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Title 54A.
Chapter 12. (New)
Pass-Through
Business
Alternative
Income Tax
§§1-5,12 -
C.54A:12-1 to
54A:12-6
§11 -
C.54:10A-5.43

P.L. 2019, CHAPTER 320, *approved January 13, 2020*
Senate, No. 3246 (*Second Reprint*)

1 AN ACT establishing an elective pass-through ²entity² business
2 alternative income tax and allowing a ²corresponding²
3 refundable gross income tax credit ²[for taxpayers earning
4 income from pass-through businesses] and corporation business
5 tax credit², supplementing Title 54A of the New Jersey Statutes
6 and amending N.J.S.54A:4-1 and P.L.1993, c.173.
7

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

11 1. (New section) This act shall be known and may be cited as
12 the “Pass-Through Business Alternative Income Tax Act.”
13

14 2. (New section) As used in P.L. , c. (C.) (pending
15 before the Legislature as this bill):

16 ²“Director” means the Director of the Division of Taxation in the
17 Department of the Treasury.²

18 “Distributive proceeds” means the ²net² income, dividends,
19 ²royalties, interest, rents, guaranteed payments,² and ²[gain] gains²
20 of a pass-through entity, derived from or connected with sources
21 within the State, and upon which tax is imposed and due on a
22 member of the pass-through entity pursuant to the “New Jersey
23 Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in a taxable year.
24 ²For a nonresident, this means New Jersey source income as set
25 forth in N.J.S.54A:5-8.

26 “Limited liability company” means an entity organized pursuant
27 to the “Revised Uniform Limited Liability Company Act,”
28 P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law providing for the
29 formation of a limited liability company in this State, or formed as a
30 limited liability company under similar statutes of other states, that

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted December 10, 2018.

²Assembly AAP committee amendments adopted December 12, 2019.

1 is classified as a partnership or an S Corporation for purposes of
 2 federal income tax law.²

3 “Member” means a ¹ [natural person who is a] ¹ shareholder of a
 4 ² [New Jersey] ² S corporation; a partner in a general, limited, or
 5 limited liability partnership; or a member of a ² [New Jersey] ²
 6 limited liability company.

7 ² [“New Jersey limited liability company” means an entity
 8 organized pursuant to the “Revised Uniform Limited Liability
 9 Company Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law
 10 providing for the formation of a limited liability company in this
 11 State that , pursuant to section 92 of P.L.2012, c.50 (C.42:2C-92), is
 12 classified as a partnership.

13 “New Jersey S corporation” means the same as that term is used
 14 in subsection (p) of section 4 of P.L.1945, c.162 (C.54:10A-4).²

15 “Partnership” means a syndicate, group, pool, joint venture, or
 16 other unincorporated organization, through or by means of which
 17 any business, financial operation, or venture is carried on in this
 18 State ¹ [, and which is not, within the meaning of P.L. ,
 19 c. (C.) (pending before the Legislature as this bill), a trust or
 20 estate or a corporation]¹.

21 ² “Pass-through business alternative income tax” means the tax
 22 set forth in subsection b. of section 3 of P.L. , c. (C.)
 23 (pending before the Legislature as this bill).²

24 “Pass-through entity” means a partnership, ² [a New Jersey] an²
 25 S corporation, or a ² [New Jersey] ² limited liability company, with
 26 at least one member who is liable for tax on distributive proceeds
 27 pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
 28 et seq., in a taxable year.

29 ² [Pro rata share] Share² of distributive proceeds” means the
 30 portion of distributive proceeds attributable to a member of a pass-
 31 through entity in a taxable year.

32 “Taxable year” means the same as ² [that term is used in section
 33 12 of P.L.1993, c.173 (C.54A:5-10)] in N.J.S.54A:1-2².

34 ² “Taxed at the business entity level” means taxed pursuant to an
 35 election made under P.L. , c. (C.) (pending before the
 36 Legislature as this bill).²

37
 38 3. (New section) a. A pass-through entity with at least one
 39 member who is liable pursuant to the “New Jersey Gross Income
 40 Tax Act,” N.J.S.54A:1-1 et seq., for tax on that member’s ² [pro
 41 rata]² share of distributive proceeds of the pass-through entity in a
 42 taxable year may elect ¹ to¹ be liable for, and pay, a pass-through
 43 business alternative income tax in the taxable year.

44 b. ² [(1)]² Each pass-through entity that makes an election for a
 45 taxable year pursuant to this section shall ² annually² report to each

1 of its members, for the taxable year, the member's ²[pro rata]²
2 share of distributive proceeds.

