

54:50-47 to 54:50-53 et al
LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2022 **CHAPTER:** 133

NJSA: 54:50-47 to 54:50-53 et al
(Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status.)

BILL NO: A4295 (Substituted for S2876 (1R))

SPONSOR(S) Sadaf F. Jaffer and others

DATE INTRODUCED: 6/16/2022

COMMITTEE: **ASSEMBLY:** Appropriations
 SENATE: Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 12/15/2022
 SENATE: 11/21/2022

DATE OF APPROVAL: 12/22/2022

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Second Reprint enacted) Yes

A4295

INTRODUCED BILL: (Includes sponsor(s) statement) Yes
COMMITTEE STATEMENT: **ASSEMBLY:** Yes
 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: Yes 6/24/2022
 6/30/2022
 11/22/2022

S2876 (1R)

INTRODUCED BILL: (Includes sponsor(s) statement) 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:

Yes 11/16/2022

VETO MESSAGE:

No

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:

No

end

§§6-12
C.54:50-47
to 54:50-53
§18
T & E
§24
C.54:10A-5.22a
§25
Note

P.L. 2022, CHAPTER 133, *approved December 22, 2022*
Assembly, No. 4295 (*Second Reprint*)

1 AN ACT concerning new federal partnership tax audit regime,
2 ending COVID-related tax extensions, eliminating requirement
3 to affirmatively elect New Jersey S Corporation status, and
4 administering these changes under the gross income tax and the
5 corporation business tax, supplementing Title 54A of the New
6 Jersey Statutes and P.L.145, c.162, and amending various parts
7 of the statutory law.

8
9 **BE IT ENACTED** by the Senate and General Assembly of the State
10 of New Jersey:

11
12 1. N.J.S.54A:2-2 is amended to read as follows:

13 54A:2-2. a. A partnership as such shall not be subject to the
14 New Jersey Gross Income Tax. Individuals carrying on business as
15 partners shall be liable for the New Jersey Gross Income Tax only
16 in their separate or individual capacities, except as provided under
17 section b. of this section.

18 b. A partnership shall report any federal partnership audit
19 adjustments made by the Internal Revenue Service pursuant section
20 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s.6225(a)(1)) to
21 the Division of Taxation in the Department of the Treasury in
22 accordance with ²[section 2 and]² subsection d. of section ²[9] ⁸2
23 of P.L. ,c. (C.) (pending before the Legislature as this bill).
24 The partners of the reviewed year shall make payment of any New
25 Jersey Gross Income Tax liability that results from the federal
26 partnership audit adjustments reported on the Federal Adjustments
27 Report, unless the partnership makes the election to pay tax on the
28 partner's behalf.

29 ²[(1)]² Failure of the partnership, partner, tiered partner, indirect
30 partner, or member to report or pay federal adjustments pursuant to
31 section 6225(a) and section 6225(c) of the Internal Revenue Code
32 shall not prevent the director from assessing the partnership,

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 AAP committee amendments adopted June 23, 2022.

²Senate SBA committee amendments adopted October 31, 2022.

1 partner, tiered partner, indirect partner, or member for taxes they
2 owe, using the best information available, in the event that the
3 partnership, partner, tiered partner, indirect partner, or member fails
4 to timely make any report or payment required by this section for
5 any reason.

6 c. The director may adopt rules and regulations that the
7 director deems necessary to effectuate the provisions of this section.

8 (cf: N.J.S.54A:2-2)

9
10 ²[2. (New section) a. A taxpayer, as defined in N.J.S. 54A:1-2
11 or subsection h. of section 4 of P.L.1945, c.162 (C.54:10A-4),
12 whose tax return filed with the Internal Revenue Service, or whose
13 net income reported, is changed or corrected by any official of the
14 United States government in any respect affecting a tax imposed by
15 chapter 2 of Title 54A of the New Jersey Statutes, including a
16 return or other similar report filed pursuant to section 6225(c)(2) of
17 the Internal Revenue Code (26 U.S.C. s.6225(c)(2)), shall within 90
18 days after the final federal adjustment and determination of the
19 change or correction, submit to the director the Federal Adjustments
20 Report.

21 b. Except for the distributive share of adjustments that have
22 been reported as required under subsection a. of this section,
23 partnerships and partners of the reviewed year shall, within 90 days
24 after the final determination date of the final federal adjustments
25 arising from a federal partnership level audit or an administrative
26 adjustment request, file the Federal Adjustments Report and make
27 payments as required under subsection b. of N.J.S.54A:5-4.

28 c. Upon the filing of a Federal Adjustments Report, the
29 director shall examine a taxpayer's return, determine any additional
30 tax or refund that may be due, and shall notify the taxpayer. Any
31 additional tax shall be paid within 15 days after the Federal
32 Adjustments Report is filed together with interest from the original
33 due date of the return for the taxable year to the date of payment of
34 the additional tax.]²

35

36 ²[3.] 2.² N.J.S.54A:5-4 is amended to read as follows:

37 54A:5-4. **[A]** a. Except as provided in subsections b. and c. of
38 this section, a partnership or association as such shall not be subject
39 to the tax imposed by this act, but the income or gain of a partner or
40 member of a partnership or association shall be subject to the tax
41 and the tax shall be imposed on **[his]** the partner's or member's
42 share, whether or not distributed, of the income or gain received by
43 the partnership or association for its taxable year ending within or
44 with the partner's or member's taxable year.

45 b. A partnership shall report and make payment of any New
46 Jersey gross income tax liability that results from the federal
47 partnership audit adjustments in accordance with ²[section 2 of

1 P.L. , c. (C.) (pending before the Legislature as this bill)
2 and]² subsection d. of section ²[9] 8² of P.L. ,c. (C.)
3 (pending before the Legislature as this bill).

4 c. Failure of the partnership, partner, indirect partner, tiered
5 partner, or member to report or pay federal adjustments that result
6 from the federal partnership audit adjustments shall not prevent the
7 director from assessing a partnership, partner, indirect partner,
8 tiered partner, or member for taxes they owe, using the best
9 information available, if the partnership, partner, indirect partner,
10 tiered partner, or member fails to timely make any report or
11 payment required by this section for any reason.

12 (cf: N.J.S.54A:5-4)

13

14 ²[4.] 3.² N.J.S.54A:8-7 is amended to read as follows:

15 54A:8-7. a. Report of change in federal taxable income or
16 credit. If the amount of a taxpayer's federal taxable income or
17 earned income tax credit reported on the taxpayer's federal income
18 tax return for any taxable year is changed or corrected by the United
19 States Internal Revenue Service or other competent authority, or as
20 the result of a renegotiation of a contract or subcontract with the
21 United States, the taxpayer shall report such change or correction
22 in federal taxable income or earned income tax credit within 90
23 days after the final determination of such change, correction, or
24 renegotiation, or as otherwise required by the director, and shall
25 concede the accuracy of such determination or state wherein it is
26 erroneous. Any taxpayer filing an amended federal income tax
27 return, including a return or other information filed pursuant to
28 section 6225(c) of the Internal Revenue Code (26 U.S.C. s.
29 6225(c)), shall also file within 90 days thereafter an amended return
30 under this act, and shall give such information as the director may
31 require. The director may by regulation prescribe such exceptions
32 to the requirements of this section as the director deems
33 appropriate.

34 b. A partnership shall report the Final Federal Adjustments
35 from a federal partnership audit or administrative adjustment
36 request pursuant to section 6225(a)(1) of the Internal Revenue Code
37 (26 U.S.C. s.6225(a)(1)) by filing the Federal Adjustments Report
38 as prescribed by the director within 90 days after the Final
39 Determination Date of the federal adjustments arising from a
40 partnership level audit.

41 c. The director may assess the federally audited partnership,
42 partners, or both, for taxes they owe, using the best information
43 available, even if the partnership or tiered partner fails to timely
44 make any report required by this section for any reason.

45 d. The director shall adopt rules and regulations the director
46 may deem necessary to effectuate the provisions of this section.

47 (cf: P.L.2000, c.80, s.6)

1 ²**[5.] 4.**² N.J.S.54A:9-4 is amended to read as follows:

2 54A:9-4. (a) General. Except as otherwise provided in this
3 section, any tax under this act shall be assessed within 3 years after
4 the return was filed (whether or not such return was filed on or after
5 the date prescribed).

6 (b) Time return deemed filed.

7 (1) Early return. for purposes of this section a return of income
8 tax, except withholding tax, filed before the last day prescribed by
9 law or by regulations promulgated pursuant to law for the filing
10 thereof, shall be deemed to be filed on such last day.

11 (2) Return of withholding tax. For purposes of this section, if a
12 return of withholding tax for any period ending with or within a
13 calendar year is filed before April 15 of the succeeding calendar
14 year, such return shall be deemed to be filed on April 15 of such
15 succeeding calendar year.

16 (c) Exceptions.

17 (1) Assessment at any time. The tax may be assessed at any
18 time if--

19 (A) No return is filed,

20 (B) A false or fraudulent return is filed with intent to evade tax,
21 or

22 (C) The taxpayer fails to comply with **[section]** N.J.S.54A:8-7,
23 in not reporting a change or correction increasing **[his]** the
24 taxpayer's Federal taxable income as reported on his Federal
25 income tax return, or in not reporting a change or correction which
26 is treated in the same manner as if it were a deficiency for Federal
27 income tax purposes, **[or]** in not filing an amended return, or, for
28 both partners and partnerships, in not reporting final federal
29 adjustments resulting from a partnership audit pursuant to section
30 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s. 6225(a)(1)).

31 (2) Extension by agreement. Where, before the expiration of the
32 time prescribed in this section for the assessment of tax, both the
33 director and the taxpayer have consented in writing to its
34 assessment after such time, the tax may be assessed at any time
35 prior to the expiration of the period agreed upon. The period so
36 agreed upon may be extended by subsequent agreements in writing
37 made before the expiration of the period previously agreed upon.

38 (3) Report of changed or corrected Federal income. If the
39 taxpayer shall, pursuant to **[section 54A:8-7]** subsection a. of
40 N.J.S.54A:8-7, report a change or correction or file an amended
41 return increasing **[his]** the taxpayer's Federal taxable income or
42 report a change or correction which is treated in the same manner as
43 if it were a deficiency for Federal income tax purposes, the
44 assessment (if not deemed to have been made upon the filing of the
45 report or amended return) may be made at any time within 2 years
46 after such report or amended return was filed. The amount of such
47 assessment of tax shall not exceed the amount of the increase in

1 New Jersey tax attributable to such Federal change or correction.
2 The provisions of this paragraph shall not affect the time within
3 which or the amount for which an assessment may otherwise be
4 made.

5 (4) Recovery of erroneous refund. An erroneous refund shall be
6 considered an underpayment of tax on the date made, and an
7 assessment of a deficiency arising out of an erroneous refund may
8 be made at any time within 3 years from the making of the refund,
9 except that the assessment may be made within 5 years from the
10 making of the refund if it appears that any part of the refund was
11 induced by fraud or misrepresentation of a material fact.

12 (5) Request for prompt assessment. If a return is required for a
13 decedent or for **[his]** the decedent's estate during the period of
14 administration, the tax shall be assessed within 18 months after
15 written request therefor (made after the return is filed) by the
16 executor, administrator or other person representing the estate of
17 such decedent, but not more than 3 years after the return was filed,
18 except as otherwise provided in this subsection and subsection (d).

19 (6) Final federal adjustments resulting from a Federal
20 Partnership Audit. Tax may be assessed against the partnership,
21 direct or indirect partners, or both, within two years of the time that
22 a partnership files a Federal Adjustments Report as required by
23 N.J.S.54A:8-7 that includes Final Federal Adjustments from a
24 federal partnership audit or administrative adjustments request that
25 would result in additional New Jersey income tax for one or more
26 direct or indirect partners.

27 (d) Omission of income on return. The tax may be assessed at
28 any time within 6 years after the return was filed if--

29 (1) An individual omits from his New Jersey income an amount
30 properly includible therein which is in excess of 25% of the amount
31 of New Jersey income stated in the return; or

32 (2) An estate or trust omits income from its return in an amount
33 in excess of 25% of its income determined as if it were an
34 individual, computing his New Jersey income under this act.

35 For purposes of this subsection there shall not be taken into
36 account any amount which is omitted in the return if such amount is
37 disclosed in the return, or in a statement attached to the return, in a
38 manner adequate to apprise the director of the nature and amount of
39 such item.

40 (e) Suspension of running of period of limitation. The running
41 of the period of limitations on assessment or collection of tax or
42 other amount (or of a transferee's liability) shall, after the mailing of
43 a notice of deficiency, be suspended for the period during which the
44 director is prohibited under subsection (c) of section N.J.S.54A:9-2
45 from making the assessment or from collecting by levy.

46 (cf: N.J.S.54A:9-4)

47

48 ²**[6.]** 5.² N.J.S.54A:9-8 is amended to read as follows:

1 54A:9-8. (a) General. Claim for credit or refund of an
2 overpayment of income tax shall be filed by the taxpayer within 3
3 years from the time the return was filed or 2 years from the time the
4 tax was paid, whichever of such periods expires the later, or if no
5 return was filed, within 2 years from the time the tax was paid. If
6 the claim is filed within the 3-year period, the amount of the credit
7 or refund shall not exceed the portion of the tax paid within the 3
8 years immediately preceding the filing of the claim plus the period
9 of any extension of time for filing the return. If the claim is not
10 filed within the 3-year period, but is filed within the 2-year period,
11 the amount of the credit or refund shall not exceed the portion of
12 the tax paid during the 2 years immediately preceding the filing of
13 the claim. Except as otherwise provided in this section, if no claim
14 is filed, the amount of a credit or refund shall not exceed the
15 amount which would be allowable if a claim had been filed on the
16 date the credit or refund is allowed.

17 (b) Extension of time by agreement. If an agreement under the
18 provisions of paragraph (2) of subsection (c) of **[section]**
19 N.J.S.54A:9-4 (extending the period for assessment of income tax)
20 is made within the period prescribed in subsection (a) for the filing
21 of a claim for credit or refund, the period for filing a claim for
22 credit or refund, or for making credit or refund if no claim is filed,
23 shall not expire prior to 6 months after the expiration of the period
24 within which an assessment may be made pursuant to the agreement
25 or any extension thereof. The amount of such credit or refund shall
26 not exceed the portion of the tax paid after the execution of the
27 agreement and before the filing of the claim or the making of the
28 credit or refund, as the case may be, plus the portion of the tax paid
29 within the period which would be applicable under subsection (a) if
30 a claim had been filed on the date the agreement was executed.

31 (c) Notice of change or correction of Federal income. If a
32 taxpayer is required by **[section]** N.J.S.54A:8-7 to report a change
33 or correction in Federal taxable income reported on **[his]** the
34 taxpayer's Federal income tax return, or to report a change or
35 correction which is treated in the same manner as if it were an
36 overpayment for Federal income tax purposes, or to file an amended
37 return with the director, claim for credit or refund of any resulting
38 overpayment of tax shall be filed by the taxpayer within 2 years
39 from the time the notice of such change or correction or such
40 amended return was required to be filed with the director. The
41 amount of such credit or refund shall not exceed the amount of the
42 reduction in tax attributable to such Federal change, correction or
43 items amended on the taxpayer's amended Federal income tax
44 return. This subsection shall not affect the time within which or the
45 amount for which a claim for credit or refund may be filed apart
46 from this subsection.

47 (d) Failure to file claim within prescribed period. No credit or
48 refund shall be allowed or made, except as provided in subsection

1 (e) of this section or subsection (d) of **[section]** N.J.S.54A:9-10,
2 after the expiration of the applicable period of limitation specified
3 in this act, unless a claim for credit or refund is filed by the
4 taxpayer within such period. Any later credit shall be void and any
5 later refund erroneous. No period of limitations specified in any
6 other law shall apply to the recovery by a taxpayer of moneys paid
7 in respect of taxes under this act.

8 (e) Effect of petition to director. If a notice of deficiency for a
9 taxable year has been mailed to the taxpayer under **[section]**
10 N.J.S.54A:9-2 and if the taxpayer files a timely petition with the
11 director under **[section]** N.J.S.54A:9-9, **[he]** the director may
12 determine that the taxpayer has made an overpayment for such year
13 (whether or not **[he]** the director also determines a deficiency for
14 such year). No separate claim for credit or refund for such year
15 shall be filed, and no credit or refund for such year shall be allowed
16 or made, except--

17 (1) As to overpayments determined by a decision of the director
18 which has become final; and

19 (2) As to any amount collected in excess of an amount
20 computed in accordance with the decision of the director which has
21 become final; and

22 (3) As to any amount claimed as a result of a change or
23 correction described in subsection (c).

24 (f) Limit on amount of credit or refund. The amount of
25 overpayment determined under subsection (e) shall, when the
26 decision of the director has become final, be credited or refunded in
27 accordance with subsection (a) of section N.J.S. 54A:6-6 and shall
28 not exceed the amount of tax which the director determines as part
29 of **[he]** the director's decision was paid--

30 (1) After the mailing of the notice of deficiency; or

31 (2) Within the period which would be applicable under
32 subsections (a), (b) or (c), if on the date of the mailing of the notice
33 of a deficiency a claim had been filed (whether or not filed) stating
34 the grounds upon which the director finds that there is an
35 overpayment.

36 (g) Early return. For purposes of this section, any return filed
37 before the last day prescribed for the filing thereof shall be
38 considered as filed on such last day, determined without regard to
39 any extension of time granted the taxpayer.

40 (h) Prepaid income tax. For purposes of this section, any tax
41 paid by the taxpayer before the last day prescribed for its payment,
42 any income tax withheld from the taxpayer during any calendar
43 year, and any amount paid by the taxpayer as estimated income tax
44 for a taxable year shall be deemed to have been paid by **[him]** the
45 taxpayer on the fifteenth day of the fourth month following the
46 close of **[his]** the taxpayer's taxable year with respect to which
47 such amount constitutes a credit or payment.

1 (i) Return and payment of withholding tax. Notwithstanding
2 subsection (h), for purposes of this section with respect to any
3 withholding tax--

4 (1) If a return for any period ending with or within a calendar
5 year is filed before April 15 of the succeeding calendar year, such
6 return shall be considered filed on April 15 of such succeeding
7 calendar year; and

8 (2) If a tax with respect to remuneration paid during any period
9 ending with or within a calendar year is paid before April 15 of the
10 succeeding calendar year, such tax shall be considered paid on April
11 15 of such succeeding calendar year.

12 (j) Final federal adjustments resulting from a partnership audit
13 or administrative adjustments request. If a partnership files a
14 Federal Adjustments Report with final federal adjustments resulting
15 from a partnership audit or administrative adjustments request that
16 do not result in a federal imputed underpayment, and which are not
17 taken into account by the partnership in the federal adjustment year
18 partnership return, then the partners may claim a credit or refund of
19 the related State tax by filing an amended return or other schedule
20 as required by the director. The amount of such credit or refund
21 shall not exceed the amount of the reduction in New Jersey tax
22 attributable to such final federal adjustments. This subsection shall
23 not affect the time within in which or the amount for which a claim
24 for credit or refund may be filed apart from this subsection.

25 (cf: N.J.S.54A:9-8)

26

27 ²[7.] 6.² (New section) As used in sections ²[7] 6² through
28 ²[13] 12² of P.L. , c. (C.) (pending before the Legislature
29 as this bill):

30 “Administrative adjustment request” means an administrative
31 adjustment request filed by a partnership under section 6227 of the
32 federal Internal Revenue Code (26 U.S.C. s.6227).

33 “Allocation Factor” means the allocation factor as required on
34 the New Jersey Gross Income Tax Business Allocation Schedule
35 NJ-NR-A.

36 “Audited partnership” means a partnership subject to a
37 partnership level audit resulting in a federal adjustment.

38 “Corporate partner” means a partner that is a corporation subject
39 to tax pursuant to section 2 of P.L. 1945, c. 162 (C.54:10A-2) or is
40 subject to the requirements of section 12 of P.L.2002, c.40
41 (C.54:10A-15.11).

42 ²“Director” means the Director of the Division of Taxation in the
43 Department of the Treasury.²

44 “Direct partner” means a partner that holds an interest directly in
45 a partnership or pass-through entity.

46 “Exempt partner” means a partner that is exempt from taxation
47 under section 3 of P.L.1945, c.162 (C.54:10A-3).

1 “Federal adjustment” means a change to an item or amount
2 determined under the federal Internal Revenue Code that is used by
3 a taxpayer to compute tax owed under the “New Jersey Gross
4 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business
5 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), whether that
6 change results from action by the Internal Revenue Service,
7 including a partnership level audit, or the filing of an amended
8 federal return, federal refund claim, or an administrative adjustment
9 request by the taxpayer. A federal adjustment is positive to the
10 extent that it increases State taxable income as determined under
11 N.J.S.54A:5-1 or subsection (k) of section 4 of P.L.1945, c.162
12 (C.54:10A-4) and is negative to the extent that it decreases State
13 taxable income as determined under N.J.S.54A:5-1 or subsection
14 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

15 “Federal Adjustments Report” includes methods or forms
16 required by N.J.S.54A:8-7 or section 13 of P.L.1945, c.162
17 (C.54:10A-13) for use by a taxpayer to report final federal
18 adjustments, including an amended New Jersey tax return,
19 information return, or a uniform multistate report.

20 “Federal partnership representative” means the person the
21 partnership designates for the taxable year as the partnership’s
22 representative, or the person the Internal Revenue Service has
23 appointed to act as the federal partnership representative, pursuant
24 to section 6223(a) of the federal Internal Revenue Code (26 U.S.C.
25 s.6223(a)).

26 “Final determination date” means the following:

27 a. Except as provided in b. and c. below, if the federal
28 adjustment arises from an Internal Revenue Service audit or other
29 action by the Internal Revenue Service, the final determination date
30 is the first day on which no federal adjustments arising from that
31 audit or other action remain to be finally determined, whether by
32 Internal Revenue Service decision with respect to which all rights
33 of appeal have been waived or exhausted, by agreement, or, if
34 appealed or contested, by a final decision with respect to which all
35 rights of appeal have been waived or exhausted. For agreements
36 required to be signed by the Internal Revenue Service and the
37 taxpayer, the final determination date is the date on which the last
38 party signed the agreement.

39 b. For federal adjustments arising from an Internal Revenue
40 Service audit or other action by the Internal Revenue Service, if the
41 taxpayer filed as a member of a composite return Form NJ-1080(c)
42 or as a member of a combined group filing a combined return for
43 corporation business tax purposes, the final determination date
44 means the first day on which no related federal adjustments arising
45 from that audit remain to be finally determined, as described in a.
46 above for the entire group.

47 c. If the federal adjustment results from filing an amended
48 federal return, a federal refund claim, or an administrative

1 adjustment request, or if it is a federal adjustment reported on an
2 amended federal return or other similar report filed pursuant to
3 6225(c) of the federal Internal Revenue Code (26 U.S.C. s.6225(c)),
4 the final determination date means the day on which the amended
5 return, refund claim, administrative adjustment request, or other
6 similar report was filed.

7 “Final federal adjustment” means a federal adjustment after the
8 final determination date for that federal adjustment has passed.

9 “Indirect partner” means a partner in a partnership or pass-
10 through entity that itself holds an interest directly, or through
11 another indirect partner, in a partnership, or pass-through entity.

12 “Nonresident partner” means an individual, trust, or estate
13 partner that is not a resident partner.

14 “Partner” means a person that holds an interest directly or
15 indirectly in a partnership or other pass-through entity.

16 “Partnership” means an entity subject to taxation under
17 subchapter K of the federal Internal Revenue Code or is otherwise
18 taxed as a partnership for federal income tax purposes.

19 “Partnership level audit” means an examination by the Internal
20 Revenue Service at the partnership level pursuant to Subchapter C
21 of Title 26, Subtitle F, Chapter 63 of the federal Internal Revenue
22 Code, as enacted by the Bipartisan Budget Act of 2015, Pub.L.114-
23 74, which results in federal adjustments.

24 “Pass-through entity” means an entity not taxed as a C
25 corporation.

26 “Reallocation adjustment” means a federal adjustment resulting
27 from a partnership level audit or an administrative adjustment
28 request that changes the shares of one or more items of partnership
29 income, gain, loss, expense, or credit allocated to direct partners. A
30 positive reallocation adjustment means the portion of a reallocation
31 adjustment that would increase federal income for one or more
32 direct partners, and a negative reallocation adjustment means the
33 portion of a reallocation adjustment that would decrease federal
34 income for one or more direct partners pursuant to regulations
35 promulgated under section 6225 of the federal Internal Revenue
36 Code (26 U.S.C. s.6225)

37 “Resident partner” means an individual, trust, or estate partner
38 that is a resident of New Jersey under subsections (m) and (o) of
39 N.J.S.54A:1-2 for the relevant tax period.

40 “Reviewed year” means the taxable year of a partnership that is
41 subject to a partnership level audit from which federal adjustments
42 arise.

43 “Taxpayer” means the same as defined under subsection (l) of
44 N.J.S.54A:1-2 or subsection (h) of section 4 of P.L.1945,
45 c.162(C.54:10A-4) and, unless the context clearly indicates
46 otherwise, includes a partnership subject to a partnership level audit
47 or a partnership that has made an administrative adjustment request,
48 as well as a tiered partner of that partnership.

1 “Tiered partner” means any partner that is a partnership or pass-
2 through entity.

3 To the extent terms used in this section are not defined in this
4 section or elsewhere in chapter 9 of Title 54A of the New Jersey
5 Statutes, the definition of such terms shall conform as closely as
6 possible to the terminology used in the amendments to the federal
7 Internal Revenue Code pertaining to the comprehensive partnership
8 audit regime as contained in the Bipartisan Budget Act of 2015,
9 Pub. L.114-74, as amended, and this section shall be so interpreted.
10

11 **²[8.] 7.²** (New section) Reporting Adjustments to Federal
12 Taxable Income – General Rule. Except in the case of final federal
13 adjustments that are required to be reported by a partnership and its
14 partners using the procedures in section **²[9] 8.²** of P.L. ,
15 c. (C.) (pending before the Legislature as this bill), and final
16 federal adjustments required to be reported for federal purposes in
17 the partnership return for the adjustment year, a taxpayer shall
18 report and pay any New Jersey Gross Income Tax or New Jersey
19 Corporation Business Tax due with respect to final federal
20 adjustments arising from an audit or other action by the Internal
21 Revenue Service or reported by the taxpayer on a timely filed
22 amended federal income tax return, including a return or other
23 similar report filed pursuant to section 6225(c)(2) of the federal
24 Internal Revenue Code (26 U.S.C. s.6225(c)(2)), or federal claim
25 for refund by filing a federal adjustments report with the Division
26 of Taxation for the reviewed year and, if applicable, paying the
27 additional New Jersey Gross Income Tax or New Jersey
28 Corporation Business Tax owed by the taxpayer no later than **²[90]**
29 **180²** days after the final determination date.
30

31 **²[9.] 8.²** (New section) Reporting Federal Adjustments –
32 Partnership Level Audit and Administrative Adjustment Request

33 a. Except for adjustments required to be reported for federal
34 purposes in the partnership return for the adjustment year, and the
35 distributive share of adjustments that have been reported as required
36 under section **²[8] 7.²** of P.L. , c. (C.) (pending before the
37 Legislature as this bill), partnerships, and partners shall report final
38 federal adjustments arising from a partnership level audit or an
39 administrative adjustment request and make payments as required
40 under this section.

41 b. State Partnership Representative.

42 (1) With respect to an action required or permitted to be taken
43 by a partnership under this section and a proceeding under
44 R.S.54:49-18 with respect to that action, the State partnership
45 representative for the reviewed year shall have the sole authority to
46 act on behalf of the partnership, and the partnership’s direct
47 partners and indirect partners shall be bound by those actions.

1 (2) The State partnership representative for the reviewed year is
2 the partnership's federal partnership representative unless the
3 partnership designates in writing another person as its State
4 partnership representative.

5 (3) The division may establish reasonable qualifications for and
6 procedures for designating a person, other than the federal
7 partnership representative, to be the State partnership
8 representative.

9 c. Reporting and Payment Requirements for Partnerships
10 Subject to a Final Federal Adjustment and their Direct Partners.
11 Final federal adjustments subject to the requirements of this section,
12 except for those subject to a properly made election under
13 subsection d. of this section shall be reported as follows:

14 (1) No later than 90 days after the final determination date, the
15 partnership shall:

16 (a) file a completed federal adjustments report, including
17 information as required by the director, with the division;

18 (b) notify each of its direct partners of their distributive share of
19 the final federal adjustments including information as required by
20 the director;

21 (c) file an amended New Jersey Form 1065 as required under
22 N.J.S.54A:8-7 and pay the amount required ²~~under section 2 of~~
23 P.L. , c. (C.) (pending before the Legislature as this bill)]²;
24 and

25 (d) file an amended composite return for direct partners and pay
26 the additional amount ²~~under subsection c. of section 2 of~~
27 P.L. , c. (C.) (pending before the Legislature as this bill)]²
28 that would have been due had the final federal adjustments been
29 reported properly as required.

30 (2) No later than ²~~90~~ 180² days after the final determination
31 date, each direct partner that is taxed under the "New Jersey Gross
32 Income Tax Act," N.J.S.54A:1-1 et seq., or Corporation Business
33 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), shall:

34 (a) file a Federal Adjustments Report reporting their distributive
35 share of the adjustments reported to them under subparagraph (b) of
36 paragraph (1) of subsection c. of this section as required under this
37 section or N.J.S.54A:8-7; and

38 (b) Pay any additional amount of tax due as if final federal
39 adjustments had been properly reported, plus any penalty and
40 interest due under N.J.S.54A:9-5, ²~~N.J.S54A:9-6~~ N.J.S.54A:9-6²,
41 R.S.54:49-3, or R.S.54:49-4.

42 d. Election – Partnership Pays. Subject to the limitations in
43 paragraph (3) of this subsection, an audited partnership making an
44 election under this section shall:

45 (1) no later than 90 days after the final determination date, file a
46 completed Federal Adjustments Report, including information as

- 1 required by the director, and notify the division that it is making the
2 election under this section;
- 3 (2) no later than 180 days after the final determination date, pay
4 an amount, determined as follows, in lieu of taxes owed by its direct
5 and indirect partners:
- 6 (a) exclude from final federal adjustments the distributive share
7 of these adjustments reported to a direct exempt partner not subject
8 to tax under section 3 of P.L.1945, c.162 (C.54:10A-3).
- 9 (b) for the total distributive shares of the remaining final federal
10 adjustments reported to direct corporate partners subject to tax
11 under section 2 of P.L.1945, c.162 (C.54:10A-2), apportion and
12 allocate such adjustments as provided under sections 6 through 10
13 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), section 19
14 of P.L.2018, c.48 (C.54:10A-4.7) and subsection a of sections 3
15 through 4 of P.L.2001, c.136 (C.54:10A-15.6. through C.54:10A-
16 15.7) and multiply the resulting amount by the highest tax rate
17 under section 5 of P.L.1945, c.162 (C.54:10A-5);
- 18 (c) for the total distributive shares of the remaining final federal
19 adjustments reported to nonresident direct partners subject to tax
20 under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
21 seq., determine the amount of such adjustments which is New
22 Jersey source income under paragraph (3) of subsection (a) of
23 N.J.S.54A:5-8 and multiply the resulting amount by the highest tax
24 rate under N.J.S.54A:2-1;
- 25 (d) For the total distributive shares of the remaining final federal
26 adjustments reported to tiered partners:
- 27 (i) determine the amount of such adjustments which is of a type
28 that it would be subject to sourcing to New Jersey under paragraph
29 (3) of subsection (a) of N.J.S.54A:5-8 and then determine the
30 portion of this amount that would be sourced to the state applying
31 these rules;
- 32 (ii) determine the amount of such adjustments which is of a type
33 that it would not be subject to sourcing to New Jersey by a
34 nonresident partner under subsection (c) of N.J.S.54A:5-8;
- 35 (iii) determine the portion of the amount determined in
36 subparagraph (ii) of this subparagraph that can be established,
37 under regulation issued by the division, to be properly allocable to
38 nonresident indirect partners or other partners not subject to tax on
39 the adjustments; or that can be excluded under procedures for
40 modified reporting and payment method allowed under
41 subparagraph (f) of this paragraph;
- 42 (e) multiply the total of the amounts determined in
43 subparagraphs (i) and (ii) of this subparagraph reduced by the
44 amount determined in subparagraph (iii) of this subparagraph by
45 the highest tax rate under N.J.S.54A:2-1;
- 46 (f) for the total distributive shares of the remaining final federal
47 adjustments reported to resident direct partners subject to tax under

1 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
2 multiply that amount by the highest tax rate under N.J.S.54A:2-1;

3 (g) add the amounts determined in subparagraphs (b), (c), (e),
4 and (f) of this paragraph, along with penalty and interest as
5 provided in N.J.S.54A:9-5, N.J.S54A:9-6, R.S.54:49-3, or
6 R.S.54:49-4.

7 (3) Final federal adjustments subject to this election exclude:

8 (a) the distributive share of final audit adjustments that are
9 required to be included in the unitary business income of any direct
10 or indirect corporate partner, provided that the audited partnership
11 can reasonably determine this; and

12 (b) any final federal adjustments resulting from an administrative
13 adjustment request.

14 (4) An audited partnership not otherwise subject to any reporting
15 or payment obligation to New Jersey that makes an election under
16 this subsection consents to be subject to New Jersey laws related to
17 reporting, assessment, payment, and collection of New Jersey tax
18 calculated under the election.

19 e. Tiered Partners. The direct and indirect partners of an audited
20 partnership that are tiered partners, and all of the partners of those
21 tiered partners that are subject to tax under the “New Jersey Gross
22 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business
23 Tax Act (1945), P.L.1945,c.162 (C. 54:10A-1 et seq.), are subject to
24 the reporting and payment requirements of subsection c. of this
25 section and the tiered partners are entitled to make the elections
26 provided in subsections d. and f. of this section. The tiered partners
27 or their partners shall make required reports and payments no later
28 than 90 days after the time for filing and furnishing statements to
29 tiered partners and their partners as established under section 6226
30 of the federal Internal Revenue Code (26 U.S.C. s.6226) and the
31 regulations thereunder. The division may adopt regulations to
32 establish procedures and interim time periods for the reports and
33 payments required by tiered partners and their partners and for
34 making the elections under this section.

35 f. Modified Reporting and Payment Method. Under procedures
36 adopted by and subject to the approval of the division, an audited
37 partnership or tiered partner may enter into an agreement with the
38 division to utilize an alternative reporting and payment method,
39 including applicable time requirements or any other provision of
40 this section, if the audited partnership or tiered partner demonstrates
41 that the requested method will reasonably provide for the reporting
42 and payment of taxes, penalties, and interest due under the
43 provisions of this section. Application for approval of an alternative
44 reporting and payment method must be made by the audited
45 partnership or tiered partner within the time for election as provided
46 in subsection d. or e. of this section, as appropriate.

47 g. Effect of Election by Audited Partnership or Tiered Partner
48 and Payment of Amount Due.

1 (1) The elections made pursuant to subsections d. and f. of this
2 section are irrevocable, unless the division, in its discretion,
3 determines otherwise.

