifying
 47 production property which the taxpayer shall demonstrate to the

1 satisfaction of the director was manufactured or produced by the
 2 taxpayer in whole or in significant part within the United States but
 3 not qualified production property that was grown or extracted by
 4 the taxpayer. "Manufactured or produced" as used in this paragraph
 5 shall be limited to performance of an operation or series of
 6 operations the object of which is to place items of tangible personal
 7 property in a form, composition, or character different from that in
 8 which they were acquired. The change in form, composition, or
 9 character shall be a substantial change, and result in a
 10 transformation of property into a different or substantially more
 11 usable product.

12 For tax years beginning after December 31, 2017,
 13 notwithstanding the provisions of N.J.S.54A:5-1 or any other law to
 14 the contrary, for the purposes of determining the amount of a
 15 category of income pursuant to N.J.S.54A:5-1 that is net of
 16 expenses, no amounts shall be taken as a deduction pursuant to
 17 section 199A of the federal Internal Revenue Code (26 U.S.C.
 18 s.199A).

19 (cf: P.L.2005, c.127, s.2)

20

21 ¹**【14.】 28.**¹ (New section) If any material provision within a
 22 clause, sentence, paragraph, section, or part of P.L. , c. (C.)
 23 (pending before the Legislature as this bill) or the application
 24 thereof shall be judged invalid by a court of competent jurisdiction,
 25 such order or judgment shall be confined in its operation to the
 26 controversy in which it was rendered, and shall not affect or
 27 invalidate the remainder of any provision of P.L. , c. (C.)
 28 (pending before the Legislature as this bill), or the application of
 29 any part thereof to any other person or circumstance and, to this
 30 end, the provisions of each clause, sentence, paragraph, section, or
 31 part of P.L. , c. (C.) (pending before the Legislature as this
 32 bill) are declared to be severable.

33

34 ¹**【15.】 29.**¹ (New section) Notwithstanding the provisions of
 35 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 36 seq.), to the contrary, the director may adopt, immediately, upon
 37 filing with the Office of Administrative Law, regulations that the
 38 director deems necessary to implement the provisions of
 39 P.L. , c. (C.) (pending before the Legislature as this bill),
 40 which regulations shall be effective for a period not to exceed 180
 41 days from the date of the filing. The director may thereafter amend,
 42 adopt, or readopt the regulations in accordance with the
 43 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

44

45 ¹30. Section 12 of P.L.2011, c.25 (C.17:47B-12) is amended to
 46 read as follows:

47 12. a. Each captive insurance company that is not a combinable
 48 captive insurance company as defined by section 18 of P.L. , c.

1 (C.) (pending before the Legislature as this bill) shall pay to the
2 Director of the Division of Taxation in the Department of the
3 Treasury, on or before March 1 of each year, a tax at the rate of .38 of
4 one percent on the first \$20,000,000 and .285 of one percent on the
5 next \$20,000,000 and .19 of one percent on the next \$20,000,000 and
6 .072 of one percent on each dollar thereafter on the direct premiums
7 collected or contracted for on policies or contracts of insurance written
8 by the captive insurance company during the year ending December 31
9 next preceding, after deducting from the direct premiums subject to the
10 tax the amounts paid to policyholders as return premiums, which shall
11 include dividends on unabsorbed premiums or premium deposits
12 returned or credited to policyholders; except that no tax shall be due or
13 payable as to considerations received for annuity contracts.

14 b. Each captive insurance company that is not a combinable
15 captive insurance company as defined by section 18 of P.L. ,

16 c. (C.) (pending before the Legislature as this bill) shall pay to the
17 Director of the Division of Taxation in the Department of the
18 Treasury, on or before March 1 of each year, a tax at the rate of .214 of
19 one percent on the first \$20,000,000 of assumed reinsurance premium,
20 and .143 of one percent on the next \$20,000,000 and .048 of one
21 percent on the next \$20,000,000 and .024 of one percent of each dollar
22 thereafter. However, no tax under this subsection applies to premiums
23 for risks or portions of risks which are subject to taxation on a direct
24 basis pursuant to subsection a. of this section. No tax under this
25 subsection shall apply in connection with the receipt of assets in
26 exchange for the assumption of loss reserves and other liabilities of
27 another insurer under common ownership and control if the transaction
28 is part of a plan to discontinue the operations of the other insurer, and
29 if the intent of the parties to the transaction is to renew or maintain the
30 business with the captive insurance company.

31 c. The annual minimum aggregate tax to be paid by a captive
32 insurance company that is not a combinable captive insurance
33 company as defined by section 18 of P.L. , c. (C.) (pending
34 before the Legislature as this bill) calculated under subsections a. and
35 b. of this section shall be \$7,500, and the annual maximum aggregate
36 tax shall be \$200,000. The maximum aggregate tax to be paid by a
37 sponsored captive insurance company that is not a combinable captive
38 insurance company as defined by section 18 of P.L. , c. (C.)
39 (pending before the Legislature as this bill) shall apply to each
40 protected cell only and not to the sponsored captive insurance
41 company as a whole.

42 d. (1) A captive insurance company that is not a combinable
43 captive insurance company as defined by section 18 of P.L. , c.
44 (C.) (pending before the Legislature as this bill) shall, on or before
45 March 1 of each year, file with the commissioner an annual tax return,
46 signed and sworn to by an officer of the company, or by its United
47 States manager, if a company of a foreign country, in the form and

1 containing matters as may be necessary for carrying out the provisions
2 of this section.

3 (2) A captive insurance company that is not a combinable captive
4 insurance company as defined by section 18 of P.L. , c. (C.)
5 (pending before the Legislature as this bill) shall pay the balance of
6 any tax due under this section based on the company's business during
7 the preceding calendar year and make an installment payment in an
8 amount equal to one-half of the tax payable under this section on the
9 company's business done during the preceding calendar year.

10 (3) The examination of returns and the assessment of additional
11 taxes, penalties and interest shall be as provided by the State Uniform
12 Tax Procedure Law, R.S.54:48-1 et seq.

13 e. Two or more captive insurance companies that are not
14 combinable captive insurance companies as defined by section 18 of
15 P.L. , c. (C.) (pending before the Legislature as this bill) under
16 common ownership and control shall be taxed as though they were a
17 single captive insurance company.

18 f. For the purposes of this section, "common ownership and
19 control" shall mean:

20 (1) in the case of stock corporations, the direct or indirect
21 ownership of 80 percent or more of the outstanding voting stock of
22 two or more corporations by the same shareholder or shareholders; and

23 (2) in the case of mutual or nonprofit corporations, the direct or
24 indirect ownership of 80 percent or more of the surplus and the voting
25 power of two or more corporations by the same member or members.

26 g. The tax provided for in this section shall constitute all taxes
27 collectible under the laws of this State from any captive insurance
28 company that is not a combinable captive insurance company as
29 defined by section 18 of P.L. , c. (C.) (pending before the
30 Legislature as this bill), and a captive insurance company that is not a
31 combinable captive insurance company as defined by section 18 of
32 P.L. , c. (C.) (pending before the Legislature as this bill) shall not
33 pay taxes pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).

34 h. The tax provided for by this section shall be calculated on an
35 annual basis, notwithstanding policies or contracts of insurance or
36 contracts of reinsurance issued on a multiyear basis. In the case of
37 multiyear policies or contracts, the premium shall be prorated for
38 purposes of determining the tax under this section.

39 i. The tax provided for by this section shall only apply to the
40 branch business of a branch captive insurance company that is not a
41 combinable captive insurance company as defined by section 18 of
42 P.L. , c. (C.) (pending before the Legislature as this bill).¹
43 (cf: P.L.2011, c.25, s.12)

44
45 ¹31. Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is amended to
46 read as follows:

47 49. Every domestic or foreign corporation subject to the tax or to
48 filing requirements imposed under the Corporation Business Tax Act

(1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), shall keep all records used to determine its tax liability and such other records as the Director of the Division of Taxation may by regulation require. The records shall be available for inspection and examination at any time upon demand by the director or his duly authorized agent or employee and shall be preserved for a period of five years, except that the director may consent to their destruction within that period or may require that they be kept longer.¹

(cf: P.L.1987, c.76, s.49)

¹32. Section 30 of P.L.2002, c.40 (C.54:10A-18.1) and section 7 of P.L.2002, c.40 (C.54:10A-5a) are repealed.¹

¹16. ¹33.¹ This act shall take effect immediately ¹1. Sections 2 and 3 shall apply retroactively to tax years beginning on and after January 1, 2017, and section 3 shall expire on December 31, 2019. The remaining sections shall apply to tax years beginning on and after January 1, 2018.] but section 1 shall be effective for tax years beginning on and after January 1, 2018, sections 2 and 3 are retroactive to January 1, 2017, and the remaining sections shall apply to tax years beginning on and after January 1, 2018, provided however that the provisions of this act related to combined reporting and market based sourcing shall apply to tax years beginning on and after January 1, 2019. Section 35 shall be effective for tax years beginning on and after January 1, 2019.¹

Imposes surtax on corporation business tax liability; decouples certain provisions from Internal Revenue Code; imposes tax on certain dividends.

ASSEMBLY, No. 4202

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED JUNE 18, 2018

Sponsored by:

Assemblywoman ELIANA PINTOR MARIN

District 29 (Essex)

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Imposes surtax on corporation business tax liability; decouples certain provisions from Internal Revenue Code; imposes tax on certain dividends.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2018)

1 AN ACT concerning taxation, supplementing P.L.1945, c.162, and
2 amending various parts of the statutory law.

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

6
7 1. (New section). a. In addition to the tax paid by each
8 taxpayer determined pursuant to section 5 of P.L.1945, c.162
9 (C.54:10A-5), each taxpayer, except for a public utility, shall be
10 assessed and shall pay a surtax as follows:

11 (1) For a taxpayer, except a public utility, that has entire net
12 income in excess of \$1 million, but less than \$25 million for the
13 privilege period, the surtax imposed shall be 2.5%;

14 (2) For a taxpayer, except a public utility, that has entire net
15 income in excess of \$25 million for the privilege period, the surtax
16 imposed shall be 4%.

17 b. The surtax imposed pursuant to this section shall be upon a
18 taxpayer's allocated net income for the privilege period ending on
19 or after January 1, 2018 and upon a taxpayer's allocated net income
20 for the next following privilege period. The surtax imposed under
21 this section shall be due and payable in accordance with section 15
22 of P.L.1945, c.162 (C.54:10A-15), and the surtax shall be
23 administered pursuant to the provisions of P.L.1945, c.162
24 (C.54:10A-1 et seq.). Notwithstanding the provisions of any other
25 law to the contrary, no credits shall be allowed against the surtax
26 liability computed under this section except for credits for
27 installment payments, estimated payments made with a request for
28 an extension of time for filing a return, or overpayments from prior
29 privilege periods.

30
31 2. (New section) For privilege periods beginning on and after
32 January 1, 2017, for the purposes of computing entire net income
33 pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer
34 shall not be allowed the amount of any deduction, exemption, or
35 credit allowed under the Internal Revenue Code for income reported
36 pursuant to section 965 of the Internal Revenue Code (26 U.S.C.
37 s.965).

38
39 3. (New section) a. Notwithstanding the provisions of section
40 4 of P.L.1945, c.162 (C.54:10A-4) or any other law to the contrary,
41 as used in this section only:

42 "Dividends" means all dividends, including but not limited to
43 dividends actually paid, deemed dividends, and all other
44 distributions treated as dividends, under the Internal Revenue Code
45 or under the laws of the State of New Jersey.

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 “Gross domestic product” means the nominal gross domestic
2 product for the prior calendar year.

3 “Subsidiary” means a business entity of which the taxpayer has a
4 direct or indirect ownership interest regardless of its percentage of
5 ownership.

6 “Taxpayer” means a business entity required to report and pay
7 tax on dividends for federal income tax purposes and either (1) is
8 subject to tax pursuant to section 2 of P.L.1945, c.162 (C.54:10A-
9 2); or (2) has taxable premiums subject to the taxes imposed
10 pursuant to R.S.54:16-1 et seq., R.S.54:18-1 et seq., and P.L.1945,
11 c.132 (C.54:18A-1 et seq.), or any other law of this State imposing
12 a tax on insurance companies for insuring risks in this State.

13 b. For tax years beginning on or after January 1, 2017 and
14 ending before December 31, 2018, in addition to the tax paid by a
15 taxpayer pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a
16 taxpayer shall pay a tax equal to a rate of 9% applied to all of the
17 taxpayer’s dividends included in the taxpayer’s income for federal
18 income tax purposes pursuant to the Internal Revenue Code without
19 any deduction, exemption, or credit allowed under the Internal
20 Revenue Code or any credits, grants, or net operating losses
21 allowed under the laws of the State of New Jersey.

22 c. A taxpayer shall not be liable for the tax imposed by this
23 section, if so prohibited by any federal law, or if the total amount of
24 dividends which were included in computing such taxable income
25 for federal income tax purposes, paid to the taxpayer by one or
26 more subsidiaries owned by the taxpayer, are in aggregate less than
27 \$1,000,000 for the tax year.

28 d. In order for a taxpayer to determine its tax liability under
29 this section, the taxpayer shall use an allocation factor based on the
30 gross domestic product of the State over the total gross domestic
31 product of every state within the United States, the District of
32 Columbia, and every United States territory, regardless of how such
33 amounts taxed by this section are classified under section 5 of
34 P.L.1993, c.173 (C.54:10A-6.1); provided, however, the director
35 may adjust and provide relief pursuant to section 8 of P.L.1945,
36 c.162 (C.54:10A-8).

37 e. The tax imposed pursuant to this section shall not be deemed
38 a tax on capital stock or property and shall be added back for the
39 purposes of subparagraph (C) of paragraph (2) of subsection (k) of
40 section 4 of P.L. 1945, c.162 (C.54:10A-4).

41 f. Except as provided in subsection c. of this section, a
42 taxpayer shall be liable to pay the tax imposed by this section if the
43 taxpayer is subject to tax pursuant to section 2 of P.L.1945, c.162
44 (C.54:10A-2), or if the taxpayer is an insurance company licensed
45 to insure risks in this State.

46 g. The tax imposed pursuant to this section shall be due and
47 payable on or before May 15, 2019 on amounts which the taxpayer
48 reports for federal income tax purposes for tax years beginning on

1 or after January 1, 2017 and ending before December 31, 2018
2 pursuant to the Internal Revenue Code. The tax shall be reported on
3 a form prescribed by the director and shall be due and payable
4 regardless of whether the taxpayer elects to pay its federal tax
5 liability for the amount in installment payments.

6 h. A taxpayer paying the tax imposed pursuant to this section
7 shall be allowed a credit against the taxpayer's tax liability under
8 subsection b. of this section in an amount equal to the tax, if any,
9 paid on the same dividends under section 5 of P.L.1945, c.162
10 (C.54:10A-5). The credit allowed by this subsection shall only be
11 allowed to the extent the taxpayer paid tax on the dividends under
12 both this section and section 5 of P.L.1945, c.162 (C.54:10A-5). A
13 taxpayer shall not transfer the credit allowed pursuant to this
14 subsection to any other taxpayer.

15 i. The tax imposed pursuant to this section shall be
16 administered pursuant to the provisions of the State Uniform Tax
17 Procedure Law, R.S.54:48-1. Penalties and interest shall be applied
18 for failure to file and pay the tax imposed pursuant to this section.
19 No penalties or interest shall be imposed upon payment of the tax
20 imposed pursuant to this section if payment is made on or before
21 May 15, 2019.

22

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

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

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

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

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

39 (d) "Net worth" shall mean the aggregate of the values disclosed
40 by the books of the corporation for (1) issued and outstanding
41 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
42 undivided profits, and (4) surplus reserves which can reasonably be
43 expected to accrue to holders or owners of equitable shares, not
44 including reasonable valuation reserves, such as reserves for
45 depreciation or obsolescence or depletion. Notwithstanding the
46 foregoing, net worth shall not include any deduction for the amount
47 of the excess depreciation described in paragraph (2)(F) of
48 subsection (k) of this section. The foregoing aggregate of values

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

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

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

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

37 (f) "Investment company" shall mean any corporation whose
38 business during the period covered by its report consisted, to the
39 extent of at least 90% thereof of holding, investing and reinvesting
40 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
41 and other securities for its own account, but this shall not include
42 any corporation which: (1) is a merchant or a dealer of stocks,
43 bonds and other securities, regularly engaged in buying the same
44 and selling the same to customers; or (2) had less than 90% of its
45 average gross assets in New Jersey, at cost, invested in stocks,
46 bonds, debentures, mortgages, notes, patents, patent rights or other
47 securities or consisting of cash on deposit during the period covered
48 by its report; or (3) is a banking corporation, a savings institution,

1 or a financial business corporation as defined in the Corporation
2 Business Tax Act.