3 ²(1) The election to pay tax at the entity level is available if
4 consent is made by each member of the electing entity who is a
5 member at the time the election is filed or by any officer, manager,
6 or member of the electing entity who is authorized, under law or the
7 entity's organizational documents, to make the election and who
8 represents to having such authorization under penalties of perjury.
9 This election shall be made annually on or before the due date of
10 the entity's return as established by the director and on forms
11 prescribed by the director. This election shall not be made
12 retroactively. If the members decide to revoke an election, that
13 revocation shall occur on or before the due date of the entity's
14 return.²

15 (2) The tax imposed on a pass-through entity pursuant to this
16 section shall be ²[equal to] determined in accordance with the
17 following table with respect to² the sum of ¹[:]¹ each member's
18 ²[pro rata]² share of distributive proceeds attributable to the pass-
19 through entity for the taxable year ²[, multiplied by ¹:

20 5.525%, if the distributive proceeds of the pass-through entity
21 are less than \$250,000 in the taxable year;

22 6.37%, if the distributive proceeds of the pass-through entity are
23 less than \$1,000,000, but greater than or equal to \$250,000, in the
24 taxable year;

25 8.97%, if the distributive proceeds of the pass through entity are
26 less than \$3,000,000, but greater than or equal to \$1,000,000, in the
27 taxable year; or¹

28 10.75% ¹, if the distributive proceeds of the pass through entity
29 are greater than or equal to \$3,000,000 in the taxable year¹.

30 (3) If a member's ¹[proportionate share of]¹ New Jersey gross
31 income tax liability for the taxable year ¹that is attributable to the
32 member's pro rate share of distributive proceeds from the pass-
33 through entity¹, after the application of any credits, deductions, or
34 exemptions, is an amount equal to or less than \$1, then that
35 member's pro rata share of distributive proceeds shall be
36 disregarded for purposes of determining the tax pursuant to this
37 section; provided, however, that the member shall not be eligible to
38 claim a credit pursuant to section 5 of P.L. , c. (C.)
39 (pending before the Legislature as this bill) for the taxable year. **]**

40 For taxable years beginning on or after January 1, 2020:

41
42 If the sum of each member's
43 share of distributive proceeds
44 attributable to the pass-through
45 entity is:

The tax is:

1	<u>Not over \$250,000.00.....</u>	<u>5.675%</u>	<u>of the sum of</u>
2	<u>distributive</u>		<u>proceeds</u>
3			
4	<u>Over \$250,000.00 but not</u>		
5	<u>over \$1,000,000.00.....</u>	<u>\$14,187.50 plus 6.52%</u>	<u>of the</u>
6		<u>excess over \$250,000.00</u>	
7			
8	<u>Over \$1,000,000.00 but not</u>		
9	<u>over \$5,000,000.00.....</u>	<u>\$63,087.50 plus 9.12%</u>	<u>of the</u>
10		<u>excess over \$1,000,000.00</u>	
11			
12	<u>Over \$5,000,000.00</u>	<u>\$427,887.50 plus 10.9%</u>	<u>of the</u>
13		<u>excess over \$5,000,000.00.²</u>	

14 c. The amount of pass-through business alternative income tax
 15 due from a pass-through entity in a taxable year shall be exclusive
 16 of any amount of tax due and paid by the pass-through entity
 17 pursuant to the "Corporation Business Tax Act (1945)," P.L.1945,
 18 c.162 (C.54:10A-1 et seq.), during any privilege period, except as
 19 otherwise provided in P.L. , c. (C.) (pending before the
 20 Legislature as this bill).

21 (1) A pass-through entity which elects to pay the pass-through
 22 business entity income tax shall be included in a combined group,
 23 as defined in subsection (z) of section 4 of P.L.1945, c.162
 24 (C.54:10A-4), and file a New Jersey combined return pursuant to
 25 the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et
 26 seq.). A pass-through entity which elects to pay the pass-through
 27 business entity income tax shall be excluded from a combined
 28 group, as defined in subsection (z) of section 4 of P.L.1945, c.162
 29 (C.54:10A-4), and from filing a New Jersey combined return
 30 pursuant to the Corporation Business Tax Act, P.L. 1945, c.162
 31 (C.54:10A-1 et seq.) if the pass-through entity meets the following:
 32 (a) all of the members of the pass-through entity are taxpayers
 33 otherwise liable for the tax under the "New Jersey Gross Income
 34 Tax Act," N.J.S.A. 54A:1-1 et seq., and (b) no business entity
 35 taxed as a corporation under the Corporation Business Tax Act, P.L.
 36 1945, c.162 (C.54:10A-1 et seq.), has a direct, indirect, beneficial,
 37 or constructive ownership or control of the pass-through entity.