4 (2) If properly reported and paid by the audited partnership or
5 tiered partner, the amount determined in paragraph (2) of subsection
6 d. of this section, or similarly under an optional election under
7 subsection f. of this section will be treated as paid in lieu of taxes
8 owed by its direct and indirect partners, to the extent applicable, on
9 the same final federal adjustments. The direct partners or indirect
10 partners may not take any deduction or credit for this amount or
11 claim a refund of the amount in this State. Nothing in this
12 subsection shall preclude a direct resident partner from claiming a
13 credit against taxes paid to this State pursuant to N.J.S.54A:4-1, any
14 amounts paid by the audited partnership or tiered partner on the
15 resident partner's behalf to another state or local tax jurisdiction in
16 accordance with the provisions of N.J.S.54A:4-1.

17 h. Failure of Audited Partnership or Tiered Partner to Report or
18 Pay. Nothing in this section prevents the division from assessing
19 direct partners or indirect partners for taxes they owe, using the best
20 information available, in the event that a partnership or tiered
21 partner fails to timely make any report or payment required by this
22 section for any reason.

23

24 ²~~10.~~ 9² (New section) Assessments of Additional New
25 Jersey Tax, Interest, and Penalties Arising from Adjustments to
26 Federal Taxable Income – Statute of Limitations

27 a. The division shall assess additional tax, interest, and
28 penalties arising from final federal adjustments arising from an
29 audit by the Internal Revenue Service, including a partnership level
30 audit, or reported by the taxpayer on an amended federal income tax
31 return or as part of an administrative adjustment request by the
32 following dates:

33 (1) Timely Reported Federal Adjustments. If a taxpayer files
34 with the division a Federal Adjustments Report or an amended New
35 Jersey Form 1065 or amended New Jersey Corporation Business
36 Tax return as required within the period specified in section ²~~8~~ 7²
37 or ²~~9~~ 8² of P.L. , c. (C.) (pending before the Legislature
38 as this bill), the division may assess any amounts, including in-lieu-
39 of amounts, taxes, interest, and penalties arising from those federal
40 adjustments if the division issues a notice of the assessment to the
41 taxpayer no later than:

42 (a) The expiration of the limitations period specified in
43 N.J.S.54A:9-4 and N.J.S.54:49-6; or

44 (b) The expiration of the one-year period following the date of
45 filing with the division of the federal adjustments report.

46 b. Untimely Reported Federal Adjustments. If the taxpayer
47 fails to file the Federal Adjustments Report within the period
48 specified in section ²~~8~~ 7² or ²~~9~~ 8² of P.L. , c. (C.)

1 (pending before the Legislature as this bill), as appropriate, or the
2 Federal Adjustments Report filed by the taxpayer omits final federal
3 adjustments or understates the correct amount of tax owed, the
4 division may assess amounts or additional amounts including in-
5 lieu-of amounts, taxes, interest, and penalties arising from the final
6 federal adjustments, if it mails a notice of the assessment to the
7 taxpayer by a date which is the latest of the following:

8 (1) The expiration of the limitations period specified in
9 N.J.S.54A:9-4 and N.J.S.54:49-6; or

10 (2) The expiration of the two-year period following the date the
11 Federal Adjustments Report was filed with the division; or

12 (3) Absent fraud, the expiration of the six-year period following
13 the final determination date.

14
15 **²[11.] 10.²** (New section) Estimated New Jersey Tax Payments
16 During the Course of a Federal Audit

17 A taxpayer may make estimated payments to the division,
18 following the process prescribed by the division, of the New Jersey
19 Gross Income Tax or Corporation Business Tax expected to result
20 from a pending Internal Revenue Service audit, prior to the due date
21 of the Federal Adjustments Report, without having to file the report
22 with the division. The estimated tax payments shall be credited
23 against any tax liability ultimately found to be due to New Jersey
24 (“Final New Jersey Tax Liability”) and will limit the accrual of
25 further statutory interest on that amount. If the estimated tax
26 payments exceed the final tax liability and statutory interest
27 ultimately determined to be due, the taxpayer is entitled to a refund
28 or credit for the excess, provided the taxpayer files a Federal
29 Adjustments Report or claim for refund or credit of tax no later than
30 one year following the final determination date.

31
32 **²[12.] 11.²** (New section) Claims for Refund or Credits of Tax
33 Arising from Final Federal Adjustments Made by the IRS

34 a. Except for final federal adjustments required to be reported
35 for federal purposes in the partnership return for the adjustment
36 year, a taxpayer may file a claim for refund or credit of tax arising
37 from federal adjustments made by the Internal Revenue Service on
38 or before the later of:

39 (1) The expiration of the last day for filing a claim for refund or
40 credit of New Jersey tax, including any extensions; or

41 (2) One year from the date a Federal Adjustments Report
42 prescribed in section 7 or 8 of P.L. , c. (C.) (pending
43 before the Legislature as this bill), as applicable, was due to the
44 division, including any extensions pursuant to this section.

45 b. The Federal Adjustments Report shall serve as the means for
46 the taxpayer to report additional tax due, report a claim for refund
47 or credit of tax, and make other adjustments, including to its net

1 operating losses, resulting from adjustments to the taxpayer's
2 federal taxable income.

3

4 ²[13.] 12.² (New section) Scope of Adjustments and
5 Extensions of Time.

6 a. Unless otherwise agreed in writing by the taxpayer and the
7 division, any adjustments by the division or by the taxpayer made
8 after the expiration of the N.J.S.54A:9-4, N.J.S.54A:9-8, R.S.54:49-
9 3, or R.S.54:49-14 are limited to changes to the taxpayer's tax
10 liability arising from federal adjustments.

11 b. The time periods provided for in this section may be
12 extended:

13 (1) Automatically, upon written notice to the division, by 60
14 days for an audited partnership or tiered partner which has 10,000
15 or more direct partners; or

16 (2) By written agreement between the taxpayer and the division
17 as set forth by the director.

18 c. Any extension granted for filing the Federal Adjustments
19 Report extends the last day prescribed by law for assessing any
20 additional tax arising from the adjustments to federal taxable
21 income and the period for filing a claim for refund or credit of
22 taxes.

23

24 ²[14.] 13.² Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is
25 amended to read as follows:

26 12. a. (1) A partnership that is not a qualified investment
27 partnership or an investment club and that is not listed on a United
28 States national stock exchange shall, on or before the 15th day of
29 the fourth month succeeding the close of each privilege period,
30 remit a payment of tax. The amount of tax shall be equal to the sum
31 of: all of the share of the entire net income of the partnership for
32 that privilege period of all nonresident noncorporate partners,
33 multiplied by an allocation factor determined, pursuant to section 6
34 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
35 of the partnership for that privilege period, and multiplied by .0637
36 plus all of the share of the entire net income of the partnership for
37 that privilege period of all nonresident corporate partners,
38 multiplied by an allocation factor determined, pursuant to section 6
39 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
40 of the partnership for that privilege period, and multiplied by .09.
41 Entire net income shall not include additional income that results
42 from any federal partnership audit adjustments made by the Internal
43 Revenue Service under section 6225(a)(1) of the federal Internal
44 Revenue Code (26 U.S.C. s.6225(a)(1)).

45 (2) (a) A partnership that is subject to the tax payment
46 requirements of paragraph (1) of this subsection shall make
47 installment payments of 25% of that tax on or before the 15th day
48 of each of the fourth month, sixth month and ninth month of the

1 privilege period and on or before the 15th day of the first month
2 succeeding the close of the privilege period.

3 (b) A partnership required to make an installment payment
4 pursuant to subparagraph (a) of this paragraph shall be deemed to
5 make an installment payment subject to the provisions of section 5
6 of P.L.1981, c.184 (C.54:10A-15.4) and shall be liable for any
7 additions to tax provided thereunder.

8 (3) A partnership shall not be required to remit a payment of tax
9 pursuant to paragraph (1) of this subsection for any nonresident that
10 reasonably expects to be refunded the payment on account of a tax
11 credit pursuant to section 5 of P.L.2019, c.320 (C.54A:12-5).

12 b. An amount of tax paid by a partnership pursuant to
13 paragraph (1) of subsection a. of this section and an installment
14 payment paid pursuant to subparagraph (a) of paragraph (2) of
15 subsection a. of this section shall be credited to the partnership
16 accounts of its nonresident partners in proportion to each
17 nonresident partner's share of allocated entire net income and the
18 multiplier rate for that partner class under subsection a. of this
19 section, and each amount of tax so credited shall be deemed to have
20 been paid by the respective partner in respect of the privilege period
21 or taxable year of the partner. Provided, however, that only a
22 nonresident partner who files a New Jersey tax return and reports
23 income that is subject to tax in this State may apply the tax paid by
24 the partnership and credited to the nonresident partner's partnership
25 account against the partner's tax liability; and provided further that
26 a partnership that pays tax pursuant to this section shall not be
27 entitled to claim a refund of payments credited to any of its
28 nonresident partners.

29 c. For the purposes of this section:

30 "Investment club" means an entity: that is classified as a
31 partnership for federal income tax purposes; all of the owners of
32 which are individuals; all of the assets of which are securities, cash,
33 or cash equivalents; the market value of the total assets of which do
34 not exceed, as measured on the last day of its privilege period, an
35 amount equal to the lesser of \$250,000 or \$35,000 per owner of the
36 entity; and which is not required to register itself or its membership
37 interests with the federal Securities and Exchange Commission;
38 provided that beginning with privilege periods commencing on or
39 after January 1, 2003 the director shall prescribe the total asset
40 value amounts which shall apply by increasing the \$250,000 total
41 asset amount and the per owner \$35,000 amount hereinabove by an
42 inflation adjustment factor, which amounts shall be rounded to the
43 next highest multiple of \$100. The inflation adjustment factor shall
44 be equal to the factor calculated by dividing the consumer price
45 index for urban wage earners and clerical workers for the nation, as
46 prepared by the United States Department of Labor for September
47 of the calendar year prior to the calendar year in which the privilege
48 period begins, by that index for September of 2001;

1 "Nonresident noncorporate partner" means an individual, an
2 estate or a trust subject to taxation pursuant to the "New Jersey
3 Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
4 taxpayer or a resident estate or trust under that act;

5 "Nonresident corporate partner" means a partner that is not an
6 individual, an estate or a trust subject to taxation pursuant to the
7 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is
8 not a corporation exempt from tax pursuant to section 3 of
9 P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular
10 place of business in this State other than a statutory office; and

11 "Partner" means an owner of an interest in the partnership, in
12 whatever manner that owner and ownership interest are designated.
13 (cf: P.L.2021, c.419, s.5)

14
15 ²**[15.] 14.**² Section 18 of P.L.2000, c.161 (C.42:1A-18) is
16 amended to read as follows:

17 18. a. Except as otherwise provided in subsections b. and c. of
18 this section, all partners are liable jointly and severally for all
19 obligations of the partnership unless otherwise agreed by the
20 claimant or provided by law. In addition, the entity is also liable for
21 all obligations of the partnership as provided by P.L.2019, c.320
22 (C.54A:12-1 et al.).

23 b. A person admitted as a partner into an existing partnership is
24 not personally liable for any partnership obligation incurred before
25 the person's admission as a partner.

26 c. An obligation of a partnership incurred while the partnership
27 is a limited liability partnership, whether arising in contract, tort, or
28 otherwise, is solely the obligation of the partnership. A partner is
29 not personally liable, directly or indirectly, by way of contribution
30 or otherwise, for such an obligation solely by reason of being or so
31 acting as a partner. This subsection applies notwithstanding
32 anything inconsistent in the partnership agreement that existed
33 immediately before the vote required to become a limited liability
34 partnership under subsection b. of section 47 of **[this act]** the
35 "Uniform Partnership Act (1996)," P.L.2000, c.161 (C.42:1A-47).

36 d. In addition, the entity is also liable for all obligations of the
37 partnership as provided by P.L. , c. (C.) (pending before
38 the Legislature as this bill).

39 (cf: P.L.2019, c.320, s.10)

40
41 ²**[16.] 15.**² Section 92 of P.L.2012, c.50 (C.42:2C-92) is
42 amended to read as follows:

43 92. Tax Classification.

44 a. For all purposes of taxation under the laws of this State, a
45 limited liability company formed under this act or qualified to do
46 business in this State as a foreign limited liability company with
47 two or more members shall be classified as a partnership unless
48 classified otherwise for federal income tax purposes, in which case

1 the limited liability company shall be classified in the same manner
2 as it is classified for federal income tax purposes. For all purposes
3 of taxation under the laws of this State, a member or a transferee of
4 a member of a limited liability company formed under this act or
5 qualified to do business in this State as a foreign limited liability
6 company shall be treated as a partner in a partnership unless the
7 limited liability company is classified otherwise for federal income
8 tax purposes, in which case the member or transferee of a member
9 shall have the same status as the member or transferee of a member
10 has for federal income tax purposes.

11 b. For all purposes of taxation on income under the laws of this
12 State and only for those purposes, a limited liability company
13 formed under this act or qualified to do business in this State as a
14 foreign limited liability company with one member is disregarded
15 as an entity separate from its owner, unless classified otherwise for
16 federal tax purposes, in which case the limited liability company
17 will be classified in the same manner as it is classified for federal
18 income tax purposes. For all purposes of taxation on income under
19 the laws of this State and only for those purposes, the sole member
20 or a transferee of all of the limited liability company interest of the
21 sole member of a limited liability company formed under this act or
22 qualified to do business in this State as a foreign limited liability
23 company is treated as the direct owner of the underlying assets of
24 the limited liability company and of its operations, unless the
25 limited liability company is classified otherwise for federal income
26 tax purposes, in which case the member or transferee of a member
27 will have the same status as the member or transferee of a member
28 has for federal income tax purposes.

29 c. With respect to a limited liability company that is taxed as a
30 partnership for federal income tax purposes, the entity is also liable
31 for all obligations of the partnership as provided by
32 P.L. , c. (C.) (pending before the Legislature as this bill) in
33 addition to its liabilities in section 30 of P.L.2012, c.50 (C.42:2C-
34 30).

35 (cf: P.L.2012, c.50, s.92)

36

37 ²[17.] 16.² Section 1 of P.L.2020, c.19 is amended to read as
38 follows:

39 1. a. A taxpayer required to make and file an annual or
40 quarterly return or report pursuant to the “New Jersey Gross Income
41 Tax Act,” N.J.S.54A:1-1 et seq., or the “Corporation Business Tax
42 Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), on an original
43 due date of April 15, 2020, shall be granted by the Director of the
44 Division of Taxation in the Department of the Treasury an
45 automatic extension of time to file those returns or reports and to
46 pay the tax due until July 15, 2020.

47 b. The provisions involving payment of interest upon any
48 overpayment of tax pursuant to N.J.S.54A:9-7 and section 7 of

1 P.L.1992, c.175 (C.54:49-15.1), are hereby extended ²[for six
2 months after the conclusion of the]² [state of] ²[public health
3 emergency declared by the Governor pursuant to Executive Order
4 No. 103 of 2020, or any extension thereof, or within six months
5 after the return is filed, whichever is later] until the date of
6 enactment of P.L., c. (C.) (pending before the Legislature
7 as this bill)².

8 c. A taxpayer granted an automatic extension pursuant to
9 subsection a. of this section shall not be subject to penalties or
10 interest if the return or report is filed and the tax due is paid on or
11 before July 15, 2020, or by such other date that may be permitted by
12 the director in accordance with regulations in effect on the effective
13 date of P.L.2020, c.19.

14 d. Notwithstanding any provision of the “Administrative
15 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the
16 contrary, the director may adopt immediately upon filing with the
17 Office of Administrative Law such rules and regulations as the
18 director determines to be necessary and appropriate to effectuate the
19 purposes of this section.
20 (cf: P.L.2020, c.19, s.1)

21
22 ²[18.] 17.² Section 2 of P.L.2020, c.19 is amended to read as
23 follows:

24 2. The statute of limitations to assess any tax pursuant to
25 N.J.S.54A:9-4 and R.S.54:49-6 is hereby extended ²[for 90 days
26 after the conclusion of the]² [state of] ²[public health emergency
27 declared by the Governor pursuant to Executive Order No. 103 of
28 2020, or any extension thereof] until the date of enactment of
29 P.L. , c. (C.) (pending before the Legislature as this bill)².
30 (cf: P.L.2020, c.19, s.2)

31
32 ²[19.] 18.² (New section) Any assessment of tax that was
33 allowed as a result of the extension of the statute of limitations in
34 section 2 of P.L.2020, c.19, but that was assessed after the ²[90th
35 day following the conclusion of the public health emergency
36 declared by the Governor pursuant to Executive Order No. 103 of
37 2020] date of enactment of P.L. , c. (C.) (pending before
38 the Legislature as this bill)², shall be voided. The Director of the
39 Division of Taxation in the Department of the Treasury shall return
40 any amounts collected from a taxpayer as a result of such
41 assessment.

42
43 ²[20.] 19.² Section 4 of P.L.1945, c.162 (C.54:10A-4) is
44 amended to read as follows:

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

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

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

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

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

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

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

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

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

11 (f) "Investment company" shall mean any corporation whose
12 business during the period covered by its report consisted, to the
13 extent of at least 90% thereof of holding, investing and reinvesting
14 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
15 and other securities for its own account, but this shall not include
16 any corporation which: (1) is a merchant or a dealer of stocks,
17 bonds and other securities, regularly engaged in buying the same
18 and selling the same to customers; or (2) had less than 90% of its
19 average gross assets in New Jersey, at cost, invested in stocks,
20 bonds, debentures, mortgages, notes, patents, patent rights or other
21 securities or consisting of cash on deposit during the period covered
22 by its report; or (3) is a banking corporation, a savings institution,
23 or a financial business corporation as defined in the Corporation
24 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, any combined group
30 filing a mandatory or elective New Jersey combined return, and any
31 partnership required, or consenting, to report or to pay taxes,
32 interest or penalties under this act. "Taxpayer" shall not include a
33 partnership that is listed on a United States national stock exchange.

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

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

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

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

1 taxpayer is classified as a partnership for federal tax purposes,
2 would otherwise be required to report, to the United States Treasury
3 Department for the purpose of computing its federal income tax,
4 provided however, that in the determination of such entire net
5 income,

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

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

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

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

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

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

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

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

1 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et
2 seq.) prior to 1998.

3 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
4 (2) of this subsection, any amount, except with respect to qualified
5 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
6 the Internal Revenue Code as in effect immediately prior to January
7 1, 1984, which the taxpayer claimed as a deduction in computing
8 federal income tax pursuant to a qualified lease agreement under
9 paragraph (8) of that section.

10 The director shall promulgate rules and regulations necessary to
11 carry out the provisions of this section, which rules shall provide,
12 among others, the manner in which the remaining life of property
13 shall be reported.

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

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

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

40 (I) Interest paid, accrued or incurred for the privilege period to
41 a related member, as defined in section 5 of P.L.2002, c.40
42 (C.54:10A-4.4), except that a deduction shall be permitted to the
43 extent that the taxpayer establishes by clear and convincing
44 evidence, as determined by the director, that: (i) a principal purpose
45 of the transaction giving rise to the payment of the interest was not
46 to avoid taxes otherwise due under Title 54 of the Revised Statutes
47 or Title 54A of the New Jersey Statutes, (ii) the interest is paid
48 pursuant to arm's length contracts at an arm's length rate of interest,

1 and (iii)(aa) the related member was subject to a tax on its net
2 income or receipts in this State or another state or possession of the
3 United States or in a foreign nation, (bb) a measure of the tax
4 includes the interest received from the related member, and (cc) the
5 rate of tax applied to the interest received by the related member is
6 equal to or greater than a rate three percentage points less than the
7 rate of tax applied to taxable interest by this State pursuant to
8 section 5 of P.L.1945, c.162 (C.54:10A-5).

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

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

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

1 series of operations the object of which is to place items of tangible
2 personal property in a form, composition, or character different
3 from that in which they were acquired. The change in form,
4 composition, or character shall be a substantial change, and result in
5 a transformation of property into a different or substantially more
6 usable product.

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

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

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

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

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

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

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

44 (ii) Making or placing deposits with foreign persons which are
45 banks or foreign branches of banks (including foreign subsidiaries)
46 or foreign branches of the taxpayers or with other international
47 banking facilities;

- 1 (iii) Entering into foreign exchange trading or hedging
2 transactions related to any of the transactions described in this
3 paragraph; or
- 4 (iv) Such other activities as an international banking facility
5 may, from time to time, be authorized to engage in;
- 6 (C) Applicable expenses shall be any expense or other
7 deductions attributable, directly or indirectly, to the eligible gross
8 income described in subparagraph (B) of this paragraph.
- 9 (5) (A) (i) Entire net income shall exclude 100% of dividends
10 which were included in computing such taxable income for federal
11 income tax purposes, paid to the taxpayer by one or more
12 subsidiaries owned by the taxpayer to the extent of the 80% or more
13 ownership of investment described in subsection (d) of this section
14 for privilege periods beginning on or before December 31, 2016.
- 15 (ii) For privilege periods beginning after December 31, 2016
16 and before January 1, 2019, entire net income shall exclude 95% of
17 dividends which were included in computing such taxable income
18 for federal income tax purposes, paid or deemed paid, to the
19 taxpayer by one or more subsidiaries owned by the taxpayer to the
20 extent of the 80% or more ownership of investment described in
21 subsection (d) of this section. For the purposes of calculating the
22 tax liability owed for the paid or deemed paid dividends included in
23 entire net income by this subparagraph (ii), the taxpayer shall
24 use either their three-year average allocation factor for the
25 taxpayer's 2014 through 2016 tax years reported on the taxpayer's
26 tax returns or 3.5 percent, whichever is lower.
- 27 (iii) For privilege periods beginning on and after January 1,
28 2019, entire net income shall exclude 95% of dividends which were
29 included in computing such taxable income for federal income tax
30 purposes, paid or deemed paid to the taxpayer by one or more
31 subsidiaries owned by the taxpayer to the extent of the 80% or more
32 ownership of investment described in subsection (d) of this section.
- 33 (B) Entire net income shall exclude 50% of dividends which
34 were included in computing such taxable income for federal income
35 tax purposes, paid or deemed paid to the taxpayer by one or more
36 subsidiaries owned by the taxpayer to the extent of 50% or more
37 ownership of investment, such ownership of investment calculated
38 in the same manner as the 80% or more of ownership of investment
39 is calculated as described in subsection (d) of this section.
- 40 (C) To the extent a subsidiary received dividends from other
41 subsidiaries and included those dividends in its entire net income
42 for the purposes of determining its tax liability pursuant to section 5
43 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,
44 the taxpayer receiving those same dividends from the subsidiary
45 shall exclude those dividends from its entire net income based on
46 the subsidiary's allocation factor used by the subsidiary in
47 determining its tax liability pursuant to section 5 of P.L.1945, c.162

1 (C.54:10A-5). This subparagraph (C) shall not apply to privilege
2 periods ending on and after July 31, 2019.

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

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

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

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

34 (C) Net operating loss. For purposes of this paragraph the term
35 "net operating loss" means the excess of the deductions over the
36 gross income used in computing entire net income without the net
37 operating loss deduction provided for in subparagraph (A) of this
38 paragraph and the exclusions in paragraphs (4) and (5) of this
39 subsection.

40 (D) Change in ownership. Where there is a change in 50% or
41 more of the ownership of a corporation because of redemption or
42 sale of stock and the corporation changes the trade or business
43 giving rise to the loss, no net operating loss sustained before the
44 changes may be carried over to be deducted from income earned
45 after such changes. In addition where the facts support the premise
46 that the corporation was acquired under any circumstances for the
47 primary purpose of the use of its net operating loss carryover, the
48 director may disallow the carryover.

1 (E) Notwithstanding the provisions of this paragraph (6) of
2 subsection (k) of this section to the contrary, for privilege periods
3 beginning during calendar year 2002 and calendar year 2003, no
4 deduction for any net operating loss carryover shall be allowed and
5 for privilege periods beginning during calendar year 2004 and
6 calendar year 2005, there shall be allowed as a deduction for the
7 privilege period so much of the net operating loss carryover as
8 reduces entire net income otherwise calculated by 50%. If and only
9 to the extent that any net operating loss carryover deduction is
10 disallowed by reason of this subparagraph (E), the date on which
11 the amount of the disallowed net operating loss carryover deduction
12 would otherwise expire shall be extended by a period equal to the
13 period for which application of the net operating loss was
14 disallowed by this subparagraph.

15 Provided, that this subparagraph (E) shall not restrict the
16 surrender or acquisition of corporation business tax benefit
17 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
18 7.42a) and shall not restrict the application of corporation business
19 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
20 (C.54:10A-4.2).

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

28 (7) The entire net income of gas, electric and gas and electric
29 public utilities that were subject to, or would have been subject to
30 tax if doing business in this State, the provisions of P.L.1940, c.5
31 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by
32 substituting the New Jersey depreciation allowance for federal tax
33 depreciation with respect to assets placed in service prior to January
34 1, 1998. For gas, electric, and gas and electric public utilities that
35 were subject to, or would have been subject to tax if doing business
36 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
37 prior to 1998, the New Jersey depreciation allowance shall be
38 computed as follows: All depreciable assets placed in service prior
39 to January 1, 1998 shall be considered a single asset account. The
40 New Jersey tax basis of this depreciable asset account shall be an
41 amount equal to the carryover adjusted basis for federal income tax
42 purposes on December 31, 1997 of all depreciable assets in service
43 on December 31, 1997, increased by the excess, of the "net carrying
44 value," defined to be adjusted book basis of all assets and liabilities,
45 excluding deferred income taxes, recorded on the public utility's
46 books of account on December 31, 1997, over the carryover
47 adjusted basis for federal income tax purposes on December 31,
48 1997 of all assets and liabilities owned by the gas, electric, or gas

1 and electric public utility as of December 31, 1997. "Books of
2 account" for gas, gas and electric, and electric public utilities means
3 the uniform system of accounts as promulgated by the Federal
4 Energy Regulatory Commission and adopted by the Board of Public
5 Utilities. The following adjustments to entire net income shall be
6 made pursuant to this section:

7 (A) Depreciation for property placed in service prior to January
8 1, 1998 shall be adjusted as follows:

9 (i) Depreciation for federal income tax purposes shall be
10 disallowed in full.

11 (ii) A deduction shall be allowed for the New Jersey
12 depreciation allowance. The New Jersey depreciation allowance
13 shall be computed for the single asset account described above
14 based on the New Jersey tax basis as adjusted above as if all assets
15 in the single asset account were first placed in service on January 1,
16 1998. Depreciation shall be computed using the straight line method
17 over a thirty-year life. A full year's depreciation shall be allowed in
18 the initial tax year. No half-year convention shall apply. The
19 depreciable basis of the single account shall be reduced by the
20 adjusted federal tax basis of assets sold, retired, or otherwise
21 disposed of during any year on which gain or loss is recognized for
22 federal income tax purposes as described in subparagraph (B) of
23 this paragraph.

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

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

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

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

45 (10) Entire net income shall exclude all income of an alien
46 corporation the activities of which are limited in this State to
47 investing or trading in stocks and securities for its own account,
48 investing or trading in commodities for its own account, or any

1 combination of those activities, within the meaning of section 864
2 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in
3 effect on December 31, 1998. Notwithstanding the previous
4 sentence, if an alien corporation undertakes one or more infrequent,
5 extraordinary or non-recurring activities, including but not limited
6 to the sale of tangible property, only the income from such
7 infrequent, extraordinary or non-recurring activity shall be subject
8 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-
9 1 et seq.), and that amount of income subject to tax shall be
10 determined without regard to the allocation to that specific
11 transaction of any general business expense of the taxpayer and
12 shall be specifically assigned to this State for taxation by this State
13 without regard to section 6 of P.L.1945, c.162 (C.54:10A-6). For
14 the purposes of this paragraph, "alien corporation" means a
15 corporation organized under the laws of a jurisdiction other than the
16 United States or its political subdivisions.

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

25 (12) (A) Notwithstanding the provisions of subsection (k) of
26 section 168 of the federal Internal Revenue Code of 1986, 26
27 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
28 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
29 law, for property acquired after September 10, 2001, the
30 depreciation deduction otherwise allowed pursuant to section 167 of
31 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
32 be determined pursuant to the provisions of the federal Internal
33 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
34 December 31, 2001.

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

40 (13) (A) Notwithstanding the provisions of section 179 of the
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
42 property placed in service on or after January 1, 2004, the costs that
43 a taxpayer may otherwise elect to treat as an expense which is not
44 chargeable to a capital account shall be determined pursuant to the
45 provisions of the federal Internal Revenue Code of 1986
46 (26 U.S.C. s.1 et seq.) in effect on December 31, 2002.

47 (B) The director shall prescribe the rules and regulations
48 necessary to carry out the provisions of this paragraph, including,

1 among others, those for determining the adjusted basis of the
2 acquired property for the purposes of the Corporation Business Tax
3 Act (1945), P.L.1945, c.162.

4 (14) Notwithstanding the provisions of subsection (i) of section
5 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
6 for privilege periods beginning after December 31, 2008 and before
7 January 1, 2011, entire net income shall include the amount of
8 discharge of indebtedness income excluded for federal income tax
9 purposes pursuant to subsection (i) of section 108 of the federal
10 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
11 periods beginning on or after January 1, 2014 and before January 1,
12 2019, entire net income shall exclude the amount of discharge of
13 indebtedness income included for federal income tax purposes,
14 pursuant to subsection (i) of section 108 of the federal Internal
15 Revenue Code of 1986 (26 U.S.C. s.108).

16 (15) Entire net income shall exclude the gain or income derived
17 from the sale or assignment of a tax credit transfer certificate
18 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
19 10 of P.L.2014, c.63 (C.34:1B-251).

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

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

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

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

41 (E) For 10 years beginning with the combined group's first
42 privilege period beginning on or after January 1 of the fifth year
43 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a
44 combined group shall be entitled to a deduction from combined
45 group entire net income equal to one-tenth of the amount necessary
46 to offset the increase in the net deferred tax liability or decrease in
47 the net deferred tax asset, or aggregate change from a net deferred
48 tax asset to a net deferred tax liability. Such increase in the net

1 deferred tax liability or decrease in the net deferred tax asset or the
2 aggregate change from a net deferred tax asset to a net deferred tax
3 liability shall be computed based on the change that would result
4 from the imposition of the unitary reporting requirements under
5 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and
6 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided
7 under this paragraph as of the effective date of this paragraph.

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

11 (i) the deferred tax impact determined in subparagraph (E) of
12 this paragraph shall be divided by the rate determined under section
13 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
14 c.48 (C.54:10A-5.41 et al.);

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

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

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

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

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

44 (m) "Financial business corporation" shall mean any corporate
45 enterprise which is (1) in substantial competition with the business
46 of national banks and which (2) employs moneyed capital with the
47 object of making profit by its use as money, through discounting
48 and negotiating promissory notes, drafts, bills of exchange and

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

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

1 Federal Reserve System. The regulations of the Commissioner of
2 Banking and Insurance shall thereafter provide the applicable
3 definitions.

4 (o) "S corporation" means a corporation **【**included in the
5 definition of**】** that has elected to be an "S corporation" pursuant to
6 section 1361 of the federal Internal Revenue Code of 1986,
7 26 U.S.C. s.1361 , for the taxable year.

8 (p) "New Jersey S corporation" means a **【**corporation that is an
9 S corporation; which has made a valid election pursuant to section 3
10 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
11 corporation continuously since the effective date of the valid
12 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
13 5.22)**】** taxpayer that has made a valid election to be an S
14 corporation for federal tax purposes ², and that has not made a valid
15 election pursuant to subsection d. of section 20 of P.L. _____,
16 c. (C. _____) (pending before the Legislature as this bill)².

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

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

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

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

37 (u) "Prior net operating loss conversion carryover" means a net
38 operating loss incurred in a privilege period ending prior to July 31,
39 2019 and converted from a pre-allocation net operating loss to a
40 post-allocation net operating loss as follows:

41 (1) As used in this subsection:

42 "Base year" means the last privilege period ending prior to July
43 31, 2019.

44 "Base year BAF" means the taxpayer's business allocation factor
45 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
46 6 through C.54:10A-10) for purposes of calculating entire net

1 income for the base year, as such section was in effect for the last
2 privilege period ending prior to July 31, 2019.

3 "UNOL" means the unabsorbed portion of net operating loss as
4 calculated under paragraph (6) of subsection (k) of this section as
5 such paragraph was in effect for the last privilege period ending
6 prior to July 31, 2019, that was not deductible in previous privilege
7 periods and was eligible for carryover on the last day of the base
8 year subject to the limitations for deduction under such subsection,
9 including any net operating loss sustained by the taxpayer during
10 the base year.

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

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

20 (B) The taxpayer shall continue to carry over its prior net
21 operating loss conversion carryover to offset its allocated entire net
22 income as provided in sections 6 through 10 of P.L.1945, c.162
23 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
24 and after July 31, 2019. Such carryover periods shall not exceed
25 the twenty privilege periods following the privilege period of the
26 initial loss. The entire amount of the prior net operating loss
27 conversion carryover for any privilege period shall be carried to the
28 earliest of the privilege periods to which the loss may be
29 carried. The portion of the prior net operating loss conversion
30 carryover which shall be carried to each of the other privilege
31 periods shall be the excess, if any, of the amount of the prior net
32 operating loss conversion carryover over the sum of the entire net
33 income, computed without the exclusions permitted in paragraphs
34 (4) and (5) of subsection (k) of this section allocated to this State.

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

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

42 (1) Net operating loss carryover. A net operating loss for any
43 privilege period ending on or after July 31, 2019, shall be a net
44 operating loss carryover to each of the twenty privilege periods
45 following the period of the loss. The entire amount of the net
46 operating loss for any privilege period shall be carried to the earliest
47 of the privilege periods to which the loss may be carried. The
48 portion of the loss which shall be carried to each of the other

1 privilege periods shall be the excess, if any, of the amount of the
2 loss over the sum of the entire net income, computed without the
3 exclusions permitted in paragraphs (4) and (5) of subsection (k) of
4 this section allocated to this State.

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

12 (3) Reduction for discharge of indebtedness. A net operating
13 loss for any privilege period ending on or after July 31, 2019, and
14 any net operating loss carryover to such privilege period, shall be
15 reduced by the amount excluded from federal taxable income under
16 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
17 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,
18 for the privilege period of the discharge of indebtedness.

19 (4) A net operating loss carryover shall not include any net
20 operating loss incurred during any privilege period ending prior to
21 July 31, 2019.

22 (5) Change in ownership. Where there is a change in 50% or
23 more of the ownership of a corporation because of redemption or
24 sale of stock and the corporation changes the trade or business
25 giving rise to the loss, no net operating loss sustained before the
26 changes may be carried over to be deducted from income earned
27 after such changes. In addition, where the facts support the premise
28 that the corporation was acquired under any circumstances for the
29 primary purpose of the use of its net operating loss carryover, the
30 director may disallow the carryover; provided, however, this
31 paragraph shall not apply between members of a combined group
32 reported on a New Jersey combined return.

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

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

1 For purposes of this subsection:

2 "U.S. domestic corporations" means: (1) business entities
3 wherever incorporated or formed that are U.S. domestic
4 corporations, are deemed to be, or are treated as U.S. domestic
5 corporations under the provisions of the federal Internal Revenue
6 Code; or (2) any entities incorporated or formed under the laws of a
7 foreign nation that are required to file federal tax returns if such
8 entities have effectively connected income within the meaning of
9 the federal Internal Revenue Code; and

10 "Commonly owned" means that more than 50 percent of the
11 voting control of each member of an affiliated group is directly or
12 indirectly owned by a common owner or owners, either corporate or
13 non-corporate, whether or not the owner or owners are members of
14 the affiliated group. Whether voting control is indirectly owned
15 shall be determined in accordance with section 318 of the federal
16 Internal Revenue Code (26 U.S.C. s.318).