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

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

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

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

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

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

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

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

40 (A) The amount of any [specific] exemption or credit allowed in
41 any law of the United States imposing any tax on or measured by
42 the income of corporations.

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

46 (C) Taxes paid or accrued to the United States, a possession or
47 territory of the United States, a state, a political subdivision thereof,
48 or the District of Columbia, or to any foreign country, state,

1 province, territory or subdivision thereof, on or measured by profits
2 or income, or business presence or business activity, or the tax
3 imposed by this act, or any tax paid or accrued with respect to
4 subsidiary dividends excluded from entire net income as provided
5 in paragraph (5) of subsection (k) of this section.

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

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

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

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

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

38 (G) (i) The amount of any civil, civil administrative, or criminal
39 penalty or fine, including a penalty or fine under an administrative
40 consent order, assessed and collected for a violation of a State or
41 federal environmental law, an administrative consent order, or an
42 environmental ordinance or resolution of a local governmental
43 entity, and any interest earned on the penalty or fine, and any
44 economic benefits having accrued to the violator as a result of a
45 violation, which benefits are assessed and recovered in a civil, civil
46 administrative, or criminal action, or pursuant to an administrative
47 consent order. The provisions of this paragraph shall not apply to a
48 penalty or fine assessed or collected for a violation of a State or

1 federal environmental law, or local environmental ordinance or
2 resolution, if the penalty or fine was for a violation that resulted
3 from fire, riot, sabotage, flood, storm event, natural cause, or other
4 act of God beyond the reasonable control of the violator, or caused
5 by an act or omission of a person who was outside the reasonable
6 control of the violator.

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

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

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

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

40 A deduction shall also be permitted to the extent that the
41 taxpayer establishes by a preponderance of the evidence, as
42 determined by the director, that the interest is directly or indirectly
43 paid, accrued or incurred to (i) a related member in a foreign nation
44 which has in force a comprehensive income tax treaty with the
45 United States containing an express exemption from state income
46 taxation, provided however that the taxpayer shall disclose on its
47 return for the privilege period the name of the related member, the
48 amount of the interest, the relevant foreign nation, and such other

1 information as the director may prescribe or (ii) to an independent
2 lender and the taxpayer guarantees the debt on which the interest is
3 required.

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

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

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

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

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

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

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

4 (i) Making, arranging for, placing or carrying loans to foreign
5 persons, provided, however, that in the case of a foreign person
6 which is an individual, or which is a foreign branch of a domestic
7 corporation (other than a bank), or which is a foreign corporation or
8 foreign partnership which is controlled by one or more domestic
9 corporations (other than banks), domestic partnerships or resident
10 individuals, all the proceeds of the loan are for use outside of the
11 United States;

12 (ii) Making or placing deposits with foreign persons which are
13 banks or foreign branches of banks (including foreign subsidiaries)
14 or foreign branches of the taxpayers or with other international
15 banking facilities;

16 (iii) Entering into foreign exchange trading or hedging
17 transactions related to any of the transactions described in this
18 paragraph; or

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

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

24 (5) (A) Entire net income shall exclude 100% of dividends
25 which were included in computing such taxable income for federal
26 income tax purposes, paid to the taxpayer by one or more
27 subsidiaries owned by the taxpayer to the extent of the 80% or more
28 ownership of investment described in subsection (d) of this section
29 **[and]** for privilege periods ending on or before December 31, 2018.

30 (B) For privilege periods beginning on and after January 1,
31 2019, entire net income shall exclude 95% of dividends which were
32 included in computing such taxable income for federal income tax
33 purposes, paid to the taxpayer by one or more subsidiaries owned
34 by the taxpayer to the extent of the 80% or more ownership of
35 investment described in subsection (d) of this section.

36 Entire net income shall exclude 50% of dividends which were
37 included in computing such taxable income for federal income tax
38 purposes, paid to the taxpayer by one or more subsidiaries owned
39 by the taxpayer to the extent of 50% or more ownership of
40 investment, such ownership of investment calculated in the same
41 manner as the 80% or more of ownership of investment is
42 calculated as described in subsection (d) of this section.

43 (6) (A) Net operating loss deduction. There shall be allowed as
44 a deduction for the privilege period the net operating loss carryover
45 to that period.

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

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

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

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

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

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

1 (F) Reduction for discharge of indebtedness. A net operating
2 loss for any privilege period ending after June 30, 2014, and any net
3 operating loss carryover to such privilege period, shall be reduced
4 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 (7) The entire net income of gas, electric and gas and electric
9 public utilities that were subject to the provisions of P.L.1940, c.5
10 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
11 substituting the New Jersey depreciation allowance for federal tax
12 depreciation with respect to assets placed in service prior to January
13 1, 1998. For gas, electric, and gas and electric public utilities that
14 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
15 seq.) 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) Entire net income shall be determined without the exclusion,
48 exemption, deduction, or credit of any income exempt from federal

1 taxable income under any treaty obligation of the United States,
2 unless such exclusion, exemption, deduction, or credit is explicitly
3 made applicable to states under the express terms of a tax treaty
4 entered into by the United States.

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

8 (m) "Financial business corporation" shall mean any corporate
9 enterprise which is (1) in substantial competition with the business
10 of national banks and which (2) employs moneyed capital with the
11 object of making profit by its use as money, through discounting
12 and negotiating promissory notes, drafts, bills of exchange and
13 other evidences of debt; buying and selling exchange; making of or
14 dealing in secured or unsecured loans and discounts; dealing in
15 securities and shares of corporate stock by purchasing and selling
16 such securities and stock without recourse, solely upon the order
17 and for the account of customers; or investing and reinvesting in
18 marketable obligations evidencing indebtedness of any person,
19 copartnership, association or corporation in the form of bonds,
20 notes or debentures commonly known as investment securities; or
21 dealing in or underwriting obligations of the United States, any
22 state or any political subdivision thereof, or of a corporate
23 instrumentality of any of them. This shall include, without
24 limitation of the foregoing, business commonly known as industrial
25 banks, dealers in commercial paper and acceptances, sales finance,
26 personal finance, small loan and mortgage financing businesses, as
27 well as any other enterprise employing moneyed capital coming
28 into competition with the business of national banks; provided that
29 the holding of bonds, notes, or other evidences of indebtedness by
30 individual persons not employed or engaged in the banking or
31 investment business and representing merely personal investments
32 not made in competition with the business of national banks, shall
33 not be deemed financial business. Nor shall "financial business"
34 include national banks, production credit associations organized
35 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
36 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
37 insurance companies duly authorized to transact business in this
38 State, security brokers or dealers or investment companies or
39 bankers not employing moneyed capital coming into competition
40 with the business of national banks, real estate investment trusts, or
41 any of the following entities organized under the laws of this State:
42 credit unions, savings banks, savings and loan and building and
43 loan associations, pawnbrokers, and State banks and trust
44 companies.

45 (n) "International banking facility" shall mean a set of asset and
46 liability accounts segregated on the books and records of a
47 depository institution, United States branch or agency of a foreign
48 bank, or an Edge or Agreement Corporation that includes only

1 international banking facility time deposits and international
2 banking facility extensions of credit as such terms are defined in
3 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
4 board of governors of the Federal Reserve System, 12 CFR Part
5 204, effective December 3, 1981. In the event that the United
6 States enacts a law, or the board of governors of the Federal
7 Reserve System adopts a regulation which amends the present
8 definition of international banking facility or of such facilities' time
9 deposits or extensions of credit, the Commissioner of Banking and
10 Insurance shall forthwith adopt regulations defining such terms in
11 the same manner as such terms are set forth in the laws of the
12 United States or the regulations of the board of governors of the
13 Federal Reserve System. The regulations of the Commissioner of
14 Banking and Insurance shall thereafter provide the applicable
15 definitions.

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

19 (p) "New Jersey S corporation" means a corporation that is an S
20 corporation; which has made a valid election pursuant to section 3
21 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
22 corporation continuously since the effective date of the valid
23 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
24 5.22).

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

27 (r) "Qualified investment partnership" means a partnership
28 under this act that has more than 10 members or partners with no
29 member or partner owning more than a 50% interest in the entity
30 and that derives at least 90% of its gross income from dividends,
31 interest, payments with respect to securities loans, and gains from
32 the sale or other disposition of stocks or securities or foreign
33 currencies or commodities or other similar income (including but
34 not limited to gains from swaps, options, futures or forward
35 contracts) derived with respect to its business of investing or
36 trading in those stocks, securities, currencies or commodities, but
37 "investment partnership" shall not include a "dealer in securities"
38 within the meaning of section 1236 of the federal Internal Revenue
39 Code of 1986, 26 U.S.C. s.1236.

40 (s) "Savings institution" means a state or federally chartered
41 building and loan association, savings and loan association, or
42 savings bank.

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

45 (cf: P.L.2017, c.313, s.4)

46

47 5. Section 5 of P.L.2002, c.40 (C.54:10A-4.4) is amended to
48 read as follows:

1 5. a. For the purposes of this section:

2 "Intangible expenses and costs" includes (1) expenses, losses and
3 costs for, related to, or in connection directly or indirectly with the
4 direct or indirect acquisition, use, maintenance or management,
5 ownership, sale, exchange, or any other disposition of intangible
6 property to the extent such amounts are allowed as deductions or
7 costs in determining taxable income before operating loss deduction
8 and special deductions for the taxable year under the federal
9 Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses
10 related to, or incurred in connection directly or indirectly with,
11 factoring transactions or discounting transactions; (3) royalty,
12 patent, technical and copyright fees; (4) licensing fees; and (5) other
13 similar expenses and costs.

14 "Intangible property" means patents, patent applications, trade
15 names, trademarks, service marks, copyrights, mask works, trade
16 secrets and similar types of intangible assets.

17 "Interest expenses and costs" means amounts directly or
18 indirectly allowed as deductions under section 163 of the federal
19 Internal Revenue Code of 1986, 26 U.S.C. s.163, for purposes of
20 determining taxable income under the code to the extent such
21 expenses and costs are directly or indirectly for, related to, or in
22 connection with the direct or indirect acquisition, maintenance,
23 management, ownership, sale, exchange or disposition of intangible
24 property.

25 "Related member" means a person that, with respect to the
26 taxpayer during all or any portion of the privilege period, is: (1) a
27 related entity, (2) a component member as defined in subsection (b)
28 of section 1563 of the federal Internal Revenue Code of 1986, 26
29 U.S.C. s.1563, (3) is a person to or from whom there is attribution
30 of stock ownership in accordance with subsection (e) of section
31 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
32 s.1563, or (4) is a person that, notwithstanding its form of
33 organization, bears the same relationship to the taxpayer as a person
34 described in (1) through (3) of this definition.

35 "Related entity" means (1) a stockholder who is an individual, or
36 a member of the stockholder's family enumerated in section 318 of
37 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
38 stockholder and the members of the stockholder's family own,
39 directly, indirectly, beneficially or constructively, in the aggregate,
40 **【at least】** 50% or more of the value of the taxpayer's outstanding
41 stock; (2) a stockholder, or a stockholder's partnership, limited
42 liability company, estate, trust or corporation, if the stockholder and
43 the stockholder's partnerships, limited liability companies, estates,
44 trusts and corporations own directly, indirectly, beneficially or
45 constructively, in the aggregate, **【at least】** 50% or more per cent of
46 the value of the taxpayer's outstanding stock; or (3) a corporation,
47 or a party related to the corporation in a manner that would require
48 an attribution of stock from the corporation to the party or from the

1 party to the corporation under the attribution rules of the federal
2 Internal Revenue Code of 1986, 26 U.S.C. s.318, if the taxpayer
3 owns, directly, indirectly, beneficially or constructively, **[at least]**
4 50% or more percent of the value of the corporation's outstanding
5 stock. The attribution rules of the federal Internal Revenue Code of
6 1986, 26 U.S.C. s.318, shall apply for purposes of determining
7 whether the ownership requirements of this definition have been
8 met.

9 b. For purposes of computing its entire net income under
10 section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add
11 back otherwise deductible interest expenses and costs and
12 intangible expenses and costs directly or indirectly paid, accrued or
13 incurred to, or in connection directly or indirectly with one or more
14 direct or indirect transactions with, one or more related members.

15 c. (1) The adjustments required in subsection b. of this section
16 shall not apply if: (a) the interest expenses and costs and intangible
17 expenses and costs are directly or indirectly paid, accrued or
18 incurred to a related member in a foreign nation which has in force
19 a comprehensive income tax treaty with the United States
20 containing an express exemption from state income taxation; or (b)
21 the taxpayer establishes by clear and convincing evidence, as
22 determined by the director, that the adjustments are unreasonable;
23 or (c) the taxpayer and the director agree in writing to the
24 application or use of an alternative method of apportionment under
25 section 8 of P.L.1945, c.162 (C.54:10A-8). Nothing in this
26 subsection shall be construed to limit or negate the director's
27 authority to otherwise enter into agreements and compromises
28 otherwise allowed by law.

29 (2) For the purposes of qualifying for the exception provided by
30 subparagraph (a) of paragraph (1) of this subsection, the taxpayer
31 shall disclose on its return for the privilege period the name of the
32 related member, the amount of the interest expenses and costs and
33 intangible expenses and costs deducted, the relevant foreign nation,
34 and such other information as the director may prescribe.

35 (3) The adjustments required in subsection b. of this section
36 shall not apply to the portion of interest expenses and costs and
37 intangible expenses and costs that the taxpayer establishes by a
38 preponderance of the evidence meets both of the following: (a) the
39 related member during the same income year directly or indirectly
40 paid, received, accrued or incurred the portion to or from a person
41 that is not a related member, and (b) the transaction giving rise to
42 the interest expenses and costs or the intangible expenses and costs
43 between the taxpayer and the related member did not have as a
44 principal purpose the avoidance of any portion of the tax due under
45 Title 54 of the Revised Statutes or Title 54A of the New Jersey
46 Statutes.

47 d. Nothing in this section shall require a taxpayer to add to its
48 net income more than once any amount of interest expenses and

1 costs and intangible expenses and costs that the taxpayer pays,
2 accrues or incurs to a related member described in subsection b. of
3 this section.

4 e. Nothing in this section shall be construed to limit or negate
5 the director's authority to make adjustments under paragraph (3) of
6 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section
7 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
8 (C.54:10A-10).

9 (cf: P.L.2002, c.40, s.5)

10
11 6. Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is amended to
12 read as follows:

13 49. Every domestic or foreign corporation subject to the tax or
14 to filing requirements imposed under the Corporation Business Tax
15 Act (1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), shall keep all
16 records used to determine its tax liability and such other records as
17 the Director of the Division of Taxation may by regulation require.
18 The records shall be available for inspection and examination at any
19 time upon demand by the director or his duly authorized agent or
20 employee and shall be preserved for a period of five years, except
21 that the director may consent to their destruction within that period
22 or may require that they be kept longer.

23 (cf: P.L.1987, c.76, s.49)

24
25 7. Section 17 of P.L.1945, c.162 (C.54:10A-17) is amended to
26 read as follows:

27 17. (a) If the period covered by the report under this act is other
28 than the period covered by the report to the United States Treasury
29 Department or is a period of less than 12 calendar months, the
30 **【commissioner】** director may, under regulations prescribed by him,
31 determine the entire net worth and entire net income of the
32 taxpayer in such manner as shall properly reflect its entire net worth
33 and entire net income for the period covered by its report under this
34 act.

35 (b) Any taxpayer which shall fail to file its return when due or
36 to pay any tax when the same becomes due, as herein provided,
37 shall be subject to such penalties and interest as provided in the
38 State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the
39 Revised Statutes. The **【commissioner】** director, if satisfied that
40 the failure to comply with any provision of this act was excusable,
41 may abate or remit the whole or part of any penalty.

42 (cf: P.L.1975, c.177, s.9)

43
44 8. Section 20 of P.L.1945, c.162 (C.54:10A-20) is amended to
45 read as follows:

46 20. In addition to other remedies for the collection of the tax
47 imposed by this chapter, the Attorney-General may of his own
48 motion or upon the request of the **【commissioner】** director,

1 whenever any tax due under this chapter shall have remained in
2 arrears for a period of three months after the tax shall have become
3 payable, bring an action in the Superior Court in the name of the
4 State, against such corporation for injunctive relief to restrain it
5 from the exercise of any franchise, or the transaction of any
6 business within this State until the payment of such tax and
7 penalties and interest due thereon, and the costs of such
8 application, to be fixed by the court. The court may proceed in the
9 action in a summary manner or otherwise and may grant the
10 injunctive relief, if a proper case appear. Upon the granting and
11 service of the order or judgment giving injunctive relief, it shall not
12 be lawful for such company thereafter to exercise any franchise or
13 transact any business in this State until such injunction be
14 dissolved.