38 (2) Nothing shall prevent a group of pass-through entities under
 39 common ownership by an individual, estate, or trust, or a group of
 40 related individuals, estates, or trusts, from filing a composite or
 41 consolidated pass-through business entity income tax return. In
 42 determining whether the pass-through entities are under common
 43 ownership, the individual, estate, or trust, or a group of related
 44 individuals, estates, or trusts, must own more than 50 percent of the
 45 direct or indirect voting control of each pass-through entity;
 46 provided, however, section 318 of the federal Internal Revenue
 47 Code, 26 U.S.C. s.318, shall apply for determining voting control.²

1 d. ²**【**The director shall set the schedule and procedures for the
2 payment of ¹the pass-through business alternative income tax**】**
3 Pass-through entities whose members have made the business
4 alternative income tax election shall file an entity tax return and
5 make payments on or before the 15th day of the third month
6 following the close of each entity’s taxable year for federal income
7 tax purposes. A pass-through entity shall make estimated entity tax
8 payments on or before the 15th day of each of the fourth month,
9 sixth month, and ninth month of the taxable year and on or before
10 the 15th day of the first month succeeding the close of the taxable
11 year².

12
13 4. (New section) a. For the purpose of administration of
14 P.L. , c. (C.) (pending before the Legislature as this bill),
15 the director shall have those powers as the director deems necessary
16 to apply to a pass-through entity subject to P.L. , c. (C.)
17 (pending before the Legislature as this bill), for the reporting,
18 payment, collection, administration, and enforcement of the tax
19 imposed pursuant to P.L. , c. (C.) (pending before the
20 Legislature as this bill), as may be applicable to the collection,
21 administration, and enforcement of the New Jersey gross income
22 tax provided in the “New Jersey Gross Income Tax Act,”
23 N.J.S.54A:1-1 et seq., ²and the “New Jersey State Uniform Tax
24 Procedure Law,” N.J.S.54:48-1 et seq.,² except as otherwise
25 provided by subsection b. of this section.

26 b. Taxes collected under the provisions of P.L. ,
27 c. (C.) (pending before the Legislature as this bill) shall be
28 deposited by the State Treasurer in the General Fund.

29
30 5. (New section) a. Except as otherwise provided in paragraph
31 (3) of subsection b. of section 3 of P.L. , c. (C.) (pending
32 before the Legislature as this bill), a taxpayer shall be allowed a
33 refundable gross income tax credit, pursuant to the “New Jersey
34 Gross Income Tax Act,” N.J.S.54A:1-1 et seq., if the taxpayer is a
35 member of a pass-through entity that elects to owe and pay the
36 pass-through business alternative income tax determined pursuant
37 to section 3 of P.L. , c. (C.) (pending before the Legislature
38 as this bill) for the taxable year.

39 For each pass-through entity of which the taxpayer is a member,
40 the amount of the credit shall equal the member’s pro rata share of
41 the tax paid pursuant to section 3 of P.L. , c. (C.) (pending
42 before the Legislature as this bill) ¹**【**multiplied by 89.25%**】**¹, which
43 credit shall be applied against the gross income tax liability of the
44 member in the taxable year.

45 b. The ¹**【**order of priority in which the**】**¹ credit allowed by this
46 section ¹**【**and any**】** shall be available after the application of all¹

1 other credits allowed by law ¹【may be taken shall be as prescribed】
2 and claimed¹ by the ¹【director】 taxpayer in the taxable year¹.

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

9 ¹d. The credit allowed to any trust or estate pursuant to this
10 section may be allocated to beneficiaries or be used against the tax
11 liability of the estate or trust, in accordance with rules and
12 regulations adopted by the director.¹

13

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

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

25 b. Each initial shareholder and the corporation shall consent to
26 the following 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. , c. (C.) (pending before the Legislature as
32 this bill);

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

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

1 the obligation, to recover payments made by the corporation
2 pursuant to this paragraph from each nonconsenting shareholder.