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

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

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

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

29 (4) 50% or less of whose gross receipts for the privilege period
30 consist of premiums from arrangements that constitute insurance for
31 federal income tax purposes.

32 A combinable captive insurance company shall not be exempt
33 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
34 insurance company that does not meet the definition of combinable
35 captive insurance company shall be excluded as provided in
36 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
37 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

38 For purposes of this definition:

39 "Affiliated group" shall have the same meaning as that term is
40 given by section 1504 of the federal Internal Revenue Code, 26
41 U.S.C. s.1504, except that the term "common parent corporation" as
42 used in section 1504 of the federal Internal Revenue Code, 26
43 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
44 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
45 to "at least 80%" in section 1504 of the federal Internal Revenue
46 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
47 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall

1 be read without regard to the exclusions provided for in subsection
2 (b) of that section.

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

7 "Premiums" includes consideration for annuity contracts and
8 excludes any part of the consideration for insurance, reinsurance, or
9 annuity contracts that do not provide bona fide insurance,
10 reinsurance, or annuity benefits.

11 (z) "Combined group" means the group of all companies that
12 have common ownership and are engaged in a unitary business,
13 where at least one company is subject to tax under this chapter, and
14 shall include all business entities, except as provided for under any
15 section of the Corporation Business Tax Act (1945), P.L.1945,
16 c.162 (C.54:10A-1 et seq.).

17 A combined group shall be treated, for privilege periods ending
18 on and after July 31, 2020, as one taxpayer for purposes of
19 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162
20 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for
21 the income derived from the unitary business; provided however,
22 with regard to the surtax imposed pursuant to section 1 of P.L.2018,
23 c.48 (C.54:10A-5.41) and for that purpose only, the portion of
24 income that is attributable to a member which is a public utility
25 exempt from the surtax shall not be included when computing the
26 surtax due.

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

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

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

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

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

4 (ee) "Nontaxable member" means a member that is: (i) not
5 subject to tax pursuant to the Corporation Business Tax Act (1945),
6 P.L.1945, c.162 (C.54:10A-1 et seq.); or (ii) (deleted by
7 amendment, P.L.2020, c.118 (C.54:10A-5.46 et al.).

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

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

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

39 (cf: P.L.2020, c.118, s.3)

40
41 ²[21.] 20.² Section 3 of P.L.1993, c.173 (C.54:10A-5.22) is
42 amended to read as follows:

43 3. a. **[**A corporation may elect, in accordance with the
44 provisions of this section, to be a New Jersey S corporation. In
45 order for an election to be valid, the corporation and each of its
46 shareholders on the day on which the election is made (hereinafter
47 "initial shareholders") must consent to such election and the
48 jurisdictional requirements of becoming a New Jersey S

1 corporation. The form of the election and consent to jurisdictional
2 requirements and the place for filing shall be as prescribed by the
3 Director of the Division of Taxation.】 (Deleted by amendment
4 P.L. , c.) (pending before the Legislature as this bill)

5 b. **【Each initial shareholder and the corporation】** A New Jersey
6 S Corporation and each shareholder shall consent to the following
7 jurisdictional requirements:

8 (1) That this State shall have the right and jurisdiction to tax and
9 collect the tax on each shareholder's S corporation income as
10 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) and,
11 if applicable, the pass-through business alternative income tax
12 pursuant to P.L.2019, c.320 (C.54A:12-1 et al.);

13 (2) That New Jersey's right and jurisdiction to tax the income as
14 set forth in paragraph (1) of this subsection shall not be affected by
15 a change of a shareholder's residency, except as provided by the
16 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

17 (3) If shareholders that are not initial shareholders of the
18 corporation, while the corporation is a New Jersey S corporation,
19 fail to consent to New Jersey's jurisdiction to tax S corporation
20 income to such shareholders, this State shall have the right and
21 jurisdiction to collect a payment of tax each year directly from the
22 corporation equal to the S corporation income allocated to this
23 State, as defined pursuant to section 12 of P.L.1993, c.173
24 (C.54A:5-10), of the nonconsenting shareholders for the accounting
25 or privilege period multiplied by the maximum tax bracket rate
26 provided under N.J.S.54A:2-1 for the accounting or privilege
27 period. In such case, the corporation shall have the right, but not
28 the obligation, to recover payments made by the corporation
29 pursuant to this paragraph from each nonconsenting shareholder.

30 c. **【A corporation may make an election to become a New**
31 **Jersey S corporation with respect to an accounting or privilege**
32 **period for which the corporation is or will be an S corporation. The**
33 **election for an accounting or privilege period, along with the】** The
34 consents to jurisdictional requirements 【,】 shall be filed within one
35 calendar month of the time at which a federal S corporation election
36 would be required if such accounting or privilege period were a
37 "taxable year" for which a federal S corporation election were to be
38 made pursuant to section 1362 of the federal Internal Revenue Code
39 of 1986, 26 U.S.C. s.1362. Such elections may only be ¹opted out
40 of or¹ revoked pursuant to subsection d. of this section. 【Such
41 election shall terminate immediately upon the corporation's failure
42 to satisfy the definition of a New Jersey S corporation pursuant to
43 paragraph (p) of section 4 of P.L.1945, c.162 (C.54:10A-4).】

44 d. **【A corporation may revoke an election pursuant to this**
45 **section on or before the last day of the first accounting or privilege**
46 **period to which the election would otherwise apply.】** ¹**【Deleted by**
47 **amendment P.L. , c.) (pending before the Legislature as this**

1 bill)] Notwithstanding any law or regulation to the contrary, any S
 2 corporation may elect not to be taxed as a New Jersey S
 3 corporation. This election shall have the consent of 100 percent of
 4 the shareholders of the S corporation ²on the date on which the
 5 election is made² . An election ²to opt out² under this subsection
 6 may be made for any taxable year at any time during the preceding
 7 taxable year or at any time on or before the due date or extended
 8 due date of the S corporation's tax return. An election ²to opt out²
 9 made pursuant to this subsection shall be effective for the taxable
 10 year for which the election is made and for each succeeding taxable
 11 year until revoked. An election ²~~under~~ to opt out made pursuant
 12 to² this subsection may be revoked if shareholders holding more
 13 than 50 percent of the shares of stock of the S corporation on the
 14 date on which the revocation is made consent to the revocation and
 15 such revocation shall be effective on the first day of the taxable
 16 year if made on or before the fifteenth day of the third month
 17 thereof; if the revocation is made after such date, the revocation
 18 shall be effective for the following taxable year, unless the
 19 shareholders revoke the revocation before December 31 of the
 20 current year. An election ²to opt out² or revocation made pursuant
 21 to this subsection shall be made in a form and manner prescribed by
 22 the director. Any S corporation doing business in New Jersey ^{2,2} or
 23 ²having or exercising its franchise in New Jersey, or deriving
 24 receipts, engaging in contracts, or employing or owning capital or
 25 property in New Jersey, or² registered to do business in New Jersey
 26 ^{2,2} that does not make this election ²to opt out² will be taxed as a
 27 New Jersey S corporation.¹

28 e. A corporation shall report any change in its shareholders or
 29 their share of ownership to the Director of the Division of Taxation
 30 in a form and manner determined by the director.

31 (cf: P.L.2019, c.320, s.6)

32
 33 ²~~[22.]~~ 21.² Section 4 of P.L.1993, c.173 (C.54:10A-5.23) is
 34 amended to read as follows:

35 4. a. ~~[With respect to each of its shareholders that is not an~~
 36 ~~initial shareholder,]~~ Each shareholder of a New Jersey S
 37 corporation shall satisfy the requirements of ~~[either]~~ paragraph b.
 38 ~~[or c.]~~ of this section.

39 b. Deliver a consent to the jurisdictional requirements as set
 40 forth in ~~[subsection b. of]~~ section 3 of P.L.1993, c.173 (C.54:10A-
 41 5.22) , in a form and manner determined by the director.

42 c. ~~[Make]~~ A New Jersey S corporation shall make payments to
 43 the Director of the Division of Taxation on behalf of each
 44 nonconsenting shareholder in an amount equal to the shareholder's
 45 pro rata share of S corporation income allocated to this State, as
 46 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10),

1 reflected on the corporation's return for the accounting or privilege
 2 period, multiplied by the maximum tax bracket rate provided under
 3 N.J.S.54A:2-1 in effect at the end of the accounting or privilege
 4 period. The payments shall be made no later than the time for filing
 5 of the return for the accounting or privilege period. The director
 6 may, by regulation, require that amounts estimated to be equal to
 7 the liability expected to be due pursuant to this subsection be
 8 withheld from any distribution made to a nonconsenting
 9 shareholder.

10 d. If a shareholder that is not an initial shareholder of a New
 11 Jersey S corporation fails to deliver a consent to the jurisdictional
 12 requirements set forth in [subsection b. of] section 3 of P.L.1993,
 13 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to
 14 withhold payments pursuant to subsection c. of this section, then
 15 this State shall have the right and jurisdiction to collect a tax each
 16 year directly from the corporation equal to the pro rata share of the
 17 S corporation income allocated to this State, as defined pursuant to
 18 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting
 19 shareholder times the maximum tax bracket rate provided under
 20 N.J.S.54A:2-1 for the appropriate accounting or privilege
 21 period. In such case, the corporation shall have the right, but not
 22 the obligation, to recover payments made by the corporation
 23 pursuant to this subsection from each nonconsenting
 24 shareholder. The corporation shall not be liable for the pass-
 25 through business alternative income tax pursuant to P.L.2019, c.320
 26 (C.54A:12-1 et al.) relative to collections made in a taxable year for
 27 such nonconsenting members.
 28 (cf: P.L.2019, c.320, s.7)

29
 30 ²[23.] 22.² Section 12 of P.L.1993, c.173 (C.54A:5-10) is
 31 amended to read as follows:

32 12. For the purposes of the "New Jersey Gross Income Tax Act,"
 33 N.J.S.54A:1-1 et seq.:

34 "New Jersey S corporation" means a [corporation that is an S
 35 corporation ; which has made a valid election pursuant to section 3
 36 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
 37 corporation continuously since the effective date of the valid
 38 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
 39 5.22)] ²[taxpayer] corporation² that has made a valid election to be
 40 an S corporation for federal tax purposes for the taxable year ², and
 41 that has not made a valid election pursuant to subsection d. of
 42 section 20 of P.L. , c. (C.) (pending before the Legislature
 43 as this bill)².

44 "Pro rata share" means the portion of any items attributable to an
 45 S corporation shareholder for a taxable year determined in the
 46 manner provided in, and subject to any election made under
 47 subsection (a) of section 1377 or subsection (e) of section 1362 of

1 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and
2 s.1362.

3 "Pro rata share of S corporation income" means the sum of the
4 shareholder's proportionate share of:

5 For a New Jersey S corporation, the S corporation income
6 allocated to this State of all New Jersey S corporations; and the S
7 corporation income not allocated to this State.

8 "S corporation" means a corporation [included in the definition
9 of] that has elected to be an "S corporation" pursuant to section
10 1361 of the federal Internal Revenue Code [of 1986], 26 U.S.C.
11 s.1361, for the taxable year.

12 "S corporation income" means the net of an S corporation's items
13 of income, loss or deduction taken into account by the shareholder
14 in the manner provided in section 1366 of the federal Internal
15 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

16 a. S corporation income shall be determined without the
17 exclusion, deduction or credit of:

18 (1) any dividend exclusion or deduction otherwise allowed
19 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,
20 c.162 (C.54:10A-4);

21 (2) taxes paid or accrued to the United States, a possession or
22 territory of the United States, a state including this State, a political
23 subdivision thereof, or the District of Columbia on or measured by
24 profits or income, or business presence or business activity, of the
25 corporation;

26 (3) any income taxes paid or accrued to the United States, a
27 possession or territory of the United States, a state including this
28 State, a political subdivision thereof, or the District of Columbia
29 paid or accrued by the S corporation on behalf of, or in satisfaction
30 of the liabilities of, shareholders of the corporation;

31 (4) interest income on obligations of any state other than this
32 State, or of a political subdivision thereof, or of the federal
33 government, except as deducted pursuant to subsection b. of this
34 section; or

35 (5) interest on indebtedness incurred or continued, expenses
36 paid and incurred to purchase, carry, manage or conserve, and
37 expenses of collection of the income or gain from obligations the
38 income or gain from which is deductible pursuant to subsection b.
39 of this definition; and

40 b. S corporation income shall be determined after deduction of
41 any gains or income derived from obligations which are referred to
42 in N.J.S.54A:6-14 or from securities which evidence ownership in a
43 qualified investment fund as defined in section 2 of P.L.1987, c.310
44 (C.54A:6-14.1), and any interest excluded from gross income
45 pursuant to N.J.S.54A:6-14, or distributions excluded from income
46 pursuant to section 2 of P.L.1987, c.310 (C.54A:6-14.1); and

47 c. The character of any S corporation item taken into account
48 by a shareholder of an S corporation shall be determined as if such

1 items were received or incurred by the S corporation and not its
2 shareholder.

3 "S corporation income allocated to this State" means that portion
4 of the S corporation income that is allocated to this State by the
5 allocation factor of the corporation for the fiscal or calendar
6 accounting period pursuant to sections 6 through 10 of P.L.1945,
7 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax
8 imposed pursuant to paragraph (3) of subsection (c) of section 5 of
9 P.L.1945, c.162 (C. 54:10A-5).

10 "S corporation income not allocated to this State" means S
11 corporation income less S corporation income allocated to this
12 State.

13 (cf: P.L.1993, c.173, s.12)

14

15 ²[24.] 23.² Section 13 of P.L.1993, c.173 (C.54A:5-11) is
16 amended to read as follows:

17 13. a. A resident shareholder of S corporation stock held by the
18 shareholder on the first day of the first taxable year following
19 enactment of this section shall have an initial basis in the stock of
20 that S corporation and any indebtedness of the S corporation equal
21 to the basis of the stock determined as though the stock was stock
22 of a corporation not an S corporation plus any indebtedness of the S
23 corporation to the shareholder and shall be determined as of the first
24 day of the first taxable year following enactment of this section

25 b. A resident shareholder of S corporation stock to which
26 subsection a. of this section does not apply shall have an initial
27 basis in the stock of the S corporation and any indebtedness of the S
28 corporation as determined pursuant to the federal Internal Revenue
29 Code of 1986, determined as of the date that is the latest to occur
30 of: the date on which the shareholder last became a resident of this
31 State; the date on which the shareholder acquired the stock of the
32 corporation; or the effective date of the corporation's most recent S
33 election under the federal Internal Revenue Code of 1986.

34 c. The initial basis of a resident shareholder in the stock and
35 indebtedness of an S corporation shall be adjusted after the date
36 specified in subsections a. or b. of this section in the manner
37 required by section 1011 of the federal Internal Revenue Code of
38 1986, 26 U.S.C. s.1011, except that such adjustments shall be
39 limited to that portion of S corporation income allocated to this
40 State and S corporation income not allocated to this State that is
41 included in the shareholder's pro rata share of S corporation income
42 and except that, with respect to any taxable period during which the
43 shareholder is a resident of this State:

44 (1) any modification made pursuant to the definition of S
45 corporation income pursuant to section 12 of P.L.1993, c.173
46 (C.54A:5-10) other than those for income exempt from taxation by
47 this State pursuant to paragraph (5) of subsection a. and subsection
48 b. of that definition shall be taken into account; and

1 (2) any adjustments made pursuant to section 1367 of the
2 federal Internal Revenue Code of 1986, 26 U.S.C. s.1367, for a
3 taxable period during which this State did not measure the income
4 of a shareholder of an S corporation by reference to the S
5 corporation's income shall not be taken into account.

6 d. A nonresident shareholder of S corporation stock shall have
7 an initial basis in the stock of the S corporation and any
8 indebtedness of the S corporation of zero as of the date that is the
9 latest to occur of: the date on which the shareholder last became a
10 nonresident of this State; the date on which the shareholder
11 acquired the stock of the corporation; or the effective date of the
12 corporation's most recent S election under the federal Internal
13 Revenue Code of 1986 **;** or the effective date of the corporation's
14 most recent election pursuant to section 3 of P.L.1993, c.173
15 (C.54:10A-5.22)**】**.

16 e. The initial basis of a nonresident shareholder in the stock
17 and indebtedness of an S corporation shall be adjusted after the date
18 specified in subsection d. of this section as provided in section 1367
19 of the of the federal Internal Revenue Code of 1986, 26 U.S.C.
20 s.1367, except that such adjustments shall be limited to that portion
21 of S corporation income allocated to this State that is included in
22 the shareholder's pro rata share of S corporation income. In
23 computing S corporation income allocated to this State any
24 modification made pursuant to the definition of S corporation
25 income pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) for
26 income exempt from taxation by this State pursuant to paragraph (5)
27 of subsection a. and subsection b. of that definition shall not be
28 taken into account.

29 f. The basis in the hands of a resident shareholder of an S
30 corporation in stock of the S corporation shall be reduced by the
31 amount of any cash distribution which is not taxable to the
32 shareholder as a result of the application of section 16 of P.L.1993,
33 c.173 (C.54A:5-14).

34 g. For purposes of this section, any person acquiring stock or
35 indebtedness of an S corporation by gift shall be considered to have
36 acquired the stock or indebtedness at the time the donor acquired
37 the stock or indebtedness.

38 (cf: P.L.1993, c.173, s.13)

39
40 ²**[25.]** 24.² (New section) The Directors of the Divisions of
41 Revenue and Enterprise Services and Taxation, when determining
42 whether to grant retroactive election of S corporation status, shall
43 liberally construe regulatory requirements in favor of the
44 corporation and shall have the discretion to authorize retroactive S
45 corporation status in circumstances in which a taxpayer may not be
46 capable of meeting all regulatory requirements for such retroactive
47 election through no fault of the taxpayer.

1 ²[26.] 25.² Sections 1 through ²[19] 18 and section 25² of this
2 act shall take effect immediately, and sections 1 through 16 shall
3 apply to any adjustments to a taxpayer's federal taxable income on
4 or after January 1, 2020 ²[and sections 17 through 19 shall apply
5 retroactively to the effective date of P.L.2020, c.19]². Sections
6 ²[20] 19² through ²[25] 24² of this act shall take effect ²[on the
7 60th day] immediately but shall apply for taxable years and
8 privilege periods beginning² after the date of enactment and the
9 Directors of the Divisions of Taxation and Revenue and Enterprise
10 Services shall take such anticipatory administrative action in
11 advance as is necessary to effectuate the purposes of this ²[bill]
12 act².

13

14

15

16

17 Adapts new federal partnership audit regime under gross income
18 tax, ends COVID-related State tax extensions, and eliminates
19 requirement to affirmatively elect New Jersey S Corporation status.

ASSEMBLY, No. 4295

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 16, 2022

Sponsored by:

Assemblywoman SADAF F. JAFFER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblywoman GABRIELA M. MOSQUERA

District 4 (Camden and Gloucester)

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

SYNOPSIS

Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning new federal partnership tax audit regime,
2 ending COVID-related tax extensions, eliminating requirement
3 to affirmatively elect New Jersey S Corporation status, and
4 administering these changes under the gross income tax and the
5 corporation business tax, supplementing Title 54A of the New
6 Jersey Statutes and P.L.145, c.162, and amending various parts
7 of the statutory law.

8
9 **BE IT ENACTED** *by the Senate and General Assembly of the State*
10 *of New Jersey:*

11
12 1. N.J.S.54A:2-2 is amended to read as follows:

13 54A:2-2. a. A partnership as such shall not be subject to the
14 New Jersey Gross Income Tax. Individuals carrying on business as
15 partners shall be liable for the New Jersey Gross Income Tax only
16 in their separate or individual capacities, except as provided under
17 section b. of this section.

18 b. A partnership shall report any federal partnership audit
19 adjustments made by the Internal Revenue Service pursuant section
20 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s.6225(a)(1)) to
21 the Division of Taxation in the Department of the Treasury in
22 accordance with section 2 and subsection d. of section 9 of
23 P.L. ,c. (C.) (pending before the Legislature as this bill). The
24 partners of the reviewed year shall make payment of any New
25 Jersey Gross Income Tax liability that results from the federal
26 partnership audit adjustments reported on the Federal Adjustments
27 Report, unless the partnership makes the election to pay tax on the
28 partner's behalf.

29 (1) Failure of the partnership, partner, tiered partner, indirect
30 partner, or member to report or pay federal adjustments pursuant to
31 section 6225(a) and section 6225(c) of the Internal Revenue Code
32 shall not prevent the director from assessing the partnership,
33 partner, tiered partner, indirect partner, or member for taxes they
34 owe, using the best information available, in the event that the
35 partnership, partner, tiered partner, indirect partner, or member fails
36 to timely make any report or payment required by this section for
37 any reason.

38 c. The director may adopt rules and regulations that the
39 director deems necessary to effectuate the provisions of this section.

40 (cf: N.J.S.54A:2-2)

41
42 2. (New section) a. A taxpayer, as defined in N.J.S. 54A:1-2 or
43 subsection h. of section 4 of P.L.1945, c.162 (C.54:10A-4), whose
44 tax return filed with the Internal Revenue Service, or whose net
45 income reported, is changed or corrected by any official of the
46 United States government in any respect affecting a tax imposed by

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 chapter 2 of Title 54A of the New Jersey Statutes, including a
2 return or other similar report filed pursuant to section 6225(c)(2) of
3 the Internal Revenue Code (26 U.S.C. s.6225(c)(2)), shall within 90
4 days after the final federal adjustment and determination of the
5 change or correction, submit to the director the Federal Adjustments
6 Report.

7 b. Except for the distributive share of adjustments that have
8 been reported as required under subsection a. of this section,
9 partnerships and partners of the reviewed year shall, within 90 days
10 after the final determination date of the final federal adjustments
11 arising from a federal partnership level audit or an administrative
12 adjustment request, file the Federal Adjustments Report and make
13 payments as required under subsection b. of N.J.S.54A:5-4.

14 c. Upon the filing of a Federal Adjustments Report, the
15 director shall examine a taxpayer's return, determine any additional
16 tax or refund that may be due, and shall notify the taxpayer. Any
17 additional tax shall be paid within 15 days after the Federal
18 Adjustments Report is filed together with interest from the original
19 due date of the return for the taxable year to the date of payment of
20 the additional tax.

21

22 3. N.J.S.54A:5-4 is amended to read as follows:

23 54A:5-4. [A] a. Except as provided in subsections b. and c. of
24 this section, a partnership or association as such shall not be subject
25 to the tax imposed by this act, but the income or gain of a partner or
26 member of a partnership or association shall be subject to the tax
27 and the tax shall be imposed on [his] the partner's or member's
28 share, whether or not distributed, of the income or gain received by
29 the partnership or association for its taxable year ending within or
30 with the partner's or member's taxable year.

31 b. A partnership shall report and make payment of any New
32 Jersey gross income tax liability that results from the federal
33 partnership audit adjustments in accordance with section 2 of
34 P.L. , c. (C.) (pending before the Legislature as this bill)
35 and subsection d. of section 9 of P.L. , c. (C.) (pending
36 before the Legislature as this bill).

37 c. Failure of the partnership, partner, indirect partner, tiered
38 partner, or member to report or pay federal adjustments that result
39 from the federal partnership audit adjustments shall not prevent the
40 director from assessing a partnership, partner, indirect partner,
41 tiered partner, or member for taxes they owe, using the best
42 information available, if the partnership, partner, indirect partner,
43 tiered partner, or member fails to timely make any report or
44 payment required by this section for any reason.

45 (cf: N.J.S.54A:5-4)

46

47 4. N.J.S.54A:8-7 is amended to read as follows:

1 54A:8-7. a. Report of change in federal taxable income or
2 credit. If the amount of a taxpayer's federal taxable income or
3 earned income tax credit reported on the taxpayer's federal income
4 tax return for any taxable year is changed or corrected by the United
5 States Internal Revenue Service or other competent authority, or as
6 the result of a renegotiation of a contract or subcontract with the
7 United States, the taxpayer shall report such change or correction
8 in federal taxable income or earned income tax credit within 90
9 days after the final determination of such change, correction, or
10 renegotiation, or as otherwise required by the director, and shall
11 concede the accuracy of such determination or state wherein it is
12 erroneous. Any taxpayer filing an amended federal income tax
13 return, including a return or other information filed pursuant to
14 section 6225(c) of the Internal Revenue Code (26 U.S.C. s.
15 6225(c)), shall also file within 90 days thereafter an amended return
16 under this act, and shall give such information as the director may
17 require. The director may by regulation prescribe such exceptions
18 to the requirements of this section as the director deems
19 appropriate.

20 b. A partnership shall report the Final Federal Adjustments
21 from a federal partnership audit or administrative adjustment
22 request pursuant to section 6225(a)(1) of the Internal Revenue Code
23 (26 U.S.C. s.6225(a)(1)) by filing the Federal Adjustments Report
24 as prescribed by the director within 90 days after the Final
25 Determination Date of the federal adjustments arising from a
26 partnership level audit.

27 c. The director may assess the federally audited partnership,
28 partners, or both, for taxes they owe, using the best information
29 available, even if the partnership or tiered partner fails to timely
30 make any report required by this section for any reason.

31 d. The director shall adopt rules and regulations the director
32 may deem necessary to effectuate the provisions of this section.

33 (cf: P.L.2000, c.80, s.6)

34

35 5. N.J.S.54A:9-4 is amended to read as follows:

36 54A:9-4. (a) General. Except as otherwise provided in this
37 section, any tax under this act shall be assessed within 3 years after
38 the return was filed (whether or not such return was filed on or after
39 the date prescribed).

40 (b) Time return deemed filed.

41 (1) Early return. for purposes of this section a return of income
42 tax, except withholding tax, filed before the last day prescribed by
43 law or by regulations promulgated pursuant to law for the filing
44 thereof, shall be deemed to be filed on such last day.

45 (2) Return of withholding tax. For purposes of this section, if a
46 return of withholding tax for any period ending with or within a
47 calendar year is filed before April 15 of the succeeding calendar

1 year, such return shall be deemed to be filed on April 15 of such
2 succeeding calendar year.

3 (c) Exceptions.

4 (1) Assessment at any time. The tax may be assessed at any time
5 if--

6 (A) No return is filed,

7 (B) A false or fraudulent return is filed with intent to evade tax,
8 or

9 (C) The taxpayer fails to comply with **[section]** N.J.S.54A:8-7,
10 in not reporting a change or correction increasing **[his]** the
11 taxpayer's Federal taxable income as reported on his Federal
12 income tax return, or in not reporting a change or correction which
13 is treated in the same manner as if it were a deficiency for Federal
14 income tax purposes, **[or]** in not filing an amended return, or, for
15 both partners and partnerships, in not reporting final federal
16 adjustments resulting from a partnership audit pursuant to section
17 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s. 6225(a)(1)).

18 (2) Extension by agreement. Where, before the expiration of the
19 time prescribed in this section for the assessment of tax, both the
20 director and the taxpayer have consented in writing to its
21 assessment after such time, the tax may be assessed at any time
22 prior to the expiration of the period agreed upon. The period so
23 agreed upon may be extended by subsequent agreements in writing
24 made before the expiration of the period previously agreed upon.

25 (3) Report of changed or corrected Federal income. If the
26 taxpayer shall, pursuant to **[section 54A:8-7]** subsection a. of
27 N.J.S.54A:8-7, report a change or correction or file an amended
28 return increasing **[his]** the taxpayer's Federal taxable income or
29 report a change or correction which is treated in the same manner as
30 if it were a deficiency for Federal income tax purposes, the
31 assessment (if not deemed to have been made upon the filing of the
32 report or amended return) may be made at any time within 2 years
33 after such report or amended return was filed. The amount of such
34 assessment of tax shall not exceed the amount of the increase in
35 New Jersey tax attributable to such Federal change or correction.
36 The provisions of this paragraph shall not affect the time within
37 which or the amount for which an assessment may otherwise be
38 made.

39 (4) Recovery of erroneous refund. An erroneous refund shall be
40 considered an underpayment of tax on the date made, and an
41 assessment of a deficiency arising out of an erroneous refund may
42 be made at any time within 3 years from the making of the refund,
43 except that the assessment may be made within 5 years from the
44 making of the refund if it appears that any part of the refund was
45 induced by fraud or misrepresentation of a material fact.

46 (5) Request for prompt assessment. If a return is required for a
47 decedent or for **[his]** the decedent's estate during the period of

1 administration, the tax shall be assessed within 18 months after
2 written request therefor (made after the return is filed) by the
3 executor, administrator or other person representing the estate of
4 such decedent, but not more than 3 years after the return was filed,
5 except as otherwise provided in this subsection and subsection (d).

6 (6) Final federal adjustments resulting from a Federal
7 Partnership Audit. Tax may be assessed against the partnership,
8 direct or indirect partners, or both, within two years of the time that
9 a partnership files a Federal Adjustments Report as required by
10 N.J.S.54A:8-7 that includes Final Federal Adjustments from a
11 federal partnership audit or administrative adjustments request that
12 would result in additional New Jersey income tax for one or more
13 direct or indirect partners.

14 (d) Omission of income on return. The tax may be assessed at
15 any time within 6 years after the return was filed if--

16 (1) An individual omits from his New Jersey income an amount
17 properly includible therein which is in excess of 25% of the amount
18 of New Jersey income stated in the return; or

19 (2) An estate or trust omits income from its return in an amount
20 in excess of 25% of its income determined as if it were an
21 individual, computing his New Jersey income under this act.

22 For purposes of this subsection there shall not be taken into
23 account any amount which is omitted in the return if such amount is
24 disclosed in the return, or in a statement attached to the return, in a
25 manner adequate to apprise the director of the nature and amount of
26 such item.

27 (e) Suspension of running of period of limitation. The running
28 of the period of limitations on assessment or collection of tax or
29 other amount (or of a transferee's liability) shall, after the mailing of
30 a notice of deficiency, be suspended for the period during which the
31 director is prohibited under subsection (c) of section N.J.S.54A:9-2
32 from making the assessment or from collecting by levy.

33 (cf: N.J.S.54A:9-4)

34
35 6. N.J.S.54A:9-8 is amended to read as follows:

36 54A:9-8. (a) General. Claim for credit or refund of an
37 overpayment of income tax shall be filed by the taxpayer within 3
38 years from the time the return was filed or 2 years from the time the
39 tax was paid, whichever of such periods expires the later, or if no
40 return was filed, within 2 years from the time the tax was paid. If
41 the claim is filed within the 3-year period, the amount of the credit
42 or refund shall not exceed the portion of the tax paid within the 3
43 years immediately preceding the filing of the claim plus the period
44 of any extension of time for filing the return. If the claim is not
45 filed within the 3-year period, but is filed within the 2-year period,
46 the amount of the credit or refund shall not exceed the portion of
47 the tax paid during the 2 years immediately preceding the filing of
48 the claim. Except as otherwise provided in this section, if no claim

1 is filed, the amount of a credit or refund shall not exceed the
2 amount which would be allowable if a claim had been filed on the
3 date the credit or refund is allowed.

4 (b) Extension of time by agreement. If an agreement under the
5 provisions of paragraph (2) of subsection (c) of **[section]**
6 N.J.S.54A:9-4 (extending the period for assessment of income tax)
7 is made within the period prescribed in subsection (a) for the filing
8 of a claim for credit or refund, the period for filing a claim for
9 credit or refund, or for making credit or refund if no claim is filed,
10 shall not expire prior to 6 months after the expiration of the period
11 within which an assessment may be made pursuant to the agreement
12 or any extension thereof. The amount of such credit or refund shall
13 not exceed the portion of the tax paid after the execution of the
14 agreement and before the filing of the claim or the making of the
15 credit or refund, as the case may be, plus the portion of the tax paid
16 within the period which would be applicable under subsection (a) if
17 a claim had been filed on the date the agreement was executed.

18 (c) Notice of change or correction of Federal income. If a
19 taxpayer is required by **[section]** N.J.S.54A:8-7 to report a change
20 or correction in Federal taxable income reported on **[his]** the
21 taxpayer's Federal income tax return, or to report a change or
22 correction which is treated in the same manner as if it were an
23 overpayment for Federal income tax purposes, or to file an amended
24 return with the director, claim for credit or refund of any resulting
25 overpayment of tax shall be filed by the taxpayer within 2 years
26 from the time the notice of such change or correction or such
27 amended return was required to be filed with the director. The
28 amount of such credit or refund shall not exceed the amount of the
29 reduction in tax attributable to such Federal change, correction or
30 items amended on the taxpayer's amended Federal income tax
31 return. This subsection shall not affect the time within which or the
32 amount for which a claim for credit or refund may be filed apart
33 from this subsection.

34 (d) Failure to file claim within prescribed period. No credit or
35 refund shall be allowed or made, except as provided in subsection
36 (e) of this section or subsection (d) of **[section]** N.J.S.54A:9-10,
37 after the expiration of the applicable period of limitation specified
38 in this act, unless a claim for credit or refund is filed by the
39 taxpayer within such period. Any later credit shall be void and any
40 later refund erroneous. No period of limitations specified in any
41 other law shall apply to the recovery by a taxpayer of moneys paid
42 in respect of taxes under this act.

43 (e) Effect of petition to director. If a notice of deficiency for a
44 taxable year has been mailed to the taxpayer under **[section]**
45 N.J.S.54A:9-2 and if the taxpayer files a timely petition with the
46 director under **[section]** N.J.S.54A:9-9, **[he]** the director may
47 determine that the taxpayer has made an overpayment for such year

1 (whether or not **【he】** the director also determines a deficiency for
2 such year). No separate claim for credit or refund for such year
3 shall be filed, and no credit or refund for such year shall be allowed
4 or made, except--

5 (1) As to overpayments determined by a decision of the director
6 which has become final; and

7 (2) As to any amount collected in excess of an amount computed
8 in accordance with the decision of the director which has become
9 final; and

10 (3) As to any amount claimed as a result of a change or
11 correction described in subsection (c).

12 (f) Limit on amount of credit or refund. The amount of
13 overpayment determined under subsection (e) shall, when the
14 decision of the director has become final, be credited or refunded in
15 accordance with subsection (a) of section N.J.S. 54A:6-6 and shall
16 not exceed the amount of tax which the director determines as part
17 of **【he】** the director's decision was paid--

18 (1) After the mailing of the notice of deficiency; or

19 (2) Within the period which would be applicable under
20 subsections (a), (b) or (c), if on the date of the mailing of the notice
21 of a deficiency a claim had been filed (whether or not filed) stating
22 the grounds upon which the director finds that there is an
23 overpayment.

24 (g) Early return. For purposes of this section, any return filed
25 before the last day prescribed for the filing thereof shall be
26 considered as filed on such last day, determined without regard to
27 any extension of time granted the taxpayer.

28 (h) Prepaid income tax. For purposes of this section, any tax paid
29 by the taxpayer before the last day prescribed for its payment, any
30 income tax withheld from the taxpayer during any calendar year,
31 and any amount paid by the taxpayer as estimated income tax for a
32 taxable year shall be deemed to have been paid by **【him】** the
33 taxpayer on the fifteenth day of the fourth month following the
34 close of **【his】** the taxpayer's taxable year with respect to which
35 such amount constitutes a credit or payment.

36 (i) Return and payment of withholding tax. Notwithstanding
37 subsection (h), for purposes of this section with respect to any
38 withholding tax--

39 (1) If a return for any period ending with or within a calendar
40 year is filed before April 15 of the succeeding calendar year, such
41 return shall be considered filed on April 15 of such succeeding
42 calendar year; and

43 (2) If a tax with respect to remuneration paid during any period
44 ending with or within a calendar year is paid before April 15 of the
45 succeeding calendar year, such tax shall be considered paid on April
46 15 of such succeeding calendar year.