15 (cf: P.L.1953, c.51, s.116)

16
17 9. Section 21 of P.L.1945, c.162 (C.54:10A-21) is amended to
18 read as follows:

19 21. In the event of failure or neglect of any taxpayer which is a
20 foreign corporation to pay the tax imposed by this chapter, on or
21 before the first day of December in each year, immediate notice
22 thereof may be given by the **【commissioner】** director to the
23 Secretary of State who shall immediately revoke the certificate of
24 authority of said corporation to do business in the State of New
25 Jersey and notice of such revocation shall be given by the Secretary
26 of State to the corporation affected and thereafter such corporation,
27 so far as the further transaction of business in the State of New
28 Jersey is concerned, shall be in the same condition as if no
29 certificate of authority had ever been issued to it by the Secretary
30 of State, but remedies provided by this chapter for the collection of
31 the tax and interest and penalties shall remain unimpaired. After
32 the revocation of any such certificate of authority, no new
33 certificate shall be issued by the Secretary of State to such
34 defaulting corporation until the payment of all assessments
35 imposed hereunder and remaining unpaid with penalties and
36 interest and any costs that may have accrued, such payment to be
37 evidenced by a certificate of the **【commissioner】** director.

38 (cf: P.L.1945, c.162, s.21)

39
40 10. Section 28 of P.L.1945, c.162 (C.54:10A-27) is amended to
41 read as follows:

42 28. The **【commissioner】** director shall prescribe and issue such
43 rules and regulations, not inconsistent herewith, for the
44 interpretation and application of the provisions of this act, as he
45 may deem necessary.

46 (cf: P.L.1945, c.162, s.28)

1 11. Section 29 of P.L.1945, c.162 (C.54:10A-28) is amended to
2 read as follows:

3 29. This act shall take effect January first, one thousand nine
4 hundred and forty-six, except that the **【commissioner】** director may
5 prior thereto take such action as he may deem appropriate in
6 anticipation of or in preparation for the operation of the provisions
7 hereof, and except further that the appropriation contained herein
8 for the reduction of the State school tax shall be first made for the
9 fiscal year beginning July first, one thousand nine hundred and
10 forty-six.

11 (cf: P.L.1945, c.162, s.29)

12

13 12. Section 4 of P.L.1947, c.51 (C.54:10A-30) is amended to
14 read as follows:

15 4. The **【Commissioner】** director upon written application made
16 to him and upon the payment of a fee of five dollars (\$5.00), may
17 release any property from the lien of any tax, interest or penalty
18 imposed upon any corporation in accordance with the provisions of
19 this act or of chapters thirteen or thirty-two-A of Title 54 of the
20 Revised Statutes, or of any certificate, judgment or levy procured
21 by him; provided, payment be made to the **【commissioner】**
22 director of such sum as he shall deem adequate consideration for
23 such release or deposit be made of such security or such bond be
24 filed as the **【commissioner】** director shall deem proper to secure
25 payment of any debt evidenced by any such tax, interest, penalty,
26 certificate, judgment or levy, the lien of which is sought to be
27 released, or provided the **【commissioner】** director is satisfied that
28 payment of the tax is otherwise provided for. The application for
29 such release shall be in such form as shall be prescribed by the
30 **【commissioner】** director and shall contain an accurate description
31 of the property to be released together with such other information
32 as the **【commissioner】** director may require. Such release shall be
33 given under the seal of the **【commissioner】** director, and may be
34 recorded in any office in which conveyances of real estate may be
35 recorded.

36 (cf: P.L.1947, c.51, s.4)

37

38 13. Section 2 of P.L.2005, c.127 (C.54A:5-15) is amended to
39 read as follows:

40 2. Notwithstanding the provisions of N.J.S.54A:5-1, if any, or
41 any other law to the contrary, for the purposes of determining the
42 amount of a category of income pursuant to N.J.S.54A:5-1 that is
43 net of expenses, no amounts shall be taken as a deduction pursuant
44 to section 199 of the federal Internal Revenue Code of 1986, 26
45 U.S.C. s.199, and the deduction of any amounts pursuant to section
46 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199
47 shall be disallowed except that this disallowance shall not apply to

1 amounts deducted pursuant to section 199 of the federal Internal
2 Revenue Code of 1986 that are exclusively based upon domestic
3 production gross receipts of the taxpayer or allocable to the
4 taxpayer under that section which are derived only from any lease,
5 rental, license, sale, exchange, or other disposition of qualifying
6 production property which the taxpayer shall demonstrate to the
7 satisfaction of the director was manufactured or produced by the
8 taxpayer in whole or in significant part within the United States but
9 not qualified production property that was grown or extracted by
10 the taxpayer. "Manufactured or produced" as used in this paragraph
11 shall be limited to performance of an operation or series of
12 operations the object of which is to place items of tangible personal
13 property in a form, composition, or character different from that in
14 which they were acquired. The change in form, composition, or
15 character shall be a substantial change, and result in a
16 transformation of property into a different or substantially more
17 usable product.

18 For tax years beginning after December 31, 2017,
19 notwithstanding the provisions of N.J.S.54A:5-1 or any other law to
20 the contrary, for the purposes of determining the amount of a
21 category of income pursuant to N.J.S.54A:5-1 that is net of
22 expenses, no amounts shall be taken as a deduction pursuant to
23 section 199A of the federal Internal Revenue Code (26 U.S.C.
24 s.199A).

25 (cf: P.L.2005, c.127, s.2)

26

27 14. (New section) If any material provision within a clause,
28 sentence, paragraph, section, or part of P.L. , c. (C.) (pending
29 before the Legislature as this bill) or the application thereof shall be
30 judged invalid by a court of competent jurisdiction, such order or
31 judgment shall be confined in its operation to the controversy in
32 which it was rendered, and shall not affect or invalidate the
33 remainder of any provision of P.L. , c. (C.) (pending before
34 the Legislature as this bill), or the application of any part thereof to
35 any other person or circumstance and, to this end, the provisions of
36 each clause, sentence, paragraph, section, or part of
37 P.L. , c. (C.) (pending before the Legislature as this bill) are
38 declared to be severable.

39

40 15. (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
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 which regulations shall be effective for a period not to exceed 180
47 days 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 16. This act shall take effect immediately. Sections 2 and 3 shall
5 apply retroactively to tax years beginning on and after January 1,
6 2017, and section 3 shall expire on December 31, 2019. The
7 remaining sections shall apply to tax years beginning on and after
8 January 1, 2018.

9
10
11 STATEMENT

12
13 This bill imposes a surtax on allocated entire net income for the
14 privilege period ending in 2018 and the next following privilege
15 period, decouples certain provisions of the corporation business tax
16 from the Internal Revenue Code, and imposes a tax on certain
17 dividends.

18
19 *Surtax on Business Income Exceeding \$1 Million*

20
21 This bill imposes a surtax of 2.5 percent against a taxpayer,
22 which has entire net income in excess of \$1 million but less than
23 \$25 million, and of four percent against a taxpayer, which has entire
24 net income of \$25 million or more. The surtax applies to the
25 privilege period ending on or after January 1, 2018 and the next
26 following privilege period.

27 This bill imposes the surtax on the allocated entire net income of
28 a taxpayer. The bill disallows the application of the various
29 business incentive credits against the surtax, but allows application
30 of credits for installment payments, estimated payments made with
31 a request for an extension of time for filing a return, or
32 overpayments from prior privilege periods. The surtax imposed by
33 this bill does not apply to public utilities.

34
35 *Decoupling from Internal Revenue Code*

36
37 The federal Tax Cuts and Jobs Act (Pub.L.115-97), signed into
38 law December 22, 2017, enacted a number of changes to the federal
39 Internal Revenue Code. This bill disallows the deduction taken for
40 federal purposes against income reported pursuant to federal
41 Internal Revenue Code section 965. That section establishes the
42 repatriation transition tax at a substantially lower rate for federal
43 purposes. This bill further prescribes a method to apply the federal
44 interest deduction limitation in section 163(j) of the federal Internal
45 Revenue Code. Additionally, the bill decouples the corporation
46 business tax and the gross income tax from section 199A of the
47 federal Internal Revenue Code. Section 199A allows taxpayers
48 other than corporations a deduction of 20 percent of qualified

1 business income earned in a qualified trade or business, subject to
2 certain limitations.

3

4 *Taxation of Dividends*

5

6 The bill reduces the dividend exclusion amount for taxpayers
7 receiving dividends from an 80 percent or greater owned subsidiary,
8 from 100 percent to 95 percent.

9 Lastly, this bill imposes a special tax on dividends and deemed
10 dividend distributions that either a corporation business tax filer or
11 an insurance company licensed to insure risks in New Jersey
12 receives from subsidiaries if the total aggregate amount of dividend
13 and deemed dividend distributions received is greater than
14 \$1,000,000 for tax years beginning on or after January 1, 2017 and
15 ending before December 31, 2018. The dividends will be taxed at
16 the rate of 9% and the tax must be paid on or before May 15, 2019.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4202

STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Assembly Budget Committee reports favorably Assembly Bill No. 4202.

This bill imposes a surtax on allocated entire net income for the privilege period ending in 2018 and the next following privilege period, decouples certain provisions of the corporation business tax from the Internal Revenue Code, and imposes a tax on certain dividends.

Surtax on Business Income Exceeding \$1 Million

This bill imposes a surtax of 2.5 percent against a taxpayer, which has entire net income in excess of \$1 million but less than \$25 million, and of four percent against a taxpayer, which has entire net income of \$25 million or more. The surtax applies to the privilege period ending after on or after January 1, 2018 and the next following privilege period.

This bill imposes the surtax on the allocated entire net income of a taxpayer. The bill disallows the application of the various business incentive credits against the surtax, but allows application of credits for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods. The surtax imposed by this bill does not apply to public utilities.

Decoupling from Internal Revenue Code

The federal Tax Cuts and Jobs Act (Pub.L.115-97), signed into law December 22, 2017, enacted a number of changes to the federal Internal Revenue Code. This bill disallows the deduction taken for federal purposes against income reported pursuant to federal Internal Revenue Code section 965. That section establishes the repatriation transition tax at a substantially lower rate for federal purposes. This bill further prescribes a method to apply the federal interest deduction limitation in section 163(j) of the federal Internal Revenue Code. Additionally, the bill decouples the corporation business tax and the gross income tax from section 199A of the federal Internal Revenue Code. Section 199A allows taxpayers other than corporations a

deduction of 20 percent of qualified business income earned in a qualified trade or business, subject to certain limitations.

Taxation of Dividends

The bill reduces the dividend exclusion amount for taxpayers receiving dividends from an 80 percent or greater owned subsidiary, from 100 percent to 95 percent.

Lastly, this bill imposes a special tax on dividends and deemed dividend distributions that either a corporation business tax filer or an insurance company licensed to insure risks in New Jersey receives from subsidiaries if the total aggregate amount of dividend and deemed dividend distributions received is greater than \$1,000,000 for tax years beginning on or after January 1, 2017 and ending before December 31, 2018. The dividends will be taxed at the rate of 9% and the tax must be paid on or before May 15, 2019.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot quantify certain provisions of this bill due to the absence of relevant data. However, the OLS projects that imposing a surtax of two-and-a-half percent against a taxpayer which has entire net income in excess of \$1 million but less than \$25 million, and of four percent against a taxpayer which has entire net income of \$25 million or more could generate revenues up to \$800 million in each of the two tax years in which the surtax will be in effect. The attainment of the estimated \$800 million maximum is predicated on the assumption that current overall economic conditions will largely continue and that higher taxpayer liabilities will not accelerate the application of unused taxpayer overpayments from prior tax years. Further, the OLS notes that actual revenues may be lower than predicted due to impacts related to taxpayer behavior, such as delaying the realization of income, intended to avoid the imposition of a higher tax rate during the two tax years for which the surtax is in effect.

SENATE, No. 2746

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 18, 2018

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

SYNOPSIS

Imposes surtax on corporation business tax liability; decouples certain provisions from Internal Revenue Code; imposes tax on certain dividends.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning taxation, supplementing P.L.1945, c.162, and
2 amending various parts of the statutory law.

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

6
7 1. (New section). a. In addition to the tax paid by each
8 taxpayer determined pursuant to section 5 of P.L.1945, c.162
9 (C.54:10A-5), each taxpayer, except for a public utility, shall be
10 assessed and shall pay a surtax as follows:

11 (1) For a taxpayer, except a public utility, that has entire net
12 income in excess of \$1 million, but less than \$25 million for the
13 privilege period, the surtax imposed shall be 2.5%;

14 (2) For a taxpayer, except a public utility, that has entire net
15 income in excess of \$25 million for the privilege period, the surtax
16 imposed shall be 4%.

17 b. The surtax imposed pursuant to this section shall be upon a
18 taxpayer's allocated net income for the privilege period ending on
19 or after January 1, 2018 and upon a taxpayer's allocated net income
20 for the next following privilege period. The surtax imposed under
21 this section shall be due and payable in accordance with section 15
22 of P.L.1945, c.162 (C.54:10A-15), and the surtax shall be
23 administered pursuant to the provisions of P.L.1945, c.162
24 (C.54:10A-1 et seq.). Notwithstanding the provisions of any other
25 law to the contrary, no credits shall be allowed against the surtax
26 liability computed under this section except for credits for
27 installment payments, estimated payments made with a request for
28 an extension of time for filing a return, or overpayments from prior
29 privilege periods.

30
31 2. (New section) For privilege periods beginning on and after
32 January 1, 2017, for the purposes of computing entire net income
33 pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer
34 shall not be allowed the amount of any deduction, exemption, or
35 credit allowed under the Internal Revenue Code for income reported
36 pursuant to section 965 of the Internal Revenue Code (26 U.S.C.
37 s.965).

38
39 3. (New section) a. Notwithstanding the provisions of section
40 4 of P.L.1945, c.162 (C.54:10A-4) or any other law to the contrary,
41 as used in this section only:

42 "Dividends" means all dividends, including but not limited to
43 dividends actually paid, deemed dividends, and all other
44 distributions treated as dividends, under the Internal Revenue Code
45 or under the laws of the State of New Jersey.

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 “Gross domestic product” means the nominal gross domestic
2 product for the prior calendar year.

3 “Subsidiary” means a business entity of which the taxpayer has a
4 direct or indirect ownership interest regardless of its percentage of
5 ownership.

6 “Taxpayer” means a business entity required to report and pay
7 tax on dividends for federal income tax purposes and either (1) is
8 subject to tax pursuant to section 2 of P.L.1945, c.162 (C.54:10A-
9 2); or (2) has taxable premiums subject to the taxes imposed
10 pursuant to R.S.54:16-1 et seq., R.S.54:18-1 et seq., and P.L.1945,
11 c.132 (C.54:18A-1 et seq.), or any other law of this State imposing
12 a tax on insurance companies for insuring risks in this State.

13 b. For tax years beginning on or after January 1, 2017 and
14 ending before December 31, 2018, in addition to the tax paid by a
15 taxpayer pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), a
16 taxpayer shall pay a tax equal to a rate of 9% applied to all of the
17 taxpayer’s dividends included in the taxpayer’s income for federal
18 income tax purposes pursuant to the Internal Revenue Code without
19 any deduction, exemption, or credit allowed under the Internal
20 Revenue Code or any credits, grants, or net operating losses
21 allowed under the laws of the State of New Jersey.

22 c. A taxpayer shall not be liable for the tax imposed by this
23 section, if so prohibited by any federal law, or if the total amount of
24 dividends which were included in computing such taxable income
25 for federal income tax purposes, paid to the taxpayer by one or
26 more subsidiaries owned by the taxpayer, are in aggregate less than
27 \$1,000,000 for the tax year.

28 d. In order for a taxpayer to determine its tax liability under
29 this section, the taxpayer shall use an allocation factor based on the
30 gross domestic product of the State over the total gross domestic
31 product of every state within the United States, the District of
32 Columbia, and every United States territory, regardless of how such
33 amounts taxed by this section are classified under section 5 of
34 P.L.1993, c.173 (C.54:10A-6.1); provided, however, the director
35 may adjust and provide relief pursuant to section 8 of P.L.1945,
36 c.162 (C.54:10A-8).

37 e. The tax imposed pursuant to this section shall not be deemed
38 a tax on capital stock or property and shall be added back for the
39 purposes of subparagraph (C) of paragraph (2) of subsection (k) of
40 section 4 of P.L. 1945, c.162 (C.54:10A-4).