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

17 d. A corporation may revoke an election pursuant to this
18 section on or before the last day of the first accounting or privilege
19 period to which the election would otherwise apply.
20 (cf: P.L.1993, c.173, s.3)

21

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

24 4. a. With respect to each of its shareholders that is not an
25 initial shareholder, a New Jersey S corporation shall satisfy the
26 requirements of either paragraph b. or c. of this section.

27 b. Deliver a consent to the jurisdictional requirements as set
28 forth in subsection b. of section 3 of P.L.1993, c.173 (C.54:10A-
29 5.22).

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

43 d. If a shareholder that is not an initial shareholder of a New
44 Jersey S corporation fails to deliver a consent to the jurisdictional
45 requirements set forth in subsection b. of section 3 of P.L.1993,
46 c.173 (C.54:10A-5.22), and objects to New Jersey's jurisdiction to
47 withhold payments pursuant to subsection c. of this section, then
48 this State shall have the right and jurisdiction to collect a tax each

1 year directly from the corporation equal to the pro rata share of the
2 S corporation income allocated to this State, as defined pursuant to
3 section 12 of P.L.1993, c.173 (C.54A:5-10), of the nonconsenting
4 shareholder times the maximum tax bracket rate provided under
5 N.J.S.54A:2-1 for the appropriate accounting or privilege period.
6 In such case, the corporation shall have the right, but not the
7 obligation, to recover payments made by the corporation pursuant to
8 this subsection from each nonconsenting shareholder. The
9 corporation shall not be liable for the pass-through business
10 alternative income tax pursuant to P.L. , c. (C.) (pending
11 before the Legislature as this bill) relative to collections made in a
12 taxable year for such nonconsenting members.
13 (cf: P.L.1993, c.173, s.4)

14

15 8. N.J.S.54A:4-1 is amended to read as follows:

16 54A:4-1. Resident credit for tax of another state. (a) A
17 resident taxpayer shall be allowed a credit against the tax otherwise
18 due under this act for the amount of any income tax or wage tax
19 imposed for the taxable year by another state of the United States or
20 political subdivision of such state, or by the District of Columbia,
21 with respect to income which is also subject to tax under this act,
22 except as provided by subsections (c) and (d) of this section.23 (b) The credit provided under this section shall not exceed the
24 proportion of the tax otherwise due under this act that the amount of
25 the taxpayer's income subject to tax by the other jurisdiction bears
26 to his entire New Jersey income.27 (c) No credit shall be allowed against the tax otherwise due
28 under this act for the amount of any income tax or wage tax
29 imposed for the taxable year on S corporation income allocated to
30 this State.31 (d) No credit shall be allowed for the amount of any taxes paid
32 or accrued for the taxable year on or measured by profits or income
33 imposed on or paid on behalf of a person other than the taxpayer,
34 whether or not the taxpayer may be held liable for the tax.35 (e) Readjustment of the tax of another state or political
36 subdivision thereof--if the taxpayer is allowed credit under this
37 section for more or less of the tax of another state or political
38 subdivision thereof than he is finally required to pay, the taxpayer
39 shall send notice of the difference to the director who shall
40 redetermine the tax for any years affected regardless of any
41 otherwise applicable statute of limitations.42 (f) A resident taxpayer shall be allowed a credit against the tax
43 otherwise due under this act for the amount of any tax that the
44 director determines is substantially similar to the tax imposed
45 pursuant to section '1[2] 3' of P.L. , c. (C.) (pending before
46 the Legislature as this bill), for the taxable year, by another state of
47 the United States or political subdivision of such state, or by the
48 District of Columbia, with respect to the direct and indirect

1 distributive proceeds from a pass-through entity, which distributive
 2 proceeds are also subject to tax under this act. ²A credit allowed
 3 pursuant to this subsection shall not exceed what would have been
 4 allowed if the income was taxed at the individual level and not
 5 taxed at the entity level.²

6 For purposes of this subsection, “distributive proceeds” and
 7 “pass-through entity” mean the same as those terms are used in
 8 section 2 of P.L. , c. (C.) (pending before the Legislature
 9 as this bill).

10 (cf: P.L.1993, c.173, s.7)

11

12 9. Section 11 of P.L.1993, c.173 (C.54A:5-9) is amended to
 13 read as follows:

14 11. **【An】** Except as otherwise provided by P.L. , c. (C.)
 15 (pending before the Legislature as this bill), an S corporation as
 16 such shall not be subject to the tax imposed by the "New Jersey
 17 Gross Income Tax Act," N.J.S.54A:1-1 et seq., but the S
 18 corporation income, dividends, and gain of a shareholder of an S
 19 corporation shall be subject to the tax, and the tax shall be imposed
 20 on the shareholder's pro rata share, whether or not distributed, of the
 21 S corporation income for its taxable year ending within or with the
 22 shareholder's taxable year.