47 (j) Final federal adjustments resulting from a partnership audit or
48 administrative adjustments request. If a partnership files a Federal

1 Adjustments Report with final federal adjustments resulting from a
2 partnership audit or administrative adjustments request that do not
3 result in a federal imputed underpayment, and which are not taken
4 into account by the partnership in the federal adjustment year
5 partnership return, then the partners may claim a credit or refund of
6 the related State tax by filing an amended return or other schedule
7 as required by the director. The amount of such credit or refund
8 shall not exceed the amount of the reduction in New Jersey tax
9 attributable to such final federal adjustments. This subsection shall
10 not affect the time within in which or the amount for which a claim
11 for credit or refund may be filed apart from this subsection.

12 (cf: N.J.S.54A:9-8)

13

14 7. (New section) As used in sections 7 through 13 of
15 P.L. , c. (C.) (pending before the Legislature as this bill):

16 “Administrative adjustment request” means an administrative
17 adjustment request filed by a partnership under section 6227 of the
18 federal Internal Revenue Code (26 U.S.C. s.6227).

19 “Allocation Factor” means the allocation factor as required on
20 the New Jersey Gross Income Tax Business Allocation Schedule
21 NJ-NR-A.

22 “Audited partnership” means a partnership subject to a
23 partnership level audit resulting in a federal adjustment.

24 “Corporate partner” means a partner that is a corporation subject
25 to tax pursuant to section 2 of P.L. 1945, c. 162 (C.54:10A-2) or is
26 subject to the requirements of section 12 of P.L.2002, c.40
27 (C.54:10A-15.11).

28 “Direct partner” means a partner that holds an interest directly in
29 a partnership or pass-through entity.

30 “Exempt partner” means a partner that is exempt from taxation
31 under section 3 of P.L.1945, c.162 (C.54:10A-3).

32 “Federal adjustment” means a change to an item or amount
33 determined under the federal Internal Revenue Code that is used by
34 a taxpayer to compute tax owed under the “New Jersey Gross
35 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business
36 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), whether that
37 change results from action by the Internal Revenue Service,
38 including a partnership level audit, or the filing of an amended
39 federal return, federal refund claim, or an administrative adjustment
40 request by the taxpayer. A federal adjustment is positive to the
41 extent that it increases State taxable income as determined under
42 N.J.S.54A:5-1 or subsection (k) of section 4 of P.L.1945, c.162
43 (C.54:10A-4) and is negative to the extent that it decreases State
44 taxable income as determined under N.J.S.54A:5-1 or subsection
45 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

46 “Federal Adjustments Report” includes methods or forms
47 required by N.J.S.54A:8-7 or section 13 of P.L.1945, c.162
48 (C.54:10A-13) for use by a taxpayer to report final federal

1 adjustments, including an amended New Jersey tax return,
2 information return, or a uniform multistate report.

3 “Federal partnership representative” means the person the
4 partnership designates for the taxable year as the partnership’s
5 representative, or the person the Internal Revenue Service has
6 appointed to act as the federal partnership representative, pursuant
7 to section 6223(a) of the federal Internal Revenue Code (26 U.S.C.
8 s.6223(a)).

9 “Final determination date” means the following:

10 a. Except as provided in b. and c. below, if the federal
11 adjustment arises from an Internal Revenue Service audit or other
12 action by the Internal Revenue Service, the final determination date
13 is the first day on which no federal adjustments arising from that
14 audit or other action remain to be finally determined, whether by
15 Internal Revenue Service decision with respect to which all rights
16 of appeal have been waived or exhausted, by agreement, or, if
17 appealed or contested, by a final decision with respect to which all
18 rights of appeal have been waived or exhausted. For agreements
19 required to be signed by the Internal Revenue Service and the
20 taxpayer, the final determination date is the date on which the last
21 party signed the agreement.

22 b. For federal adjustments arising from an Internal Revenue
23 Service audit or other action by the Internal Revenue Service, if the
24 taxpayer filed as a member of a composite return Form NJ-1080(c)
25 or as a member of a combined group filing a combined return for
26 corporation business tax purposes, the final determination date
27 means the first day on which no related federal adjustments arising
28 from that audit remain to be finally determined, as described in a.
29 above for the entire group.

30 c. If the federal adjustment results from filing an amended
31 federal return, a federal refund claim, or an administrative
32 adjustment request, or if it is a federal adjustment reported on an
33 amended federal return or other similar report filed pursuant to
34 6225(c) of the federal Internal Revenue Code (26 U.S.C. s.6225(c)),
35 the final determination date means the day on which the amended
36 return, refund claim, administrative adjustment request, or other
37 similar report was filed.

38 “Final federal adjustment” means a federal adjustment after the
39 final determination date for that federal adjustment has passed.

40 “Indirect partner” means a partner in a partnership or pass-
41 through entity that itself holds an interest directly, or through
42 another indirect partner, in a partnership, or pass-through entity.

43 “Nonresident partner” means an individual, trust, or estate
44 partner that is not a resident partner.

45 “Partner” means a person that holds an interest directly or
46 indirectly in a partnership or other pass-through entity.

1 “Partnership” means an entity subject to taxation under
2 subchapter K of the federal Internal Revenue Code or is otherwise
3 taxed as a partnership for federal income tax purposes.

4 “Partnership level audit” means an examination by the Internal
5 Revenue Service at the partnership level pursuant to Subchapter C
6 of Title 26, Subtitle F, Chapter 63 of the federal Internal Revenue
7 Code, as enacted by the Bipartisan Budget Act of 2015, Pub.L.114-
8 74, which results in federal adjustments.

9 “Pass-through entity” means an entity not taxed as a C
10 corporation.

11 “Reallocation adjustment” means a federal adjustment resulting
12 from a partnership level audit or an administrative adjustment
13 request that changes the shares of one or more items of partnership
14 income, gain, loss, expense, or credit allocated to direct partners. A
15 positive reallocation adjustment means the portion of a reallocation
16 adjustment that would increase federal income for one or more
17 direct partners, and a negative reallocation adjustment means the
18 portion of a reallocation adjustment that would decrease federal
19 income for one or more direct partners pursuant to regulations
20 promulgated under section 6225 of the federal Internal Revenue
21 Code (26 U.S.C. s.6225)

22 “Resident partner” means an individual, trust, or estate partner
23 that is a resident of New Jersey under subsections (m) and (o) of
24 N.J.S.54A:1-2 for the relevant tax period.

25 “Reviewed year” means the taxable year of a partnership that is
26 subject to a partnership level audit from which federal adjustments
27 arise.

28 “Taxpayer” means the same as defined under subsection (l) of
29 N.J.S.54A:1-2 or subsection (h) of section 4 of P.L.1945,
30 c.162(C.54:10A-4) and, unless the context clearly indicates
31 otherwise, includes a partnership subject to a partnership level audit
32 or a partnership that has made an administrative adjustment request,
33 as well as a tiered partner of that partnership.

34 “Tiered partner” means any partner that is a partnership or pass-
35 through entity.

36 To the extent terms used in this section are not defined in this
37 section or elsewhere in chapter 9 of Title 54A of the New Jersey
38 Statutes, the definition of such terms shall conform as closely as
39 possible to the terminology used in the amendments to the federal
40 Internal Revenue Code pertaining to the comprehensive partnership
41 audit regime as contained in the Bipartisan Budget Act of 2015,
42 Pub. L.114-74, as amended, and this section shall be so interpreted.

43
44 8. (New section) Reporting Adjustments to Federal Taxable
45 Income – General Rule. Except in the case of final federal
46 adjustments that are required to be reported by a partnership and its
47 partners using the procedures in section 9 of P.L. , c. (C.)
48 (pending before the Legislature as this bill), and final federal

1 adjustments required to be reported for federal purposes in the
2 partnership return for the adjustment year, a taxpayer shall report
3 and pay any New Jersey Gross Income Tax or New Jersey
4 Corporation Business Tax due with respect to final federal
5 adjustments arising from an audit or other action by the Internal
6 Revenue Service or reported by the taxpayer on a timely filed
7 amended federal income tax return, including a return or other
8 similar report filed pursuant to section 6225(c)(2) of the federal
9 Internal Revenue Code (26 U.S.C. s.6225(c)(2)), or federal claim
10 for refund by filing a federal adjustments report with the Division
11 of Taxation for the reviewed year and, if applicable, paying the
12 additional New Jersey Gross Income Tax or New Jersey
13 Corporation Business Tax owed by the taxpayer no later than 90
14 days after the final determination date.

15

16 9. (New section) Reporting Federal Adjustments – Partnership
17 Level Audit and Administrative Adjustment Request

18 a. Except for adjustments required to be reported for federal
19 purposes in the partnership return for the adjustment year, and the
20 distributive share of adjustments that have been reported as required
21 under section 8 of P.L. , c. (C.) (pending before the
22 Legislature as this bill), partnerships, and partners shall report final
23 federal adjustments arising from a partnership level audit or an
24 administrative adjustment request and make payments as required
25 under this section.

26 b. State Partnership Representative.

27 (1) With respect to an action required or permitted to be taken by
28 a partnership under this section and a proceeding under R.S.54:49-
29 18 with respect to that action, the State partnership representative
30 for the reviewed year shall have the sole authority to act on behalf
31 of the partnership, and the partnership's direct partners and indirect
32 partners shall be bound by those actions.

33 (2) The State partnership representative for the reviewed year is
34 the partnership's federal partnership representative unless the
35 partnership designates in writing another person as its State
36 partnership representative.

37 (3) The division may establish reasonable qualifications for and
38 procedures for designating a person, other than the federal
39 partnership representative, to be the State partnership
40 representative.

41 c. Reporting and Payment Requirements for Partnerships
42 Subject to a Final Federal Adjustment and their Direct Partners.
43 Final federal adjustments subject to the requirements of this section,
44 except for those subject to a properly made election under
45 subsection d. of this section shall be reported as follows:

46 (1) No later than 90 days after the final determination date, the
47 partnership shall:

- 1 (a) file a completed federal adjustments report, including
2 information as required by the director, with the division;
- 3 (b) notify each of its direct partners of their distributive share of
4 the final federal adjustments including information as required by
5 the director;
- 6 (c) file an amended New Jersey Form 1065 as required under
7 N.J.S.54A:8-7 and pay the amount required under section 2 of
8 P.L. , c. (C.) (pending before the Legislature as this bill);
9 and
- 10 (d) file an amended composite return for direct partners and pay
11 the additional amount under subsection c. of section 2 of
12 P.L. , c. (C.) (pending before the Legislature as this bill) that
13 would have been due had the final federal adjustments been
14 reported properly as required.
- 15 (2) No later than 90 days after the final determination date, each
16 direct partner that is taxed under the “New Jersey Gross Income
17 Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business Tax Act
18 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), shall:
- 19 (a) file a Federal Adjustments Report reporting their distributive
20 share of the adjustments reported to them under subparagraph (b) of
21 paragraph (1) of subsection c. of this section as required under this
22 section or N.J.S.54A:8-7; and
- 23 (b) Pay any additional amount of tax due as if final federal
24 adjustments had been properly reported, plus any penalty and
25 interest due under N.J.S.54A:9-5, N.J.S54A:9-6, R.S.54:49-3, or
26 R.S.54:49-4.
- 27 d. Election – Partnership Pays. Subject to the limitations in
28 paragraph (3) of this subsection, an audited partnership making an
29 election under this section shall:
- 30 (1) no later than 90 days after the final determination date, file a
31 completed Federal Adjustments Report, including information as
32 required by the director, and notify the division that it is making the
33 election under this section;
- 34 (2) no later than 180 days after the final determination date, pay
35 an amount, determined as follows, in lieu of taxes owed by its direct
36 and indirect partners:
- 37 (a) exclude from final federal adjustments the distributive share
38 of these adjustments reported to a direct exempt partner not subject
39 to tax under section 3 of P.L.1945, c.162 (C.54:10A-3).
- 40 (b) for the total distributive shares of the remaining final federal
41 adjustments reported to direct corporate partners subject to tax
42 under section 2 of P.L.1945, c.162 (C.54:10A-2), apportion and
43 allocate such adjustments as provided under sections 6 through 10
44 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), section 19
45 of P.L. 2018, c. 48 (C.54:10A-4.7) and subsection a of sections 3
46 through 4 of P.L. 2001, c. 136 (C.54:10A-15.6. through C.54:10A-
47 15.7) and multiply the resulting amount by the highest tax rate
48 under section 5 of P.L.1945, c.162 (C.54:10A-5);

1 (c) for the total distributive shares of the remaining final federal
2 adjustments reported to nonresident direct partners subject to tax
3 under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
4 seq., determine the amount of such adjustments which is New
5 Jersey source income under paragraph (3) of subsection (a) of
6 N.J.S.54A:5-8 and multiply the resulting amount by the highest tax
7 rate under N.J.S.54A:2-1;

8 (d) For the total distributive shares of the remaining final federal
9 adjustments reported to tiered partners:

10 (i) determine the amount of such adjustments which is of a type
11 that it would be subject to sourcing to New Jersey under paragraph
12 (3) of subsection (a) of N.J.S.54A:5-8 and then determine the
13 portion of this amount that would be sourced to the state applying
14 these rules;

15 (ii) determine the amount of such adjustments which is of a type
16 that it would not be subject to sourcing to New Jersey by a
17 nonresident partner under subsection (c) of N.J.S.54A:5-8;

18 (iii) determine the portion of the amount determined in
19 subparagraph (ii) of this subparagraph that can be established,
20 under regulation issued by the division, to be properly allocable to
21 nonresident indirect partners or other partners not subject to tax on
22 the adjustments; or that can be excluded under procedures for
23 modified reporting and payment method allowed under
24 subparagraph (f) of this paragraph;

25 (e) multiply the total of the amounts determined in
26 subparagraphs (i) and (ii) of this subparagraph reduced by the
27 amount determined in subparagraph (iii) of this subparagraph by
28 the highest tax rate under N.J.S.54A:2-1;

29 (f) for the total distributive shares of the remaining final federal
30 adjustments reported to resident direct partners subject to tax under
31 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
32 multiply that amount by the highest tax rate under N.J.S.54A:2-1;

33 (g) add the amounts determined in subparagraphs (b), (c), (e),
34 and (f) of this paragraph, along with penalty and interest as
35 provided in N.J.S.54A:9-5, N.J.S.54A:9-6, R.S.54:49-3, or
36 R.S.54:49-4.

37 (3) Final federal adjustments subject to this election exclude:

38 (a) the distributive share of final audit adjustments that are
39 required to be included in the unitary business income of any direct
40 or indirect corporate partner, provided that the audited partnership
41 can reasonably determine this; and

42 (b) any final federal adjustments resulting from an administrative
43 adjustment request.

44 (4) An audited partnership not otherwise subject to any reporting
45 or payment obligation to New Jersey that makes an election under
46 this subsection consents to be subject to New Jersey laws related to
47 reporting, assessment, payment, and collection of New Jersey tax
48 calculated under the election.

1 e. Tiered Partners. The direct and indirect partners of an audited
2 partnership that are tiered partners, and all of the partners of those
3 tiered partners that are subject to tax under the “New Jersey Gross
4 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business
5 Tax Act (1945), P.L.1945,c.162 (C. 54:10A-1 et seq.), are subject to
6 the reporting and payment requirements of subsection c. of this
7 section and the tiered partners are entitled to make the elections
8 provided in subsections d. and f. of this section. The tiered partners
9 or their partners shall make required reports and payments no later
10 than 90 days after the time for filing and furnishing statements to
11 tiered partners and their partners as established under section 6226
12 of the federal Internal Revenue Code (26 U.S.C. s.6226) and the
13 regulations thereunder. The division may adopt regulations to
14 establish procedures and interim time periods for the reports and
15 payments required by tiered partners and their partners and for
16 making the elections under this section.

17 f. Modified Reporting and Payment Method. Under procedures
18 adopted by and subject to the approval of the division, an audited
19 partnership or tiered partner may enter into an agreement with the
20 division to utilize an alternative reporting and payment method,
21 including applicable time requirements or any other provision of
22 this section, if the audited partnership or tiered partner demonstrates
23 that the requested method will reasonably provide for the reporting
24 and payment of taxes, penalties, and interest due under the
25 provisions of this section. Application for approval of an alternative
26 reporting and payment method must be made by the audited
27 partnership or tiered partner within the time for election as provided
28 in subsection d. or e. of this section, as appropriate.

29 g. Effect of Election by Audited Partnership or Tiered Partner
30 and Payment of Amount Due.

31 (1) The elections made pursuant to subsections d. and f. of this
32 section are irrevocable, unless the division, in its discretion,
33 determines otherwise.

34 (2) If properly reported and paid by the audited partnership or
35 tiered partner, the amount determined in paragraph (2) of subsection
36 d. of this section, or similarly under an optional election under
37 subsection f. of this section will be treated as paid in lieu of taxes
38 owed by its direct and indirect partners, to the extent applicable, on
39 the same final federal adjustments. The direct partners or indirect
40 partners may not take any deduction or credit for this amount or
41 claim a refund of the amount in this State. Nothing in this
42 subsection shall preclude a direct resident partner from claiming a
43 credit against taxes paid to this State pursuant to N.J.S.54A:4-1, any
44 amounts paid by the audited partnership or tiered partner on the
45 resident partner’s behalf to another state or local tax jurisdiction in
46 accordance with the provisions of N.J.S.54A:4-1.

47 h. Failure of Audited Partnership or Tiered Partner to Report or
48 Pay. Nothing in this section prevents the division from assessing

1 direct partners or indirect partners for taxes they owe, using the best
2 information available, in the event that a partnership or tiered
3 partner fails to timely make any report or payment required by this
4 section for any reason.

5
6 10. (New section) Assessments of Additional New Jersey Tax,
7 Interest, and Penalties Arising from Adjustments to Federal Taxable
8 Income – Statute of Limitations

9 a. The division shall assess additional tax, interest, and penalties
10 arising from final federal adjustments arising from an audit by the
11 Internal Revenue Service, including a partnership level audit, or
12 reported by the taxpayer on an amended federal income tax return
13 or as part of an administrative adjustment request by the following
14 dates:

15 (1) Timely Reported Federal Adjustments. If a taxpayer files
16 with the division a Federal Adjustments Report or an amended New
17 Jersey Form 1065 or amended New Jersey Corporation Business
18 Tax return as required within the period specified in section 8 or 9
19 of P.L. , c. (C.) (pending before the Legislature as this bill),
20 the division may assess any amounts, including in-lieu-of amounts,
21 taxes, interest, and penalties arising from those federal adjustments
22 if the division issues a notice of the assessment to the taxpayer no
23 later than:

24 (a) The expiration of the limitations period specified in
25 N.J.S.54A:9-4 and N.J.S.54:49-6; or

26 (b) The expiration of the one-year period following the date of
27 filing with the division of the federal adjustments report.

28 b. Untimely Reported Federal Adjustments. If the taxpayer fails
29 to file the Federal Adjustments Report within the period specified in
30 section 8 or 9 of P.L. , c. (C.) (pending before the
31 Legislature as this bill), as appropriate, or the Federal Adjustments
32 Report filed by the taxpayer omits final federal adjustments or
33 understates the correct amount of tax owed, the division may assess
34 amounts or additional amounts including in-lieu-of amounts, taxes,
35 interest, and penalties arising from the final federal adjustments, if
36 it mails a notice of the assessment to the taxpayer by a date which is
37 the latest of the following:

38 (1) The expiration of the limitations period specified in
39 N.J.S.54A:9-4 and N.J.S.54:49-6; or

40 (2) The expiration of the two-year period following the date the
41 Federal Adjustments Report was filed with the division; or

42 (3) Absent fraud, the expiration of the six-year period following
43 the final determination date.

44
45 11. (New section) Estimated New Jersey Tax Payments During
46 the Course of a Federal Audit

47 A taxpayer may make estimated payments to the division,
48 following the process prescribed by the division, of the New Jersey

1 Gross Income Tax or Corporation Business Tax expected to result
2 from a pending Internal Revenue Service audit, prior to the due date
3 of the Federal Adjustments Report, without having to file the report
4 with the division. The estimated tax payments shall be credited
5 against any tax liability ultimately found to be due to New Jersey
6 (“Final New Jersey Tax Liability”) and will limit the accrual of
7 further statutory interest on that amount. If the estimated tax
8 payments exceed the final tax liability and statutory interest
9 ultimately determined to be due, the taxpayer is entitled to a refund
10 or credit for the excess, provided the taxpayer files a Federal
11 Adjustments Report or claim for refund or credit of tax no later than
12 one year following the final determination date.

13

14 12. (New section) Claims for Refund or Credits of Tax Arising
15 from Final Federal Adjustments Made by the IRS

16 a. Except for final federal adjustments required to be reported
17 for federal purposes in the partnership return for the adjustment
18 year, a taxpayer may file a claim for refund or credit of tax arising
19 from federal adjustments made by the Internal Revenue Service on
20 or before the later of:

21 (1) The expiration of the last day for filing a claim for refund or
22 credit of New Jersey tax, including any extensions; or

23 (2) One year from the date a Federal Adjustments Report
24 prescribed in section 7 or 8 of P.L. , c. (C.) (pending
25 before the Legislature as this bill), as applicable, was due to the
26 division, including any extensions pursuant to this section.

27 b. The Federal Adjustments Report shall serve as the means for
28 the taxpayer to report additional tax due, report a claim for refund
29 or credit of tax, and make other adjustments, including to its net
30 operating losses, resulting from adjustments to the taxpayer’s
31 federal taxable income.

32

33 13. (New section) Scope of Adjustments and Extensions of Time.

34 a. Unless otherwise agreed in writing by the taxpayer and the
35 division, any adjustments by the division or by the taxpayer made
36 after the expiration of the N.J.S.54A:9-4, N.J.S.54A:9-8, R.S.54:49-
37 3, or R.S.54:49-14 are limited to changes to the taxpayer’s tax
38 liability arising from federal adjustments.

39 b. The time periods provided for in this section may be
40 extended:

41 (1) Automatically, upon written notice to the division, by 60
42 days for an audited partnership or tiered partner which has 10,000
43 or more direct partners; or

44 (2) By written agreement between the taxpayer and the division
45 as set forth by the director.

46 c. Any extension granted for filing the Federal Adjustments
47 Report extends the last day prescribed by law for assessing any
48 additional tax arising from the adjustments to federal taxable

1 income and the period for filing a claim for refund or credit of
2 taxes.

3

4 14. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
5 read as follows:

6 12. a. (1) A partnership that is not a qualified investment
7 partnership or an investment club and that is not listed on a United
8 States national stock exchange shall, on or before the 15th day of
9 the fourth month succeeding the close of each privilege period,
10 remit a payment of tax. The amount of tax shall be equal to the sum
11 of: all of the share of the entire net income of the partnership for
12 that privilege period of all nonresident noncorporate partners,
13 multiplied by an allocation factor determined, pursuant to section 6
14 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
15 of the partnership for that privilege period, and multiplied by .0637
16 plus all of the share of the entire net income of the partnership for
17 that privilege period of all nonresident corporate partners,
18 multiplied by an allocation factor determined, pursuant to section 6
19 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
20 of the partnership for that privilege period, and multiplied by .09.
21 Entire net income shall not include additional income that results
22 from any federal partnership audit adjustments made by the Internal
23 Revenue Service under section 6225(a)(1) of the federal Internal
24 Revenue Code (26 U.S.C. s.6225(a)(1)).

25 (2) (a) A partnership that is subject to the tax payment
26 requirements of paragraph (1) of this subsection shall make
27 installment payments of 25% of that tax on or before the 15th day
28 of each of the fourth month, sixth month and ninth month of the
29 privilege period and on or before the 15th day of the first month
30 succeeding the close of the privilege period.

31 (b) A partnership required to make an installment payment
32 pursuant to subparagraph (a) of this paragraph shall be deemed to
33 make an installment payment subject to the provisions of section 5
34 of P.L.1981, c.184 (C.54:10A-15.4) and shall be liable for any
35 additions to tax provided thereunder.

36 (3) A partnership shall not be required to remit a payment of tax
37 pursuant to paragraph (1) of this subsection for any nonresident that
38 reasonably expects to be refunded the payment on account of a tax
39 credit pursuant to section 5 of P.L.2019, c.320 (C.54A:12-5).

40 b. An amount of tax paid by a partnership pursuant to
41 paragraph (1) of subsection a. of this section and an installment
42 payment paid pursuant to subparagraph (a) of paragraph (2) of
43 subsection a. of this section shall be credited to the partnership
44 accounts of its nonresident partners in proportion to each
45 nonresident partner's share of allocated entire net income and the
46 multiplier rate for that partner class under subsection a. of this
47 section, and each amount of tax so credited shall be deemed to have
48 been paid by the respective partner in respect of the privilege period

1 or taxable year of the partner. Provided, however, that only a
2 nonresident partner who files a New Jersey tax return and reports
3 income that is subject to tax in this State may apply the tax paid by
4 the partnership and credited to the nonresident partner's partnership
5 account against the partner's tax liability; and provided further that
6 a partnership that pays tax pursuant to this section shall not be
7 entitled to claim a refund of payments credited to any of its
8 nonresident partners.

9 c. For the purposes of this section:

10 "Investment club" means an entity: that is classified as a
11 partnership for federal income tax purposes; all of the owners of
12 which are individuals; all of the assets of which are securities, cash,
13 or cash equivalents; the market value of the total assets of which do
14 not exceed, as measured on the last day of its privilege period, an
15 amount equal to the lesser of \$250,000 or \$35,000 per owner of the
16 entity; and which is not required to register itself or its membership
17 interests with the federal Securities and Exchange Commission;
18 provided that beginning with privilege periods commencing on or
19 after January 1, 2003 the director shall prescribe the total asset
20 value amounts which shall apply by increasing the \$250,000 total
21 asset amount and the per owner \$35,000 amount hereinabove by an
22 inflation adjustment factor, which amounts shall be rounded to the
23 next highest multiple of \$100. The inflation adjustment factor shall
24 be equal to the factor calculated by dividing the consumer price
25 index for urban wage earners and clerical workers for the nation, as
26 prepared by the United States Department of Labor for September
27 of the calendar year prior to the calendar year in which the privilege
28 period begins, by that index for September of 2001;

29 "Nonresident noncorporate partner" means an individual, an
30 estate or a trust subject to taxation pursuant to the "New Jersey
31 Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
32 taxpayer or a resident estate or trust under that act;

33 "Nonresident corporate partner" means a partner that is not an
34 individual, an estate or a trust subject to taxation pursuant to the
35 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is
36 not a corporation exempt from tax pursuant to section 3 of
37 P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular
38 place of business in this State other than a statutory office; and

39 "Partner" means an owner of an interest in the partnership, in
40 whatever manner that owner and ownership interest are designated.
41 (cf: P.L.2021, c.419, s.5)

42
43 15. Section 18 of P.L.2000, c.161 (C.42:1A-18) is amended to
44 read as follows:

45 18. a. Except as otherwise provided in subsections b. and c. of
46 this section, all partners are liable jointly and severally for all
47 obligations of the partnership unless otherwise agreed by the
48 claimant or provided by law. In addition, the entity is also liable for

1 all obligations of the partnership as provided by P.L.2019, c.320
2 (C.54A:12-1 et al.).

3 b. A person admitted as a partner into an existing partnership is
4 not personally liable for any partnership obligation incurred before
5 the person's admission as a partner.

6 c. An obligation of a partnership incurred while the partnership
7 is a limited liability partnership, whether arising in contract, tort, or
8 otherwise, is solely the obligation of the partnership. A partner is
9 not personally liable, directly or indirectly, by way of contribution
10 or otherwise, for such an obligation solely by reason of being or so
11 acting as a partner. This subsection applies notwithstanding
12 anything inconsistent in the partnership agreement that existed
13 immediately before the vote required to become a limited liability
14 partnership under subsection b. of section 47 of **[this act]** the
15 “Uniform Partnership Act (1996),” P.L.2000, c.161 (C.42:1A-47).

16 d. In addition, the entity is also liable for all obligations of the
17 partnership as provided by P.L. , c. (C.) (pending before
18 the Legislature as this bill).

19 (cf: P.L.2019, c.320, s.10)

20

21 16. Section 92 of L.2012, c.50 (C.42:2C-92) is amended to read
22 as follows:

23 92. Tax Classification.

24 a. For all purposes of taxation under the laws of this State, a
25 limited liability company formed under this act or qualified to do
26 business in this State as a foreign limited liability company with
27 two or more members shall be classified as a partnership unless
28 classified otherwise for federal income tax purposes, in which case
29 the limited liability company shall be classified in the same manner
30 as it is classified for federal income tax purposes. For all purposes
31 of taxation under the laws of this State, a member or a transferee of
32 a member of a limited liability company formed under this act or
33 qualified to do business in this State as a foreign limited liability
34 company shall be treated as a partner in a partnership unless the
35 limited liability company is classified otherwise for federal income
36 tax purposes, in which case the member or transferee of a member
37 shall have the same status as the member or transferee of a member
38 has for federal income tax purposes.

39 b. For all purposes of taxation on income under the laws of this
40 State and only for those purposes, a limited liability company
41 formed under this act or qualified to do business in this State as a
42 foreign limited liability company with one member is disregarded
43 as an entity separate from its owner, unless classified otherwise for
44 federal tax purposes, in which case the limited liability company
45 will be classified in the same manner as it is classified for federal
46 income tax purposes. For all purposes of taxation on income under
47 the laws of this State and only for those purposes, the sole member
48 or a transferee of all of the limited liability company interest of the

1 sole member of a limited liability company formed under this act or
2 qualified to do business in this State as a foreign limited liability
3 company is treated as the direct owner of the underlying assets of
4 the limited liability company and of its operations, unless the
5 limited liability company is classified otherwise for federal income
6 tax purposes, in which case the member or transferee of a member
7 will have the same status as the member or transferee of a member
8 has for federal income tax purposes.

9 c. With respect to a limited liability company that is taxed as a
10 partnership for federal income tax purposes, the entity is also liable
11 for all obligations of the partnership as provided by
12 P.L. , c. (C.) (pending before the Legislature as this bill) in
13 addition to its liabilities in section 30 of P.L.2012, c.50 (C.42:2C-
14 30).

15 (cf: P.L.2012, c.50, s.92)

16
17 17. Section 1 of P.L.2020, c.19 is amended to read as follows:

18 1. a. A taxpayer required to make and file an annual or
19 quarterly return or report pursuant to the “New Jersey Gross Income
20 Tax Act,” N.J.S.54A:1-1 et seq., or the “Corporation Business Tax
21 Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), on an original
22 due date of April 15, 2020, shall be granted by the Director of the
23 Division of Taxation in the Department of the Treasury an
24 automatic extension of time to file those returns or reports and to
25 pay the tax due until July 15, 2020.

26 b. The provisions involving payment of interest upon any
27 overpayment of tax pursuant to N.J.S.54A:9-7 and section 7 of
28 P.L.1992, c.175 (C.54:49-15.1), are hereby extended for six months
29 after the conclusion of the **【state of】** public health emergency
30 declared by the Governor pursuant to Executive Order No. 103 of
31 2020, or any extension thereof, or within six months after the return
32 is filed, whichever is later.

33 c. A taxpayer granted an automatic extension pursuant to
34 subsection a. of this section shall not be subject to penalties or
35 interest if the return or report is filed and the tax due is paid on or
36 before July 15, 2020, or by such other date that may be permitted by
37 the director in accordance with regulations in effect on the effective
38 date of P.L.2020, c.19.

39 d. Notwithstanding any provision of the “Administrative
40 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the
41 contrary, the director may adopt immediately upon filing with the
42 Office of Administrative Law such rules and regulations as the
43 director determines to be necessary and appropriate to effectuate the
44 purposes of this section.

45 (cf: P.L.2020, c.19, s.1)

46
47 18. Section 2 of P.L.2020, c.19 is amended to read as follows:

1 2. The statute of limitations to assess any tax pursuant to
2 N.J.S.54A:9-4 and R.S.54:49-6 is hereby extended for 90 days after
3 the conclusion of the **【state of】** public health emergency declared
4 by the Governor pursuant to Executive Order No. 103 of 2020, or
5 any extension thereof.

6 (cf: P.L.2020, c.19, s.2)

7
8 19. (New section) Any assessment of tax that was allowed as a
9 result of the extension of the statute of limitations in section 2 of
10 P.L.2020, c.19, but that was assessed after the 90th day following
11 the conclusion of the public health emergency declared by the
12 Governor pursuant to Executive Order No. 103 of 2020, shall be
13 voided. The Director of the Division of Taxation in the Department
14 of the Treasury shall return any amounts collected from a taxpayer
15 as a result of such assessment.

16
17 20. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to
18 read as follows:

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

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

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

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

33 (d) "Net worth" shall mean the aggregate of the values disclosed
34 by the books of the corporation for (1) issued and outstanding
35 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
36 undivided profits, and (4) surplus reserves which can reasonably be
37 expected to accrue to holders or owners of equitable shares, not
38 including reasonable valuation reserves, such as reserves for
39 depreciation or obsolescence or depletion. Notwithstanding the
40 foregoing, net worth shall not include any deduction for the amount
41 of the excess depreciation described in paragraph (2) (F) of
42 subsection (k) of this section. The foregoing aggregate of values
43 shall be reduced by 50% of the amount disclosed by the books of
44 the corporation for investment in the capital stock of one or more
45 subsidiaries, which investment is defined as ownership (1) of at
46 least 80% of the total combined voting power of all classes of stock
47 of the subsidiary entitled to vote and (2) of at least 80% of the total
48 number of shares of all other classes of stock except nonvoting

1 stock which is limited and preferred as to dividends. In the case of
2 investment in an entity organized under the laws of a foreign
3 country, the foregoing requisite degree of ownership shall effect a
4 like reduction of such investment from the net worth of the
5 taxpayer, if the foreign entity is considered a corporation for any
6 purpose under the United States federal income tax laws, such as
7 (but not by way of sole examples) for the purpose of supplying
8 deemed paid foreign tax credits or for the purpose of status as a
9 controlled foreign corporation. In calculating the net worth of a
10 taxpayer entitled to reduction for investment in subsidiaries, the
11 amount of liabilities of the taxpayer shall be reduced by such
12 proportion of the liabilities as corresponds to the ratio which the
13 excluded portion of the subsidiary values bears to the total assets of
14 the taxpayer.

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

22 If in the opinion of the director, the corporation's books do not
23 disclose fair valuations the director may make a reasonable
24 determination of the net worth which, in his opinion, would reflect
25 the fair value of the assets, exclusive of subsidiary investments as
26 defined aforesaid, carried on the books of the corporation, in
27 accordance with sound accounting principles, and such
28 determination shall be used as net worth for the purpose of this act.

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

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

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

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

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

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

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

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

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

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

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

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

41 (C) Taxes paid or accrued to the United States, a possession or
42 territory of the United States, a state, a political subdivision thereof,
43 or the District of Columbia, or to any foreign country, state,
44 province, territory or subdivision thereof, on or measured by profits
45 or income, or business presence or business activity, or the tax
46 imposed by this act, or any tax paid or accrued with respect to
47 subsidiary dividends excluded from entire net income as provided
48 in paragraph (5) of subsection (k) of this section.

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

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

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

22 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
23 (2) of this subsection, any amount, except with respect to qualified
24 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
25 the Internal Revenue Code as in effect immediately prior to January
26 1, 1984, which the taxpayer claimed as a deduction in computing
27 federal income tax pursuant to a qualified lease agreement under
28 paragraph (8) of that section.