41 f. Except as provided in subsection c. of this section, a
42 taxpayer shall be liable to pay the tax imposed by this section if the
43 taxpayer is subject to tax pursuant to section 2 of P.L.1945, c.162
44 (C.54:10A-2), or if the taxpayer is an insurance company licensed
45 to insure risks in this State.

46 g. The tax imposed pursuant to this section shall be due and
47 payable on or before May 15, 2019 on amounts which the taxpayer
48 reports for federal income tax purposes for tax years beginning on

1 or after January 1, 2017 and ending before December 31, 2018
2 pursuant to the Internal Revenue Code. The tax shall be reported on
3 a form prescribed by the director and shall be due and payable
4 regardless of whether the taxpayer elects to pay its federal tax
5 liability for the amount in installment payments.

6 h. A taxpayer paying the tax imposed pursuant to this section
7 shall be allowed a credit against the taxpayer's tax liability under
8 subsection b. of this section in an amount equal to the tax, if any,
9 paid on the same dividends under section 5 of P.L.1945, c.162
10 (C.54:10A-5). The credit allowed by this subsection shall only be
11 allowed to the extent the taxpayer paid tax on the dividends under
12 both this section and section 5 of P.L.1945, c.162 (C.54:10A-5). A
13 taxpayer shall not transfer the credit allowed pursuant to this
14 subsection to any other taxpayer.

15 i. The tax imposed pursuant to this section shall be
16 administered pursuant to the provisions of the State Uniform Tax
17 Procedure Law, R.S.54:48-1. Penalties and interest shall be applied
18 for failure to file and pay the tax imposed pursuant to this section.
19 No penalties or interest shall be imposed upon payment of the tax
20 imposed pursuant to this section if payment is made on or before
21 May 15, 2019.

22

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

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

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

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

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

39 (d) "Net worth" shall mean the aggregate of the values disclosed
40 by the books of the corporation for (1) issued and outstanding
41 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
42 undivided profits, and (4) surplus reserves which can reasonably be
43 expected to accrue to holders or owners of equitable shares, not
44 including reasonable valuation reserves, such as reserves for
45 depreciation or obsolescence or depletion. Notwithstanding the
46 foregoing, net worth shall not include any deduction for the amount
47 of the excess depreciation described in paragraph (2)(F) of
48 subsection (k) of this section. The foregoing aggregate of values

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

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

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

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

37 (f) "Investment company" shall mean any corporation whose
38 business during the period covered by its report consisted, to the
39 extent of at least 90% thereof of holding, investing and reinvesting
40 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
41 and other securities for its own account, but this shall not include
42 any corporation which: (1) is a merchant or a dealer of stocks,
43 bonds and other securities, regularly engaged in buying the same
44 and selling the same to customers; or (2) had less than 90% of its
45 average gross assets in New Jersey, at cost, invested in stocks,
46 bonds, debentures, mortgages, notes, patents, patent rights or other
47 securities or consisting of cash on deposit during the period covered
48 by its report; or (3) is a banking corporation, a savings institution,

1 or a financial business corporation as defined in the Corporation
2 Business Tax Act.

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

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

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

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

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

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

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

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

40 (A) The amount of any [specific] exemption or credit allowed in
41 any law of the United States imposing any tax on or measured by
42 the income of corporations.

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

46 (C) Taxes paid or accrued to the United States, a possession or
47 territory of the United States, a state, a political subdivision thereof,
48 or the District of Columbia, or to any foreign country, state,

1 province, territory or subdivision thereof, on or measured by profits
2 or income, or business presence or business activity, or the tax
3 imposed by this act, or any tax paid or accrued with respect to
4 subsidiary dividends excluded from entire net income as provided
5 in paragraph (5) of subsection (k) of this section.

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

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

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

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

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

38 (G) (i) The amount of any civil, civil administrative, or criminal
39 penalty or fine, including a penalty or fine under an administrative
40 consent order, assessed and collected for a violation of a State or
41 federal environmental law, an administrative consent order, or an
42 environmental ordinance or resolution of a local governmental
43 entity, and any interest earned on the penalty or fine, and any
44 economic benefits having accrued to the violator as a result of a
45 violation, which benefits are assessed and recovered in a civil, civil
46 administrative, or criminal action, or pursuant to an administrative
47 consent order. The provisions of this paragraph shall not apply to a
48 penalty or fine assessed or collected for a violation of a State or

1 federal environmental law, or local environmental ordinance or
2 resolution, if the penalty or fine was for a violation that resulted
3 from fire, riot, sabotage, flood, storm event, natural cause, or other
4 act of God beyond the reasonable control of the violator, or caused
5 by an act or omission of a person who was outside the reasonable
6 control of the violator.

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

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

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

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

40 A deduction shall also be permitted to the extent that the
41 taxpayer establishes by a preponderance of the evidence, as
42 determined by the director, that the interest is directly or indirectly
43 paid, accrued or incurred to (i) a related member in a foreign nation
44 which has in force a comprehensive income tax treaty with the
45 United States containing an express exemption from state income
46 taxation, provided however that the taxpayer shall disclose on its
47 return for the privilege period the name of the related member, the
48 amount of the interest, the relevant foreign nation, and such other

1 information as the director may prescribe or (ii) to an independent
2 lender and the taxpayer guarantees the debt on which the interest is
3 required.

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

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

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

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

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

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

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

4 (i) Making, arranging for, placing or carrying loans to foreign
5 persons, provided, however, that in the case of a foreign person
6 which is an individual, or which is a foreign branch of a domestic
7 corporation (other than a bank), or which is a foreign corporation or
8 foreign partnership which is controlled by one or more domestic
9 corporations (other than banks), domestic partnerships or resident
10 individuals, all the proceeds of the loan are for use outside of the
11 United States;

12 (ii) Making or placing deposits with foreign persons which are
13 banks or foreign branches of banks (including foreign subsidiaries)
14 or foreign branches of the taxpayers or with other international
15 banking facilities;

16 (iii) Entering into foreign exchange trading or hedging
17 transactions related to any of the transactions described in this
18 paragraph; or

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

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

24 (5) (A) Entire net income shall exclude 100% of dividends
25 which were included in computing such taxable income for federal
26 income tax purposes, paid to the taxpayer by one or more
27 subsidiaries owned by the taxpayer to the extent of the 80% or more
28 ownership of investment described in subsection (d) of this section
29 **【and】 for privilege periods ending on or before December 31, 2018.**

30 **(B) For privilege periods beginning on and after January 1,**
31 **2019, entire net income shall exclude 95% of dividends which were**
32 **included in computing such taxable income for federal income tax**
33 **purposes, paid to the taxpayer by one or more subsidiaries owned**
34 **by the taxpayer to the extent of the 80% or more ownership of**
35 **investment described in subsection (d) of this section.**

36 Entire net income shall exclude 50% of dividends which were
37 included in computing such taxable income for federal income tax
38 purposes, paid to the taxpayer by one or more subsidiaries owned
39 by the taxpayer to the extent of 50% or more ownership of
40 investment, such ownership of investment calculated in the same
41 manner as the 80% or more of ownership of investment is
42 calculated as described in subsection (d) of this section.

43 (6) (A) Net operating loss deduction. There shall be allowed as
44 a deduction for the privilege period the net operating loss carryover
45 to that period.

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

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

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

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

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

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

1 (F) Reduction for discharge of indebtedness. A net operating
2 loss for any privilege period ending after June 30, 2014, and any net
3 operating loss carryover to such privilege period, shall be reduced
4 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 (7) The entire net income of gas, electric and gas and electric
9 public utilities that were subject to the provisions of P.L.1940, c.5
10 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
11 substituting the New Jersey depreciation allowance for federal tax
12 depreciation with respect to assets placed in service prior to January
13 1, 1998. For gas, electric, and gas and electric public utilities that
14 were subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
15 seq.) 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) Entire net income shall be determined without the exclusion,
48 exemption, deduction, or credit of any income exempt from federal

1 taxable income under any treaty obligation of the United States,
2 unless such exclusion, exemption, deduction, or credit is explicitly
3 made applicable to states under the express terms of a tax treaty
4 entered into by the United States.

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

8 (m) "Financial business corporation" shall mean any corporate
9 enterprise which is (1) in substantial competition with the business
10 of national banks and which (2) employs moneyed capital with the
11 object of making profit by its use as money, through discounting
12 and negotiating promissory notes, drafts, bills of exchange and
13 other evidences of debt; buying and selling exchange; making of or
14 dealing in secured or unsecured loans and discounts; dealing in
15 securities and shares of corporate stock by purchasing and selling
16 such securities and stock without recourse, solely upon the order
17 and for the account of customers; or investing and reinvesting in
18 marketable obligations evidencing indebtedness of any person,
19 copartnership, association or corporation in the form of bonds,
20 notes or debentures commonly known as investment securities; or
21 dealing in or underwriting obligations of the United States, any
22 state or any political subdivision thereof, or of a corporate
23 instrumentality of any of them. This shall include, without
24 limitation of the foregoing, business commonly known as industrial
25 banks, dealers in commercial paper and acceptances, sales finance,
26 personal finance, small loan and mortgage financing businesses, as
27 well as any other enterprise employing moneyed capital coming
28 into competition with the business of national banks; provided that
29 the holding of bonds, notes, or other evidences of indebtedness by
30 individual persons not employed or engaged in the banking or
31 investment business and representing merely personal investments
32 not made in competition with the business of national banks, shall
33 not be deemed financial business. Nor shall "financial business"
34 include national banks, production credit associations organized
35 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,
36 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual
37 insurance companies duly authorized to transact business in this
38 State, security brokers or dealers or investment companies or
39 bankers not employing moneyed capital coming into competition
40 with the business of national banks, real estate investment trusts, or
41 any of the following entities organized under the laws of this State:
42 credit unions, savings banks, savings and loan and building and
43 loan associations, pawnbrokers, and State banks and trust
44 companies.

45 (n) "International banking facility" shall mean a set of asset and
46 liability accounts segregated on the books and records of a
47 depository institution, United States branch or agency of a foreign
48 bank, or an Edge or Agreement Corporation that includes only

1 international banking facility time deposits and international
2 banking facility extensions of credit as such terms are defined in
3 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
4 board of governors of the Federal Reserve System, 12 CFR Part
5 204, effective December 3, 1981. In the event that the United
6 States enacts a law, or the board of governors of the Federal
7 Reserve System adopts a regulation which amends the present
8 definition of international banking facility or of such facilities' time
9 deposits or extensions of credit, the Commissioner of Banking and
10 Insurance shall forthwith adopt regulations defining such terms in
11 the same manner as such terms are set forth in the laws of the
12 United States or the regulations of the board of governors of the
13 Federal Reserve System. The regulations of the Commissioner of
14 Banking and Insurance shall thereafter provide the applicable
15 definitions.

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

19 (p) "New Jersey S corporation" means a corporation that is an S
20 corporation; which has made a valid election pursuant to section 3
21 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
22 corporation continuously since the effective date of the valid
23 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
24 5.22).

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

27 (r) "Qualified investment partnership" means a partnership
28 under this act that has more than 10 members or partners with no
29 member or partner owning more than a 50% interest in the entity
30 and that derives at least 90% of its gross income from dividends,
31 interest, payments with respect to securities loans, and gains from
32 the sale or other disposition of stocks or securities or foreign
33 currencies or commodities or other similar income (including but
34 not limited to gains from swaps, options, futures or forward
35 contracts) derived with respect to its business of investing or
36 trading in those stocks, securities, currencies or commodities, but
37 "investment partnership" shall not include a "dealer in securities"
38 within the meaning of section 1236 of the federal Internal Revenue
39 Code of 1986, 26 U.S.C. s.1236.

40 (s) "Savings institution" means a state or federally chartered
41 building and loan association, savings and loan association, or
42 savings bank.

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

45 (cf: P.L.2017, c.313, s.4)

46

47 5. Section 5 of P.L.2002, c.40 (C.54:10A-4.4) is amended to
48 read as follows:

1 5. a. For the purposes of this section:

2 "Intangible expenses and costs" includes (1) expenses, losses and
3 costs for, related to, or in connection directly or indirectly with the
4 direct or indirect acquisition, use, maintenance or management,
5 ownership, sale, exchange, or any other disposition of intangible
6 property to the extent such amounts are allowed as deductions or
7 costs in determining taxable income before operating loss deduction
8 and special deductions for the taxable year under the federal
9 Internal Revenue Code of 1986, 26 U.S.C. s.1 et seq.; (2) losses
10 related to, or incurred in connection directly or indirectly with,
11 factoring transactions or discounting transactions; (3) royalty,
12 patent, technical and copyright fees; (4) licensing fees; and (5) other
13 similar expenses and costs.

14 "Intangible property" means patents, patent applications, trade
15 names, trademarks, service marks, copyrights, mask works, trade
16 secrets and similar types of intangible assets.

17 "Interest expenses and costs" means amounts directly or
18 indirectly allowed as deductions under section 163 of the federal
19 Internal Revenue Code of 1986, 26 U.S.C. s.163, for purposes of
20 determining taxable income under the code to the extent such
21 expenses and costs are directly or indirectly for, related to, or in
22 connection with the direct or indirect acquisition, maintenance,
23 management, ownership, sale, exchange or disposition of intangible
24 property.

25 "Related member" means a person that, with respect to the
26 taxpayer during all or any portion of the privilege period, is: (1) a
27 related entity, (2) a component member as defined in subsection (b)
28 of section 1563 of the federal Internal Revenue Code of 1986, 26
29 U.S.C. s.1563, (3) is a person to or from whom there is attribution
30 of stock ownership in accordance with subsection (e) of section
31 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
32 s.1563, or (4) is a person that, notwithstanding its form of
33 organization, bears the same relationship to the taxpayer as a person
34 described in (1) through (3) of this definition.

35 "Related entity" means (1) a stockholder who is an individual, or
36 a member of the stockholder's family enumerated in section 318 of
37 the federal Internal Revenue Code of 1986, 26 U.S.C. s.318, if the
38 stockholder and the members of the stockholder's family own,
39 directly, indirectly, beneficially or constructively, in the aggregate,
40 **【at least】** 50% or more of the value of the taxpayer's outstanding
41 stock; (2) a stockholder, or a stockholder's partnership, limited
42 liability company, estate, trust or corporation, if the stockholder and
43 the stockholder's partnerships, limited liability companies, estates,
44 trusts and corporations own directly, indirectly, beneficially or
45 constructively, in the aggregate, **【at least】** 50% or more per cent of
46 the value of the taxpayer's outstanding stock; or (3) a corporation,
47 or a party related to the corporation in a manner that would require
48 an attribution of stock from the corporation to the party or from the

1 party to the corporation under the attribution rules of the federal
2 Internal Revenue Code of 1986, 26 U.S.C. s.318, if the taxpayer
3 owns, directly, indirectly, beneficially or constructively, **[at least]**
4 50% or more percent of the value of the corporation's outstanding
5 stock. The attribution rules of the federal Internal Revenue Code of
6 1986, 26 U.S.C. s.318, shall apply for purposes of determining
7 whether the ownership requirements of this definition have been
8 met.

9 b. For purposes of computing its entire net income under
10 section 4 of P.L.1945, c.162 (C.54:10A-4), a taxpayer shall add
11 back otherwise deductible interest expenses and costs and
12 intangible expenses and costs directly or indirectly paid, accrued or
13 incurred to, or in connection directly or indirectly with one or more
14 direct or indirect transactions with, one or more related members.

15 c. (1) The adjustments required in subsection b. of this section
16 shall not apply if: (a) the interest expenses and costs and intangible
17 expenses and costs are directly or indirectly paid, accrued or
18 incurred to a related member in a foreign nation which has in force
19 a comprehensive income tax treaty with the United States
20 containing an express exemption from state income taxation; or (b)
21 the taxpayer establishes by clear and convincing evidence, as
22 determined by the director, that the adjustments are unreasonable;
23 or (c) the taxpayer and the director agree in writing to the
24 application or use of an alternative method of apportionment under
25 section 8 of P.L.1945, c.162 (C.54:10A-8). Nothing in this
26 subsection shall be construed to limit or negate the director's
27 authority to otherwise enter into agreements and compromises
28 otherwise allowed by law.

29 (2) For the purposes of qualifying for the exception provided by
30 subparagraph (a) of paragraph (1) of this subsection, the taxpayer
31 shall disclose on its return for the privilege period the name of the
32 related member, the amount of the interest expenses and costs and
33 intangible expenses and costs deducted, the relevant foreign nation,
34 and such other information as the director may prescribe.