23 (cf: P.L.1993, c.173, s.11)

24

25 ²**【10.** Section 15 of P.L.1993, c.173 (C.54A:5-13) is amended to
 26 read as follows:

27 15. For purposes of **【this act】** the "New Jersey Gross Income
 28 Tax Act," N.J.S.54A:1-1 et seq., if a shareholder of an S
 29 corporation is both a resident and a nonresident of this State during
 30 any taxable year, the shareholder's pro rata share of the S
 31 corporation income allocated to this State and S corporation income
 32 not allocated to this State for the taxable period shall be further
 33 prorated between the shareholder's periods of residence and
 34 nonresidence during the taxable period, in accordance with the
 35 number of days in each period. Any prorated amount of S
 36 corporation income determined pursuant to this section shall also
 37 apply to determinations of income for purposes of the assessment of
 38 the pass-through business alternative income tax, pursuant to
 39 P.L. , c. (C.) (pending before the Legislature as this bill).

40 (cf: P.L.1993, c.173 s.15)²

41

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

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

1 all obligations of the partnership as provided by P.L. _____,
2 c. (C. _____) (pending before the Legislature as this bill).

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.²

15 (cf: P.L.2000, c.161,s.18)

16

17 ²11. (New section) Where the pass-through entity, which pays
18 the pass-through business alternative income tax, is owned by both
19 corporate members and non-corporate members, the corporate
20 member shall be allowed a tax credit against the surtax imposed
21 pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) or the tax
22 imposed under paragraph (1) of subsection c. of section 5 of
23 P.L.1945, c.162 (C.54:10A-5), if the corporate member is a member
24 of a pass-through entity that elects to owe and pay the pass-through
25 business alternative income tax determined pursuant to section 3 of
26 P.L. _____, c. (C. _____) (pending before the Legislature as this bill)
27 for the taxable year; provided, however, the credit shall not reduce
28 the corporate member's tax liability below the statutory minimum
29 imposed under subsection e. of section 5 of P.L. 1945, c. 162
30 (C.54:10A-5). Any excess credit shall be carried over for a period
31 of up to 20 privilege periods.

32 a. For each pass-through entity of which the corporate member
33 is a member, the amount of the credit shall equal the member's
34 share of the tax paid pursuant to section 3 of P.L. _____, c. (C. _____)
35 (pending before the Legislature as this bill), which credit shall be
36 applied against the surtax or corporation business tax liability of the
37 member during the member's privilege period.

38 b. The credit allowed by this section shall be taken as
39 prescribed by the director. A taxpayer shall only claim a credit for
40 payment of the pass-through business alternative income tax made
41 by the entity that is applicable to the same tax year.

42 c. If the pass-through entity is unitary with both the corporate
43 member and the member's combined group filing a New Jersey
44 combined return for which the corporate member is included as a
45 member, within the meaning of subsection (dd) of section 4 of
46 P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48
47 (C.54:10A-4.11), the credit shall be shareable for the purposes of
48 subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and

1 allowed to reduce the total surtax and total corporation business tax
2 liability of the combined group but not the below the aggregate
3 statutory minimum tax of the taxable members of the combined
4 group.

5 d. If the pass-through entity is unitary with the corporate
6 member, but not the member's combined group filing a New Jersey
7 combined return for which the corporate member is included as a
8 member, within the meaning of subsection (dd) of section 4 of
9 P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48
10 (C.54:10A-4.11), the credit shall not be shareable for the purposes
11 of subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) but
12 shall be allowed to reduce the total surtax and total corporation
13 business tax liability of the corporate member derived from the
14 corporate member's activities that are independent of the unitary
15 business of the member's combined group.

16 e. An exempt corporate member that is a corporation exempt
17 from tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3)
18 shall be refunded the share of the tax paid by the pass-through
19 entity on the exempt corporate member's distributive proceeds of
20 the pass-through entity.

21 f. For the purposes of this section:

22 "Corporate member" means a member that is not an individual,
23 an estate, or a trust subject to taxation pursuant to the "New Jersey
24 Gross Income Tax Act," N.J.S.54A:1-1 et seq., that is not a
25 corporation exempt from the Corporation Business Tax Act
26 pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3). A corporate
27 member does not include another pass-through entity.