29 The director shall promulgate rules and regulations necessary to
30 carry out the provisions of this section, which rules shall provide,
31 among others, the manner in which the remaining life of property
32 shall be reported.

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

1 by an act or omission of a person who was outside the reasonable
2 control of the violator.

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

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

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

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

37 A deduction shall also be permitted to the extent that the
38 taxpayer establishes by a preponderance of the evidence, as
39 determined by the director, that the interest is directly or indirectly
40 paid, accrued or incurred to (i) a related member in a foreign nation
41 which has in force a comprehensive income tax treaty with the
42 United States and the related member (aa) was subject to tax in the
43 foreign nation on a tax base that included the payment paid,
44 accrued, or incurred; and (bb) under which the related member's
45 income received from the transaction was taxed at an effective tax
46 rate equal to or greater than a rate of three percentage points less
47 than the rate of tax applied to taxable interest by the State of New
48 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),

1 provided however that the taxpayer shall disclose on its return for
2 the privilege period the name of the related member, the amount of
3 the interest, the relevant foreign nation, and such other information
4 as the director may prescribe or (ii) to an independent lender and
5 the taxpayer guarantees the debt on which the interest is
6 required. The adjustments required by this subparagraph shall not
7 apply to transactions between related members included in a
8 combined group reported on a New Jersey combined return.

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

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

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

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

46 (4) There shall be allowed as a deduction from entire net income
47 of a banking corporation, to the extent not deductible in

1 determining federal taxable income, the eligible net income of an
2 international banking facility determined as follows:

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

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

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

17 (ii) Making or placing deposits with foreign persons which are
18 banks or foreign branches of banks (including foreign subsidiaries)
19 or foreign branches of the taxpayers or with other international
20 banking facilities;

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

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

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

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

35 (ii) For privilege periods beginning after December 31, 2016
36 and before January 1, 2019, entire net income shall exclude 95% of
37 dividends which were included in computing such taxable income
38 for federal income tax purposes, paid or deemed paid, to the
39 taxpayer by one or more subsidiaries owned by the taxpayer to the
40 extent of the 80% or more ownership of investment described in
41 subsection (d) of this section. For the purposes of calculating the
42 tax liability owed for the paid or deemed paid dividends included in
43 entire net income by this subsubparagraph (ii), the taxpayer shall
44 use either their three-year average allocation factor for the
45 taxpayer's 2014 through 2016 tax years reported on the taxpayer's
46 tax returns or 3.5 percent, whichever is lower.

47 (iii) For privilege periods beginning on and after January 1,
48 2019, entire net income shall exclude 95% of dividends which were

1 included in computing such taxable income for federal income tax
2 purposes, paid or deemed paid to the taxpayer by one or more
3 subsidiaries owned by the taxpayer to the extent of the 80% or more
4 ownership of investment described in subsection (d) of this section.

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

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

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

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

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

38 (B) Net operating loss carryover. A net operating loss for any
39 privilege period ending after June 30, 1984 shall be a net operating
40 loss carryover to each of the seven privilege periods following the
41 period of the loss and a net operating loss for any privilege period
42 ending after June 30, 2009 shall be a net operating loss carryover to
43 each of the twenty privilege periods following the period of the
44 loss. The entire amount of the net operating loss for any privilege
45 period (the "loss period") shall be carried to the earliest of the
46 privilege periods to which the loss may be carried. The portion of
47 the loss which shall be carried to each of the other privilege periods
48 shall be the excess, if any, of the amount of the loss over the sum of

1 the entire net income, computed without the exclusions permitted in
2 paragraphs (4) and (5) of this subsection or the net operating loss
3 deduction provided by subparagraph (A) of this paragraph, for each
4 of the prior privilege periods to which the loss may be carried.

5 (C) Net operating loss. For purposes of this paragraph the term
6 "net operating loss" means the excess of the deductions over the
7 gross income used in computing entire net income without the net
8 operating loss deduction provided for in subparagraph (A) of this
9 paragraph and the exclusions in paragraphs (4) and (5) of this
10 subsection.

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

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

34 Provided, that this subparagraph (E) shall not restrict the
35 surrender or acquisition of corporation business tax benefit
36 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
37 7.42a) and shall not restrict the application of corporation business
38 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
39 (C.54:10A-4.2).

40 (F) Reduction for discharge of indebtedness. A net operating
41 loss for any privilege period ending after June 30, 2014, and any net
42 operating loss carryover to such privilege period, shall be reduced
43 by the amount excluded from federal taxable income under
44 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
45 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),
46 for the privilege period of the discharge of indebtedness.

47 (7) The entire net income of gas, electric and gas and electric
48 public utilities that were subject to, or would have been subject to

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

26 (A) Depreciation for property placed in service prior to January
27 1, 1998 shall be adjusted as follows:

28 (i) Depreciation for federal income tax purposes shall be
29 disallowed in full.

30 (ii) A deduction shall be allowed for the New Jersey
31 depreciation allowance. The New Jersey depreciation allowance
32 shall be computed for the single asset account described above
33 based on the New Jersey tax basis as adjusted above as if all assets
34 in the single asset account were first placed in service on January 1,
35 1998. Depreciation shall be computed using the straight line method
36 over a thirty-year life. A full year's depreciation shall be allowed in
37 the initial tax year. No half-year convention shall apply. The
38 depreciable basis of the single account shall be reduced by the
39 adjusted federal tax basis of assets sold, retired, or otherwise
40 disposed of during any year on which gain or loss is recognized for
41 federal income tax purposes as described in subparagraph (B) of
42 this paragraph.

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

47 (C) The Director of the Division of Taxation shall promulgate
48 regulations describing the methodology for allocating the single

1 asset account in the event that a portion of the utility's operations
2 are separated, spun-off, transferred to a separate company or
3 otherwise desegregated.

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

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

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

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

44 (12) (A) Notwithstanding the provisions of subsection (k) of
45 section 168 of the federal Internal Revenue Code of 1986, 26
46 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
47 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
48 law, for property acquired after September 10, 2001, the

1 depreciation deduction otherwise allowed pursuant to section 167 of
2 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
3 be determined pursuant to the provisions of the federal Internal
4 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
5 December 31, 2001.

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

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

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

23 (14) Notwithstanding the provisions of subsection (i) of section
24 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
25 for privilege periods beginning after December 31, 2008 and before
26 January 1, 2011, entire net income shall include the amount of
27 discharge of indebtedness income excluded for federal income tax
28 purposes pursuant to subsection (i) of section 108 of the federal
29 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
30 periods beginning on or after January 1, 2014 and before January 1,
31 2019, entire net income shall exclude the amount of discharge of
32 indebtedness income included for federal income tax purposes,
33 pursuant to subsection (i) of section 108 of the federal Internal
34 Revenue Code of 1986 (26 U.S.C. s.108).

35 (15) Entire net income shall exclude the gain or income derived
36 from the sale or assignment of a tax credit transfer certificate
37 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
38 10 of P.L.2014, c.63 (C.34:1B-251).

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

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

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

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

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

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

31 (i) the deferred tax impact determined in subparagraph (E) of
32 this paragraph shall be divided by the rate determined under section
33 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
34 c.48 (C.54:10A-5.41 et al.);

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

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

43 (G) The deduction calculated under this paragraph shall not be
44 adjusted as a result of any events happening subsequent to such
45 calculation, including, but not limited to, any disposition or
46 abandonment of assets. Such deduction shall be calculated without
47 regard to the federal tax effect and shall not alter the tax basis of
48 any asset. If the deduction under this section is greater than

1 combined group entire net income, any excess deduction shall be
2 carried forward and applied as a deduction to combined group entire
3 net income in future privilege periods until fully utilized.

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

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

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

1 any of the following entities organized under the laws of this State:
2 credit unions, savings banks, savings and loan and building and
3 loan associations, pawnbrokers, and State banks and trust
4 companies.

5 (n) "International banking facility" shall mean a set of asset and
6 liability accounts segregated on the books and records of a
7 depository institution, United States branch or agency of a foreign
8 bank, or an Edge or Agreement Corporation that includes only
9 international banking facility time deposits and international
10 banking facility extensions of credit as such terms are defined in
11 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the
12 board of governors of the Federal Reserve System, 12 CFR Part
13 204, effective December 3, 1981. In the event that the United
14 States enacts a law, or the board of governors of the Federal
15 Reserve System adopts a regulation which amends the present
16 definition of international banking facility or of such facilities' time
17 deposits or extensions of credit, the Commissioner of Banking and
18 Insurance shall forthwith adopt regulations defining such terms in
19 the same manner as such terms are set forth in the laws of the
20 United States or the regulations of the board of governors of the
21 Federal Reserve System. The regulations of the Commissioner of
22 Banking and Insurance shall thereafter provide the applicable
23 definitions.

24 (o) "S corporation" means a corporation **included in the**
25 **definition of** that has elected to be an "S corporation" pursuant to
26 section 1361 of the federal Internal Revenue Code of 1986,
27 26 U.S.C. s.1361 , for the taxable year.

28 (p) "New Jersey S corporation" means a **corporation that is an**
29 **S corporation; which has made a valid election pursuant to section 3**
30 **of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S**
31 **corporation continuously since the effective date of the valid**
32 **election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-**
33 **5.22)** taxpayer that has made a valid election to be an S
34 corporation for federal tax purposes.

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

37 (r) "Qualified investment partnership" means a partnership
38 under this act that has more than 10 members or partners with no
39 member or partner owning more than a 50% interest in the entity
40 and that derives at least 90% of its gross income from dividends,
41 interest, payments with respect to securities loans, and gains from
42 the sale or other disposition of stocks or securities or foreign
43 currencies or commodities or other similar income (including but
44 not limited to gains from swaps, options, futures or forward
45 contracts) derived with respect to its business of investing or
46 trading in those stocks, securities, currencies or commodities, but
47 "investment partnership" shall not include a "dealer in securities"

1 within the meaning of section 1236 of the federal Internal Revenue
2 Code of 1986, 26 U.S.C. s.1236.

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

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

8 (u) "Prior net operating loss conversion carryover" means a net
9 operating loss incurred in a privilege period ending prior to July 31,
10 2019 and converted from a pre-allocation net operating loss to a
11 post-allocation net operating loss as follows:

12 (1) As used in this subsection:

13 "Base year" means the last privilege period ending prior to July
14 31, 2019.

15 "Base year BAF" means the taxpayer's business allocation factor
16 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
17 6 through C.54:10A-10) for purposes of calculating entire net
18 income for the base year, as such section was in effect for the last
19 privilege period ending prior to July 31, 2019.

20 "UNOL" means the unabsorbed portion of net operating loss as
21 calculated under paragraph (6) of subsection (k) of this section as
22 such paragraph was in effect for the last privilege period ending
23 prior to July 31, 2019, that was not deductible in previous privilege
24 periods and was eligible for carryover on the last day of the base
25 year subject to the limitations for deduction under such subsection,
26 including any net operating loss sustained by the taxpayer during
27 the base year.

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

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

37 (B) The taxpayer shall continue to carry over its prior net
38 operating loss conversion carryover to offset its allocated entire net
39 income as provided in sections 6 through 10 of P.L.1945, c.162
40 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
41 and after July 31, 2019. Such carryover periods shall not exceed
42 the twenty privilege periods following the privilege period of the
43 initial loss. The entire amount of the prior net operating loss
44 conversion carryover for any privilege period shall be carried to the
45 earliest of the privilege periods to which the loss may be
46 carried. The portion of the prior net operating loss conversion
47 carryover which shall be carried to each of the other privilege
48 periods shall be the excess, if any, of the amount of the prior net

1 operating loss conversion carryover over the sum of the entire net
2 income, computed without the exclusions permitted in paragraphs
3 (4) and (5) of subsection (k) of this section allocated to this State.

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

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

11 (1) Net operating loss carryover. A net operating loss for any
12 privilege period ending on or after July 31, 2019, shall be a net
13 operating loss carryover to each of the twenty privilege periods
14 following the period of the loss. The entire amount of the net
15 operating loss for any privilege period shall be carried to the earliest
16 of the privilege periods to which the loss may be carried. The
17 portion of the loss which shall be carried to each of the other
18 privilege periods shall be the excess, if any, of the amount of the
19 loss over the sum of the entire net income, computed without the
20 exclusions permitted in paragraphs (4) and (5) of subsection (k) of
21 this section allocated to this State.

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

29 (3) Reduction for discharge of indebtedness. A net operating
30 loss for any privilege period ending on or after July 31, 2019, and
31 any net operating loss carryover to such privilege period, shall be
32 reduced by the amount excluded from federal taxable income under
33 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
34 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,
35 for the privilege period of the discharge of indebtedness.

36 (4) A net operating loss carryover shall not include any net
37 operating loss incurred during any privilege period ending prior to
38 July 31, 2019.

39 (5) Change in ownership. Where there is a change in 50% or
40 more of the ownership of a corporation because of redemption or
41 sale of stock and the corporation changes the trade or business
42 giving rise to the loss, no net operating loss sustained before the
43 changes may be carried over to be deducted from income earned
44 after such changes. In addition, where the facts support the premise
45 that the corporation was acquired under any circumstances for the
46 primary purpose of the use of its net operating loss carryover, the
47 director may disallow the carryover; provided, however, this

1 paragraph shall not apply between members of a combined group
2 reported on a New Jersey combined return.

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

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

19 For purposes of this subsection:

20 "U.S. domestic corporations" means: (1) business entities
21 wherever incorporated or formed that are U.S. domestic
22 corporations, are deemed to be, or are treated as U.S. domestic
23 corporations under the provisions of the federal Internal Revenue
24 Code; or (2) any entities incorporated or formed under the laws of a
25 foreign nation that are required to file federal tax returns if such
26 entities have effectively connected income within the meaning of
27 the federal Internal Revenue Code; and

28 "Commonly owned" means that more than 50 percent of the
29 voting control of each member of an affiliated group is directly or
30 indirectly owned by a common owner or owners, either corporate or
31 non-corporate, whether or not the owner or owners are members of
32 the affiliated group. Whether voting control is indirectly owned
33 shall be determined in accordance with section 318 of the federal
34 Internal Revenue Code (26 U.S.C. s.318).

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

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

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

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

1 (4) 50% or less of whose gross receipts for the privilege period
2 consist of premiums from arrangements that constitute insurance for
3 federal income tax purposes.

4 A combinable captive insurance company shall not be exempt
5 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
6 insurance company that does not meet the definition of combinable
7 captive insurance company shall be excluded as provided in
8 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
9 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

10 For purposes of this definition:

11 "Affiliated group" shall have the same meaning as that term is
12 given by section 1504 of the federal Internal Revenue Code, 26
13 U.S.C. s.1504, except that the term "common parent corporation" as
14 used in section 1504 of the federal Internal Revenue Code, 26
15 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
16 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
17 to "at least 80%" in section 1504 of the federal Internal Revenue
18 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
19 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
20 be read without regard to the exclusions provided for in subsection
21 (b) of that section.

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

26 "Premiums" includes consideration for annuity contracts and
27 excludes any part of the consideration for insurance, reinsurance, or
28 annuity contracts that do not provide bona fide insurance,
29 reinsurance, or annuity benefits.

30 (z) "Combined group" means the group of all companies that
31 have common ownership and are engaged in a unitary business,
32 where at least one company is subject to tax under this chapter, and
33 shall include all business entities, except as provided for under any
34 section of the Corporation Business Tax Act (1945), P.L.1945,
35 c.162 (C.54:10A-1 et seq.).

36 A combined group shall be treated, for privilege periods ending
37 on and after July 31, 2020, as one taxpayer for purposes of
38 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162
39 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for
40 the income derived from the unitary business; provided however,
41 with regard to the surtax imposed pursuant to section 1 of P.L.2018,
42 c.48 (C.54:10A-5.41) and for that purpose only, the portion of
43 income that is attributable to a member which is a public utility
44 exempt from the surtax shall not be included when computing the
45 surtax due.

46 (aa) "Common ownership" means that more than 50% of the
47 voting control of each member of a combined group is directly or
48 indirectly owned by a common owner or owners, either corporate or

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

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

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

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

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

23 (ee) "Nontaxable member" means a member that is: (i) not
24 subject to tax pursuant to the Corporation Business Tax Act (1945),
25 P.L.1945, c.162 (C.54:10A-1 et seq.); or (ii) (deleted by
26 amendment, P.L.2020, c.118 (C.54:10A-5.46 et al.).

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

30 A New Jersey S corporation shall only be included as a taxable
31 member of a combined group filing a New Jersey combined return
32 if the New Jersey S Corporation elects to be included as a member
33 and taxed at the same rate as the other members of the combined
34 group. A New Jersey S corporation that does not elect to be
35 included shall be excluded as a member of the combined return and
36 shall file a separate return.

37 (gg) "Unitary business" means a single economic enterprise that
38 is made up either of separate parts of a single business entity or of a
39 group of business entities under common ownership that are
40 sufficiently interdependent, integrated, and interrelated through
41 their activities so as to provide a synergy and mutual benefit that
42 produces a sharing or exchange of value among them and a
43 significant flow of value among the separate parts. "Unitary
44 business" shall be construed to the broadest extent permitted under
45 the Constitution of the United States. A business conducted by a
46 partnership which is in a unitary business with the combined group
47 shall be treated as the business of the partners that are members of
48 the combined group, whether the partnership interest is held directly

1 or indirectly through a series of partnerships, to the extent of a
2 partner's distributive share of partnership income. The amount of
3 partnership income to be included in the partner's entire net income
4 shall be determined in accordance with subsection a. of section 3 of
5 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
6 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business
7 conducted directly or indirectly by one corporation is unitary with
8 that portion of a business conducted by another corporation through
9 its direct or indirect interest in a partnership.
10 (cf: P.L.2020, c.118, s.3)

11

12 21. Section 3 of P.L.1993, c.173 (C.54:10A-5.22) is amended to
13 read as follows:

14 3. a. **【A corporation may elect, in accordance with the**
15 **provisions of this section, to be a New Jersey S corporation. In**
16 **order for an election to be valid, the corporation and each of its**
17 **shareholders on the day on which the election is made (hereinafter**
18 **"initial shareholders") must consent to such election and the**
19 **jurisdictional requirements of becoming a New Jersey S**
20 **corporation. The form of the election and consent to jurisdictional**
21 **requirements and the place for filing shall be as prescribed by the**
22 **Director of the Division of Taxation.】** (Deleted by amendment
23 P.L. , c.) (pending before the Legislature as this bill)

24 b. **【Each initial shareholder and the corporation】** A New Jersey
25 S Corporation and each shareholder shall consent to the following
26 jurisdictional requirements:

27 (1) That this State shall have the right and jurisdiction to tax and
28 collect the tax on each shareholder's S corporation income as
29 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) and,
30 if applicable, the pass-through business alternative income tax
31 pursuant to P.L.2019, c.320 (C.54A:12-1 et al.);

32 (2) That New Jersey's right and jurisdiction to tax the income as
33 set forth in paragraph (1) of this subsection shall not be affected by
34 a change of a shareholder's residency, except as provided by the
35 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

36 (3) If shareholders that are not initial shareholders of the
37 corporation, while the corporation is a New Jersey S corporation,
38 fail to consent to New Jersey's jurisdiction to tax S corporation
39 income to such shareholders, this State shall have the right and
40 jurisdiction to collect a payment of tax each year directly from the
41 corporation equal to the S corporation income allocated to this
42 State, as defined pursuant to section 12 of P.L.1993, c.173
43 (C.54A:5-10), of the nonconsenting shareholders for the accounting
44 or privilege period multiplied by the maximum tax bracket rate
45 provided under N.J.S.54A:2-1 for the accounting or privilege
46 period. In such case, the corporation shall have the right, but not
47 the obligation, to recover payments made by the corporation
48 pursuant to this paragraph from each nonconsenting shareholder.

1 c. **【A corporation may make an election to become a New**
2 **Jersey S corporation with respect to an accounting or privilege**
3 **period for which the corporation is or will be an S corporation. The**
4 **election for an accounting or privilege period, along with the】** The
5 **consents to jurisdictional requirements **【,】** shall be filed within one**
6 **calendar month of the time at which a federal S corporation election**
7 **would be required if such accounting or privilege period were a**
8 **"taxable year" for which a federal S corporation election were to be**
9 **made pursuant to section 1362 of the federal Internal Revenue Code**
10 **of 1986, 26 U.S.C. s.1362. Such elections may only be revoked**
11 **pursuant to subsection d. of this section. **【Such election shall****
12 **terminate immediately upon the corporation's failure to satisfy the**
13 **definition of a New Jersey S corporation pursuant to paragraph (p)**
14 **of section 4 of P.L.1945, c.162 (C.54:10A-4).】**

15 d. **【A corporation may revoke an election pursuant to this**
16 **section on or before the last day of the first accounting or privilege**
17 **period to which the election would otherwise apply.】** Deleted by
18 amendment P.L. , c.) (pending before the Legislature as this
19 bill)

20 e. A corporation shall report any change in its shareholders or
21 their share of ownership to the Director of the Division of Taxation
22 in a form and manner determined by the director.

23 (cf: P.L.2019, c.320, s.6)

24

25 22. Section 4 of P.L.1993, c.173 (C.54:10A-5.23) is amended to
26 read as follows:

27 4. a. **【With respect to each of its shareholders that is not an**
28 **initial shareholder,】** Each shareholder of a New Jersey S
29 corporation shall satisfy the requirements of **【either】** paragraph b.
30 **【or c.】** of this section.

31 b. Deliver a consent to the jurisdictional requirements as set
32 forth in **【subsection b. of】** section 3 of P.L.1993, c.173 (C.54:10A-
33 5.22) , in a form and manner determined by the director.

34 c. **【Make】** A New Jersey S corporation shall make payments to
35 the Director of the Division of Taxation on behalf of each
36 nonconsenting shareholder in an amount equal to the shareholder's
37 pro rata share of S corporation income allocated to this State, as
38 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10),
39 reflected on the corporation's return for the accounting or privilege
40 period, multiplied by the maximum tax bracket rate provided under
41 N.J.S.54A:2-1 in effect at the end of the accounting or privilege
42 period. The payments shall be made no later than the time for filing
43 of the return for the accounting or privilege period. The director
44 may, by regulation, require that amounts estimated to be equal to
45 the liability expected to be due pursuant to this subsection be
46 withheld from any distribution made to a nonconsenting
47 shareholder.

1 d. If a shareholder that is not an initial shareholder of a New
2 Jersey S corporation fails to deliver a consent to the jurisdictional
3 requirements set forth in [subsection b. of] section 3 of P.L.1993,
4 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to
5 withhold payments pursuant to subsection c. of this section, then
6 this State shall have the right and jurisdiction to collect a tax each
7 year directly from the corporation equal to the pro rata share of the
8 S corporation income allocated to this State, as defined pursuant to
9 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting
10 shareholder times the maximum tax bracket rate provided under
11 N.J.S.54A:2-1 for the appropriate accounting or privilege
12 period. In such case, the corporation shall have the right, but not
13 the obligation, to recover payments made by the corporation
14 pursuant to this subsection from each nonconsenting
15 shareholder. The corporation shall not be liable for the pass-
16 through business alternative income tax pursuant to P.L.2019, c.320
17 (C.54A:12-1 et al.) relative to collections made in a taxable year for
18 such nonconsenting members.
19 (cf: P.L.2019, c.320, s.7)

20

21 23. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to
22 read as follows:

23 12. For the purposes of the "New Jersey Gross Income Tax Act,"
24 N.J.S.54A:1-1 et seq.:

25 "New Jersey S corporation" means a [corporation that is an S
26 corporation ; which has made a valid election pursuant to section 3
27 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
28 corporation continuously since the effective date of the valid
29 election pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
30 5.22)] taxpayer that has made a valid election to be an S
31 corporation for federal tax purposes for the taxable year.

32 "Pro rata share" means the portion of any items attributable to an
33 S corporation shareholder for a taxable year determined in the
34 manner provided in, and subject to any election made under
35 subsection (a) of section 1377 or subsection (e) of section 1362 of
36 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and
37 s.1362.

38 "Pro rata share of S corporation income" means the sum of the
39 shareholder's proportionate share of:

40 For a New Jersey S corporation, the S corporation income
41 allocated to this State of all New Jersey S corporations; and the S
42 corporation income not allocated to this State.

43 "S corporation" means a corporation [included in the definition
44 of] that has elected to be an "S corporation" pursuant to section
45 1361 of the federal Internal Revenue Code [of 1986], 26 U.S.C.
46 s.1361, for the taxable year.

1 "S corporation income" means the net of an S corporation's items
2 of income, loss or deduction taken into account by the shareholder
3 in the manner provided in section 1366 of the federal Internal
4 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

5 a. S corporation income shall be determined without the
6 exclusion, deduction or credit of:

7 (1) any dividend exclusion or deduction otherwise allowed
8 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,
9 c.162 (C.54:10A-4);

10 (2) taxes paid or accrued to the United States, a possession or
11 territory of the United States, a state including this State, a political
12 subdivision thereof, or the District of Columbia on or measured by
13 profits or income, or business presence or business activity, of the
14 corporation;

15 (3) any income taxes paid or accrued to the United States, a
16 possession or territory of the United States, a state including this
17 State, a political subdivision thereof, or the District of Columbia
18 paid or accrued by the S corporation on behalf of, or in satisfaction
19 of the liabilities of, shareholders of the corporation;

20 (4) interest income on obligations of any state other than this
21 State, or of a political subdivision thereof, or of the federal
22 government, except as deducted pursuant to subsection b. of this
23 section; or

24 (5) interest on indebtedness incurred or continued, expenses
25 paid and incurred to purchase, carry, manage or conserve, and
26 expenses of collection of the income or gain from obligations the
27 income or gain from which is deductible pursuant to subsection b.
28 of this definition; and

29 b. S corporation income shall be determined after deduction of
30 any gains or income derived from obligations which are referred to
31 in N.J.S.54A:6-14 or from securities which evidence ownership in a
32 qualified investment fund as defined in section 2 of P.L.1987, c.310
33 (C.54A:6-14.1), and any interest excluded from gross income
34 pursuant to N.J.S.54A:6-14, or distributions excluded from income
35 pursuant to section 2 of P.L.1987, c.310 (C.54A:6-14.1); and

36 c. The character of any S corporation item taken into account
37 by a shareholder of an S corporation shall be determined as if such
38 items were received or incurred by the S corporation and not its
39 shareholder.

40 "S corporation income allocated to this State" means that portion
41 of the S corporation income that is allocated to this State by the
42 allocation factor of the corporation for the fiscal or calendar
43 accounting period pursuant to sections 6 through 10 of P.L.1945,
44 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax
45 imposed pursuant to paragraph (3) of subsection (c) of section 5 of
46 P.L.1945, c.162 (C. 54:10A-5).

1 "S corporation income not allocated to this State" means S
2 corporation income less S corporation income allocated to this
3 State.

4 (cf: P.L.1993, c.173, s.12)

5

6 24. Section 13 of P.L.1993, c.173 (C.54A:5-11) is amended to
7 read as follows:

8 13. a. A resident shareholder of S corporation stock held by the
9 shareholder on the first day of the first taxable year following
10 enactment of this section shall have an initial basis in the stock of
11 that S corporation and any indebtedness of the S corporation equal
12 to the basis of the stock determined as though the stock was stock
13 of a corporation not an S corporation plus any indebtedness of the S
14 corporation to the shareholder and shall be determined as of the first
15 day of the first taxable year following enactment of this section

16 b. A resident shareholder of S corporation stock to which
17 subsection a. of this section does not apply shall have an initial
18 basis in the stock of the S corporation and any indebtedness of the S
19 corporation as determined pursuant to the federal Internal Revenue
20 Code of 1986, determined as of the date that is the latest to occur
21 of: the date on which the shareholder last became a resident of this
22 State; the date on which the shareholder acquired the stock of the
23 corporation; or the effective date of the corporation's most recent S
24 election under the federal Internal Revenue Code of 1986.

25 c. The initial basis of a resident shareholder in the stock and
26 indebtedness of an S corporation shall be adjusted after the date
27 specified in subsections a. or b. of this section in the manner
28 required by section 1011 of the federal Internal Revenue Code of
29 1986, 26 U.S.C. s.1011, except that such adjustments shall be
30 limited to that portion of S corporation income allocated to this
31 State and S corporation income not allocated to this State that is
32 included in the shareholder's pro rata share of S corporation income
33 and except that, with respect to any taxable period during which the
34 shareholder is a resident of this State:

35 (1) any modification made pursuant to the definition of S
36 corporation income pursuant to section 12 of P.L.1993, c.173
37 (C.54A:5-10) other than those for income exempt from taxation by
38 this State pursuant to paragraph (5) of subsection a. and subsection
39 b. of that definition shall be taken into account; and

40 (2) any adjustments made pursuant to section 1367 of the
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.1367, for a
42 taxable period during which this State did not measure the income
43 of a shareholder of an S corporation by reference to the S
44 corporation's income shall not be taken into account.

45 d. A nonresident shareholder of S corporation stock shall have
46 an initial basis in the stock of the S corporation and any
47 indebtedness of the S corporation of zero as of the date that is the
48 latest to occur of: the date on which the shareholder last became a

1 nonresident of this State; the date on which the shareholder
2 acquired the stock of the corporation; or the effective date of the
3 corporation's most recent S election under the federal Internal
4 Revenue Code of 1986 **】**; or the effective date of the corporation's
5 most recent election pursuant to section 3 of P.L.1993, c.173
6 (C.54:10A-5.22)**】**.

7 e. The initial basis of a nonresident shareholder in the stock
8 and indebtedness of an S corporation shall be adjusted after the date
9 specified in subsection d. of this section as provided in section 1367
10 of the of the federal Internal Revenue Code of 1986, 26 U.S.C.
11 s.1367, except that such adjustments shall be limited to that portion
12 of S corporation income allocated to this State that is included in
13 the shareholder's pro rata share of S corporation income. In
14 computing S corporation income allocated to this State any
15 modification made pursuant to the definition of S corporation
16 income pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) for
17 income exempt from taxation by this State pursuant to paragraph (5)
18 of subsection a. and subsection b. of that definition shall not be
19 taken into account.

20 f. The basis in the hands of a resident shareholder of an S
21 corporation in stock of the S corporation shall be reduced by the
22 amount of any cash distribution which is not taxable to the
23 shareholder as a result of the application of section 16 of P.L.1993,
24 c.173 (C.54A:5-14).

25 g. For purposes of this section, any person acquiring stock or
26 indebtedness of an S corporation by gift shall be considered to have
27 acquired the stock or indebtedness at the time the donor acquired
28 the stock or indebtedness.

29 (cf: P.L.1993, c.173, s.13)

30

31 25. (New section) The Directors of the Divisions of Revenue
32 and Enterprise Services and Taxation, when determining whether to
33 grant retroactive election of S corporation status, shall liberally
34 construe regulatory requirements in favor of the corporation and
35 shall have the discretion to authorize retroactive S corporation
36 status in circumstances in which a taxpayer may not be capable of
37 meeting all regulatory requirements for such retroactive election
38 through no fault of the taxpayer.

39

40 26. Sections 1 through 19 of this act shall take effect
41 immediately, and sections 1 through 16 shall apply to any
42 adjustments to a taxpayer's federal taxable income on or after
43 January 1, 2020 and sections 17 through 19 shall apply retroactively
44 to the effective date of P.L.2020, c.19. Sections 20 through 25 of
45 this act shall take effect on the 60th day after the date of enactment
46 and the Directors of the Divisions of Taxation and Revenue and
47 Enterprise Services shall take such anticipatory administrative

1 action in advance as is necessary to effectuate the purposes of this
2 bill.

3

4

5

STATEMENT

6

7 This bill makes various changes to administration of the gross
8 income tax and the corporation business tax by adapting new
9 federal partnership audit regime, ending COVID-related extensions
10 concerning certain State taxes and eliminating requirement to
11 affirmatively elect New Jersey S Corporation status.

12

Partnership Audit Regime

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

This bill ends the extension of time for the statute of limitations on tax due that was enacted in response to the COVID-19 pandemic. The bill also ends the extension for the provisions regarding the State's payment of interest on a taxpayer's overpayment of tax.

Both of these extension's end dates are currently tied by statute to the end of the state of emergency declared by the Governor in Executive Order No. 103. Separately, in Executive Order No. 170, the Governor extended the time for taxpayers to file a claim for a refund on taxes paid. The end date for that extension is tied to the end of the public health emergency.

On June 4, 2021, the Governor terminated the public health emergency with Executive Order No. 244, but did not terminate the state of emergency. As a result, the extension of time for the statute of limitations on tax due, and payment of interest on tax

1 overpayments, still do not have an end date, while the extension of
2 time for the filing of refund claims does have an end date.

3 This bill changes the end dates for the extension of time for the
4 statute of limitations on tax due, and payment of interest on
5 overpayments of tax, so that the extensions are tied to the end of the
6 public health emergency, as is the case with the extension for the
7 filing of refund claims.

8

9 Separate S Corporation Election

10

11 This bill eliminates the requirement that a taxpayer which
12 qualifies as a Subchapter S Corporation for federal tax purposes
13 affirmatively elect New Jersey S Corporation status for purposes of
14 the State's Corporation Business Tax and Gross Income Tax. S
15 Corporations retain certain benefits of the corporate form, such as
16 limited liability, without the "double" taxation of corporate income
17 and dividends distributed that applies to C Corporations. When S
18 Corporation status is elected for federal purposes, the income and
19 losses incurred by the entity pass-through to the shareholders of the
20 S Corporation.

21 A "small business corporation" as defined in the federal Internal
22 Revenue Code may elect to be an S Corporation for purposes of
23 federal income taxation. The corporation must affirmatively elect
24 to be an S Corporation for a particular taxable year, and all
25 shareholders must give their consent to the election.

26 New Jersey currently requires that entities which have elected to
27 be S Corporations for federal tax purposes, and that want to be
28 treated as S Corporations for State tax purposes, must affirmatively
29 elect to be treated as a New Jersey S Corporation by annually
30 submitting a form to the Director of the Division of Taxation.
31 Failure to make such an election for State purposes results in the
32 taxation by the State of the entity's corporate income and of
33 dividends received by shareholders, as occurs for corporations
34 generally.

35 This bill removes the requirement that a taxpayer which elects
36 treatment as an S Corporation for federal tax purposes must also
37 elect to be a "New Jersey S Corporation." This bill links New
38 Jersey S Corporation status to the S Corporation election for federal
39 income tax purposes and eliminates the confusion and
40 administrative snafus that have prevented some eligible taxpayers
41 from receiving the benefits of "pass-through" taxation.

42 Upon enactment of this bill, New Jersey would join the majority
43 of states that accept a federal S Corporation election for state tax
44 purposes without requiring any additional action on the part of the
45 corporation. The bill streamlines the process by which eligible
46 corporations may avail themselves of "pass-through" tax treatment
47 on the State level.

1 The bill retains the requirement that the S Corporation and each
2 shareholder affirmatively consent to existing jurisdictional
3 requirements, in a form and manner to be determined by the
4 director.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 4295
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JUNE 24, 2022

SUMMARY

- Synopsis:** Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status.
- Type of Impact:** Indeterminate State impact.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2023 and Each FY Thereafter</u>
State Impact	Indeterminate

- The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.
- The Office of Legislative Services (OLS) can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue.

BILL DESCRIPTION

This bill makes various changes to the administration of the gross income tax (GIT) and the corporation business tax (CBT) by adapting new federal partnership auditing practices, ending COVID-related extensions concerning certain tax payments and refunds, and eliminating the requirement that a taxpayer which qualifies as a Subchapter S Corporation for federal tax purposes affirmatively elect New Jersey S Corporation status for purposes of the State's CBT and GIT.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.