35 (3) The adjustments required in subsection b. of this section
36 shall not apply to the portion of interest expenses and costs and
37 intangible expenses and costs that the taxpayer establishes by a
38 preponderance of the evidence meets both of the following: (a) the
39 related member during the same income year directly or indirectly
40 paid, received, accrued or incurred the portion to or from a person
41 that is not a related member, and (b) the transaction giving rise to
42 the interest expenses and costs or the intangible expenses and costs
43 between the taxpayer and the related member did not have as a
44 principal purpose the avoidance of any portion of the tax due under
45 Title 54 of the Revised Statutes or Title 54A of the New Jersey
46 Statutes.

47 d. Nothing in this section shall require a taxpayer to add to its
48 net income more than once any amount of interest expenses and

1 costs and intangible expenses and costs that the taxpayer pays,
2 accrues or incurs to a related member described in subsection b. of
3 this section.

4 e. Nothing in this section shall be construed to limit or negate
5 the director's authority to make adjustments under paragraph (3) of
6 subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), section
7 8 of P.L.1945, c.162 (C.54:10A-8), or section 10 of P.L.1945, c.162
8 (C.54:10A-10).

9 (cf: P.L.2002, c.40, s.5)

10
11 6. Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is amended to
12 read as follows:

13 49. Every domestic or foreign corporation subject to the tax or
14 to filing requirements imposed under the Corporation Business Tax
15 Act (1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), shall keep all
16 records used to determine its tax liability and such other records as
17 the Director of the Division of Taxation may by regulation require.
18 The records shall be available for inspection and examination at any
19 time upon demand by the director or his duly authorized agent or
20 employee and shall be preserved for a period of five years, except
21 that the director may consent to their destruction within that period
22 or may require that they be kept longer.

23 (cf: P.L.1987, c.76, s.49)

24
25 7. Section 17 of P.L.1945, c.162 (C.54:10A-17) is amended to
26 read as follows:

27 17. (a) If the period covered by the report under this act is other
28 than the period covered by the report to the United States Treasury
29 Department or is a period of less than 12 calendar months, the
30 **【commissioner】** director may, under regulations prescribed by him,
31 determine the entire net worth and entire net income of the
32 taxpayer in such manner as shall properly reflect its entire net worth
33 and entire net income for the period covered by its report under this
34 act.

35 (b) Any taxpayer which shall fail to file its return when due or
36 to pay any tax when the same becomes due, as herein provided,
37 shall be subject to such penalties and interest as provided in the
38 State Tax Uniform Procedure Law, subtitle 9 of Title 54 of the
39 Revised Statutes. The **【commissioner】** director, if satisfied that
40 the failure to comply with any provision of this act was excusable,
41 may abate or remit the whole or part of any penalty.

42 (cf: P.L.1975, c.177, s.9)

43
44 8. Section 20 of P.L.1945, c.162 (C.54:10A-20) is amended to
45 read as follows:

46 20. In addition to other remedies for the collection of the tax
47 imposed by this chapter, the Attorney-General may of his own
48 motion or upon the request of the **【commissioner】** director,

1 whenever any tax due under this chapter shall have remained in
2 arrears for a period of three months after the tax shall have become
3 payable, bring an action in the Superior Court in the name of the
4 State, against such corporation for injunctive relief to restrain it
5 from the exercise of any franchise, or the transaction of any
6 business within this State until the payment of such tax and
7 penalties and interest due thereon, and the costs of such
8 application, to be fixed by the court. The court may proceed in the
9 action in a summary manner or otherwise and may grant the
10 injunctive relief, if a proper case appear. Upon the granting and
11 service of the order or judgment giving injunctive relief, it shall not
12 be lawful for such company thereafter to exercise any franchise or
13 transact any business in this State until such injunction be
14 dissolved.

15 (cf: P.L.1953, c.51, s.116)

16
17 9. Section 21 of P.L.1945, c.162 (C.54:10A-21) is amended to
18 read as follows:

19 21. In the event of failure or neglect of any taxpayer which is a
20 foreign corporation to pay the tax imposed by this chapter, on or
21 before the first day of December in each year, immediate notice
22 thereof may be given by the **【commissioner】** director to the
23 Secretary of State who shall immediately revoke the certificate of
24 authority of said corporation to do business in the State of New
25 Jersey and notice of such revocation shall be given by the Secretary
26 of State to the corporation affected and thereafter such corporation,
27 so far as the further transaction of business in the State of New
28 Jersey is concerned, shall be in the same condition as if no
29 certificate of authority had ever been issued to it by the Secretary
30 of State, but remedies provided by this chapter for the collection of
31 the tax and interest and penalties shall remain unimpaired. After
32 the revocation of any such certificate of authority, no new
33 certificate shall be issued by the Secretary of State to such
34 defaulting corporation until the payment of all assessments
35 imposed hereunder and remaining unpaid with penalties and
36 interest and any costs that may have accrued, such payment to be
37 evidenced by a certificate of the **【commissioner】** director.

38 (cf: P.L.1945, c.162, s.21)

39
40 10. Section 28 of P.L.1945, c.162 (C.54:10A-27) is amended to
41 read as follows:

42 28. The **【commissioner】** director shall prescribe and issue such
43 rules and regulations, not inconsistent herewith, for the
44 interpretation and application of the provisions of this act, as he
45 may deem necessary.

46 (cf: P.L.1945, c.162, s.28)

1 11. Section 29 of P.L.1945, c.162 (C.54:10A-28) is amended to
2 read as follows:

3 29. This act shall take effect January first, one thousand nine
4 hundred and forty-six, except that the **【commissioner】** director may
5 prior thereto take such action as he may deem appropriate in
6 anticipation of or in preparation for the operation of the provisions
7 hereof, and except further that the appropriation contained herein
8 for the reduction of the State school tax shall be first made for the
9 fiscal year beginning July first, one thousand nine hundred and
10 forty-six.

11 (cf: P.L.1945, c.162, s.29)

12

13 12. Section 4 of P.L.1947, c.51 (C.54:10A-30) is amended to
14 read as follows:

15 4. The **【Commissioner】** director upon written application made
16 to him and upon the payment of a fee of five dollars (\$5.00), may
17 release any property from the lien of any tax, interest or penalty
18 imposed upon any corporation in accordance with the provisions of
19 this act or of chapters thirteen or thirty-two-A of Title 54 of the
20 Revised Statutes, or of any certificate, judgment or levy procured
21 by him; provided, payment be made to the **【commissioner】**
22 director of such sum as he shall deem adequate consideration for
23 such release or deposit be made of such security or such bond be
24 filed as the **【commissioner】** director shall deem proper to secure
25 payment of any debt evidenced by any such tax, interest, penalty,
26 certificate, judgment or levy, the lien of which is sought to be
27 released, or provided the **【commissioner】** director is satisfied that
28 payment of the tax is otherwise provided for. The application for
29 such release shall be in such form as shall be prescribed by the
30 **【commissioner】** director and shall contain an accurate description
31 of the property to be released together with such other information
32 as the **【commissioner】** director may require. Such release shall be
33 given under the seal of the **【commissioner】** director, and may be
34 recorded in any office in which conveyances of real estate may be
35 recorded.

36 (cf: P.L.1947, c.51, s.4)

37

38 13. Section 2 of P.L.2005, c.127 (C.54A:5-15) is amended to
39 read as follows:

40 2. Notwithstanding the provisions of N.J.S.54A:5-1, if any, or
41 any other law to the contrary, for the purposes of determining the
42 amount of a category of income pursuant to N.J.S.54A:5-1 that is
43 net of expenses, no amounts shall be taken as a deduction pursuant
44 to section 199 of the federal Internal Revenue Code of 1986, 26
45 U.S.C. s.199, and the deduction of any amounts pursuant to section
46 199 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.199
47 shall be disallowed except that this disallowance shall not apply to

1 amounts deducted pursuant to section 199 of the federal Internal
2 Revenue Code of 1986 that are exclusively based upon domestic
3 production gross receipts of the taxpayer or allocable to the
4 taxpayer under that section which are derived only from any lease,
5 rental, license, sale, exchange, or other disposition of qualifying
6 production property which the taxpayer shall demonstrate to the
7 satisfaction of the director was manufactured or produced by the
8 taxpayer in whole or in significant part within the United States but
9 not qualified production property that was grown or extracted by
10 the taxpayer. "Manufactured or produced" as used in this paragraph
11 shall be limited to performance of an operation or series of
12 operations the object of which is to place items of tangible personal
13 property in a form, composition, or character different from that in
14 which they were acquired. The change in form, composition, or
15 character shall be a substantial change, and result in a
16 transformation of property into a different or substantially more
17 usable product.

18 For tax years beginning after December 31, 2017,
19 notwithstanding the provisions of N.J.S.54A:5-1 or any other law to
20 the contrary, for the purposes of determining the amount of a
21 category of income pursuant to N.J.S.54A:5-1 that is net of
22 expenses, no amounts shall be taken as a deduction pursuant to
23 section 199A of the federal Internal Revenue Code (26 U.S.C.
24 s.199A).

25 (cf: P.L.2005, c.127, s.2)

26

27 14. (New section) If any material provision within a clause,
28 sentence, paragraph, section, or part of P.L. , c. (C.) (pending
29 before the Legislature as this bill) or the application thereof shall be
30 judged invalid by a court of competent jurisdiction, such order or
31 judgment shall be confined in its operation to the controversy in
32 which it was rendered, and shall not affect or invalidate the
33 remainder of any provision of P.L. , c. (C.) (pending before
34 the Legislature as this bill), or the application of any part thereof to
35 any other person or circumstance and, to this end, the provisions of
36 each clause, sentence, paragraph, section, or part of
37 P.L. , c. (C.) (pending before the Legislature as this bill) are
38 declared to be severable.

39

40 15. (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
45 P.L. , c. (C.) (pending before the Legislature as this bill),
46 which regulations shall be effective for a period not to exceed 180
47 days 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 16. This act shall take effect immediately. Sections 2 and 3 shall
5 apply retroactively to tax years beginning on and after January 1,
6 2017, and section 3 shall expire on December 31, 2019. The
7 remaining sections shall apply to tax years beginning on and after
8 January 1, 2018.

9
10
11 STATEMENT

12
13 This bill imposes a surtax on allocated entire net income for the
14 privilege period ending in 2018 and the next following privilege
15 period, decouples certain provisions of the corporation business tax
16 from the Internal Revenue Code, and imposes a tax on certain
17 dividends.

18
19 *Surtax on Business Income Exceeding \$1 Million*

20
21 This bill imposes a surtax of 2.5 percent against a taxpayer,
22 which has entire net income in excess of \$1 million but less than
23 \$25 million, and of four percent against a taxpayer, which has entire
24 net income of \$25 million or more. The surtax applies to the
25 privilege period ending on or after January 1, 2018 and the next
26 following privilege period.

27 This bill imposes the surtax on the allocated entire net income of
28 a taxpayer. The bill disallows the application of the various
29 business incentive credits against the surtax, but allows application
30 of credits for installment payments, estimated payments made with
31 a request for an extension of time for filing a return, or
32 overpayments from prior privilege periods. The surtax imposed by
33 this bill does not apply to public utilities.

34
35 *Decoupling from Internal Revenue Code*

36
37 The federal Tax Cuts and Jobs Act (Pub.L.115-97), signed into
38 law December 22, 2017, enacted a number of changes to the federal
39 Internal Revenue Code. This bill disallows the deduction taken for
40 federal purposes against income reported pursuant to federal
41 Internal Revenue Code section 965. That section establishes the
42 repatriation transition tax at a substantially lower rate for federal
43 purposes. This bill further prescribes a method to apply the federal
44 interest deduction limitation in section 163(j) of the federal Internal
45 Revenue Code. Additionally, the bill decouples the corporation
46 business tax and the gross income tax from section 199A of the
47 federal Internal Revenue Code. Section 199A allows taxpayers
48 other than corporations a deduction of 20 percent of qualified

1 business income earned in a qualified trade or business, subject to
2 certain limitations.

3

4 *Taxation of Dividends*

5

6 The bill reduces the dividend exclusion amount for taxpayers
7 receiving dividends from an 80 percent or greater owned subsidiary,
8 from 100 percent to 95 percent.

9 Lastly, this bill imposes a special tax on dividends and deemed
10 dividend distributions that either a corporation business tax filer or
11 an insurance company licensed to insure risks in New Jersey
12 receives from subsidiaries if the total aggregate amount of dividend
13 and deemed dividend distributions received is greater than
14 \$1,000,000 for tax years beginning on or after January 1, 2017 and
15 ending before December 31, 2018. The dividends will be taxed at
16 the rate of 9% and the tax must be paid on or before May 15, 2019.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2746

STATE OF NEW JERSEY

DATED: JUNE 18, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2746.

This bill imposes a surtax on allocated entire net income for the privilege period ending in 2018 and the next following privilege period, decouples certain provisions of the corporation business tax from the Internal Revenue Code, and imposes a tax on certain dividends.

Surcharge on Business Income Exceeding \$1 Million

This bill imposes a surtax of two and a half percent against a taxpayer, which has entire net income in excess of \$1 million but less than \$25 million, and of four percent against a taxpayer, which has entire net income of \$25 million or more. The surtax applies to the privilege period ending after on or after January 1, 2018 and the next following privilege period.

This bill imposes the surtax on the allocated entire net income of a taxpayer. The bill disallows the application of the various business incentive credits against the surtax, but allows application of credits for installment payments, estimated payments made with a request for an extension of time for filing a return, or overpayments from prior privilege periods. The surtax imposed by this bill does not apply to public utilities.

Decoupling from Internal Revenue Code

The federal Tax Cuts and Jobs Act (Pub.L.115-97), signed into law December 22, 2017, enacted a number of changes to the federal Internal Revenue Code. This bill disallows the deduction taken for federal purposes against income reported pursuant to federal Internal Revenue Code section 965. That section establishes the repatriation transition tax at a substantially lower rate for federal purposes. This bill further prescribes a method to apply the federal interest deduction limitation in section 163(j) of the federal Internal Revenue Code. Additionally, the bill decouples the corporation business tax and the gross income tax from section 199A of the federal Internal Revenue Code. Section 199A allows taxpayers other than corporations a

deduction of 20 percent of qualified business income earned in a qualified trade or business, subject to certain limitations.

Taxation of Dividends

The bill reduces the dividend exclusion amount for taxpayers receiving dividends from an 80 percent or greater owned subsidiary, from 100 percent to 95 percent.

Lastly, this bill imposes a special tax on dividends and deemed dividend distributions that either a corporation business tax filer or an insurance company licensed to insure risks in New Jersey receives from subsidiaries if the total aggregate amount of dividend and deemed dividend distributions received is greater than \$1,000,000 for tax years beginning on or after January 1, 2017 and ending before December 31, 2018. The dividends will be taxed at the rate of nine percent and the tax must be paid on or before May 15, 2019.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot quantify certain provisions of this bill due to the absence of relevant data. However, the OLS projects that imposing a surtax of two-and-a-half percent against a taxpayer which has entire net income in excess of \$1 million but less than \$25 million, and of four percent against a taxpayer which has entire net income of \$25 million or more could generate revenues up to \$800 million in each of the two tax years in which the surtax will be in effect. The attainment of the estimated \$800 million maximum is predicated on the assumption that current overall economic conditions will largely continue and that higher taxpayer liabilities will not accelerate the application of unused taxpayer overpayments from prior tax years. Further, the OLS notes that actual revenues may be lower than predicted due to impacts related to taxpayer behavior, such as delaying the realization of income, intended to avoid the imposition of a higher tax rate during the two tax years for which the surtax is in effect.

July 1, 2018

ASSEMBLY BILL NO. 4202

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 4202 with my recommendations for reconsideration.

I am very pleased to have reached a deal with my partners in the Legislature concerning the Fiscal Year 2019 State budget and supporting revenue bills. Our agreed upon spending plan implements almost all of the investments in New Jersey's future that I recommended to the Legislature in March. I thank the Legislature for including all of these important initiatives in the State's spending plan for Fiscal Year 2019.

As I noted publicly and in meetings with legislative leadership, I had some problems with the revenue side of the Legislature's original Fiscal Year 2019 budget. In particular, I questioned whether the original legislative revenue plan adequately supported the investments that we all want for the people of New Jersey, including investments in schools, in mass transit, and in property tax relief and other core programs to assist individuals and families, in a sustainable manner. These long-term commitments require real, reliable, long-term revenues. Because of magnanimous concessions on all sides, I am satisfied that the plan we agreed to today will appropriately begin the multi-year process of fixing New Jersey's fiscal woes in a fair and responsible manner.

A temporary CBT surtax atop the existing corporation business tax was not part of the budget recommendations I presented to the Legislature in March. After extensive discussions with legislative leadership, in the spirit of cooperation and to avoid the unnecessary consequences that would be associated with a government shutdown, I have accepted this concept as part of our spending plan, if it is

amended to include several technical and substantive revisions to ensure fairness and equitable distribution of the surtax among all New Jersey corporations.