28 "Exempt corporate member" means a member that is not an
29 individual, an estate, or a trust subject to taxation pursuant to the
30 "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq. and
31 that is a corporation exempt from the Corporation Business Tax
32 Act pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3).

33 "Noncorporate member" means, an individual, an estate or a
34 trust subject to taxation pursuant to the "New Jersey Gross Income
35 Tax Act," N.J.S.A. 54A:1-1 et seq.

36 "Pass-through entity member" means a member that itself is a
37 pass-through entity.²

38

39 ²**[11.]** 12.² (New section) ²[The director shall adopt, pursuant
40 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
41 1 et seq.), and immediately upon filing with the Office of
42 Administrative Law, rules and regulations necessary to effectuate
43 the purposes of P.L. , c. (C.) (pending before the
44 Legislature as this bill)] Notwithstanding the provisions of the
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
46 seq.), to the contrary, the director may, immediately, upon filing
47 with the Office of Administrative Law, prescribe forms and adopt
48 regulations that the director deems necessary to administer the

1 provisions of this act², which regulations² shall be effective for a
2 period not to exceed 360 days following enactment of P.L. , c.
3 (C.) (pending before the Legislature as this bill) and may
4 thereafter be amended, adopted, or readopted by the director in
5 accordance with the requirements of P.L.1968, c.410.

6
7 ²~~12.~~ 13.² This act shall take effect immediately and shall
8 ¹~~apply~~ ²~~be retroactive~~¹ apply² to taxable years of pass-through
9 entities beginning on or after January 1, ¹~~2019~~ ²~~2018~~¹ 2020².

10

11

12

13

14 Establishes elective pass-through entity business alternative
15 income tax and allows corresponding refundable gross income tax
16 and corporation business tax credit.

SENATE, No. 3246

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED DECEMBER 3, 2018

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator TROY SINGLETON

District 7 (Burlington)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Senator ANTHONY R. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Establishes elective pass-through business alternative income tax and allows refundable gross income tax credit for taxpayers earning income from pass-through businesses in taxable year.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing an elective pass-through business alternative
2 income tax and allowing a refundable gross income tax credit for
3 taxpayers earning income from pass-through businesses,
4 supplementing Title 54A of the New Jersey Statutes and
5 amending N.J.S.54A:4-1 and P.L.1993, c.173.

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. (New section) This act shall be known and may be cited as
11 the “Pass-Through Business Alternative Income Tax Act.”

12
13 2. (New section) As used in P.L. , c. (C.) (pending
14 before the Legislature as this bill):

15 “Distributive proceeds” means the income, dividends, and gain
16 of a pass-through entity, derived from or connected with sources
17 within the State, and upon which tax is imposed and due on a
18 member of the pass-through entity pursuant to the “New Jersey
19 Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in a taxable year.

20 “Member” means a natural person who is a shareholder of a New
21 Jersey S corporation; a partner in a general, limited, or limited
22 liability partnership; or a member of a New Jersey limited liability
23 company.

24 “New Jersey limited liability company” means an entity
25 organized pursuant to the “Revised Uniform Limited Liability
26 Company Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law
27 providing for the formation of a limited liability company in this
28 State that, pursuant to section 92 of P.L.2012, c.50 (C.42:2C-92), is
29 classified as a partnership.

30 “New Jersey S corporation” means the same as that term is used
31 in subsection (p) of section 4 of P.L.1945, c.162 (C.54:10A-4).

32 “Partnership” means a syndicate, group, pool, joint venture, or
33 other unincorporated organization, through or by means of which
34 any business, financial operation, or venture is carried on in this
35 State, and which is not, within the meaning of P.L. , c. (C.)
36 (pending before the Legislature as this bill), a trust or estate or a
37 corporation.

38 “Pass-through entity” means a partnership, a New Jersey S
39 corporation, or a New Jersey limited liability company, with at least
40 one member who is liable for tax on distributive proceeds pursuant
41 to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
42 in a taxable year.

43 “Pro rata share of distributive proceeds” means the portion of
44 distributive proceeds attributable to a member of a pass-through
45 entity in a taxable year.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 “Taxable year” means the same as that term is used in section 12
2 of P.L.1993, c.173 (C.54A:5-10).

3
4 3. (New section) a. A pass-through entity with at least one
5 member who is liable pursuant to the “New Jersey Gross Income
6 Tax Act,” N.J.S.54A:1-1 et seq., for tax on that member’s pro rata
7 share of distributive proceeds of the pass-through entity in a taxable
8 year may elect to be liable for, and pay, a pass-through business
9 alternative income tax in the taxable year.