OFFICE OF LEGISLATIVE SERVICES

The OLS can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue. For example, shifting to new auditing standards could yield additional tax revenues, which may have otherwise not been collected by the division, if the scope and powers granted to the division are broader. The ending of the COVID-related extension may shift the timing of certain payments and refunds. The automatic election of S-Corporation status for certain taxpayers could reduce the amount of time and resources expended by the division in dealing with these matters.

Section: Revenue, Finance and Appropriations

*Analyst: Jordan M. DiGiovanni
Revenue Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

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

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

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4295

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 23, 2022

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 4295.

This bill, as amended, makes various changes to administration of the gross income tax and the corporation business tax by adapting new federal partnership audit regime, ending COVID-related extensions concerning certain State taxes and eliminating requirement to affirmatively elect New Jersey S Corporation status.

Partnership Audit Regime

New Jersey imposes income tax on partners in accordance with N.J.S.A. 54A:2-2 and N.J.S.A. 54A:5-4. The United States Internal Revenue Service has changed its partnership audit regime so that partnerships are the focus of an audit instead of partners due to legislative changes made by the enactment of Title XI of the Bipartisan Budget Act of 2015 (PL 114-74) and I.R.C. Section 6221(a). Federal audit determinations will be made at the partnership level for post-2017 partnership returns. The provisions of this bill adapt the New Jersey Gross Income Tax to this new federal partnership audit regime that audits the partnership for greater efficiency instead of auditing individual partners. This bill adopts the Multistate Tax Commission's Model Uniform Statute for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments for purposes of the New Jersey Gross Income Tax Act and Corporation Business Tax Act.

Ends COVID-related Extension

This bill ends the extension of time for the statute of limitations on tax due that was enacted in response to the COVID-19 pandemic. The bill also ends the extension for the provisions regarding the State's payment of interest on a taxpayer's overpayment of tax.

Both of these extension's end dates are currently tied by statute to the end of the state of emergency declared by the Governor in Executive Order No. 103. Separately, in Executive Order No. 170, the Governor extended the time for taxpayers to file a claim for a refund

on taxes paid. The end date for that extension is tied to the end of the public health emergency.

On June 4, 2021, the Governor terminated the public health emergency with Executive Order No. 244, but did not terminate the state of emergency. As a result, the extension of time for the statute of limitations on tax due, and payment of interest on tax overpayments, still do not have an end date, while the extension of time for the filing of refund claims does have an end date.

This bill changes the end dates for the extension of time for the statute of limitations on tax due, and payment of interest on overpayments of tax, so that the extensions are tied to the end of the public health emergency, as is the case with the extension for the filing of refund claims.

Separate S Corporation Election

This bill eliminates the requirement that a taxpayer which qualifies as a Subchapter S Corporation for federal tax purposes affirmatively elect New Jersey S Corporation status for purposes of the State's Corporation Business Tax and Gross Income Tax. S Corporations retain certain benefits of the corporate form, such as limited liability, without the "double" taxation of corporate income and dividends distributed that applies to C Corporations. When S Corporation status is elected for federal purposes, the income and losses incurred by the entity pass-through to the shareholders of the S Corporation.

A "small business corporation" as defined in the federal Internal Revenue Code may elect to be an S Corporation for purposes of federal income taxation. The corporation must affirmatively elect to be an S Corporation for a particular taxable year, and all shareholders must give their consent to the election.

New Jersey currently requires that entities which have elected to be S Corporations for federal tax purposes, and that want to be treated as S Corporations for State tax purposes, must affirmatively elect to be treated as a New Jersey S Corporation by annually submitting a form to the Director of the Division of Taxation. Failure to make such an election for State purposes results in the taxation by the State of the entity's corporate income and of dividends received by shareholders, as occurs for corporations generally.

This bill removes the requirement that a taxpayer which elects treatment as an S Corporation for federal tax purposes must also elect to be a "New Jersey S Corporation." This bill links New Jersey S Corporation status to the S Corporation election for federal income tax purposes and eliminates the confusion and administrative snafus that have prevented some eligible taxpayers from receiving the benefits of "pass-through" taxation.

An S corporation may also elect not to be taxed as a New Jersey S corporation. This election must have the consent of 100 percent of the

shareholders of the S corporation. The election may be made for any taxable year at any time during the preceding taxable year or at any time on or before the due date or extended due date of the S corporation's tax return. An election to not be taxed as a New Jersey S corporation may be revoked if shareholders holding more than 50 percent of the shares of stock of the S corporation on the day on which the revocation is made consent to the revocation.

Upon enactment of this bill, New Jersey would join the majority of states that accept a federal S Corporation election for state tax purposes without requiring any additional action on the part of the corporation. The bill streamlines the process by which eligible corporations may avail themselves of "pass-through" tax treatment on the State level.

The bill retains the requirement that the S Corporation and each shareholder affirmatively consent to existing jurisdictional requirements, in a form and manner to be determined by the director.

COMMITTEE AMENDMENTS

The committee amendments clarify that an S corporation may elect not to be taxed as an S corporation with the consent of 100 percent of the shareholders of the S corporation.

FISCAL IMPACT:

The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.

The Office of Legislative Services (OLS) can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4295

STATE OF NEW JERSEY 220th LEGISLATURE

DATED: JUNE 30, 2022

SUMMARY

- Synopsis:** Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status.
- Type of Impact:** Indeterminate State impact.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2023 and Each FY Thereafter</u>
State Impact	Indeterminate

- The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.
- The Office of Legislative Services (OLS) can neither confirm nor refute the Executive’s determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue.

BILL DESCRIPTION

This bill makes various changes to the administration of the gross income tax (GIT) and the corporation business tax (CBT) by adapting new federal partnership auditing practices, ending COVID-related extensions concerning certain tax payments and refunds, and eliminating the requirement that a taxpayer which qualifies as a Subchapter S Corporation for federal tax purposes affirmatively elect New Jersey S Corporation status for purposes of the State’s CBT and GIT.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.

OFFICE OF LEGISLATIVE SERVICES

The OLS can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue. For example, shifting to new auditing standards could yield additional tax revenues, which may have otherwise not been collected by the division, if the scope and powers granted to the division are broader. The ending of the COVID-related extension may shift the timing of certain payments and refunds. The automatic election of S-Corporation status for certain taxpayers could reduce the amount of time and resources expended by the division in dealing with these matters.

Section: Revenue, Finance and Appropriations

Analyst: Jordan M. DiGiovanni
Revenue Analyst

Approved: Thomas Koenig
Legislative Budget and Finance Officer

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

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

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4295

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 31, 2022

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 4295 (1R).

This bill, as amended, makes various changes to the administration of the gross income tax and the corporation business tax by adapting a new federal partnership audit regime, ending COVID-related extensions concerning certain State taxes, and eliminating the requirement to affirmatively elect New Jersey S Corporation status.

As amended and reported by the committee, Assembly Bill No. 4295 (2R) is identical to Senate Bill No. 2876 (1R), which was also reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments:

- omit section 2 from the bill in its entirety;
- renumber sections 3 through 26 of the bill as sections 2 through 25, and adjust some of the bill's internal citations accordingly;
- end, as of the bill's effective date, the extensions enacted in response to the COVID-19 pandemic for the statute of limitations on tax due and the provisions regarding the State's payment of interest on a taxpayer's overpayment of tax;
- require taxpayers to pay, no later than 180 days after the final determination date, any additional New Jersey Gross Income Tax or New Jersey Corporation Business Tax due with respect to final federal adjustments arising from an audit or other action by the Internal Revenue Service or reported by the taxpayer on a timely filed amended federal income tax return;
- require each direct partner that is taxed under the "New Jersey Gross Income Tax Act" or the Corporation Business Tax Act (1945) to, no later than 180 days after the final determination date, file a Federal Adjustments Report reporting their distributive share of the adjustments reported to them and pay any additional amount of the tax due as if final federal

adjustments had been properly reported, plus any penalty and interest due;

- provide that any assessment of tax that was allowed as a result of the extension of the statute of limitations will be voided if made after the bill's effective date;
- revise the definition for "New Jersey S corporation" under the gross income tax and the corporation business tax to mean a taxpayer that has made a valid election to be an S corporation for federal tax purposes, and that has not made a valid election to opt out of being taxed as a New Jersey S corporation;
- add a definition for "director" to section 6 of the bill;
- clarify that the "election" referred to in subsection d. of section 20 of the bill is the election to opt out of being taxed as a New Jersey S corporation; and
- revise certain provisions concerning the bill's effective date.

FISCAL IMPACT:

The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.

The Office of Legislative Services (OLS) can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4295

**STATE OF NEW JERSEY
220th LEGISLATURE**

DATED: NOVEMBER 22, 2022

SUMMARY

- Synopsis:** Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status.
- Type of Impact:** Indeterminate State impact.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY2023 and Each FY Thereafter</u>
State Impact	Indeterminate

- The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.
- The Office of Legislative Services (OLS) can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue.

BILL DESCRIPTION

This bill makes various changes to the administration of the gross income tax (GIT) and the corporation business tax (CBT) by adapting a new federal partnership audit regime, ending COVID-related extensions concerning certain State taxes, and eliminating the requirement that a taxpayer which qualifies as a Subchapter S Corporation for federal tax purposes affirmatively elect New Jersey S Corporation status.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.

OFFICE OF LEGISLATIVE SERVICES

The OLS can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue. For example, shifting to new auditing standards could yield additional tax revenues, which may have otherwise not been collected by the division, if the scope and powers granted to the division are broader. The ending of the COVID-related extension may shift the timing of certain payments and refunds. The automatic election of S-Corporation status for certain taxpayers could reduce the amount of time and resources expended by the division in dealing with these matters.

Section: Revenue, Finance, and Appropriations
Analyst: Robert A. Melcher
Section Chief
Approved: Thomas Koenig
Legislative Budget and Finance Officer

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

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

SENATE, No. 2876

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED JUNE 20, 2022

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Co-Sponsored by:

Senator Diegnan

SYNOPSIS

Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/31/2022)

1 AN ACT concerning new federal partnership tax audit regime,
2 ending COVID-related tax extensions, eliminating requirement
3 to affirmatively elect New Jersey S Corporation status, and
4 administering these changes under the gross income tax and the
5 corporation business tax, supplementing Title 54A of the New
6 Jersey Statutes and P.L.145, c.162, and amending various parts
7 of the statutory law.

8
9 **BE IT ENACTED** *by the Senate and General Assembly of the State*
10 *of New Jersey:*

11

12 1. N.J.S.54A:2-2 is amended to read as follows:

13 54A:2-2. a. A partnership as such shall not be subject to the
14 New Jersey Gross Income Tax. Individuals carrying on business as
15 partners shall be liable for the New Jersey Gross Income Tax only
16 in their separate or individual capacities, except as provided under
17 section b. of this section.

18 b. A partnership shall report any federal partnership audit
19 adjustments made by the Internal Revenue Service pursuant section
20 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s.6225(a)(1)) to
21 the Division of Taxation in the Department of the Treasury in
22 accordance with section 2 and subsection d. of section 9 of
23 P.L. ,c. (C.) (pending before the Legislature as this bill). The
24 partners of the reviewed year shall make payment of any New
25 Jersey Gross Income Tax liability that results from the federal
26 partnership audit adjustments reported on the Federal Adjustments
27 Report, unless the partnership makes the election to pay tax on the
28 partner's behalf.

29 Failure of the partnership, partner, tiered partner, indirect
30 partner, or member to report or pay federal adjustments pursuant to
31 section 6225(a) and section 6225(c) of the Internal Revenue Code
32 shall not prevent the director from assessing the partnership,
33 partner, tiered partner, indirect partner, or member for taxes they
34 owe, using the best information available, in the event that the
35 partnership, partner, tiered partner, indirect partner, or member fails
36 to timely make any report or payment required by this section for
37 any reason.

38 c. The director may adopt rules and regulations that the
39 director deems necessary to effectuate the provisions of this section.

40 (cf: N.J.S.54A:2-2)

41

42 2. (New section) a. A taxpayer, as defined in N.J.S. 54A:1-2 or
43 subsection h. of section 4 of P.L.1945, c.162 (C.54:10A-4), whose
44 tax return filed with the Internal Revenue Service, or whose net
45 income reported, is changed or corrected by any official of 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.

1 United States government in any respect affecting a tax imposed by
2 chapter 2 of Title 54A of the New Jersey Statutes, including a
3 return or other similar report filed pursuant to section 6225(c)(2) of
4 the Internal Revenue Code (26 U.S.C. s.6225(c)(2)), shall within 90
5 days after the final federal adjustment and determination of the
6 change or correction, submit to the director the Federal Adjustments
7 Report.

8 b. Except for the distributive share of adjustments that have
9 been reported as required under subsection a. of this section,
10 partnerships and partners of the reviewed year shall, within 90 days
11 after the final determination date of the final federal adjustments
12 arising from a federal partnership level audit or an administrative
13 adjustment request, file the Federal Adjustments Report and make
14 payments as required under subsection b. of N.J.S.54A:5-4.

15 c. Upon the filing of a Federal Adjustments Report, the director
16 shall examine a taxpayer's return, determine any additional tax or
17 refund that may be due, and shall notify the taxpayer. Any
18 additional tax shall be paid within 15 days after the Federal
19 Adjustments Report is filed together with interest from the original
20 due date of the return for the taxable year to the date of payment of
21 the additional tax.

22

23 3. N.J.S.54A:5-4 is amended to read as follows:

24 54A:5-4. **[A]** a. Except as provided in subsections b. and c. of
25 this section, a partnership or association as such shall not be subject
26 to the tax imposed by this act, but the income or gain of a partner or
27 member of a partnership or association shall be subject to the tax
28 and the tax shall be imposed on [his] the partner's or member's
29 share, whether or not distributed, of the income or gain received by
30 the partnership or association for its taxable year ending within or
31 with the partner's or member's taxable year.

32 b. A partnership shall report and make payment of any New
33 Jersey gross income tax liability that results from the federal
34 partnership audit adjustments in accordance with section 2 of
35 P.L. , c. (C.) (pending before the Legislature as this bill)
36 and subsection d. of section 9 of P.L. ,c. (C.) (pending
37 before the Legislature as this bill).

38 c. Failure of the partnership, partner, indirect partner, tiered
39 partner, or member to report or pay federal adjustments that result
40 from the federal partnership audit adjustments shall not prevent the
41 director from assessing a partnership, partner, indirect partner,
42 tiered partner, or member for taxes they owe, using the best
43 information available, if the partnership, partner, indirect partner,
44 tiered partner, or member fails to timely make any report or
45 payment required by this section for any reason.

46 (cf: N.J.S.54A:5-4)

47

48 4. N.J.S.54A:8-7 is amended to read as follows:

1 54A:8-7. a. Report of change in federal taxable income or
2 credit. If the amount of a taxpayer's federal taxable income or
3 earned income tax credit reported on the taxpayer's federal income
4 tax return for any taxable year is changed or corrected by the United
5 States Internal Revenue Service or other competent authority, or as
6 the result of a renegotiation of a contract or subcontract with the
7 United States, the taxpayer shall report such change or correction
8 in federal taxable income or earned income tax credit within 90
9 days after the final determination of such change, correction, or
10 renegotiation, or as otherwise required by the director, and shall
11 concede the accuracy of such determination or state wherein it is
12 erroneous. Any taxpayer filing an amended federal income tax
13 return, including a return or other information filed pursuant to
14 section 6225(c) of the Internal Revenue Code (26 U.S.C. s.
15 6225(c)), shall also file within 90 days thereafter an amended return
16 under this act, and shall give such information as the director may
17 require. The director may by regulation prescribe such exceptions
18 to the requirements of this section as the director deems
19 appropriate.

20 b. A partnership shall report the Final Federal Adjustments
21 from a federal partnership audit or administrative adjustment
22 request pursuant to section 6225(a)(1) of the Internal Revenue Code
23 (26 U.S.C. s.6225(a)(1)) by filing the Federal Adjustments Report
24 as prescribed by the director within 90 days after the Final
25 Determination Date of the federal adjustments arising from a
26 partnership level audit.

27 c. The director may assess the federally audited partnership,
28 partners, or both, for taxes they owe, using the best information
29 available, even if the partnership or tiered partner fails to timely
30 make any report required by this section for any reason.

31 d. The director shall adopt rules and regulations the director
32 may deem necessary to effectuate the provisions of this section.

33 (cf: P.L.2000, c.80, s.6)

34

35 5. N.J.S.54A:9-4 is amended to read as follows:

36 54A:9-4. (a) General. Except as otherwise provided in this
37 section, any tax under this act shall be assessed within 3 years after
38 the return was filed (whether or not such return was filed on or after
39 the date prescribed).

40 (b) Time return deemed filed.

41 (1) Early return. for purposes of this section a return of income
42 tax, except withholding tax, filed before the last day prescribed by
43 law or by regulations promulgated pursuant to law for the filing
44 thereof, shall be deemed to be filed on such last day.

45 (2) Return of withholding tax. For purposes of this section, if a
46 return of withholding tax for any period ending with or within a
47 calendar year is filed before April 15 of the succeeding calendar

1 year, such return shall be deemed to be filed on April 15 of such
2 succeeding calendar year.

3 (c) Exceptions.

4 (1) Assessment at any time. The tax may be assessed at any time
5 if--

6 (A) No return is filed,

7 (B) A false or fraudulent return is filed with intent to evade tax,
8 or

9 (C) The taxpayer fails to comply with **[section]** N.J.S.54A:8-7,
10 in not reporting a change or correction increasing **[his]** the
11 taxpayer's Federal taxable income as reported on his Federal
12 income tax return, or in not reporting a change or correction which
13 is treated in the same manner as if it were a deficiency for Federal
14 income tax purposes, **[or]** in not filing an amended return, or, for
15 both partners and partnerships, in not reporting final federal
16 adjustments resulting from a partnership audit pursuant to section
17 6225(a)(1) of the Internal Revenue Code (26 U.S.C. s. 6225(a)(1)).

18 (2) Extension by agreement. Where, before the expiration of the
19 time prescribed in this section for the assessment of tax, both the
20 director and the taxpayer have consented in writing to its
21 assessment after such time, the tax may be assessed at any time
22 prior to the expiration of the period agreed upon. The period so
23 agreed upon may be extended by subsequent agreements in writing
24 made before the expiration of the period previously agreed upon.

25 (3) Report of changed or corrected Federal income. If the
26 taxpayer shall, pursuant to **[section 54A:8-7]** subsection a. of
27 N.J.S.54A:8-7, report a change or correction or file an amended
28 return increasing **[his]** the taxpayer's Federal taxable income or
29 report a change or correction which is treated in the same manner as
30 if it were a deficiency for Federal income tax purposes, the
31 assessment (if not deemed to have been made upon the filing of the
32 report or amended return) may be made at any time within 2 years
33 after such report or amended return was filed. The amount of such
34 assessment of tax shall not exceed the amount of the increase in
35 New Jersey tax attributable to such Federal change or correction.
36 The provisions of this paragraph shall not affect the time within
37 which or the amount for which an assessment may otherwise be
38 made.

39 (4) Recovery of erroneous refund. An erroneous refund shall be
40 considered an underpayment of tax on the date made, and an
41 assessment of a deficiency arising out of an erroneous refund may
42 be made at any time within 3 years from the making of the refund,
43 except that the assessment may be made within 5 years from the
44 making of the refund if it appears that any part of the refund was
45 induced by fraud or misrepresentation of a material fact.

46 (5) Request for prompt assessment. If a return is required for a
47 decedent or for **[his]** the decedent's estate during the period of
48 administration, the tax shall be assessed within 18 months after

1 written request therefor (made after the return is filed) by the
2 executor, administrator or other person representing the estate of
3 such decedent, but not more than 3 years after the return was filed,
4 except as otherwise provided in this subsection and subsection (d).

5 (6) Final federal adjustments resulting from a Federal
6 Partnership Audit. Tax may be assessed against the partnership,
7 direct or indirect partners, or both, within two years of the time that
8 a partnership files a Federal Adjustments Report as required by
9 N.J.S.54A:8-7 that includes Final Federal Adjustments from a
10 federal partnership audit or administrative adjustments request that
11 would result in additional New Jersey income tax for one or more
12 direct or indirect partners.

13 (d) Omission of income on return. The tax may be assessed at
14 any time within 6 years after the return was filed if--

15 (1) An individual omits from his New Jersey income an amount
16 properly includible therein which is in excess of 25% of the amount
17 of New Jersey income stated in the return; or

18 (2) An estate or trust omits income from its return in an amount
19 in excess of 25% of its income determined as if it were an
20 individual, computing his New Jersey income under this act.

21 For purposes of this subsection there shall not be taken into
22 account any amount which is omitted in the return if such amount is
23 disclosed in the return, or in a statement attached to the return, in a
24 manner adequate to apprise the director of the nature and amount of
25 such item.

26 (e) Suspension of running of period of limitation. The running
27 of the period of limitations on assessment or collection of tax or
28 other amount (or of a transferee's liability) shall, after the mailing of
29 a notice of deficiency, be suspended for the period during which the
30 director is prohibited under subsection (c) of section N.J.S.54A:9-2
31 from making the assessment or from collecting by levy.

32 (cf: N.J.S.54A:9-4)

33
34 6. N.J.S.54A:9-8 is amended to read as follows:

35 54A:9-8. (a) General. Claim for credit or refund of an
36 overpayment of income tax shall be filed by the taxpayer within 3
37 years from the time the return was filed or 2 years from the time the
38 tax was paid, whichever of such periods expires the later, or if no
39 return was filed, within 2 years from the time the tax was paid. If
40 the claim is filed within the 3-year period, the amount of the credit
41 or refund shall not exceed the portion of the tax paid within the 3
42 years immediately preceding the filing of the claim plus the period
43 of any extension of time for filing the return. If the claim is not
44 filed within the 3-year period, but is filed within the 2-year period,
45 the amount of the credit or refund shall not exceed the portion of
46 the tax paid during the 2 years immediately preceding the filing of
47 the claim. Except as otherwise provided in this section, if no claim
48 is filed, the amount of a credit or refund shall not exceed the

1 amount which would be allowable if a claim had been filed on the
2 date the credit or refund is allowed.

3 (b) Extension of time by agreement. If an agreement under the
4 provisions of paragraph (2) of subsection (c) of **[section]**
5 N.J.S.54A:9-4 (extending the period for assessment of income tax)
6 is made within the period prescribed in subsection (a) for the filing
7 of a claim for credit or refund, the period for filing a claim for
8 credit or refund, or for making credit or refund if no claim is filed,
9 shall not expire prior to 6 months after the expiration of the period
10 within which an assessment may be made pursuant to the agreement
11 or any extension thereof. The amount of such credit or refund shall
12 not exceed the portion of the tax paid after the execution of the
13 agreement and before the filing of the claim or the making of the
14 credit or refund, as the case may be, plus the portion of the tax paid
15 within the period which would be applicable under subsection (a) if
16 a claim had been filed on the date the agreement was executed.

17 (c) Notice of change or correction of Federal income. If a
18 taxpayer is required by **[section]** N.J.S.54A:8-7 to report a change
19 or correction in Federal taxable income reported on **[his]** the
20 taxpayer's Federal income tax return, or to report a change or
21 correction which is treated in the same manner as if it were an
22 overpayment for Federal income tax purposes, or to file an amended
23 return with the director, claim for credit or refund of any resulting
24 overpayment of tax shall be filed by the taxpayer within 2 years
25 from the time the notice of such change or correction or such
26 amended return was required to be filed with the director. The
27 amount of such credit or refund shall not exceed the amount of the
28 reduction in tax attributable to such Federal change, correction or
29 items amended on the taxpayer's amended Federal income tax
30 return. This subsection shall not affect the time within which or the
31 amount for which a claim for credit or refund may be filed apart
32 from this subsection.

33 (d) Failure to file claim within prescribed period. No credit or
34 refund shall be allowed or made, except as provided in subsection
35 (e) of this section or subsection (d) of **[section]** N.J.S.54A:9-10,
36 after the expiration of the applicable period of limitation specified
37 in this act, unless a claim for credit or refund is filed by the
38 taxpayer within such period. Any later credit shall be void and any
39 later refund erroneous. No period of limitations specified in any
40 other law shall apply to the recovery by a taxpayer of moneys paid
41 in respect of taxes under this act.

42 (e) Effect of petition to director. If a notice of deficiency for a
43 taxable year has been mailed to the taxpayer under **[section]**
44 N.J.S.54A:9-2 and if the taxpayer files a timely petition with the
45 director under **[section]** N.J.S.54A:9-9, **[he]** the director may
46 determine that the taxpayer has made an overpayment for such year
47 (whether or not **[he]** the director also determines a deficiency for
48 such year). No separate claim for credit or refund for such year

1 shall be filed, and no credit or refund for such year shall be allowed
2 or made, except--

3 (1) As to overpayments determined by a decision of the director
4 which has become final; and

5 (2) As to any amount collected in excess of an amount computed
6 in accordance with the decision of the director which has become
7 final; and

8 (3) As to any amount claimed as a result of a change or
9 correction described in subsection (c).

10 (f) Limit on amount of credit or refund. The amount of
11 overpayment determined under subsection (e) shall, when the
12 decision of the director has become final, be credited or refunded in
13 accordance with subsection (a) of section N.J.S. 54A:6-6 and shall
14 not exceed the amount of tax which the director determines as part
15 of **[he]** the director's decision was paid--

16 (1) After the mailing of the notice of deficiency; or

17 (2) Within the period which would be applicable under
18 subsections (a), (b) or (c), if on the date of the mailing of the notice
19 of a deficiency a claim had been filed (whether or not filed) stating
20 the grounds upon which the director finds that there is an
21 overpayment.

22 (g) Early return. For purposes of this section, any return filed
23 before the last day prescribed for the filing thereof shall be
24 considered as filed on such last day, determined without regard to
25 any extension of time granted the taxpayer.

26 (h) Prepaid income tax. For purposes of this section, any tax paid
27 by the taxpayer before the last day prescribed for its payment, any
28 income tax withheld from the taxpayer during any calendar year,
29 and any amount paid by the taxpayer as estimated income tax for a
30 taxable year shall be deemed to have been paid by **[him]** the
31 taxpayer on the fifteenth day of the fourth month following the
32 close of **[his]** the taxpayer's taxable year with respect to which
33 such amount constitutes a credit or payment.

34 (i) Return and payment of withholding tax. Notwithstanding
35 subsection (h), for purposes of this section with respect to any
36 withholding tax--

37 (1) If a return for any period ending with or within a calendar
38 year is filed before April 15 of the succeeding calendar year, such
39 return shall be considered filed on April 15 of such succeeding
40 calendar year; and

41 (2) If a tax with respect to remuneration paid during any period
42 ending with or within a calendar year is paid before April 15 of the
43 succeeding calendar year, such tax shall be considered paid on April
44 15 of such succeeding calendar year.

45 (j) Final federal adjustments resulting from a partnership audit or
46 administrative adjustments request. If a partnership files a Federal
47 Adjustments Report with final federal adjustments resulting from a
48 partnership audit or administrative adjustments request that do not

1 result in a federal imputed underpayment, and which are not taken
2 into account by the partnership in the federal adjustment year
3 partnership return, then the partners may claim a credit or refund of
4 the related State tax by filing an amended return or other schedule
5 as required by the director. The amount of such credit or refund
6 shall not exceed the amount of the reduction in New Jersey tax
7 attributable to such final federal adjustments. This subsection shall
8 not affect the time within in which or the amount for which a claim
9 for credit or refund may be filed apart from this subsection.

10 (cf: N.J.S.54A:9-8)

11
12 7. (New section) As used in sections 7 through 13 of
13 P.L. , c. (C.) (pending before the Legislature as this bill):

14 “Administrative adjustment request” means an administrative
15 adjustment request filed by a partnership under section 6227 of the
16 federal Internal Revenue Code (26 U.S.C. s.6227).

17 “Allocation Factor” means the allocation factor as required on
18 the New Jersey Gross Income Tax Business Allocation Schedule
19 NJ-NR-A.

20 “Audited partnership” means a partnership subject to a
21 partnership level audit resulting in a federal adjustment.

22 “Corporate partner” means a partner that is a corporation subject
23 to tax pursuant to section 2 of P.L. 1945, c. 162 (C.54:10A-2) or is
24 subject to the requirements of section 12 of P.L.2002, c.40
25 (C.54:10A-15.11).

26 “Direct partner” means a partner that holds an interest directly in
27 a partnership or pass-through entity.

28 “Exempt partner” means a partner that is exempt from taxation
29 under section 3 of P.L.1945, c.162 (C.54:10A-3).

30 “Federal adjustment” means a change to an item or amount
31 determined under the federal Internal Revenue Code that is used by
32 a taxpayer to compute tax owed under the “New Jersey Gross
33 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business
34 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), whether that
35 change results from action by the Internal Revenue Service,
36 including a partnership level audit, or the filing of an amended
37 federal return, federal refund claim, or an administrative adjustment
38 request by the taxpayer. A federal adjustment is positive to the
39 extent that it increases State taxable income as determined under
40 N.J.S.54A:5-1 or subsection (k) of section 4 of P.L.1945, c.162
41 (C.54:10A-4) and is negative to the extent that it decreases State
42 taxable income as determined under N.J.S.54A:5-1 or subsection
43 (k) of section 4 of P.L.1945, c.162 (C.54:10A-4).

44 “Federal Adjustments Report” includes methods or forms
45 required by N.J.S.54A:8-7 or section 13 of P.L.1945, c.162
46 (C.54:10A-13) for use by a taxpayer to report final federal
47 adjustments, including an amended New Jersey tax return,
48 information return, or a uniform multistate report.

1 “Federal partnership representative” means the person the
2 partnership designates for the taxable year as the partnership’s
3 representative, or the person the Internal Revenue Service has
4 appointed to act as the federal partnership representative, pursuant
5 to section 6223(a) of the federal Internal Revenue Code (26 U.S.C.
6 s.6223(a)).

7 “Final determination date” means the following:

8 a. Except as provided in b. and c. below, if the federal
9 adjustment arises from an Internal Revenue Service audit or other
10 action by the Internal Revenue Service, the final determination date
11 is the first day on which no federal adjustments arising from that
12 audit or other action remain to be finally determined, whether by
13 Internal Revenue Service decision with respect to which all rights
14 of appeal have been waived or exhausted, by agreement, or, if
15 appealed or contested, by a final decision with respect to which all
16 rights of appeal have been waived or exhausted. For agreements
17 required to be signed by the Internal Revenue Service and the
18 taxpayer, the final determination date is the date on which the last
19 party signed the agreement.

20 b. For federal adjustments arising from an Internal Revenue
21 Service audit or other action by the Internal Revenue Service, if the
22 taxpayer filed as a member of a composite return Form NJ-1080(c)
23 or as a member of a combined group filing a combined return for
24 corporation business tax purposes, the final determination date
25 means the first day on which no related federal adjustments arising
26 from that audit remain to be finally determined, as described in a.
27 above for the entire group.

28 c. If the federal adjustment results from filing an amended
29 federal return, a federal refund claim, or an administrative
30 adjustment request, or if it is a federal adjustment reported on an
31 amended federal return or other similar report filed pursuant to
32 6225(c) of the federal Internal Revenue Code (26 U.S.C. s.6225(c)),
33 the final determination date means the day on which the amended
34 return, refund claim, administrative adjustment request, or other
35 similar report was filed.

36 “Final federal adjustment” means a federal adjustment after the
37 final determination date for that federal adjustment has passed.

38 “Indirect partner” means a partner in a partnership or pass-
39 through entity that itself holds an interest directly, or through
40 another indirect partner, in a partnership, or pass-through entity.

41 “Nonresident partner” means an individual, trust, or estate
42 partner that is not a resident partner.

43 “Partner” means a person that holds an interest directly or
44 indirectly in a partnership or other pass-through entity.

45 “Partnership” means an entity subject to taxation under
46 subchapter K of the federal Internal Revenue Code or is otherwise
47 taxed as a partnership for federal income tax purposes.

1 “Partnership level audit” means an examination by the Internal
2 Revenue Service at the partnership level pursuant to Subchapter C
3 of Title 26, Subtitle F, Chapter 63 of the federal Internal Revenue
4 Code, as enacted by the Bipartisan Budget Act of 2015, Pub.L.114-
5 74, which results in federal adjustments.

6 “Pass-through entity” means an entity not taxed as a C
7 corporation.

8 “Reallocation adjustment” means a federal adjustment resulting
9 from a partnership level audit or an administrative adjustment
10 request that changes the shares of one or more items of partnership
11 income, gain, loss, expense, or credit allocated to direct partners. A
12 positive reallocation adjustment means the portion of a reallocation
13 adjustment that would increase federal income for one or more
14 direct partners, and a negative reallocation adjustment means the
15 portion of a reallocation adjustment that would decrease federal
16 income for one or more direct partners pursuant to regulations
17 promulgated under section 6225 of the federal Internal Revenue
18 Code (26 U.S.C. s.6225)

19 “Resident partner” means an individual, trust, or estate partner
20 that is a resident of New Jersey under subsections (m) and (o) of
21 N.J.S.54A:1-2 for the relevant tax period.

22 “Reviewed year” means the taxable year of a partnership that is
23 subject to a partnership level audit from which federal adjustments
24 arise.

25 “Taxpayer” means the same as defined under subsection (l) of
26 N.J.S.54A:1-2 or subsection (h) of section 4 of P.L.1945,
27 c.162(C.54:10A-4) and, unless the context clearly indicates
28 otherwise, includes a partnership subject to a partnership level audit
29 or a partnership that has made an administrative adjustment request,
30 as well as a tiered partner of that partnership.

31 “Tiered partner” means any partner that is a partnership or pass-
32 through entity.

33 To the extent terms used in this section are not defined in this
34 section or elsewhere in chapter 9 of Title 54A of the New Jersey
35 Statutes, the definition of such terms shall conform as closely as
36 possible to the terminology used in the amendments to the federal
37 Internal Revenue Code pertaining to the comprehensive partnership
38 audit regime as contained in the Bipartisan Budget Act of 2015,
39 Pub. L.114-74, as amended, and this section shall be so interpreted.
40

41 8. (New section) Reporting Adjustments to Federal Taxable
42 Income – General Rule. Except in the case of final federal
43 adjustments that are required to be reported by a partnership and its
44 partners using the procedures in section 9 of P.L. , c. (C.)
45 (pending before the Legislature as this bill), and final federal
46 adjustments required to be reported for federal purposes in the
47 partnership return for the adjustment year, a taxpayer shall report
48 and pay any New Jersey Gross Income Tax or New Jersey

1 Corporation Business Tax due with respect to final federal
2 adjustments arising from an audit or other action by the Internal
3 Revenue Service or reported by the taxpayer on a timely filed
4 amended federal income tax return, including a return or other
5 similar report filed pursuant to section 6225(c)(2) of the federal
6 Internal Revenue Code (26 U.S.C. s.6225(c)(2)), or federal claim
7 for refund by filing a federal adjustments report with the Division
8 of Taxation for the reviewed year and, if applicable, paying the
9 additional New Jersey Gross Income Tax or New Jersey
10 Corporation Business Tax owed by the taxpayer no later than 90
11 days after the final determination date.