Among other revisions, I am recommending changes to support New Jersey-based companies by including market-based sourcing, aligning our State tax law with the federal research and development credit, ensuring the equitable recapture of income made available through the enactment of the federal Tax Cuts and Jobs Act, and more precisely addressing treaty exclusions to prevent abusive profit-shifting activities. My revisions also modernize New Jersey's tax code by introducing combined reporting to New Jersey so that we may join the 26 other states, the District of Columbia and New York City that have already done so.

Therefore, I herewith return Assembly Bill No. 4202 and recommend that it be amended as follows:

<u>Page 2, Title, Line 1:</u>	Delete "and"
<u>Page 2, Title, Line 2:</u>	After "law" in ", and repealing section 30 of P.L.2002, c.40 (C.54:10A-18.1) and section 7 of P.L.2002, c.40 (C.54:10A-5a)"
<u>Page 2, Section 1, Line 11:</u>	Delete "entire" and insert "allocated"
<u>Page 2, Section 1, Line 12:</u>	Delete ", but less than \$25 million"
<u>Page 2, Section 1, Line 13:</u>	Delete "period" and insert "periods, beginning on or after January 1, 2018 through December 31, 2019"
<u>Page 2, Section 1, Line 14:</u>	Delete "entire" and insert "allocated"
<u>Page 2, Section 1, Line 15:</u>	Delete "\$25" and insert "\$1"
<u>Page 2, Section 1, Line 15:</u>	Delete "period" and insert "periods, beginning on or after January 1, 2020 through December 31, 2021"
<u>Page 2, Section 1, Line 16:</u>	Delete "4%" and insert "1.5%"
<u>Page 2, Section 1, Line 17:</u>	Delete "The surtax imposed pursuant to this section shall be upon a taxpayer's allocated net income for the privilege period ending on or after January 1, 2018"

and upon a taxpayer's allocated net income for the next following privilege period." and insert "For purposes of this section, "taxpayer" shall mean any business entity required to report and pay tax for federal income tax purposes, and shall include any business entity subject to tax as provided in the Corporation Business Tax (1945), P.L.1945, c.162 (C.54:10A-1 et seq.)."

<u>Page 2, Section 3, Lines 39-45:</u>	Delete in their entirety
<u>Page 3, Section 3, Lines 1-48:</u>	Delete in their entirety
<u>Page 4, Section 3, Lines 1-21:</u>	Delete in their entirety
<u>Page 4, Section 4, Line 23:</u>	Delete "4." and insert "3."
<u>Page 5, Section 4, Line 1:</u>	Delete "50%" and insert "100%"
<u>Page 8, Section 4, Lines 45-46:</u>	Delete " <u>containing an express exemption from state income taxation</u> " and insert " <u>and the related member (aa) was subject to tax in the foreign nation on a tax base that included the payment paid, accrued, or incurred; and (bb) under which the related member's income received from the transaction was taxed at an effective tax rate equal to or greater than a rate of three percentage points less than the rate of tax applied to taxable interest by the State of New Jersey</u> "
<u>Page 9, Section 4, Line 3:</u>	After "required." insert " <u>Transactions between members of a combined group are eliminated in the computation of the entire net income of the members of the combined group; therefore, this subparagraph only applies to interest paid, accrued or incurred by a taxable member of a combined group to related parties that are not members of the combined group.</u> "
<u>Page 10, Section 4, Line 24:</u>	After "(5) (A)" insert "(i)"
<u>Page 10, Section 4, Line 29:</u>	Delete "2018" and insert "2016. (ii) For the privilege period beginning after December 31, 2016, entire net income shall exclude 95% of dividends which were included in computing such taxable income for federal income tax purposes, paid or deemed paid, to the taxpayer by one or more subsidiaries owned by the taxpayer to the extent of the 80% or more ownership of investment described in subsection (d) of this section. For the purposes of calculating

the tax liability owed for the deemed dividends included in entire net income by this subsection, the taxpayer shall use either their three year average allocation factor for the taxpayer's 2015 through 2017 tax years reported on the taxpayer's tax returns or 3.5 percent, whichever is lower."

Page 10, Section 4, Line 30:

Delete "(B)" and insert "(iii)"

Page 10, Section 4, Line 31:

Delete "2019" and insert "2018"

Page 10, Section 4, Line 33:

After "paid" insert "or deemed paid"

Page 10, Section 4, Line 36:

Before "Entire" insert "(B)"

Page 10, Section 4, Line 38:

After "paid" insert "or deemed paid"

Page 10, Section 4, Line 42:

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

Page 10, Section 4, Line 43:

Delete "There" and insert "For privilege periods before the effective date of P.L. ____, c. (pending before the Legislature as this bill, there"

Page 11, Section 4, Line 9:

Delete "exclusions" and insert "exclusion"

Page 11, Section 4, Line 10:

Delete "paragraphs" and insert "paragraph"

Page 11, Section 4, Line 10:

After "(4)" delete "and (5)"

Page 11, Section 4, Line 17:

After "in" delete "exclusions in paragraphs (4) and (5)" and insert "exclusion in paragraph (4)"

Page 12, Section 4, Line 9:

After "to" insert ",or would have been subject to tax if doing business in this State,"

Page 12, Section 4, Line 14:

After "to" insert ",or would have been subject to tax if doing business in this State,"

Page 14, Section 4, Line 47-48:

Delete "Entire net income shall be determined without exclusion, exemption, deduction or credit of any income exempt from federal" and insert "(A) There shall be allowed as a deduction an amount computed in accordance with this paragraph."

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

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

(D) If the provisions of sections 17 through 21 of P.L. , c. (C.) (pending before the Legislature as this bill) result in an aggregate increase to the members' net deferred tax liability or an aggregate decrease to the members' net deferred tax asset, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the combined group shall be entitled to a deduction, as determined in this paragraph.

(E) For 10 years beginning with the combined group's first privilege period beginning on or after January 1 of the fifth year after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) becomes effective, a combined group shall be entitled to a deduction from combined group entire net income equal to one-tenth of the amount necessary to offset the increase in the net deferred tax liability or decrease in the net deferred tax asset, or aggregate change from a net

deferred tax asset to a net deferred tax liability. Such increase in the net deferred tax liability or decrease in the net deferred tax asset or the aggregate change from a net deferred tax asset to a net deferred tax liability shall be computed based on the change that would result from the imposition of the unitary reporting requirements under sections 1 through 17-21 of P.L. , c. (C.) (pending before the Legislature as this bill) but for the deduction provided under this paragraph as of the effective date of this paragraph.

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

(i) the deferred tax impact determined in subparagraph (E) of this paragraph shall be divided by the rate determined under section 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L. , c. (C.) (pending before the Legislature as this bill);

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

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

(G) The deduction calculated under this paragraph shall not be adjusted as a result of any events happening subsequent to such calculation, including, but not limited to, any disposition or abandonment of assets. Such deduction shall be calculated without regard to the federal tax effect and shall not alter the tax basis of any asset. If the deduction under this section is greater than combined group entire net income, any excess deduction shall be carried forward and

applied as a deduction to combined group entire net income in future privilege periods until fully utilized.

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

Page 15, Section 4, Line 1-4:

Delete in their entirety

Page 16, Section 4, Line 44:

After "purposes." Insert
"(u) "Prior net operating loss conversion carryover" means a net operating loss incurred in a privilege period prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) and converted from a pre-allocation net operating loss to a post-allocation net operating loss as follows:
(1) As used in this subsection: "Base year" means the last privilege period prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). "Base year BAF" means the taxpayer's business allocation factor as provided in sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) for purposes of calculating entire net income for the base year, as such section was in effect for the last privilege period prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). "UNOL" means the unabsorbed portion of net operating loss as calculated under paragraph (6) of subsection (k) of this section as such paragraph was in effect for

the last privilege period prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), that was not deductible in previous privilege periods and was eligible for carryover on the last day of the base year subject to the limitations for deduction under such subsection, including any net operating loss sustained by the taxpayer during the base year.

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

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

(B) The taxpayer shall continue to carry over its prior net operating loss conversion carryover to offset its allocated entire net income as provided in sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) for privilege periods beginning on and after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). Such carryover periods shall not exceed the twenty privilege periods following the privilege period of the initial loss. The entire amount of the prior net operating loss conversion carryover for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the prior net operating loss conversion carryover which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the prior net operating loss conversion carryover over the sum of the entire net income, computed without the exclusion permitted in paragraph (4) of subsection (k) of

this section allocated to this state.

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

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

(1) Net operating loss carryover. A net operating loss for any privilege period beginning on or after the effective date of this Act shall be a net operating loss carryover to each of the twenty privilege periods following the period of the loss. The entire amount of the net operating loss for any privilege period shall be carried to the earliest of the privilege periods to which the loss may be carried. The portion of the loss which shall be carried to each of the other privilege periods shall be the excess, if any, of the amount of the loss over the sum of the entire net income, computed without the exclusion permitted in paragraph (4) of subsection (k) of this section allocated to this state.

(2) Net operating loss. For purposes of this paragraph the term "net operating loss" means the excess of the deductions over the gross income used in computing entire net income, without regard to any net operating loss carryover, and computed without the exclusion in paragraph (4) of subsection (k) of this section, allocated to this State pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8).

(3) Reduction for discharge of indebtedness. A net operating loss for any privilege period beginning after the effective date of this Act, and any net operating loss carryover to such privilege period, shall be reduced by the amount excluded from federal taxable income under subparagraph

(A), (B), or (C) of paragraph (1) of subsection (a) of section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108, for the privilege period of the discharge of indebtedness.

(4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period beginning prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

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

(x) "Affiliated group" means an affiliated group as defined in section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, except such affiliated group shall include all domestic corporations that are commonly owned, directly or indirectly, by any member of such affiliated group, without regard to whether the affiliated group includes (1) corporations included in more than one federal consolidated return, (2) corporations engaged in one or more unitary businesses, or (3) corporations that are not engaged in a unitary business with any other member of the affiliated group.

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

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

(2) that is licensed as a captive insurance company under the laws

of this State or another jurisdiction;

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

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

For purposes of this definition:

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

"Gross receipts" includes the amounts included in gross receipts for purposes of paragraph (15) of subsection (c) of section 501 of the federal Internal Revenue Code, 26 U.S.C. s.501, except that those amounts also include all premiums. "Premiums" includes consideration for annuity contracts and excludes any part of the consideration for insurance, reinsurance, or annuity contracts that do not provide bona fide insurance, reinsurance, or annuity benefits.

(z) "Combined group" means the group of all companies that have common ownership and are engaged in a unitary business, where at least one company is subject to tax under this chapter, except as provided in paragraph k of section 17 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

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

(dd) "Member" means a corporation that is a part of a combined group.

(ee) "Nontaxable member" means a member that is not subject to tax pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and is not a corporation exempted from the tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3) except for a combinable captive insurance company. (ii) a New Jersey S Corporation which does not elect to be included in the combine group.

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

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

Page 16, Section 5, Line 47:

Delete "5." and insert "4."

Page 18, Section 5, Line 20:

Delete "containing an express exemption from state income taxation" and insert "and the (i) related member was subject to tax in the foreign nation on a tax base that included the payment paid, accrued, or incurred and (ii) the related member's income received from the transaction was taxed at an effective tax rate equal to or greater than a rate of three percentage points less than the rate of tax applied to taxable interest by the State of New Jersey"

Page 19, Line 10:

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

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

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

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

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

(c) (1) For a taxpayer that is not a New Jersey S corporation, 3 1/4% of its entire net income or such portion thereof as may be allocable to this State as provided in [section] sections 6 through 8 of P.L.1945, c.162 [(C.54:10A-6)] (C.54:10A-6 through C.54:10A-8), plus such portion thereof as is specifically assigned to this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1); provided, however, that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1967, the rate shall be 4 1/4%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1971, the rate shall be 5 1/2%; and that with respect to reports covering accounting or privilege periods or parts thereof ending after December 31, 1974, the rate shall be 7 1/2%; and that with respect to reports covering privilege periods or parts thereof ending after December 31, 1979, the rate shall be 9%; provided however, that for a taxpayer that has entire net income of \$100,000 or less for a privilege period and is not a partnership the rate for that privilege period shall be 7 1/2% and provided further that for a taxpayer that has entire net income of \$50,000 or less for a privilege period and is not a partnership the rate for that privilege period shall be 6 1/2%. For privilege periods beginning on or after the effective date of P.L. , c. (pending before the Legislature as this bill), the tax rate shall be applied against the net income.

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

- (i) for privilege periods ending on or before June 30, 1998 the rate determined by subtracting the maximum tax bracket rate provided under N.J.S.54A:2-1 for the privilege period from the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period; and
- (ii) For a taxpayer that has entire net income in excess of \$100,000 for the privilege period,

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

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

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

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

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

(iv) The taxpayer's rate determined under subparagraph (i), (ii) or (iii) of this paragraph shall be multiplied by its entire net income that is not subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through [10] 8 of P.L.1945, c.162 (C.54:10A-6 through [54:10A-10] 54:10A-8) plus such portion thereof as is specifically assigned to this State as provided in section 5 of P.L.1993, c.173 (C.54:10A-6.1).

(3) For a taxpayer that is a New Jersey S corporation, in addition to the amount, if any, determined under paragraph (2) of this subsection, the tax rate that would otherwise be applicable to the taxpayer's entire net income for the privilege period if the taxpayer were not an S corporation provided under paragraph (1) of this subsection for the privilege period multiplied by its entire net income that is subject to federal income taxation or such portion thereof as may be allocable to this State pursuant to sections 6 through [10] 8 of P.L.1945, c.162 (C.54:10A-6 through [54:10A-10] 54:10A-8). For privilege periods beginning on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the tax rate shall be applied against taxable net income.

(d) Provided, however, that the franchise tax to be annually assessed to and paid by any

investment company or real estate investment trust, which has elected to report as such and has filed its return in the form and within the time provided in this act and the rules and regulations promulgated in connection therewith, shall, in the case of an investment company, be measured by 40% of its entire net income and 40% of its entire net worth, and in the case of a real estate investment trust, by 4% of its entire net income and 15% of its entire net worth, at the rates hereinbefore set forth for the computation of tax on net income and net worth, respectively, but in no case less than \$250, and further provided, however, that the franchise tax to be annually assessed to and paid by a regulated investment company which for a period covered by its report satisfies the requirements of Chapter 1, Subchapter M, Part I, Section 852(a) of the federal Internal Revenue Code shall be \$250. For privilege periods beginning on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the tax rate shall be applied against taxable net income.

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

Period Beginning In Calendar Year:	Domestic Corporation Minimum Tax:	Foreign Corporation Minimum Tax:
1994	\$50	\$100
1995	\$150	\$200
1996	\$200	\$200
1997	\$200	\$200
1998	\$200	\$200
1999	\$200	\$200
2000	\$200	\$200
2001	\$210	\$210

and for calendar years 2002 through 2005 the minimum tax for all taxpayers shall be \$500, and for calendar year 2006 through

calendar year 2011 the minimum tax for all corporations, and for privilege periods beginning in calendar year 2012 and thereafter the minimum tax for corporations that are not New Jersey S corporations shall be based on the New Jersey gross receipts[, as defined for the purposes of this section pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a),] of the taxpayer pursuant to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$500
\$100,000 or more but less than \$250,000	\$750
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000.....	\$1,500
\$1,000,000 or more	\$2,000

and for privilege periods beginning in calendar year 2012 and thereafter the minimum tax for corporations that are New Jersey S corporations shall be based on the New Jersey gross receipts [, as defined for the purposes of this section pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a),] of the taxpayer pursuant to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$375
\$100,000 or more but less than \$250,000	\$562.50
\$250,000 or more but less than \$500,000	\$750
\$500,000 or more but less than \$1,000,000.....	\$1,125
\$1,000,000 or more	\$1,500

provided however, that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax shall be \$2,000 for the privilege period.