10 b. (1) Each pass-through entity that makes an election for a
11 taxable year pursuant to this section shall report to each of its
12 members, for the taxable year, the member’s pro rata share of
13 distributive proceeds.

14 (2) The tax imposed on a pass-through entity pursuant to this
15 section shall be equal to the sum of: each member’s pro rata share
16 of distributive proceeds attributable to the pass-through entity for
17 the taxable year, multiplied by 10.75%.

18 (3) If a member’s proportionate share of New Jersey gross
19 income tax liability for the taxable year, after the application of any
20 credits, deductions, or exemptions, is an amount equal to or less
21 than \$1, then that member’s pro rata share of distributive proceeds
22 shall be disregarded for purposes of determining the tax pursuant to
23 this section; provided, however, that the member shall not be
24 eligible to claim a credit pursuant to section 5 of P.L. ,
25 c. (C.) (pending before the Legislature as this bill) for the
26 taxable year.

27 c. The amount of pass-through business alternative income tax
28 due from a pass-through entity in a taxable year shall be exclusive
29 of any amount of tax due and paid by the pass-through entity
30 pursuant to the "Corporation Business Tax Act (1945)," P.L.1945,
31 c.162 (C.54:10A-1 et seq.), during any privilege period, except as
32 otherwise provided in P.L. , c. (C.) (pending before the
33 Legislature as this bill).

34 d. The director shall set the schedule and procedures for the
35 payment of pass-through business alternative income tax.

36
37 4. (New section) a. For the purpose of administration of
38 P.L. , c. (C.) (pending before the Legislature as this bill),
39 the director shall have those powers as the director deems necessary
40 to apply to a pass-through entity subject to P.L. , c. (C.)
41 (pending before the Legislature as this bill), for the reporting,
42 payment, collection, administration, and enforcement of the tax
43 imposed pursuant to P.L. , c. (C.) (pending before the
44 Legislature as this bill), as may be applicable to the collection,
45 administration, and enforcement of the New Jersey gross income
46 tax provided in the “New Jersey Gross Income Tax Act,”
47 N.J.S.54A:1-1 et seq., except as otherwise provided by subsection
48 b. of this section.

1 b. Taxes collected under the provisions of P.L. , c. (C.)
2 (pending before the Legislature as this bill) shall be deposited by
3 the State Treasurer in the General Fund.

4
5 5. (New section) a. Except as otherwise provided in paragraph
6 (3) of subsection b. of section 3 of P.L. , c. (C.) (pending
7 before the Legislature as this bill), a taxpayer shall be allowed a
8 refundable gross income tax credit, pursuant to the "New Jersey
9 Gross Income Tax Act," N.J.S.54A:1-1 et seq., if the taxpayer is a
10 member of a pass-through entity that elects to owe and pay the
11 pass-through business alternative income tax determined pursuant
12 to section 3 of P.L. , c. (C.) (pending before the Legislature
13 as this bill) for the taxable year.

14 For each pass-through entity of which the taxpayer is a member,
15 the amount of the credit shall equal the member's pro rata share of
16 the tax paid pursuant to section 3 of P.L. , c. (C.) (pending
17 before the Legislature as this bill) multiplied by 89.25%, which
18 credit shall be applied against the gross income tax liability of the
19 member in the taxable year.

20 b. The order of priority in which the credit allowed by this
21 section and any other credits allowed by law may be taken shall be
22 as prescribed by the director.

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

29
30 6. Section 3 of P.L.1993, c.173 (C.54:10A-5.22) is amended to
31 read as follows:

32 3. a. A corporation may elect, in accordance with the provisions
33 of this section, to be a New Jersey S corporation. In order for an
34 election to be valid, the corporation and each of its shareholders on
35 the day on which the election is made (hereinafter "initial
36 shareholders") must consent to such election and the jurisdictional
37 requirements of becoming a New Jersey S corporation. The form of
38 the election and consent to jurisdictional requirements and the place
39 for filing shall be as prescribed by the Director of the Division of
40 Taxation.