12

13 9. (New section) Reporting Federal Adjustments – Partnership
14 Level Audit and Administrative Adjustment Request

15 a. Except for adjustments required to be reported for federal
16 purposes in the partnership return for the adjustment year, and the
17 distributive share of adjustments that have been reported as required
18 under section 8 of P.L. , c. (C.) (pending before the
19 Legislature as this bill), partnerships, and partners shall report final
20 federal adjustments arising from a partnership level audit or an
21 administrative adjustment request and make payments as required
22 under this section.

23 b. State Partnership Representative.

24 (1) With respect to an action required or permitted to be taken by
25 a partnership under this section and a proceeding under R.S.54:49-
26 18 with respect to that action, the State partnership representative
27 for the reviewed year shall have the sole authority to act on behalf
28 of the partnership, and the partnership's direct partners and indirect
29 partners shall be bound by those actions.

30 (2) The State partnership representative for the reviewed year is
31 the partnership's federal partnership representative unless the
32 partnership designates in writing another person as its State
33 partnership representative.

34 (3) The division may establish reasonable qualifications for and
35 procedures for designating a person, other than the federal
36 partnership representative, to be the State partnership
37 representative.

38 c. Reporting and Payment Requirements for Partnerships
39 Subject to a Final Federal Adjustment and their Direct Partners.
40 Final federal adjustments subject to the requirements of this section,
41 except for those subject to a properly made election under
42 subsection d. of this section shall be reported as follows:

43 (1) No later than 90 days after the final determination date, the
44 partnership shall:

45 (a) file a completed federal adjustments report, including
46 information as required by the director, with the division;

1 (b) notify each of its direct partners of their distributive share of
2 the final federal adjustments including information as required by
3 the director;

4 (c) file an amended New Jersey Form 1065 as required under
5 N.J.S.54A:8-7 and pay the amount required under section 2
6 of P.L. , c. (C.) (pending before the Legislature as this
7 bill); and

8 (d) file an amended composite return for direct partners and pay
9 the additional amount under subsection c. of section 2 of
10 P.L. , c. (C.) (pending before the Legislature as this bill) that
11 would have been due had the final federal adjustments been
12 reported properly as required.

13 (2) No later than 90 days after the final determination date, each
14 direct partner that is taxed under the “New Jersey Gross Income
15 Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business Tax Act
16 (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), shall:

17 (a) file a Federal Adjustments Report reporting their distributive
18 share of the adjustments reported to them under subparagraph (b) of
19 paragraph (1) of subsection c. of this section as required under this
20 section or N.J.S.54A:8-7; and

21 (b) Pay any additional amount of tax due as if final federal
22 adjustments had been properly reported, plus any penalty and
23 interest due under N.J.S.54A:9-5, N.J.S54A:9-6, R.S.54:49-3, or
24 R.S.54:49-4.

25 d. Election – Partnership Pays. Subject to the limitations in
26 paragraph (3) of this subsection, an audited partnership making an
27 election under this section shall:

28 (1) no later than 90 days after the final determination date, file a
29 completed Federal Adjustments Report, including information as
30 required by the director, and notify the division that it is making the
31 election under this section;

32 (2) no later than 180 days after the final determination date, pay
33 an amount, determined as follows, in lieu of taxes owed by its direct
34 and indirect partners:

35 (a) exclude from final federal adjustments the distributive share
36 of these adjustments reported to a direct exempt partner not subject
37 to tax under section 3 of P.L.1945, c.162 (C.54:10A-3).

38 (b) for the total distributive shares of the remaining final federal
39 adjustments reported to direct corporate partners subject to tax
40 under section 2 of P.L.1945, c.162 (C.54:10A-2), apportion and
41 allocate such adjustments as provided under sections 6 through 10
42 of P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10), section 19
43 of P.L. 2018, c. 48 (C.54:10A-4.7) and subsection a of sections 3
44 through 4 of P.L. 2001, c. 136 (C.54:10A-15.6. through C.54:10A-
45 15.7) and multiply the resulting amount by the highest tax rate
46 under section 5 of P.L.1945, c.162 (C.54:10A-5);

47 (c) for the total distributive shares of the remaining final federal
48 adjustments reported to nonresident direct partners subject to tax

1 under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
2 seq., determine the amount of such adjustments which is New
3 Jersey source income under paragraph (3) of subsection (a) of
4 N.J.S.54A:5-8 and multiply the resulting amount by the highest tax
5 rate under N.J.S.54A:2-1;

6 (d) For the total distributive shares of the remaining final federal
7 adjustments reported to tiered partners:

8 (i) determine the amount of such adjustments which is of a type
9 that it would be subject to sourcing to New Jersey under paragraph
10 (3) of subsection (a) of N.J.S.54A:5-8 and then determine the
11 portion of this amount that would be sourced to the state applying
12 these rules;

13 (ii) determine the amount of such adjustments which is of a type
14 that it would not be subject to sourcing to New Jersey by a
15 nonresident partner under subsection (c) of N.J.S.54A:5-8;

16 (iii) determine the portion of the amount determined in
17 subparagraph (ii) of this subparagraph that can be established,
18 under regulation issued by the division, to be properly allocable to
19 nonresident indirect partners or other partners not subject to tax on
20 the adjustments; or that can be excluded under procedures for
21 modified reporting and payment method allowed under
22 subparagraph (f) of this paragraph;

23 (e) multiply the total of the amounts determined in
24 subparagraphs (i) and (ii) of this subparagraph reduced by the
25 amount determined in subparagraph (iii) of this subparagraph by
26 the highest tax rate under N.J.S.54A:2-1;

27 (f) for the total distributive shares of the remaining final federal
28 adjustments reported to resident direct partners subject to tax under
29 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
30 multiply that amount by the highest tax rate under N.J.S.54A:2-1;

31 (g) add the amounts determined in subparagraphs (b), (c), (e),
32 and (f) of this paragraph, along with penalty and interest as
33 provided in N.J.S.54A:9-5, N.J.S.54A:9-6, R.S.54:49-3, or
34 R.S.54:49-4.

35 (3) Final federal adjustments subject to this election exclude:

36 (a) the distributive share of final audit adjustments that are
37 required to be included in the unitary business income of any direct
38 or indirect corporate partner, provided that the audited partnership
39 can reasonably determine this; and

40 (b) any final federal adjustments resulting from an administrative
41 adjustment request.

42 (4) An audited partnership not otherwise subject to any reporting
43 or payment obligation to New Jersey that makes an election under
44 this subsection consents to be subject to New Jersey laws related to
45 reporting, assessment, payment, and collection of New Jersey tax
46 calculated under the election.

47 e. Tiered Partners. The direct and indirect partners of an audited
48 partnership that are tiered partners, and all of the partners of those

1 tiered partners that are subject to tax under the “New Jersey Gross
2 Income Tax Act,” N.J.S.54A:1-1 et seq., or Corporation Business
3 Tax Act (1945), P.L.1945,c.162 (C. 54:10A-1 et seq.), are subject to
4 the reporting and payment requirements of subsection c. of this
5 section and the tiered partners are entitled to make the elections
6 provided in subsections d. and f. of this section. The tiered partners
7 or their partners shall make required reports and payments no later
8 than 90 days after the time for filing and furnishing statements to
9 tiered partners and their partners as established under section 6226
10 of the federal Internal Revenue Code (26 U.S.C. s.6226) and the
11 regulations thereunder. The division may adopt regulations to
12 establish procedures and interim time periods for the reports and
13 payments required by tiered partners and their partners and for
14 making the elections under this section.

15 f. Modified Reporting and Payment Method. Under procedures
16 adopted by and subject to the approval of the division, an audited
17 partnership or tiered partner may enter into an agreement with the
18 division to utilize an alternative reporting and payment method,
19 including applicable time requirements or any other provision of
20 this section, if the audited partnership or tiered partner demonstrates
21 that the requested method will reasonably provide for the reporting
22 and payment of taxes, penalties, and interest due under the
23 provisions of this section. Application for approval of an alternative
24 reporting and payment method must be made by the audited
25 partnership or tiered partner within the time for election as provided
26 in subsection d. or e. of this section, as appropriate.

27 g. Effect of Election by Audited Partnership or Tiered Partner
28 and Payment of Amount Due.

29 (1) The elections made pursuant to subsections d. and f. of this
30 section are irrevocable, unless the division, in its discretion,
31 determines otherwise.

32 (2) If properly reported and paid by the audited partnership or
33 tiered partner, the amount determined in paragraph (2) of subsection
34 d. of this section, or similarly under an optional election under
35 subsection f. of this section will be treated as paid in lieu of taxes
36 owed by its direct and indirect partners, to the extent applicable, on
37 the same final federal adjustments. The direct partners or indirect
38 partners may not take any deduction or credit for this amount or
39 claim a refund of the amount in this State. Nothing in this
40 subsection shall preclude a direct resident partner from claiming a
41 credit against taxes paid to this State pursuant to N.J.S.54A:4-1, any
42 amounts paid by the audited partnership or tiered partner on the
43 resident partner’s behalf to another state or local tax jurisdiction in
44 accordance with the provisions of N.J.S.54A:4-1.

45 h. Failure of Audited Partnership or Tiered Partner to Report or
46 Pay. Nothing in this section prevents the division from assessing
47 direct partners or indirect partners for taxes they owe, using the best
48 information available, in the event that a partnership or tiered

1 partner fails to timely make any report or payment required by this
2 section for any reason.

3

4 10. (New section) Assessments of Additional New Jersey Tax,
5 Interest, and Penalties Arising from Adjustments to Federal Taxable
6 Income – Statute of Limitations

7 a. The division shall assess additional tax, interest, and penalties
8 arising from final federal adjustments arising from an audit by the
9 Internal Revenue Service, including a partnership level audit, or
10 reported by the taxpayer on an amended federal income tax return
11 or as part of an administrative adjustment request by the following
12 dates:

13 (1) Timely Reported Federal Adjustments. If a taxpayer files
14 with the division a Federal Adjustments Report or an amended New
15 Jersey Form 1065 or amended New Jersey Corporation Business
16 Tax return as required within the period specified in section 8 or 9
17 of P.L. , c. (C.) (pending before the Legislature as this bill),
18 the division may assess any amounts, including in-lieu-of amounts,
19 taxes, interest, and penalties arising from those federal adjustments
20 if the division issues a notice of the assessment to the taxpayer no
21 later than:

22 (a) The expiration of the limitations period specified in
23 N.J.S.54A:9-4 and N.J.S.54:49-6; or

24 (b) The expiration of the one-year period following the date of
25 filing with the division of the federal adjustments report.

26 b. Untimely Reported Federal Adjustments. If the taxpayer fails
27 to file the Federal Adjustments Report within the period specified in
28 section 8 or 9 of P.L. , c. (C.) (pending before the
29 Legislature as this bill), as appropriate, or the Federal Adjustments
30 Report filed by the taxpayer omits final federal adjustments or
31 understates the correct amount of tax owed, the division may assess
32 amounts or additional amounts including in-lieu-of amounts, taxes,
33 interest, and penalties arising from the final federal adjustments, if
34 it mails a notice of the assessment to the taxpayer by a date which is
35 the latest of the following:

36 (1) The expiration of the limitations period specified in
37 N.J.S.54A:9-4 and N.J.S.54:49-6; or

38 (2) The expiration of the two-year period following the date the
39 Federal Adjustments Report was filed with the division; or

40 (3) Absent fraud, the expiration of the six-year period following
41 the final determination date.

42

43 11. (New section) Estimated New Jersey Tax Payments During
44 the Course of a Federal Audit

45 A taxpayer may make estimated payments to the division,
46 following the process prescribed by the division, of the New Jersey
47 Gross Income Tax or Corporation Business Tax expected to result
48 from a pending Internal Revenue Service audit, prior to the due date

1 of the Federal Adjustments Report, without having to file the report
2 with the division. The estimated tax payments shall be credited
3 against any tax liability ultimately found to be due to New Jersey
4 (“Final New Jersey Tax Liability”) and will limit the accrual of
5 further statutory interest on that amount. If the estimated tax
6 payments exceed the final tax liability and statutory interest
7 ultimately determined to be due, the taxpayer is entitled to a refund
8 or credit for the excess, provided the taxpayer files a Federal
9 Adjustments Report or claim for refund or credit of tax no later than
10 one year following the final determination date.

11

12 12. (New section) Claims for Refund or Credits of Tax Arising
13 from Final Federal Adjustments Made by the IRS

14 a. Except for final federal adjustments required to be reported
15 for federal purposes in the partnership return for the adjustment
16 year, a taxpayer may file a claim for refund or credit of tax arising
17 from federal adjustments made by the Internal Revenue Service on
18 or before the later of:

19 (1) The expiration of the last day for filing a claim for refund or
20 credit of New Jersey tax, including any extensions; or

21 (2) One year from the date a Federal Adjustments Report
22 prescribed in section 7 or 8 of P.L. , c. (C.) (pending
23 before the Legislature as this bill), as applicable, was due to the
24 division, including any extensions pursuant to this section.

25 b. The Federal Adjustments Report shall serve as the means for
26 the taxpayer to report additional tax due, report a claim for refund
27 or credit of tax, and make other adjustments, including to its net
28 operating losses, resulting from adjustments to the taxpayer’s
29 federal taxable income.

30

31 13. (New section) Scope of Adjustments and Extensions of Time.

32 a. Unless otherwise agreed in writing by the taxpayer and the
33 division, any adjustments by the division or by the taxpayer made
34 after the expiration of the N.J.S.54A:9-4, N.J.S.54A:9-8, R.S.54:49-
35 3, or R.S.54:49-14 are limited to changes to the taxpayer’s tax
36 liability arising from federal adjustments.

37 b. The time periods provided for in this section may be
38 extended:

39 (1) Automatically, upon written notice to the division, by 60
40 days for an audited partnership or tiered partner which has 10,000
41 or more direct partners; or

42 (2) By written agreement between the taxpayer and the division
43 as set forth by the director.

44 c. Any extension granted for filing the Federal Adjustments
45 Report extends the last day prescribed by law for assessing any
46 additional tax arising from the adjustments to federal taxable
47 income and the period for filing a claim for refund or credit of
48 taxes.

1 14. Section 12 of P.L.2002, c.40 (C.54:10A-15.11) is amended to
2 read as follows:

3 12. a. (1) A partnership that is not a qualified investment
4 partnership or an investment club and that is not listed on a United
5 States national stock exchange shall, on or before the 15th day of
6 the fourth month succeeding the close of each privilege period,
7 remit a payment of tax. The amount of tax shall be equal to the sum
8 of: all of the share of the entire net income of the partnership for
9 that privilege period of all nonresident noncorporate partners,
10 multiplied by an allocation factor determined, pursuant to section 6
11 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
12 of the partnership for that privilege period, and multiplied by .0637
13 plus all of the share of the entire net income of the partnership for
14 that privilege period of all nonresident corporate partners,
15 multiplied by an allocation factor determined, pursuant to section 6
16 of P.L.1945, c.162 (C.54:10A-6), based on the allocation fractions
17 of the partnership for that privilege period, and multiplied by .09.
18 Entire net income shall not include additional income that results
19 from any federal partnership audit adjustments made by the Internal
20 Revenue Service under section 6225(a)(1) of the federal Internal
21 Revenue Code (26 U.S.C. s.6225(a)(1)).

22 (2) (a) A partnership that is subject to the tax payment
23 requirements of paragraph (1) of this subsection shall make
24 installment payments of 25% of that tax on or before the 15th day
25 of each of the fourth month, sixth month and ninth month of the
26 privilege period and on or before the 15th day of the first month
27 succeeding the close of the privilege period.

28 (b) A partnership required to make an installment payment
29 pursuant to subparagraph (a) of this paragraph shall be deemed to
30 make an installment payment subject to the provisions of section 5
31 of P.L.1981, c.184 (C.54:10A-15.4) and shall be liable for any
32 additions to tax provided thereunder.

33 (3) A partnership shall not be required to remit a payment of tax
34 pursuant to paragraph (1) of this subsection for any nonresident that
35 reasonably expects to be refunded the payment on account of a tax
36 credit pursuant to section 5 of P.L.2019, c.320 (C.54A:12-5).

37 b. An amount of tax paid by a partnership pursuant to
38 paragraph (1) of subsection a. of this section and an installment
39 payment paid pursuant to subparagraph (a) of paragraph (2) of
40 subsection a. of this section shall be credited to the partnership
41 accounts of its nonresident partners in proportion to each
42 nonresident partner's share of allocated entire net income and the
43 multiplier rate for that partner class under subsection a. of this
44 section, and each amount of tax so credited shall be deemed to have
45 been paid by the respective partner in respect of the privilege period
46 or taxable year of the partner. Provided, however, that only a
47 nonresident partner who files a New Jersey tax return and reports
48 income that is subject to tax in this State may apply the tax paid by

1 the partnership and credited to the nonresident partner's partnership
2 account against the partner's tax liability; and provided further that
3 a partnership that pays tax pursuant to this section shall not be
4 entitled to claim a refund of payments credited to any of its
5 nonresident partners.

6 c. For the purposes of this section:

7 "Investment club" means an entity: that is classified as a
8 partnership for federal income tax purposes; all of the owners of
9 which are individuals; all of the assets of which are securities, cash,
10 or cash equivalents; the market value of the total assets of which do
11 not exceed, as measured on the last day of its privilege period, an
12 amount equal to the lesser of \$250,000 or \$35,000 per owner of the
13 entity; and which is not required to register itself or its membership
14 interests with the federal Securities and Exchange Commission;
15 provided that beginning with privilege periods commencing on or
16 after January 1, 2003 the director shall prescribe the total asset
17 value amounts which shall apply by increasing the \$250,000 total
18 asset amount and the per owner \$35,000 amount hereinabove by an
19 inflation adjustment factor, which amounts shall be rounded to the
20 next highest multiple of \$100. The inflation adjustment factor shall
21 be equal to the factor calculated by dividing the consumer price
22 index for urban wage earners and clerical workers for the nation, as
23 prepared by the United States Department of Labor for September
24 of the calendar year prior to the calendar year in which the privilege
25 period begins, by that index for September of 2001;

26 "Nonresident noncorporate partner" means an individual, an
27 estate or a trust subject to taxation pursuant to the "New Jersey
28 Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a resident
29 taxpayer or a resident estate or trust under that act;

30 "Nonresident corporate partner" means a partner that is not an
31 individual, an estate or a trust subject to taxation pursuant to the
32 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is
33 not a corporation exempt from tax pursuant to section 3 of
34 P.L.1945, c.162 (C.54:10A-3), and that does not maintain a regular
35 place of business in this State other than a statutory office; and

36 "Partner" means an owner of an interest in the partnership, in
37 whatever manner that owner and ownership interest are designated.
38 (cf: P.L.2021, c.419, s.5)

39
40 15. Section 18 of P.L.2000, c.161 (C.42:1A-18) is amended to
41 read as follows:

42 18. a. Except as otherwise provided in subsections b. and c. of
43 this section, all partners are liable jointly and severally for all
44 obligations of the partnership unless otherwise agreed by the
45 claimant or provided by law. In addition, the entity is also liable for
46 all obligations of the partnership as provided by P.L.2019, c.320
47 (C.54A:12-1 et al.).

1 b. A person admitted as a partner into an existing partnership is
2 not personally liable for any partnership obligation incurred before
3 the person's admission as a partner.

4 c. An obligation of a partnership incurred while the partnership
5 is a limited liability partnership, whether arising in contract, tort, or
6 otherwise, is solely the obligation of the partnership. A partner is
7 not personally liable, directly or indirectly, by way of contribution
8 or otherwise, for such an obligation solely by reason of being or so
9 acting as a partner. This subsection applies notwithstanding
10 anything inconsistent in the partnership agreement that existed
11 immediately before the vote required to become a limited liability
12 partnership under subsection b. of section 47 of **[this act]** the
13 “Uniform Partnership Act (1996),” P.L.2000, c.161 (C.42:1A-47).

14 d. In addition, the entity is also liable for all obligations of the
15 partnership as provided by P.L. , c. (C.) (pending before
16 the Legislature as this bill).
17 (cf: P.L.2019, c.320, s.10)

18
19 16. Section 92 of P.L.2012, c.50 (C.42:2C-92) is amended to
20 read as follows:

21 92. Tax Classification.

22 a. For all purposes of taxation under the laws of this State, a
23 limited liability company formed under this act or qualified to do
24 business in this State as a foreign limited liability company with
25 two or more members shall be classified as a partnership unless
26 classified otherwise for federal income tax purposes, in which case
27 the limited liability company shall be classified in the same manner
28 as it is classified for federal income tax purposes. For all purposes
29 of taxation under the laws of this State, a member or a transferee of
30 a member of a limited liability company formed under this act or
31 qualified to do business in this State as a foreign limited liability
32 company shall be treated as a partner in a partnership unless the
33 limited liability company is classified otherwise for federal income
34 tax purposes, in which case the member or transferee of a member
35 shall have the same status as the member or transferee of a member
36 has for federal income tax purposes.

37 b. For all purposes of taxation on income under the laws of this
38 State and only for those purposes, a limited liability company
39 formed under this act or qualified to do business in this State as a
40 foreign limited liability company with one member is disregarded
41 as an entity separate from its owner, unless classified otherwise for
42 federal tax purposes, in which case the limited liability company
43 will be classified in the same manner as it is classified for federal
44 income tax purposes. For all purposes of taxation on income under
45 the laws of this State and only for those purposes, the sole member
46 or a transferee of all of the limited liability company interest of the
47 sole member of a limited liability company formed under this act or
48 qualified to do business in this State as a foreign limited liability

1 company is treated as the direct owner of the underlying assets of
2 the limited liability company and of its operations, unless the
3 limited liability company is classified otherwise for federal income
4 tax purposes, in which case the member or transferee of a member
5 will have the same status as the member or transferee of a member
6 has for federal income tax purposes.

7 c. With respect to a limited liability company that is taxed as a
8 partnership for federal income tax purposes, the entity is also liable
9 for all obligations of the partnership as provided by
10 P.L. , c. (C.) (pending before the Legislature as this bill) in
11 addition to its liabilities in section 30 of P.L.2012, c.50 (C.42:2C-
12 30).

13 (cf: P.L.2012, c.50, s.92)

14
15 17. Section 1 of P.L.2020, c.19 is amended to read as follows:

16 1. a. A taxpayer required to make and file an annual or
17 quarterly return or report pursuant to the “New Jersey Gross Income
18 Tax Act,” N.J.S.54A:1-1 et seq., or the “Corporation Business Tax
19 Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), on an original
20 due date of April 15, 2020, shall be granted by the Director of the
21 Division of Taxation in the Department of the Treasury an
22 automatic extension of time to file those returns or reports and to
23 pay the tax due until July 15, 2020.

24 b. The provisions involving payment of interest upon any
25 overpayment of tax pursuant to N.J.S.54A:9-7 and section 7 of
26 P.L.1992, c.175 (C.54:49-15.1), are hereby extended for six months
27 after the conclusion of the **【state of】** public health emergency
28 declared by the Governor pursuant to Executive Order No. 103 of
29 2020, or any extension thereof, or within six months after the return
30 is filed, whichever is later.

31 c. A taxpayer granted an automatic extension pursuant to
32 subsection a. of this section shall not be subject to penalties or
33 interest if the return or report is filed and the tax due is paid on or
34 before July 15, 2020, or by such other date that may be permitted by
35 the director in accordance with regulations in effect on the effective
36 date of P.L.2020, c.19.

37 d. Notwithstanding any provision of the “Administrative
38 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the
39 contrary, the director may adopt immediately upon filing with the
40 Office of Administrative Law such rules and regulations as the
41 director determines to be necessary and appropriate to effectuate the
42 purposes of this section.

43 (cf: P.L.2020, c.19, s.1)

44
45 18. Section 2 of P.L.2020, c.19 is amended to read as follows:

46 2. The statute of limitations to assess any tax pursuant to
47 N.J.S.54A:9-4 and R.S.54:49-6 is hereby extended for 90 days after
48 the conclusion of the **【state of】** public health emergency declared

1 by the Governor pursuant to Executive Order No. 103 of 2020, or
2 any extension thereof.

3 (cf: P.L.2020, c.19, s.2)

4

5 19. (New section) Any assessment of tax that was allowed as a
6 result of the extension of the statute of limitations in section 2 of
7 P.L.2020, c.19, but that was assessed after the 90th day following
8 the conclusion of the public health emergency declared by the
9 Governor pursuant to Executive Order No. 103 of 2020, shall be
10 voided. The Director of the Division of Taxation in the Department
11 of the Treasury shall return any amounts collected from a taxpayer
12 as a result of such assessment.

13

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

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

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

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

23 (c) "Corporation" shall mean any corporation, joint-stock
24 company or association and any business conducted by a trustee or
25 trustees wherein interest or ownership is evidenced by a certificate
26 of interest or ownership or similar written instrument, any other
27 entity classified as a corporation for federal income tax purposes,
28 and any state or federally chartered building and loan association or
29 savings and loan association.

30 (d) "Net worth" shall mean the aggregate of the values disclosed
31 by the books of the corporation for (1) issued and outstanding
32 capital stock, (2) paid-in or capital surplus, (3) earned surplus and
33 undivided profits, and (4) surplus reserves which can reasonably be
34 expected to accrue to holders or owners of equitable shares, not
35 including reasonable valuation reserves, such as reserves for
36 depreciation or obsolescence or depletion. Notwithstanding the
37 foregoing, net worth shall not include any deduction for the amount
38 of the excess depreciation described in paragraph (2) (F) of
39 subsection (k) of this section. The foregoing aggregate of values
40 shall be reduced by 50% of the amount disclosed by the books of
41 the corporation for investment in the capital stock of one or more
42 subsidiaries, which investment is defined as ownership (1) of at
43 least 80% of the total combined voting power of all classes of stock
44 of the subsidiary entitled to vote and (2) of at least 80% of the total
45 number of shares of all other classes of stock except nonvoting
46 stock which is limited and preferred as to dividends. In the case of
47 investment in an entity organized under the laws of a foreign
48 country, the foregoing requisite degree of ownership shall effect a

1 like reduction of such investment from the net worth of the
2 taxpayer, if the foreign entity is considered a corporation for any
3 purpose under the United States federal income tax laws, such as
4 (but not by way of sole examples) for the purpose of supplying
5 deemed paid foreign tax credits or for the purpose of status as a
6 controlled foreign corporation. In calculating the net worth of a
7 taxpayer entitled to reduction for investment in subsidiaries, the
8 amount of liabilities of the taxpayer shall be reduced by such
9 proportion of the liabilities as corresponds to the ratio which the
10 excluded portion of the subsidiary values bears to the total assets of
11 the taxpayer.

12 In the case of banking corporations which have international
13 banking facilities as defined in subsection (n), the foregoing
14 aggregate of values shall also be reduced by retained earnings of the
15 international banking facility. Retained earnings means the
16 earnings accumulated over the life of such facility and shall not
17 include the distributive share of dividends paid and federal income
18 taxes paid or payable during the tax year.

19 If in the opinion of the director, the corporation's books do not
20 disclose fair valuations the director may make a reasonable
21 determination of the net worth which, in his opinion, would reflect
22 the fair value of the assets, exclusive of subsidiary investments as
23 defined aforesaid, carried on the books of the corporation, in
24 accordance with sound accounting principles, and such
25 determination shall be used as net worth for the purpose of this act.

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

27 (f) "Investment company" shall mean any corporation whose
28 business during the period covered by its report consisted, to the
29 extent of at least 90% thereof of holding, investing and reinvesting
30 in stocks, bonds, notes, mortgages, debentures, patents, patent rights
31 and other securities for its own account, but this shall not include
32 any corporation which: (1) is a merchant or a dealer of stocks,
33 bonds and other securities, regularly engaged in buying the same
34 and selling the same to customers; or (2) had less than 90% of its
35 average gross assets in New Jersey, at cost, invested in stocks,
36 bonds, debentures, mortgages, notes, patents, patent rights or other
37 securities or consisting of cash on deposit during the period covered
38 by its report; or (3) is a banking corporation, a savings institution,
39 or a financial business corporation as defined in the Corporation
40 Business Tax Act.

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

45 (h) "Taxpayer" shall mean any corporation, any combined group
46 filing a mandatory or elective New Jersey combined return, and any
47 partnership required, or consenting, to report or to pay taxes,

1 interest or penalties under this act. "Taxpayer" shall not include a
2 partnership that is listed on a United States national stock exchange.

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

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

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

14 For the purpose of this act, the amount of a taxpayer's entire net
15 income shall be deemed prima facie to be equal in amount to the
16 taxable income, before net operating loss deduction and special
17 deductions, which the taxpayer is required to report, or, if the
18 taxpayer is classified as a partnership for federal tax purposes,
19 would otherwise be required to report, to the United States Treasury
20 Department for the purpose of computing its federal income tax,
21 provided however, that in the determination of such entire net
22 income,

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

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

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

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

38 (C) Taxes paid or accrued to the United States, a possession or
39 territory of the United States, a state, a political subdivision thereof,
40 or the District of Columbia, or to any foreign country, state,
41 province, territory or subdivision thereof, on or measured by profits
42 or income, or business presence or business activity, or the tax
43 imposed by this act, or any tax paid or accrued with respect to
44 subsidiary dividends excluded from entire net income as provided
45 in paragraph (5) of subsection (k) of this section.

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

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

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

20 (ii) For the periods set forth in subparagraph (F)(i) of paragraph
21 (2) of this subsection, any amount, except with respect to qualified
22 mass commuting vehicles as described in section 168(f)(8)(D)(v) of
23 the Internal Revenue Code as in effect immediately prior to January
24 1, 1984, which the taxpayer claimed as a deduction in computing
25 federal income tax pursuant to a qualified lease agreement under
26 paragraph (8) of that section.

27 The director shall promulgate rules and regulations necessary to
28 carry out the provisions of this section, which rules shall provide,
29 among others, the manner in which the remaining life of property
30 shall be reported.

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

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

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

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

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

35 A deduction shall also be permitted to the extent that the
36 taxpayer establishes by a preponderance of the evidence, as
37 determined by the director, that the interest is directly or indirectly
38 paid, accrued or incurred to (i) a related member in a foreign nation
39 which has in force a comprehensive income tax treaty with the
40 United States and the related member (aa) was subject to tax in the
41 foreign nation on a tax base that included the payment paid,
42 accrued, or incurred; and (bb) under which the related member's
43 income received from the transaction was taxed at an effective tax
44 rate equal to or greater than a rate of three percentage points less
45 than the rate of tax applied to taxable interest by the State of New
46 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),
47 provided however that the taxpayer shall disclose on its return for
48 the privilege period the name of the related member, the amount of

1 the interest, the relevant foreign nation, and such other information
2 as the director may prescribe or (ii) to an independent lender and
3 the taxpayer guarantees the debt on which the interest is
4 required. The adjustments required by this subparagraph shall not
5 apply to transactions between related members included in a
6 combined group reported on a New Jersey combined return.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (ii) For privilege periods beginning after December 31, 2016
34 and before January 1, 2019, entire net income shall exclude 95% of
35 dividends which were included in computing such taxable income
36 for federal income tax purposes, paid or deemed paid, to the
37 taxpayer by one or more subsidiaries owned by the taxpayer to the
38 extent of the 80% or more ownership of investment described in
39 subsection (d) of this section. For the purposes of calculating the
40 tax liability owed for the paid or deemed paid dividends included in
41 entire net income by this subparagraph (ii), the taxpayer shall
42 use either their three-year average allocation factor for the
43 taxpayer's 2014 through 2016 tax years reported on the taxpayer's
44 tax returns or 3.5 percent, whichever is lower.

45 (iii) For privilege periods beginning on and after January 1,
46 2019, entire net income shall exclude 95% of dividends which were
47 included in computing such taxable income for federal income tax
48 purposes, paid or deemed paid to the taxpayer by one or more

1 subsidiaries owned by the taxpayer to the extent of the 80% or more
2 ownership of investment described in subsection (d) of this section.

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

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

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

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

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

36 (B) Net operating loss carryover. A net operating loss for any
37 privilege period ending after June 30, 1984 shall be a net operating
38 loss carryover to each of the seven privilege periods following the
39 period of the loss and a net operating loss for any privilege period
40 ending after June 30, 2009 shall be a net operating loss carryover to
41 each of the twenty privilege periods following the period of the
42 loss. The entire amount of the net operating loss for any privilege
43 period (the "loss period") shall be carried to the earliest of the
44 privilege periods to which the loss may be carried. The portion of
45 the loss which shall be carried to each of the other privilege periods
46 shall be the excess, if any, of the amount of the loss over the sum of
47 the entire net income, computed without the exclusions permitted in
48 paragraphs (4) and (5) of this subsection or the net operating loss

1 deduction provided by subparagraph (A) of this paragraph, for each
2 of the prior privilege periods to which the loss may be carried.

3 (C) Net operating loss. For purposes of this paragraph the term
4 "net operating loss" means the excess of the deductions over the
5 gross income used in computing entire net income without the net
6 operating loss deduction provided for in subparagraph (A) of this
7 paragraph and the exclusions in paragraphs (4) and (5) of this
8 subsection.

9 (D) Change in ownership. Where there is a change in 50% or
10 more of the ownership of a corporation because of redemption or
11 sale of stock and the corporation changes the trade or business
12 giving rise to the loss, no net operating loss sustained before the
13 changes may be carried over to be deducted from income earned
14 after such changes. In addition where the facts support the premise
15 that the corporation was acquired under any circumstances for the
16 primary purpose of the use of its net operating loss carryover, the
17 director may disallow the carryover.

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

32 Provided, that this subparagraph (E) shall not restrict the
33 surrender or acquisition of corporation business tax benefit
34 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-
35 7.42a) and shall not restrict the application of corporation business
36 tax benefit certificates pursuant to section 2 of P.L.1997, c.334
37 (C.54:10A-4.2).

38 (F) Reduction for discharge of indebtedness. A net operating
39 loss for any privilege period ending after June 30, 2014, and any net
40 operating loss carryover to such privilege period, shall be reduced
41 by the amount excluded from federal taxable income under
42 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
43 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),
44 for the privilege period of the discharge of indebtedness.

45 (7) The entire net income of gas, electric and gas and electric
46 public utilities that were subject to, or would have been subject to
47 tax if doing business in this State, the provisions of P.L.1940, c.5
48 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by

1 substituting the New Jersey depreciation allowance for federal tax
2 depreciation with respect to assets placed in service prior to January
3 1, 1998. For gas, electric, and gas and electric public utilities that
4 were subject to, or would have been subject to tax if doing business
5 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)
6 prior to 1998, the New Jersey depreciation allowance shall be
7 computed as follows: All depreciable assets placed in service prior
8 to January 1, 1998 shall be considered a single asset account. The
9 New Jersey tax basis of this depreciable asset account shall be an
10 amount equal to the carryover adjusted basis for federal income tax
11 purposes on December 31, 1997 of all depreciable assets in service
12 on December 31, 1997, increased by the excess, of the "net carrying
13 value," defined to be adjusted book basis of all assets and liabilities,
14 excluding deferred income taxes, recorded on the public utility's
15 books of account on December 31, 1997, over the carryover
16 adjusted basis for federal income tax purposes on December 31,
17 1997 of all assets and liabilities owned by the gas, electric, or gas
18 and electric public utility as of December 31, 1997. "Books of
19 account" for gas, gas and electric, and electric public utilities means
20 the uniform system of accounts as promulgated by the Federal
21 Energy Regulatory Commission and adopted by the Board of Public
22 Utilities. The following adjustments to entire net income shall be
23 made pursuant to this section:

24 (A) Depreciation for property placed in service prior to January
25 1, 1998 shall be adjusted as follows:

26 (i) Depreciation for federal income tax purposes shall be
27 disallowed in full.