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

(g) Provided however, that for privilege periods beginning on or after January 1, 2001 but before January 1, 2002 the franchise tax

annually assessed to and paid by a taxpayer:

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

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

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

(i) (Deleted by amendment, P.L.2008, c.120)

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

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

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

(2) 10% of the basic research payments for the privilege period determined in accordance with section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41[, as in effect on June 30, 1992, and provided that subsection (h) of 26 U.S.C. s.41 relating to termination shall not apply]. Provided however, that the terms "qualified research expenses," "base amount," "qualified organization base amount period," "basic research" and any other terms determined by the Director of the Division of Taxation to affect the calculation of the credit shall include only expenditures for research conducted in this State.

b. No credit shall be allowed under section 42 of P.L.1987, c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and Employment Investment Tax Credit

Act," P.L.1993, c.171 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for property or expenditures for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

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

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

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

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

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

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

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

6. The portion of a taxpayer's entire net worth to be used as a measure of the tax imposed by subsection (a) of section 5 of P.L.1945, c.162 (C.54:10A-5), and the portion of its entire net income to be used as a measure of the tax imposed by subsection (c)

of section 5 of P.L.1945, c.162 (C.54:10A-5), shall be determined by multiplying such entire net worth and entire net income, respectively, by an allocation factor which is the property fraction, plus twice the sales fraction plus the payroll fraction and the denominator of which is four, and which, for privilege periods beginning on or after January 1, 2012, is the sum of the portions of the property fraction, the sales fraction, and the payroll fraction determined in accordance with the following schedule:

for privilege periods beginning on or after January 1, 2012 but before January 1, 2013, 15% of the property fraction plus 70% of the sales fraction plus 15% of the payroll fraction, for privilege periods beginning on or after January 1, 2013 but before January 1, 2014, 5% of the property fraction plus 90% of the sales fraction plus 5% of the payroll fraction, and for privilege periods beginning on or after January 1, 2014, 100% of the sales fraction, except as the director may determine pursuant to section 8 of P.L.1945, c.162 (C.54:10A-8), that is:

(A) The property fraction is the average value of the taxpayer's real and tangible personal property within the State during the period covered by its report divided by the average value of all the taxpayer's real and tangible personal property wherever situated during such period; provided, however, that for the purpose of determining average value, the provisions with respect to depreciation as set forth in subparagraph (F) of paragraph (2) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) shall be taken into account for arriving at such value.

(B) The sales fraction is the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its net income for federal tax purposes, arising during such period from:

(1) sales of its tangible personal property located within this State at the time of the receipt of or appropriation to the orders where shipments are made to points within this State,

(2) sales of tangible personal property located without the State at the time of the receipt of or appropriation to the orders where shipment is made to points within the State,

(3) (Deleted by amendment.)

(4) [services performed within the State,] (i) sales of services, if the benefit of the service is received at a location in this State. If the benefit of the service is received both at a location within and outside this State, the portion of the sale that is allocated to this State is based on the percentage of the total value of the benefit of the service received at a location in this State or a reasonable approximation to the total value of the benefit of the service received in all locations both within and outside this State; (ii) if the state or states of assignment of services under subparagraph (i) of this paragraph cannot be determined for a customer who is an individual that is not a sole proprietor, the benefit of the service is deemed to be received at the customer's billing address; (iii) if the state or states of assignment of services under subparagraph (i) cannot be determined for a customer, except for a customer under subparagraph (ii) of this paragraph, the benefit of the service is deemed to be received at the location from which the services were ordered in the customer's regular course of operations. If the location from which the services were ordered in the customer's regular course of operations cannot be determined, the benefit of the service is deemed to be received at the customer's billing address,

(5) rentals from property situated, and royalties from the use of patents or copyrights, within the State,

(6) all other business receipts (excluding dividends excluded from entire net income by paragraph (1) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State, divided by the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business receipts, whether within or without the State.

(C) The payroll fraction is the total wages, salaries and other personal service compensation, similarly computed, during such period of officers and employees within the State divided by the total wages, salaries and other personal service compensation, similarly computed, during such period of all the taxpayer's officers and employees within and without the State.

In the case of a banking corporation which maintains a regular place of business outside this State other than a statutory office, and which elects to take the exclusion from net worth provided in subsection (d) of section 4 of P.L.1945, c.162 (C.54:10A-4) or the deduction from entire net income provided in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), the allocation factor shall be computed and applied in accordance with section 6 of P.L.1945, c.162 (C.54:10A-6); provided, however, that the numerators and the denominators of the fractions described in (A), (B) or (C) above shall include all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in paragraph (4) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), whether or not such amounts are otherwise attributable to this State.

8. Section 26 of P.L. 2002, c. 40 (C.54:10A-6.2) is amended to read as follows:

26. a. (1) For the purposes of determining the receipts from services **[performed]** within the State under paragraph (4) of subsection (B) of section 6 of P.L.1945, c.162 (C.54:10A-6), **[and for the purposes of paragraph (3) of the definition of New Jersey gross receipts pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a),]** the receipts from the services of a registered securities or commodities broker or dealer and the receipts from asset management services shall be from services **[performed]** within the State if the customer is located within this State.

b. For purposes of this subsection:

"Asset management services" means the rendering of investment advice, making determinations as

to when sales and purchases are to be made, or the selling or purchasing of assets, and related activities;

"Securities" has the meaning provided by paragraph (2) of subsection (c) of section 475 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.475;

"Commodities" has the meaning provided by paragraph (2) of subsection (e) of section 475 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.475; and

"Registered securities or commodities broker or dealer" means a broker or dealer registered as such by the federal Securities and Exchange Commission or the federal Commodities Futures Trading Commission.

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

10. a. Whenever it shall appear to the director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in such manner as either directly or indirectly to distort its true entire net income or its true entire net worth under this act or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under this act, or whereby the activity, business, receipts, expenses, assets, liabilities, income or net worth of the taxpayer are improperly or inaccurately reflected, the director is authorized and empowered, in the director's discretion and in such manner as the director may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the State and the allocation of entire net income or entire net worth or to make any other adjustments in any tax report or tax returns as may be necessary to make a fair and reasonable determination of the amount of tax payable under this act.

b. Where (1) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (2) any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by or through another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the director may include in the entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction. The director may require any person or corporation to submit such information under oath or affirmation, or to permit such examination of its books, papers and documents, as may be necessary to enable the director to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not such person or corporation is subject to the tax imposed by this act.

c. [The entire net income of a taxpayer exercising its franchise in this State that is a member of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, shall be determined by eliminating all payments to, or charges by, other members of the affiliated or controlled group in excess of fair compensation in all inter-group transactions of any kind. Notwithstanding the elimination of all inter-group transactions in excess of fair compensation, if the taxpayer cannot demonstrate by clear and convincing evidence that a report by a taxpayer discloses the true earnings of the taxpayer on its business carried on in this State, the director may, at the director's discretion, require the taxpayer to file a

consolidated return of the entire operations of the affiliated group or controlled group, including its own operations and income to the extent permitted under the Constitution and statutes of the United States. The director shall determine the true amount of entire net income earned by the taxpayer in this State. The consolidated entire net income of the taxpayer and of the other members of its affiliated group or controlled group shall be allocated to this State by use of the applicable allocation formula that the director requires pursuant to P.L.1945, c.162 (C.54A:10A-1 et seq.) be used by the taxpayer. The return shall include in the allocation formula the property, payrolls, and sales of all corporations for which the return is made. The director may require a consolidated return under this section without regard to whether the other members of the affiliated or controlled group, other than the taxpayer, are or are not exercising their franchises in this State.

A consolidated return required by this section shall be filed within 60 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

The member of an affiliated group or a controlled group shall incorporate in its return required under this section information needed to determine under this section its taxable entire net income, and shall furnish any additional information the director requires, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. A taxpayer shall furnish any additional information requested within 30 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. (Deleted by amendment, P.L. , c. (pending before the Legislature as this bill)).

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

(a) The director may by [general rule] regulation or by special notice require any taxpayer to submit copies or pertinent extracts of its federal income tax returns, or of any other tax return [made to] filed with any agency of the federal government,

or of this or any other state, or of any statement or registration made pursuant to any state or federal law pertaining to securities or securities exchange regulation.

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

(c) Each taxpayer filing a return that is a member of [an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563] a commonly owned group or a combined group shall, upon the request of the director and 90 days' notice thereof, disclose in its return for the privilege period the amount of all inter-member costs or expenses, including but not limited to management fees, rents, and other services, for the privilege period. If the taxpayer acquires products or services from another member of its [affiliated group or controlled group] commonly owned group or a combined group, which it re-sells or otherwise uses to generate revenue, the taxpayer shall, upon the request of the director and 90 days' notice thereof, disclose the amount of revenue generated from those products or services. The director shall promulgate rules and procedures for the manner of disclosure. A failure to file such a disclosure shall be deemed the filing of an incomplete tax return, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq."

Page 19, Section 7, Line 25:

Delete "7." and insert "11."

Page 19, Section 8, Line 44:

Delete "8." and insert "12."

Page 20, Section 9, Line 17:

Delete "9." and insert "13."

Page 20, Section 10, Line 40:

Delete "10." and insert "14."

Page 21, Section 11, Line 1:

Delete "11." and insert "15."

Page 21, Section 12, Line 13:

Delete "12." and insert "16."

Page 21, Line 37:

Insert new sections 17-25:

"17. (New section) A taxable member of a combined group shall determine its entire net income from the unitary business as its share of the entire net income of the combined group in accordance with a combined unitary tax return made pursuant to this section and sections 17 through 21 of P.L. , c. (C.) (pending before the Legislature as this bill). The entire net income from the unitary business of a combined group is the sum of the entire net incomes of each taxable member and each nontaxable member of the combined group derived from the unitary business, which shall be determined as follows:

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

b. For a member not incorporated in the United States, the income to be included in the entire net income of the combined group shall be determined from a profit and loss statement that shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained, adjusted to conform it to the accounting principles generally accepted in the United States for the presentation of those statements and further adjusted to take into account any book-tax differences required by federal or State law. The profit and loss statement of each foreign member of the

combined group and the allocation factors related thereto, whether United States or foreign, shall be translated into or from the currency in which the parent company maintains its books and records on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. Income shall be expressed in United States dollars. In lieu of these procedures and subject to the determination of the director that the income to be reported reasonably approximates income as determined under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), income may be determined on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis.

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

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

d. All dividends paid by one member to another member of the

combined group shall be eliminated from the income of the recipient.

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

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

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

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

under section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, but allowed as a carryover deduction in a subsequent privilege period, shall be treated as originally incurred in the subsequent year by the same member and the provisions of this section shall apply in the subsequent privilege period in determining the allowable deduction for that privilege period.

g. A prior net operating loss conversion carryover incurred by a member of a combined group shall be deducted from the entire net income or loss allocated to this state pursuant to section 18 of P.L. , c. (C.) (pending before the Legislature as this bill) as follows:

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

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

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

h. A net operating loss carryover incurred by a member of a combined group shall be deducted from entire net income or loss allocated to this state pursuant to section 18 of P.L. , c. (C.) (pending

before the Legislature as this bill) as follows:

(1) For privilege periods beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 21 of P.L. , c. (C.) (pending before the Legislature as this bill), if the computation of a combined group's entire net income allocated to this state results in a net operating loss, a taxable member of such group may carry over the net operating loss allocated to this state, as calculated under this section and sections 2 and 3 of P.L. , c. (C.) (pending before the Legislature as this bill), and shall be deductible from entire net income derived from the unitary business in a future privilege period to the extent that the carryover and deduction is otherwise consistent with subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4)

(2) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred by a combined group in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill), then the taxable member may share the net operating loss carryover with other taxable members of the combined group if such other taxable members were members of the combined group in the privilege period that the loss was incurred. Any amount of net operating loss carryover that is deducted by another taxable member of the combined group shall reduce the amount of net operating loss carryover that may be carried over by the taxable member that originally incurred the loss.

(3) Where a taxable member of a combined group has a net operating loss carryover derived

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

(4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 and 20 of P.L. , c. (C.) (pending before the legislature as this bill).

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

(1) If a taxable member of a combined group earns a tax credit in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill), then the taxable member may share the credit with other taxable members of the combined group. Any amount of credit that is utilized by another taxable member of the combined group shall reduce the amount of credit carryover that may be carried over by the taxable member that originally earned the credit. If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill), then the taxable member may share the carryover

credit with other taxable members of the combined group.

(2) If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill), then the taxable member may share the carryover credit with other taxable members of the combined group.

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

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

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

k. Nothing in this section shall apply to:

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

eligible by the Commissioner of Banking and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks within this State that is not a combinable captive insurance company. Notwithstanding a provision, if any, to the contrary in this section, the income of an insurance company that is not a combinable captive insurance company, the allocation or apportionment of income related thereto and the apportionment factors of an insurance company that is not a combinable captive insurance company shall not be included in a combined unitary tax return filed under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill). In addition, the dividend exclusion provisions of paragraph (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating to dividends paid by insurance companies to non-insurance companies included in the unitary group shall not be affected by P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

18. (New section) A taxable member of a combined group shall determine its allocation factor for determining its share of the entire net income of the combined group, as determined pursuant to the provisions of section 17 of P.L. , c. (C.) (pending before the Legislature as this bill), pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8); provided however:

a. In computing its denominator for the sales fraction, the taxable member shall use the combined group's denominator for that fraction. In computing the numerator of its sales fraction, each taxable member shall be treated as a separate taxpayer and that taxable member's numerator will include only that taxable member's receipts assignable to this state.

b. All business income of a combined group engaged in the transportation of freight by air or ground shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the ton miles traveled by the combined group's mobile assets in this State by type of mobile asset and the denominator of which is the total ton miles traveled by the combined group's mobile assets everywhere. This section applies, if 50 per cent or more of the combined group's entire net income is derived from the transportation of freight by air or ground.

c. In determining the numerator and denominator of the allocation factors of taxable members, transactions between or among members of the combined group shall be eliminated.

d. The director shall promulgate rules and regulations necessary to carry out the provisions of this section.

19. (New section) a. A combined group shall file a combined unitary tax return under this section in the form and manner prescribed by the director. The managerial member of the combined group shall file the combined unitary tax return on behalf of the taxable members of the combined group and shall pay the tax on behalf of such taxable members. The managerial member is authorized to file taxable member returns, file taxable member extensions for filing, pay taxable member liabilities, receive taxable member findings, assessments, and notices, make and receive taxable member claims, or

file taxable member protests and appeals.

b. The privilege period for which the group shall file shall be determined as the privilege period of the managerial member. If a member of a combined group has a different fiscal or calendar accounting period from the group privilege period, that member with a different period shall report amounts from its return for its fiscal or calendar accounting year that ends during the group privilege period, provided no such reporting of amounts shall be required of such member until its first privilege period beginning on or after the first day of the initial privilege period of the managerial member for which a combined unitary tax return is required under sections 17 through 20 of P.L. , c. (C. and) (pending before the Legislature as this bill).

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

d. If a combined group is eligible to select the managerial member of the combined group, notice of the selection shall be submitted in written form to the director not later than the due date, or, if an extension of time to file has been requested and granted, not later than the extended due date of the combined unitary tax return for the initial privilege period for which such return is required. The subsequent selection of another designated taxable member shall be subject to the approval of the director.

e. For purposes of this section:

(1) Any notice shall be sent to the managerial member of the combined group at the last known address of the managerial member as indicated on either the last

filing required or made under this Chapter or a subsequent electronic or written notice provided by the managerial member under rules prescribed by the director;

(2) The director may, at the director's sole discretion: (a) make any deficiency assessment against either the managerial member or a taxable member of the combined group; (b) refund or credit any overpayment to either the managerial member or a taxable member of the combined group; (c) require any payment to be made by electronic funds transfer; and (d) require the combined unitary tax return to be electronically filed.

f. The director shall promulgate rules and regulations necessary to carry out the provisions of this section.

20. (New section) A combined group filing a combined return that has any outstanding alternative minimum assessment credit or credits at the time of the effective date of the repeal of section 7 of P.L.2002, c.40 (C.54:10A-5a) shall be allowed to use the credit to offset the combined group's net deferred tax liability resulting from the transition to a mandatory unitary combined return. For purposes of this section, "net deferred tax liability" shall mean the net increase, if any, in deferred tax liabilities minus the net increase, if any, in deferred tax assets of the combined group, as computed in accordance with generally accepted accounting principles, that is the result of the transition from filing separate returns to filing a mandatory unitary combined return. The remaining balance of the credit carryovers of members of the combined group from prior to the effective date of the repeal of section 7 of P.L.2002, c.40 (C.54:10A-5a) shall not reduce the combined tax liability below 50% of the tax owed by the group. The remaining balance of the credit may be carried over until used by the combined group.

21. (New section) a. Determination of Managerial Member. If the combined group has a common parent corporation within the meaning of the Corporation Business Tax Act (1945), P.L.1945,

c.162 (C.54:10A-1 et seq.), and that common parent corporation is a taxable member of the corporate group, the managerial member shall be the common parent corporation. In other cases, the combined group shall select a taxable member as its managerial member or, in the discretion of the director or upon failure of the combined group to select its managerial member, the director shall designate a taxable member of the combined group as managerial member. Once the election of the managerial member is made, the election shall be binding for 10 successive privilege periods, except as otherwise provided for by the director.