28 (ii) A deduction shall be allowed for the New Jersey
29 depreciation allowance. The New Jersey depreciation allowance
30 shall be computed for the single asset account described above
31 based on the New Jersey tax basis as adjusted above as if all assets
32 in the single asset account were first placed in service on January 1,
33 1998. Depreciation shall be computed using the straight line method
34 over a thirty-year life. A full year's depreciation shall be allowed in
35 the initial tax year. No half-year convention shall apply. The
36 depreciable basis of the single account shall be reduced by the
37 adjusted federal tax basis of assets sold, retired, or otherwise
38 disposed of during any year on which gain or loss is recognized for
39 federal income tax purposes as described in subparagraph (B) of
40 this paragraph.

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

45 (C) The Director of the Division of Taxation shall promulgate
46 regulations describing the methodology for allocating the single
47 asset account in the event that a portion of the utility's operations

1 are separated, spun-off, transferred to a separate company or
2 otherwise desegregated.

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

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

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

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

43 (12) (A) Notwithstanding the provisions of subsection (k) of
44 section 168 of the federal Internal Revenue Code of 1986, 26
45 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal
46 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal
47 law, for property acquired after September 10, 2001, the
48 depreciation deduction otherwise allowed pursuant to section 167 of

1 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall
2 be determined pursuant to the provisions of the federal Internal
3 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on
4 December 31, 2001.

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

10 (13) (A) Notwithstanding the provisions of section 179 of the
11 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for
12 property placed in service on or after January 1, 2004, the costs that
13 a taxpayer may otherwise elect to treat as an expense which is not
14 chargeable to a capital account shall be determined pursuant to the
15 provisions of the federal Internal Revenue Code of 1986
16 (26 U.S.C. s.1 et seq.) in effect on December 31, 2002.

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

22 (14) Notwithstanding the provisions of subsection (i) of section
23 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),
24 for privilege periods beginning after December 31, 2008 and before
25 January 1, 2011, entire net income shall include the amount of
26 discharge of indebtedness income excluded for federal income tax
27 purposes pursuant to subsection (i) of section 108 of the federal
28 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege
29 periods beginning on or after January 1, 2014 and before January 1,
30 2019, entire net income shall exclude the amount of discharge of
31 indebtedness income included for federal income tax purposes,
32 pursuant to subsection (i) of section 108 of the federal Internal
33 Revenue Code of 1986 (26 U.S.C. s.108).

34 (15) Entire net income shall exclude the gain or income derived
35 from the sale or assignment of a tax credit transfer certificate
36 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section
37 10 of P.L.2014, c.63 (C.34:1B-251).

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

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

47 (C) Only publicly traded companies, including affiliated
48 corporations participating in the filing of a publicly traded

1 company's financial statements prepared in accordance with
2 generally accepted accounting principles, as of the effective date of
3 this paragraph, shall be eligible for this deduction.

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

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

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

29 (i) the deferred tax impact determined in subparagraph (E) of
30 this paragraph shall be divided by the rate determined under section
31 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,
32 c.48 (C.54:10A-5.41 et al.);

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

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

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

1 carried forward and applied as a deduction to combined group entire
2 net income in future privilege periods until fully utilized.

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

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

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

1 credit unions, savings banks, savings and loan and building and
2 loan associations, pawnbrokers, and State banks and trust
3 companies.

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

23 (o) "S corporation" means a corporation **【included in the**
24 **definition of】** that has elected to be an "S corporation" pursuant to
25 section 1361 of the federal Internal Revenue Code of 1986,
26 26 U.S.C. s.1361 ,for the taxable year.

27 (p) "New Jersey S corporation" means a **【corporation that is an**
28 **S corporation; which has made a valid election pursuant to section 3**
29 **of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S**
30 **corporation continuously since the effective date of the valid**
31 **election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-**
32 **5.22)】** taxpayer that has made a valid election to be an S
33 corporation for federal tax purposes.

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

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

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

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

6 (u) "Prior net operating loss conversion carryover" means a net
7 operating loss incurred in a privilege period ending prior to July 31,
8 2019 and converted from a pre-allocation net operating loss to a
9 post-allocation net operating loss as follows:

10 (1) As used in this subsection:

11 "Base year" means the last privilege period ending prior to July
12 31, 2019.

13 "Base year BAF" means the taxpayer's business allocation factor
14 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-
15 6 through C.54:10A-10) for purposes of calculating entire net
16 income for the base year, as such section was in effect for the last
17 privilege period ending prior to July 31, 2019.

18 "UNOL" means the unabsorbed portion of net operating loss as
19 calculated under paragraph (6) of subsection (k) of this section as
20 such paragraph was in effect for the last privilege period ending
21 prior to July 31, 2019, that was not deductible in previous privilege
22 periods and was eligible for carryover on the last day of the base
23 year subject to the limitations for deduction under such subsection,
24 including any net operating loss sustained by the taxpayer during
25 the base year.

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

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

35 (B) The taxpayer shall continue to carry over its prior net
36 operating loss conversion carryover to offset its allocated entire net
37 income as provided in sections 6 through 10 of P.L.1945, c.162
38 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on
39 and after July 31, 2019. Such carryover periods shall not exceed
40 the twenty privilege periods following the privilege period of the
41 initial loss. The entire amount of the prior net operating loss
42 conversion carryover for any privilege period shall be carried to the
43 earliest of the privilege periods to which the loss may be
44 carried. The portion of the prior net operating loss conversion
45 carryover which shall be carried to each of the other privilege
46 periods shall be the excess, if any, of the amount of the prior net
47 operating loss conversion carryover over the sum of the entire net

1 income, computed without the exclusions permitted in paragraphs
2 (4) and (5) of subsection (k) of this section allocated to this State.

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

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

10 (1) Net operating loss carryover. A net operating loss for any
11 privilege period ending on or after July 31, 2019, shall be a net
12 operating loss carryover to each of the twenty privilege periods
13 following the period of the loss. The entire amount of the net
14 operating loss for any privilege period shall be carried to the earliest
15 of the privilege periods to which the loss may be carried. The
16 portion of the loss which shall be carried to each of the other
17 privilege periods shall be the excess, if any, of the amount of the
18 loss over the sum of the entire net income, computed without the
19 exclusions permitted in paragraphs (4) and (5) of subsection (k) of
20 this section allocated to this State.

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

28 (3) Reduction for discharge of indebtedness. A net operating
29 loss for any privilege period ending on or after July 31, 2019, and
30 any net operating loss carryover to such privilege period, shall be
31 reduced by the amount excluded from federal taxable income under
32 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of
33 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,
34 for the privilege period of the discharge of indebtedness.

35 (4) A net operating loss carryover shall not include any net
36 operating loss incurred during any privilege period ending prior to
37 July 31, 2019.

38 (5) Change in ownership. Where there is a change in 50% or
39 more of the ownership of a corporation because of redemption or
40 sale of stock and the corporation changes the trade or business
41 giving rise to the loss, no net operating loss sustained before the
42 changes may be carried over to be deducted from income earned
43 after such changes. In addition, where the facts support the premise
44 that the corporation was acquired under any circumstances for the
45 primary purpose of the use of its net operating loss carryover, the
46 director may disallow the carryover; provided, however, this
47 paragraph shall not apply between members of a combined group
48 reported on a New Jersey combined return.

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

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

17 For purposes of this subsection:

18 "U.S. domestic corporations" means: (1) business entities
19 wherever incorporated or formed that are U.S. domestic
20 corporations, are deemed to be, or are treated as U.S. domestic
21 corporations under the provisions of the federal Internal Revenue
22 Code; or (2) any entities incorporated or formed under the laws of a
23 foreign nation that are required to file federal tax returns if such
24 entities have effectively connected income within the meaning of
25 the federal Internal Revenue Code; and

26 "Commonly owned" means that more than 50 percent of the
27 voting control of each member of an affiliated group is directly or
28 indirectly owned by a common owner or owners, either corporate or
29 non-corporate, whether or not the owner or owners are members of
30 the affiliated group. Whether voting control is indirectly owned
31 shall be determined in accordance with section 318 of the federal
32 Internal Revenue Code (26 U.S.C. s.318).

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

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

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

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

45 (4) 50% or less of whose gross receipts for the privilege period
46 consist of premiums from arrangements that constitute insurance for
47 federal income tax purposes.

1 A combinable captive insurance company shall not be exempt
2 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive
3 insurance company that does not meet the definition of combinable
4 captive insurance company shall be excluded as provided in
5 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and
6 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

7 For purposes of this definition:

8 "Affiliated group" shall have the same meaning as that term is
9 given by section 1504 of the federal Internal Revenue Code, 26
10 U.S.C. s.1504, except that the term "common parent corporation" as
11 used in section 1504 of the federal Internal Revenue Code, 26
12 U.S.C. s.1504, shall mean any person, as defined in section 7701 of
13 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references
14 to "at least 80%" in section 1504 of the federal Internal Revenue
15 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section
16 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall
17 be read without regard to the exclusions provided for in subsection
18 (b) of that section.

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

23 "Premiums" includes consideration for annuity contracts and
24 excludes any part of the consideration for insurance, reinsurance, or
25 annuity contracts that do not provide bona fide insurance,
26 reinsurance, or annuity benefits.

27 (z) "Combined group" means the group of all companies that
28 have common ownership and are engaged in a unitary business,
29 where at least one company is subject to tax under this chapter, and
30 shall include all business entities, except as provided for under any
31 section of the Corporation Business Tax Act (1945), P.L.1945,
32 c.162 (C.54:10A-1 et seq.).

33 A combined group shall be treated, for privilege periods ending
34 on and after July 31, 2020, as one taxpayer for purposes of
35 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162
36 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for
37 the income derived from the unitary business; provided however,
38 with regard to the surtax imposed pursuant to section 1 of P.L.2018,
39 c.48 (C.54:10A-5.41) and for that purpose only, the portion of
40 income that is attributable to a member which is a public utility
41 exempt from the surtax shall not be included when computing the
42 surtax due.

43 (aa) "Common ownership" means that more than 50% of the
44 voting control of each member of a combined group is directly or
45 indirectly owned by a common owner or owners, either corporate or
46 non-corporate, whether or not the owner or owners are members of
47 the combined group. Whether voting control is indirectly owned

1 shall be determined in accordance with section 318 of the federal
2 Internal Revenue Code, 26 U.S.C. s.318.

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

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

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

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

21 (ee) "Nontaxable member" means a member that is: (i) not
22 subject to tax pursuant to the Corporation Business Tax Act (1945),
23 P.L.1945, c.162 (C.54:10A-1 et seq.); or (ii) (deleted by
24 amendment, P.L.2020, c.118 (C.54:10A-5.46 et al.).

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

28 A New Jersey S corporation shall only be included as a taxable
29 member of a combined group filing a New Jersey combined return
30 if the New Jersey S Corporation elects to be included as a member
31 and taxed at the same rate as the other members of the combined
32 group. A New Jersey S corporation that does not elect to be
33 included shall be excluded as a member of the combined return and
34 shall file a separate return.

35 (gg) "Unitary business" means a single economic enterprise that
36 is made up either of separate parts of a single business entity or of a
37 group of business entities under common ownership that are
38 sufficiently interdependent, integrated, and interrelated through
39 their activities so as to provide a synergy and mutual benefit that
40 produces a sharing or exchange of value among them and a
41 significant flow of value among the separate parts. "Unitary
42 business" shall be construed to the broadest extent permitted under
43 the Constitution of the United States. A business conducted by a
44 partnership which is in a unitary business with the combined group
45 shall be treated as the business of the partners that are members of
46 the combined group, whether the partnership interest is held directly
47 or indirectly through a series of partnerships, to the extent of a
48 partner's distributive share of partnership income. The amount of

1 partnership income to be included in the partner's entire net income
2 shall be determined in accordance with subsection a. of section 3 of
3 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of
4 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business
5 conducted directly or indirectly by one corporation is unitary with
6 that portion of a business conducted by another corporation through
7 its direct or indirect interest in a partnership.

8 (cf: P.L.2020, c.118, s.3)

9

10 21. Section 3 of P.L.1993, c.173 (C.54:10A-5.22) is amended to
11 read as follows:

12 3. a. **【A corporation may elect, in accordance with the**
13 **provisions of this section, to be a New Jersey S corporation. In**
14 **order for an election to be valid, the corporation and each of its**
15 **shareholders on the day on which the election is made (hereinafter**
16 **"initial shareholders") must consent to such election and the**
17 **jurisdictional requirements of becoming a New Jersey S**
18 **corporation. The form of the election and consent to jurisdictional**
19 **requirements and the place for filing shall be as prescribed by the**
20 **Director of the Division of Taxation.】** (Deleted by amendment
21 P.L. , c.) (pending before the Legislature as this bill)

22 b. **【Each initial shareholder and the corporation】** A New Jersey
23 S Corporation and each shareholder shall consent to the following
24 jurisdictional requirements:

25 (1) That this State shall have the right and jurisdiction to tax and
26 collect the tax on each shareholder's S corporation income as
27 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) and,
28 if applicable, the pass-through business alternative income tax
29 pursuant to P.L.2019, c.320 (C.54A:12-1 et al.);

30 (2) That New Jersey's right and jurisdiction to tax the income as
31 set forth in paragraph (1) of this subsection shall not be affected by
32 a change of a shareholder's residency, except as provided by the
33 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; and

34 (3) If shareholders that are not initial shareholders of the
35 corporation, while the corporation is a New Jersey S corporation,
36 fail to consent to New Jersey's jurisdiction to tax S corporation
37 income to such shareholders, this State shall have the right and
38 jurisdiction to collect a payment of tax each year directly from the
39 corporation equal to the S corporation income allocated to this
40 State, as defined pursuant to section 12 of P.L.1993, c.173
41 (C.54A:5-10), of the nonconsenting shareholders for the accounting
42 or privilege period multiplied by the maximum tax bracket rate
43 provided under N.J.S.54A:2-1 for the accounting or privilege
44 period. In such case, the corporation shall have the right, but not
45 the obligation, to recover payments made by the corporation
46 pursuant to this paragraph from each nonconsenting shareholder.

47 c. **【A corporation may make an election to become a New**
48 **Jersey S corporation with respect to an accounting or privilege**

1 period for which the corporation is or will be an S corporation. The
2 election for an accounting or privilege period, along with the **】** The
3 consents to jurisdictional requirements **【,】** shall be filed within one
4 calendar month of the time at which a federal S corporation election
5 would be required if such accounting or privilege period were a
6 "taxable year" for which a federal S corporation election were to be
7 made pursuant to section 1362 of the federal Internal Revenue Code
8 of 1986, 26 U.S.C. s.1362. Such elections may only be revoked
9 pursuant to subsection d. of this section. **【Such election shall**
10 **terminate immediately upon the corporation's failure to satisfy the**
11 **definition of a New Jersey S corporation pursuant to paragraph (p)**
12 **of section 4 of P.L.1945, c.162 (C.54:10A-4).】**

13 d. **【A corporation may revoke an election pursuant to this**
14 **section on or before the last day of the first accounting or privilege**
15 **period to which the election would otherwise apply.】** Deleted by
16 amendment P.L. , c.) (pending before the Legislature as this
17 bill)

18 e. A corporation shall report any change in its shareholders or
19 their share of ownership to the Director of the Division of Taxation
20 in a form and manner determined by the director.
21 (cf: P.L.2019, c.320, s.6)

22
23 22. Section 4 of P.L.1993, c.173 (C.54:10A-5.23) is amended to
24 read as follows:

25 4. a. **【With respect to each of its shareholders that is not an**
26 **initial shareholder,】** Each shareholder of a New Jersey S
27 corporation shall satisfy the requirements of **【either】** paragraph b.
28 **【or c.】** of this section.

29 b. Deliver a consent to the jurisdictional requirements as set
30 forth in **【subsection b. of】** section 3 of P.L.1993, c.173 (C.54:10A-
31 5.22) , in a form and manner determined by the director.

32 c. **【Make】** A New Jersey S corporation shall make payments to
33 the Director of the Division of Taxation on behalf of each
34 nonconsenting shareholder in an amount equal to the shareholder's
35 pro rata share of S corporation income allocated to this State, as
36 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10),
37 reflected on the corporation's return for the accounting or privilege
38 period, multiplied by the maximum tax bracket rate provided under
39 N.J.S.54A:2-1 in effect at the end of the accounting or privilege
40 period. The payments shall be made no later than the time for filing
41 of the return for the accounting or privilege period. The director
42 may, by regulation, require that amounts estimated to be equal to
43 the liability expected to be due pursuant to this subsection be
44 withheld from any distribution made to a nonconsenting
45 shareholder.

46 d. If a shareholder that is not an initial shareholder of a New
47 Jersey S corporation fails to deliver a consent to the jurisdictional

1 requirements set forth in [subsection b. of] section 3 of P.L.1993,
2 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to
3 withhold payments pursuant to subsection c. of this section, then
4 this State shall have the right and jurisdiction to collect a tax each
5 year directly from the corporation equal to the pro rata share of the
6 S corporation income allocated to this State, as defined pursuant to
7 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting
8 shareholder times the maximum tax bracket rate provided under
9 N.J.S.54A:2-1 for the appropriate accounting or privilege
10 period. In such case, the corporation shall have the right, but not
11 the obligation, to recover payments made by the corporation
12 pursuant to this subsection from each nonconsenting
13 shareholder. The corporation shall not be liable for the pass-
14 through business alternative income tax pursuant to P.L.2019, c.320
15 (C.54A:12-1 et al.) relative to collections made in a taxable year for
16 such nonconsenting members.
17 (cf: P.L.2019, c.320, s.7)

18

19 23. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to
20 read as follows:

21 12. For the purposes of the "New Jersey Gross Income Tax Act,"
22 N.J.S.54A:1-1 et seq.:

23 "New Jersey S corporation" means a [corporation that is an S
24 corporation ; which has made a valid election pursuant to section 3
25 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S
26 corporation continuously since the effective date of the valid
27 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-
28 5.22)] taxpayer that has made a valid election to be an S
29 corporation for federal tax purposes for the taxable year.

30 "Pro rata share" means the portion of any items attributable to an
31 S corporation shareholder for a taxable year determined in the
32 manner provided in, and subject to any election made under
33 subsection (a) of section 1377 or subsection (e) of section 1362 of
34 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and
35 s.1362.

36 "Pro rata share of S corporation income" means the sum of the
37 shareholder's proportionate share of:

38 For a New Jersey S corporation, the S corporation income
39 allocated to this State of all New Jersey S corporations; and the S
40 corporation income not allocated to this State.

41 "S corporation" means a corporation [included in the definition
42 of] that has elected to be an "S corporation" pursuant to section
43 1361 of the federal Internal Revenue Code [of 1986], 26 U.S.C.
44 s.1361, for the taxable year.

45 "S corporation income" means the net of an S corporation's items
46 of income, loss or deduction taken into account by the shareholder
47 in the manner provided in section 1366 of the federal Internal
48 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

1 a. S corporation income shall be determined without the
2 exclusion, deduction or credit of:

3 (1) any dividend exclusion or deduction otherwise allowed
4 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,
5 c.162 (C.54:10A-4);

6 (2) taxes paid or accrued to the United States, a possession or
7 territory of the United States, a state including this State, a political
8 subdivision thereof, or the District of Columbia on or measured by
9 profits or income, or business presence or business activity, of the
10 corporation;

11 (3) any income taxes paid or accrued to the United States, a
12 possession or territory of the United States, a state including this
13 State, a political subdivision thereof, or the District of Columbia
14 paid or accrued by the S corporation on behalf of, or in satisfaction
15 of the liabilities of, shareholders of the corporation;

16 (4) interest income on obligations of any state other than this
17 State, or of a political subdivision thereof, or of the federal
18 government, except as deducted pursuant to subsection b. of this
19 section; or

20 (5) interest on indebtedness incurred or continued, expenses
21 paid and incurred to purchase, carry, manage or conserve, and
22 expenses of collection of the income or gain from obligations the
23 income or gain from which is deductible pursuant to subsection b.
24 of this definition; and

25 b. S corporation income shall be determined after deduction of
26 any gains or income derived from obligations which are referred to
27 in N.J.S.54A:6-14 or from securities which evidence ownership in a
28 qualified investment fund as defined in section 2 of P.L.1987, c.310
29 (C.54A:6-14.1), and any interest excluded from gross income
30 pursuant to N.J.S.54A:6-14, or distributions excluded from income
31 pursuant to section 2 of P.L.1987, c.310 (C.54A:6-14.1); and

32 c. The character of any S corporation item taken into account
33 by a shareholder of an S corporation shall be determined as if such
34 items were received or incurred by the S corporation and not its
35 shareholder.

36 "S corporation income allocated to this State" means that portion
37 of the S corporation income that is allocated to this State by the
38 allocation factor of the corporation for the fiscal or calendar
39 accounting period pursuant to sections 6 through 10 of P.L.1945,
40 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax
41 imposed pursuant to paragraph (3) of subsection (c) of section 5 of
42 P.L.1945, c.162 (C. 54:10A-5).

43 "S corporation income not allocated to this State" means S
44 corporation income less S corporation income allocated to this
45 State.

46 (cf: P.L.1993, c.173, s.12)

1 24. Section 13 of P.L.1993, c.173 (C.54A:5-11) is amended to
2 read as follows:

3 13. a. A resident shareholder of S corporation stock held by the
4 shareholder on the first day of the first taxable year following
5 enactment of this section shall have an initial basis in the stock of
6 that S corporation and any indebtedness of the S corporation equal
7 to the basis of the stock determined as though the stock was stock
8 of a corporation not an S corporation plus any indebtedness of the S
9 corporation to the shareholder and shall be determined as of the first
10 day of the first taxable year following enactment of this section

11 b. A resident shareholder of S corporation stock to which
12 subsection a. of this section does not apply shall have an initial
13 basis in the stock of the S corporation and any indebtedness of the S
14 corporation as determined pursuant to the federal Internal Revenue
15 Code of 1986, determined as of the date that is the latest to occur
16 of: the date on which the shareholder last became a resident of this
17 State; the date on which the shareholder acquired the stock of the
18 corporation; or the effective date of the corporation's most recent S
19 election under the federal Internal Revenue Code of 1986.

20 c. The initial basis of a resident shareholder in the stock and
21 indebtedness of an S corporation shall be adjusted after the date
22 specified in subsections a. or b. of this section in the manner
23 required by section 1011 of the federal Internal Revenue Code of
24 1986, 26 U.S.C. s.1011, except that such adjustments shall be
25 limited to that portion of S corporation income allocated to this
26 State and S corporation income not allocated to this State that is
27 included in the shareholder's pro rata share of S corporation income
28 and except that, with respect to any taxable period during which the
29 shareholder is a resident of this State:

30 (1) any modification made pursuant to the definition of S
31 corporation income pursuant to section 12 of P.L.1993, c.173
32 (C.54A:5-10) other than those for income exempt from taxation by
33 this State pursuant to paragraph (5) of subsection a. and subsection
34 b. of that definition shall be taken into account; and

35 (2) any adjustments made pursuant to section 1367 of the
36 federal Internal Revenue Code of 1986, 26 U.S.C. s.1367, for a
37 taxable period during which this State did not measure the income
38 of a shareholder of an S corporation by reference to the S
39 corporation's income shall not be taken into account.

40 d. A nonresident shareholder of S corporation stock shall have
41 an initial basis in the stock of the S corporation and any
42 indebtedness of the S corporation of zero as of the date that is the
43 latest to occur of: the date on which the shareholder last became a
44 nonresident of this State; the date on which the shareholder
45 acquired the stock of the corporation; or the effective date of the
46 corporation's most recent S election under the federal Internal
47 Revenue Code of 1986 **;** or the effective date of the corporation's

1 most recent election pursuant to section 3 of P.L.1993, c.173
2 (C.54:10A-5.22)].

3 e. The initial basis of a nonresident shareholder in the stock
4 and indebtedness of an S corporation shall be adjusted after the date
5 specified in subsection d. of this section as provided in section 1367
6 of the of the federal Internal Revenue Code of 1986, 26 U.S.C.
7 s.1367, except that such adjustments shall be limited to that portion
8 of S corporation income allocated to this State that is included in
9 the shareholder's pro rata share of S corporation income. In
10 computing S corporation income allocated to this State any
11 modification made pursuant to the definition of S corporation
12 income pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) for
13 income exempt from taxation by this State pursuant to paragraph (5)
14 of subsection a. and subsection b. of that definition shall not be
15 taken into account.

16 f. The basis in the hands of a resident shareholder of an S
17 corporation in stock of the S corporation shall be reduced by the
18 amount of any cash distribution which is not taxable to the
19 shareholder as a result of the application of section 16 of P.L.1993,
20 c.173 (C.54A:5-14).

21 g. For purposes of this section, any person acquiring stock or
22 indebtedness of an S corporation by gift shall be considered to have
23 acquired the stock or indebtedness at the time the donor acquired
24 the stock or indebtedness.
25 (cf: P.L.1993, c.173, s.13)

26

27 25. (New section) The Directors of the Divisions of Revenue
28 and Enterprise Services and Taxation, when determining whether to
29 grant retroactive election of S corporation status, shall liberally
30 construe regulatory requirements in favor of the corporation and
31 shall have the discretion to authorize retroactive S corporation
32 status in circumstances in which a taxpayer may not be capable of
33 meeting all regulatory requirements for such retroactive election
34 through no fault of the taxpayer.

35

36 26. Sections 1 through 19 of this act shall take effect
37 immediately, and sections 1 through 16 shall apply to any
38 adjustments to a taxpayer's federal taxable income on or after
39 January 1, 2020 and sections 17 through 19 shall apply retroactively
40 to the effective date of P.L.2020, c.19. Sections 20 through 25 of
41 this act shall take effect on the 60th day after the date of enactment
42 and the Directors of the Divisions of Taxation and Revenue and
43 Enterprise Services shall take such anticipatory administrative
44 action in advance as is necessary to effectuate the purposes of this
45 bill.

STATEMENT

1
2
3 This bill makes various changes to administration of the gross
4 income tax and the corporation business tax by adapting new
5 federal partnership audit regime, ending COVID-related extensions
6 concerning certain State taxes and eliminating requirement to
7 affirmatively elect New Jersey S Corporation status.

8
9 Partnership Audit Regime

10
11 New Jersey imposes income tax on partners in accordance with
12 N.J.S.A. 54A:2-2 and N.J.S.A. 54A:5-4. The United States Internal
13 Revenue Service has changed its partnership audit regime so that
14 partnerships are the focus of an audit instead of partners due to
15 legislative changes made by the enactment of Title XI of the
16 Bipartisan Budget Act of 2015 (PL 114-74) and I.R.C. Section
17 6221(a). Federal audit determinations will be made at the
18 partnership level for post-2017 partnership returns. The provisions
19 of this Bill adapt the New Jersey Gross Income Tax to this new
20 federal partnership audit regime that audits the partnership for
21 greater efficiency instead of auditing individual partners. This Bill
22 adopts the Multistate Tax Commission's Model Uniform Statute for
23 Reporting Adjustments to Federal Taxable Income and Federal
24 Partnership Audit Adjustments for purposes of the New Jersey
25 Gross Income Tax Act and Corporation Business Tax Act.

26
27 Ends COVID-related Extension

28
29 This bill ends the extension of time for the statute of limitations
30 on tax due that was enacted in response to the COVID-19
31 pandemic. The bill also ends the extension for the provisions
32 regarding the State's payment of interest on a taxpayer's
33 overpayment of tax.

34 Both of these extension's end dates are currently tied by statute
35 to the end of the state of emergency declared by the Governor in
36 Executive Order No. 103. Separately, in Executive Order No. 170,
37 the Governor extended the time for taxpayers to file a claim for a
38 refund on taxes paid. The end date for that extension is tied to the
39 end of the public health emergency.

40 On June 4, 2021, the Governor terminated the public health
41 emergency with Executive Order No. 244, but did not terminate the
42 state of emergency. As a result, the extension of time for the statute
43 of limitations on tax due, and payment of interest on tax
44 overpayments, still do not have an end date, while the extension of
45 time for the filing of refund claims does have an end date.

46 This bill changes the end dates for the extension of time for the
47 statute of limitations on tax due, and payment of interest on
48 overpayments of tax, so that the extensions are tied to the end of the

1 public health emergency, as is the case with the extension for the
2 filing of refund claims.

3

4 Separate S Corporation Election

5

6 This bill eliminates the requirement that a taxpayer which
7 qualifies as a Subchapter S Corporation for federal tax purposes
8 affirmatively elect New Jersey S Corporation status for purposes of
9 the State's Corporation Business Tax and Gross Income Tax. S
10 Corporations retain certain benefits of the corporate form, such as
11 limited liability, without the "double" taxation of corporate income
12 and dividends distributed that applies to C Corporations. When S
13 Corporation status is elected for federal purposes, the income and
14 losses incurred by the entity pass-through to the shareholders of the
15 S Corporation.

16 A "small business corporation" as defined in the federal Internal
17 Revenue Code may elect to be an S Corporation for purposes of
18 federal income taxation. The corporation must affirmatively elect
19 to be an S Corporation for a particular taxable year, and all
20 shareholders must give their consent to the election.

21 New Jersey currently requires that entities which have elected to
22 be S Corporations for federal tax purposes, and that want to be
23 treated as S Corporations for State tax purposes, must affirmatively
24 elect to be treated as a New Jersey S Corporation by annually
25 submitting a form to the Director of the Division of Taxation.
26 Failure to make such an election for State purposes results in the
27 taxation by the State of the entity's corporate income and of
28 dividends received by shareholders, as occurs for corporations
29 generally.

30 This bill removes the requirement that a taxpayer which elects
31 treatment as an S Corporation for federal tax purposes must also
32 elect to be a "New Jersey S Corporation." This bill links New
33 Jersey S Corporation status to the S Corporation election for federal
34 income tax purposes and eliminates the confusion and
35 administrative snafus that have prevented some eligible taxpayers
36 from receiving the benefits of "pass-through" taxation.

37 Upon enactment of this bill, New Jersey would join the majority
38 of states that accept a federal S Corporation election for state tax
39 purposes without requiring any additional action on the part of the
40 corporation. The bill streamlines the process by which eligible
41 corporations may avail themselves of "pass-through" tax treatment
42 on the State level.

43 The bill retains the requirement that the S Corporation and each
44 shareholder affirmatively consent to existing jurisdictional
45 requirements, in a form and manner to be determined by the
46 director.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2876

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 31, 2022

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2876 with committee amendments.

This bill, as amended, makes various changes to the administration of the gross income tax and the corporation business tax by adapting a new federal partnership audit regime, ending COVID-related extensions concerning certain State taxes, and eliminating the requirement to affirmatively elect New Jersey S Corporation status.

As amended and reported by the committee, Senate Bill No. 2876 (1R) is identical to Assembly Bill No. 4295 (2R), which was also reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments:

- omit section 2 from the bill in its entirety;
- renumber sections 3 through 26 of the bill as sections 2 through 25, and adjust some of the bill's internal citations accordingly;
- end, as of the bill's effective date, the extensions enacted in response to the COVID-19 pandemic for the statute of limitations on tax due and the provisions regarding the State's payment of interest on a taxpayer's overpayment of tax;
- require taxpayers to pay, no later than 180 days after the final determination date, any additional New Jersey Gross Income Tax or New Jersey Corporation Business Tax due with respect to final federal adjustments arising from an audit or other action by the Internal Revenue Service or reported by the taxpayer on a timely filed amended federal income tax return;
- require each direct partner that is taxed under the "New Jersey Gross Income Tax Act" or the Corporation Business Tax Act (1945) to, no later than 180 days after the final determination date, file a Federal Adjustments Report reporting their distributive share of the adjustments reported to them and pay any additional amount of the tax due as if final federal adjustments had been properly reported, plus any penalty and interest due;

- provide that any assessment of tax that was allowed as a result of the extension of the statute of limitations will be voided if made after the bill's effective date;
- provide that an S corporation may elect not to be taxed as a New Jersey S corporation with the consent of 100 percent of the shareholders of the S corporation;
- revise the definition for "New Jersey S corporation" under the gross income tax and the corporation business tax to mean a taxpayer that has made a valid election to be an S corporation for federal tax purposes, and that has not made a valid election to opt out of being taxed as a New Jersey S corporation;
- add a definition for "director" to section 6 of the bill;
- clarify that the "election" referred to in subsection d. of section 20 of the bill is the election to opt out of taxation as a New Jersey S corporation; and
- revise certain provisions concerning the bill's effective date.

FISCAL IMPACT:

The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.

The Office of Legislative Services (OLS) can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2876

STATE OF NEW JERSEY 220th LEGISLATURE

DATED: NOVEMBER 16, 2022

SUMMARY

- Synopsis:** Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status.
- Type of Impact:** Indeterminate State impact.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2023 and Each FY Thereafter</u>
State Impact	Indeterminate

- The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.
- The Office of Legislative Services (OLS) can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue.

BILL DESCRIPTION

This bill makes various changes to the administration of the gross income tax (GIT) and the corporation business tax (CBT) by adapting a new federal partnership audit regime, ending COVID-related extensions concerning certain State taxes, and eliminating the requirement that a taxpayer which qualifies as a Subchapter S Corporation for federal tax purposes affirmatively elect New Jersey S Corporation status.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Executive has not published a formal fiscal note, but does anticipate this bill will be revenue neutral.

OFFICE OF LEGISLATIVE SERVICES

The OLS can neither confirm nor refute the Executive's determination that this bill will likely be revenue neutral. The OLS notes that these provisions are largely meant to ease the administrative burden of the Division of Taxation while also simplifying certain processes for taxpayers. However, there could be underlying effects that reduce costs for the State or capture more revenue. For example, shifting to new auditing standards could yield additional tax revenues, which may have otherwise not been collected by the division, if the scope and powers granted to the division are broader. The ending of the COVID-related extension may shift the timing of certain payments and refunds. The automatic election of S-Corporation status for certain taxpayers could reduce the amount of time and resources expended by the division in dealing with these matters.

Section: Revenue, Finance and Appropriations

*Analyst: Robert A. Melcher
Section Chief*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

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

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

Governor Murphy Takes Action on Legislation

12/22/2022

TRENTON – Today, Governor Murphy signed the following bills into law:

S-3241/A-4918 (Vitale, Gopal/Conaway, Jaffer, Lampitt) - Extends temporary waiver of certain basic life support services and specialty care transport unit crewmember requirements

[Copy of Statement](#)

A-4295/S-2876 (Jaffer, Mosquera, Swain/Singleton) - Adapts new federal partnership audit regime under gross income tax, ends COVID-related State tax extensions, and eliminates requirement to affirmatively elect New Jersey S Corporation status

A-4929/S-3379 (Pintor Marin, Greenwald, Atkins/Ruiz, Pou) - Concerns accommodations related to COVID-19 public health emergency for businesses participating in certain State economic development programs

A-4957/S-3361 (Jaffer, Kennedy, Caputo/Smith, Stanfield) - Appropriates \$64.929 million from constitutionally dedicated CBT revenues for recreation and conservation purposes to DEP for State capital and park development projects

A-4958/S-3342 (Chaparro, Lampitt, Freiman/Beach, Turner) - Appropriates \$17,288,315 from constitutionally dedicated CBT revenues to NJ Historic Trust for grants for certain historic preservation projects and associated administrative expenses

A-4959/S-3362 (Spearman, Reynolds-Jackson, Wimberly/Greenstein, Codey) - Appropriates \$53,249,310 from constitutionally dedicated CBT revenues to DEP for State acquisition of lands for recreation and conservation purposes, including Blue Acres projects, and Green Acres Program administrative cost