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

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

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

e. If a combined group is eligible to elect the managerial member of the combined group,

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

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

g. For privilege periods beginning on and after January 1, 2019 a combined group must file a mandatory combined return. However, if privilege periods of the members of the combined group differ, the first mandatory combined return for the combined group shall be required for the privilege period of the managerial member.

h. The members of a combined group shall notify the director within 90 days of a change in the combined group where a member dissolves, a merger of any kind occurs, a member withdraws from the group, a member ceases doing business, a member of the group is acquired by a third party not in the group, or additional members enter group which are required to be included.

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

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

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

(2) refund or credit any overpayment to either the

managerial member or a taxable member of the combined group;

(3) require any payment to be made by electronic funds transfer; and
 (4) require the mandatory combined return to be filed electronically.

22. (New section) a. The managerial member of a combined group may elect to have the combined group determined on a world-wide basis or an affiliated group basis. If no such election is made, the combined group shall be determined on a water's-edge basis and will take into account the incomes and allocation factors of only the following members of the combined group:

(1) each member incorporated in the United States, or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States, excluding such a member if eighty per cent or more of both its property and payroll during the privilege period are located outside the United States, the District of Columbia, and any territory or possession of the United States;

(2) each member, wherever incorporated or formed, if twenty per cent or more of both its property and payroll during the privilege period are located in the United States, the District of Columbia, or any territory or possession of the United States;

(3) any member that earns more than 20% of its income, directly or indirectly, from intangible property or related service activities that are deductible against the income of other members of the combined group;

(4) each member that has income as defined under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) and has sufficient nexus in New Jersey pursuant to section 2 of P.L.1945, c.162 (C.54:10A-2).

b. A world-wide election or an affiliated group election is effective only if made on a timely filed, original return for a privilege period by the managerial member of the combined

group. Such election is binding for, and applicable to, the privilege period for which it is made and for the five immediately succeeding privilege periods. Provided however, the election can be revoked prior to the expiration of the binding period by written request to the Director of Taxation for reasonable cause including but not limited to a substantial change in ownership, members of the combined group or principal business, or changes in tax law, regulation or policy.

c. If the managerial member elects to determine the members of a combined group on an affiliated group basis, the taxable members shall take into account the entire net income or loss and allocation factors of all of the members of its affiliated group, regardless of whether such members are engaged in a unitary business, that are subject to tax or would be subject to tax under this chapter, if doing business in this State.

d. The director shall promulgate rules and regulations necessary to carry out the provisions of this section.

23. (New section) Following the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), no penalties or interest shall accrue for underpayment of tax for the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) applying retroactively to tax years beginning on or after January 1, 2017, that create an additional tax liability due to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill), provided, however, the additional payments must be made by either the second next estimated payment subsequent to the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), by December 31, 2018 for tax years beginning on or after January 1, 2017, or by the first estimated payment due after January 1, 2019 for tax years beginning on or after

January 1, 2018. In the first tax year that a mandatory combined return is due pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), no penalties or interest shall accrue due to underpayment that may result from the switch from separate returns to mandatory combined returns, and any overpayment by a member of the combined group from the prior tax year will be credited as an overpayment of the tax owed by the combined group, credited toward future estimated payments by the combined group.

24. Section 27 of P.L.2002, c.40 (C.54:10A-4.5) is amended as follows:

27. a. Notwithstanding any provision of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal Revenue Code, including but not limited to 26 U.S.C. s.381 or any successor or equivalent provision, that permits a corporation to use the net operating losses of another for federal income tax purposes following certain transactions, including but not limited to those qualifying as reorganizations under the provisions of subparagraph (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368, a net operating loss for a privilege period ending after June 30, 1984, may be carried over and allowed as a deduction only by the corporation that sustained the loss; provided, however, that in the case of a merger of two or more corporations pursuant to statute of this State or any other jurisdiction, the net operating loss may be carried over only by the corporation that sustained the loss and that is also the surviving corporation following the merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation. [No net operating loss shall be allowed as a deduction by a corporation resulting from a consolidation pursuant to statute of this State or of any other jurisdiction.]

b. Subsection a. of this section shall not apply between members of a combined group reported on a combined return in New Jersey,

or between members of a commonly owned group reported on the elective combined return in New Jersey.

25. N.J.S.54A:5-1 is amended to read as follows:

54A:5-1. New Jersey Gross Income Defined. New Jersey gross income shall consist of the following categories of income:

a. Salaries, wages, tips, fees, commissions, bonuses, and other remuneration received for services rendered whether in cash or in property, and amounts paid or distributed, or deemed paid or distributed, out of a medical savings account that are not excluded from gross income pursuant to section 5 of P.L.1997, c.414 (C.54A:6-27).

b. Net profits from business. The net income from the operation of a business, profession or other activity after provision for all costs and expenses incurred in the conduct thereof, determined either on a cash or accrual basis in accordance with the method of accounting allowed for federal income tax purposes but without deduction of the amount of:

(1) taxes based on income;

(2) a civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for a violation of a State or federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this paragraph shall not apply to a penalty or fine assessed or collected for a violation of a State or federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was

outside the reasonable control of the violator; and

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

c. Net gains or income from disposition of property. Net gains or net income, less net losses, derived from the sale, exchange or other disposition of property, including real or personal, whether tangible or intangible as determined in accordance with the method of accounting allowed for federal income tax purposes. For the purpose of determining gain or loss, the basis of property shall be the adjusted basis used for federal income tax purposes, except as expressly provided for under this act, but without a deduction for penalties, fines, or economic benefits excepted pursuant to paragraph (2), or for treble damages excepted pursuant to paragraph (3) of subsection b. of this section.

A taxpayer's net gain or loss on the sale, exchange or other disposition of a share of an S corporation shall be calculated by increasing the adjusted basis of the share by an amount equal to the shareholder's net losses and deductions in respect of the share allowed and deducted from income for federal income tax purposes, not including any personal net operating loss deductions, to the extent that such net losses were not offset by the taxpayer's pro rata share of S corporation income otherwise subject to taxation pursuant to subsection p. of this section in respect of another S corporation, subject to rules of priority and assignment determined by the director.

For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all

capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of N.J.S.54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). [The term "net gains or income" shall not include gains or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).] The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

For purposes of this clause, the term "reorganization" means--

- (i) A statutory merger or consolidation;
- (ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring

corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

(iii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded;

(iv) A transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the corporation to which the assets are transferred;

(v) A recapitalization;

(vi) A mere change in identity, form, or place of organization however effected; or

(vii) The acquisition by one corporation, in exchange for stock of a corporation (referred to in this subclause as "controlling corporation") which is in control of the acquiring corporation, of substantially all of the properties of another corporation which in the transaction is merged into the acquiring corporation shall not disqualify a transaction under subclause (i) if such transaction would have qualified under subclause (i) if the merger had been into the controlling corporation, and no stock of the acquiring corporation is used in the transaction;

(viii) A transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties

of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

For purposes of this clause, the term "control" means the ownership of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.

For purposes of this clause, the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. In the case of a reorganization qualifying under subclause (i) by reason of subclause (vii) the term "a party to a reorganization" includes the controlling corporation referred to in such subclause (vii).

Notwithstanding any provisions hereof, upon every such exchange or conversion, the taxpayer's basis for the stock or securities received shall be the same as the taxpayer's actual or attributed basis for the stock, securities or property surrendered in exchange therefor.

d. Net gains or net income derived from or in the form of rents, royalties, patents, and copyrights.

e. Interest, except interest referred to in clause (1) or (2) of N.J.S.54A:6-14, or distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

f. Dividends. "Dividends" means any distribution in cash or property made by a corporation, association or business trust that is not an S corporation, (1) out of accumulated earnings and profits, or (2) out of earnings and profits of the year in which such dividend is paid and any distribution in cash or property made by an S corporation, as specifically determined pursuant

to section 16 of P.L.1993, c.173 (C.54A:5-14).

The term "dividends" shall not include distributions paid by a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1), to the extent provided in that section.

g. Gambling winnings.

h. Net gains or income derived through estates or trusts.

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust attributable to contributions to the trust which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey Statutes, amounts rolled over from an IRA, as defined pursuant to subsection (a) of section 408 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as defined pursuant to subsection b. of section 2 of P.L.1998, c.57 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and annuities except to the extent of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

k. Distributive share of partnership income [, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251)].

l. Amounts received as prizes and awards, except as provided in N.J.S.54A:6-8 and N.J.S.54A:6-11 hereunder.

m. Rental value of a residence furnished by an employer or a rental allowance paid by an employer to provide a home.

n. Alimony and separate maintenance payments to the extent that such payments are required to be made under a decree of divorce or separate maintenance but not

including payments for support of minor children.
o. Income, gain or profit derived from acts or omissions defined as crimes or offenses under the laws of this State or any other jurisdiction.
p. Net pro rata share of S corporation income [, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251)]."

Page 21, Section 13, Line 38:
Page 22, Section 14, Line 27:
Page 22, Section 15, Line 40:
Page 23, Line 3:

Delete "13." and insert "26."
Delete "14." and insert "27."
Delete "15." and insert "28."
Insert new sections 29-31:

29. Section 10. Section 12 of P.L.2011, c.25 (C.17:47B-12) is amended to read as follows:
12. a. Each captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall pay to the Director of the Division of Taxation in the Department of the Treasury, on or before March 1 of each year, a tax at the rate of .38 of one percent on the first \$20,000,000 and .285 of one percent on the next \$20,000,000 and .19 of one percent on the next \$20,000,000 and .072 of one percent on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders; except that no tax shall be due or payable as to considerations received for annuity contracts.
b. Each captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall pay to the Director of the Division of Taxation in the Department of the Treasury, on or

before March 1 of each year, a tax at the rate of .214 of one percent on the first \$20,000,000 of assumed reinsurance premium, and .143 of one percent on the next \$20,000,000 and .048 of one percent on the next \$20,000,000 and .024 of one percent of each dollar thereafter. However, no tax under this subsection applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection a. of this section. No tax under this subsection shall apply in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer, and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

c. The annual minimum aggregate tax to be paid by a captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) calculated under subsections a. and b. of this section shall be \$7,500, and the annual maximum aggregate tax shall be \$200,000. The maximum aggregate tax to be paid by a sponsored captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall apply to each protected cell only and not to the sponsored captive insurance company as a whole.

d. (1) A captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall, on or before March 1 of each year, file with the commissioner an annual tax return, signed and sworn to by an officer of the company, or by its United States manager, if a company of a foreign country, in the form and containing matters as may be necessary for carrying out the provisions of this section.

(2) A captive insurance company that is not a combinable captive insurance company as

defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall pay the balance of any tax due under this section based on the company's business during the preceding calendar year and make an installment payment in an amount equal to one-half of the tax payable under this section on the company's business done during the preceding calendar year.

(3) The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Uniform Tax Procedure Law, R.S.54:48-1 et seq.

e. Two or more captive insurance companies that are not combinable captive insurance companies as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) under common ownership and control shall be taxed as though they were a single captive insurance company.

f. For the purposes of this section, "common ownership and control" shall mean:

(1) in the case of stock corporations, the direct or indirect ownership of 80 percent or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(2) in the case of mutual or nonprofit corporations, the direct or indirect ownership of 80 percent or more of the surplus and the voting power of two or more corporations by the same member or members.

g. The tax provided for in this section shall constitute all taxes collectible under the laws of this State from any captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill), and a captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not pay taxes pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).

h. The tax provided for by this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on

a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

i. The tax provided for by this section shall only apply to the branch business of a branch captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.2011, c.25, s.12)

30. Section 49 of P.L.1987, c.76 (C.54:10A-14.1) is amended to read as follows:

"Every domestic or foreign corporation subject to the tax or to filing requirements imposed under the Corporation Business Tax Act (1945), P.L. 1945, c. 162 (C. 54:10A-1 et seq.), shall keep all records used to determine its tax liability and such other records as the Director of the Division of Taxation may by regulation require. The records shall be available for inspection and examination at any time upon demand by the director or his duly authorized agent or employee and shall be preserved for a period of five years, except that the director may consent to their destruction within that period or may require that they be kept longer.

31. Section 30 of P.L.2002, c.40 (C.54:10A-18.1) and section 7 of P.L.2002, c.40 (C.54:10A-5a) are repealed."

Page 23, Section 16, Line 4:
Page 23, Section 16, Line 4:

Delete "16." and insert "32."

After "immediately" delete ". Sections 2 and 3 shall" and insert "but section 1 shall be effective for tax years beginning on and after January 1, 2018, sections 2 and 3 are retroactive to January 1, 2017, and the remaining sections shall apply to tax years beginning on and after January 1, 2018, provided however that the provisions of this act related to combined reporting and market based sourcing shall apply to tax years beginning on and after January 1, 2019. Section 36 shall be effective for tax years

beginning on and after January 1,
2019.”

Page 23, Section 16, Lines 5-8:

Delete in their entirety

Respectfully,

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor



Home Administration ▾ Key Initiatives ▾ News and Events ▾ Social ▾ Contact Us ▾

Newark, N.J.

Governor Murphy Signs Fiscal Year 2019 Budget into Law

07/1/2018

TRENTON - Governor Phil Murphy today conditionally vetoed the following bills and signed them into law after the Legislature concurred with the Governor's recommendations:

ACS for A-3088wGR/SCS for S-64, 1515, 2407 (Jimenez, Dancer, Mukherji/Turner, Singleton, Ruiz, Pennacchio) - Increases earned income tax credit; provides credit for child or dependent care expenses; taxes "investment management services
[Copy of Message on A-3088](#)

A-3438wGR/SCS for S-1841, 2523 (Karabinchak, Coughlin, DeAngelo/Diegnan, Cryan) - Requires Director of the Division of Taxation to establish 90-day State tax amnesty period that ends no later than January 15, 2019
[Copy of Message on A-3438](#)

ACS for A-4061wGR/S-2767 (Chiaravalloti, Mukherji/Cruz-Perez) - Imposes surcharge on prearranged rides and increases certain fee associated with motor vehicle violations
[Copy of Message on A-4061](#)

A-4202wGR/S-2746 (Pintor Marin/Sweeney) - Imposes surtax on corporation business tax liability; decouples certain provisions from Internal Revenue Code; imposes tax on certain dividends
[Copy of Message on A-4202](#)

Governor Murphy signed the following bills into law:

A-1753/S-749 (Quijano, Vainieri Huttel, Mukherji, Giblin/Diegnan, Sarlo) - Imposes State sales and use tax and hotel and motel occupancy fee on transient accommodations; authorizes various municipal taxes and fees on transient accommodations

A-4132/S-2731 (Pintor Marin, Timberlake, Mukherji/Sarlo) - Imposes \$0.10 per fluid milliliter tax related to sales of liquid nicotine

A-4207/S-2657 (Greenwald/Sarlo) - Establishes Medicaid emergency room triage reimbursement fee for low acuity emergency room encounters

A-4229/S-2772 (Calabrese, Schaer, Jimenez/Sarlo) - Applies Meadowlands regional hotel use assessment to all municipalities that participate in Meadowlands tax sharing program

Governor Murphy signed the following bills into law while exercising his line item veto authority:

S-2019/A-4200 (Sarlo/Pintor Marin, Burzichelli) - LINE ITEM - Appropriates \$36,517,421,000 in State funds and \$16,551,418,698 in federal funds for the State budget for fiscal year 2018-2019

[Line Item Veto of S-2019](#)

[Line Item Veto Message on S-2019](#)

S-2824/A-4326 (Sarlo/Coughlin) - LINE ITEM - Amends and supplements various appropriations and language provisions in Fiscal year 2019 annual State appropriations ac

[Line Item Veto of S-2824](#)

[Line Item Veto Message on S-2824](#)

Revenue Certification for Fiscal Year 2019 Budget - <https://nj.gov/governor/news/statements/docs/RevenueCert-S2019.pdf>

[Back to Top](#)

Powered by  **Translate** [Select Language](#)

[Translator Disclaimer](#)

Governor Phil Murphy

Statewide

Home

Key Initiatives

Social

Administration

Governor Phil Murphy

Lt. Governor Sheila

Oliver

First Lady Tammy

Snyder Murphy

Cabinet

Boards, Commissions
& Authorities

Internship

Opportunities

Governor's Residence

- Drumthwacket

Economy & Jobs

Education

Environment

Health

Law & Justice

Transportation

News & Events

Press Releases

Public Addresses

Executive Orders

Statements on

Legislation

Administration Reports

Transition Reports

Facebook

Twitter

Instagram

Snapchat

YouTube

Contact Us

Scheduling Requests

Contact Us

NJ Home

Services A to Z

Departments/Agencies

FAQs

Contact Us

Privacy Notice

Legal Statement &

Disclaimers

Accessibility

Statement