41 b. Each initial shareholder and the corporation shall consent to
42 the following jurisdictional requirements:

43 (1) That this State shall have the right and jurisdiction to tax and
44 collect the tax on each shareholder's S corporation income as
45 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) and,
46 if applicable, the pass-through business alternative income tax
47 pursuant to P.L. , c. (C.) (pending before the Legislature as
48 this bill);

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

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

18 c. A corporation may make an election to become a New Jersey
19 S corporation with respect to an accounting or privilege period for
20 which the corporation is or will be an S corporation. The election
21 for an accounting or privilege period, along with the consents to
22 jurisdictional requirements, shall be filed within one calendar
23 month of the time at which a federal S corporation election would
24 be required if such accounting or privilege period were a "taxable
25 year" for which a federal S corporation election were to be made
26 pursuant to section 1362 of the federal Internal Revenue Code of
27 1986, 26 U.S.C. s.1362. Such elections may only be revoked
28 pursuant to subsection d. of this section. Such election shall
29 terminate immediately upon the corporation's failure to satisfy the
30 definition of a New Jersey S corporation pursuant to paragraph (p)
31 of section 4 of P.L.1945, c.162 (C.54:10A-4).

32 d. A corporation may revoke an election pursuant to this section
33 on or before the last day of the first accounting or privilege period
34 to which the election would otherwise apply.

35 (cf: P.L.1993, c.173, s.3)

36

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

39 4. a. With respect to each of its shareholders that is not an
40 initial shareholder, a New Jersey S corporation shall satisfy the
41 requirements of either paragraph b. or c. of this section.

42 b. Deliver a consent to the jurisdictional requirements as set
43 forth in subsection b. of section 3 of P.L.1993, c.173 (C.54:10A-
44 5.22).

45 c. Make payments to the Director of the Division of Taxation on
46 behalf of each nonconsenting shareholder in an amount equal to the
47 shareholder's pro rata share of S corporation income allocated to
48 this State, as defined pursuant to section 12 of P.L.1993, c.173

1 (C.54A:5-10), reflected on the corporation's return for the
2 accounting or privilege period, multiplied by the maximum tax
3 bracket rate provided under N.J.S.54A:2-1 in effect at the end of the
4 accounting or privilege period. The payments shall be made no
5 later than the time for filing of the return for the accounting or
6 privilege period. The director may, by regulation, require that
7 amounts estimated to be equal to the liability expected to be due
8 pursuant to this subsection be withheld from any distribution made
9 to a nonconsenting 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 period.
21 In such case, the corporation shall have the right, but not the
22 obligation, to recover payments made by the corporation pursuant to
23 this subsection from each nonconsenting shareholder. The
24 corporation shall not be liable for the pass-through business
25 alternative income tax pursuant to P.L. , c. (C.) (pending
26 before the Legislature as this bill) relative to collections made in a
27 taxable year for such nonconsenting members.

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

29
30 8. N.J.S.54A:4-1 is amended to read as follows:

31 54A:4-1. Resident credit for tax of another state. (a) A resident
32 taxpayer shall be allowed a credit against the tax otherwise due
33 under this act for the amount of any income tax or wage tax
34 imposed for the taxable year by another state of the United States or
35 political subdivision of such state, or by the District of Columbia,
36 with respect to income which is also subject to tax under this act,
37 except as provided by subsections (c) and (d) of this section.

38 (b) The credit provided under this section shall not exceed the
39 proportion of the tax otherwise due under this act that the amount of
40 the taxpayer's income subject to tax by the other jurisdiction bears
41 to his entire New Jersey income.

42 (c) No credit shall be allowed against the tax otherwise due
43 under this act for the amount of any income tax or wage tax
44 imposed for the taxable year on S corporation income allocated to
45 this State.

46 (d) No credit shall be allowed for the amount of any taxes paid
47 or accrued for the taxable year on or measured by profits or income

1 imposed on or paid on behalf of a person other than the taxpayer,
2 whether or not the taxpayer may be held liable for the tax.

3 (e) Readjustment of the tax of another state or political
4 subdivision thereof--if the taxpayer is allowed credit under this
5 section for more or less of the tax of another state or political
6 subdivision thereof than he is finally required to pay, the taxpayer
7 shall send notice of the difference to the director who shall
8 redetermine the tax for any years affected regardless of any
9 otherwise applicable statute of limitations.

10 (f) A resident taxpayer shall be allowed a credit against the tax
11 otherwise due under this act for the amount of any tax that the
12 director determines is substantially similar to the tax imposed
13 pursuant to section 2 of P.L. , c. (C.) (pending before the
14 Legislature as this bill), for the taxable year, by another state of the
15 United States or political subdivision of such state, or by the
16 District of Columbia, with respect to the direct and indirect
17 distributive proceeds from a pass-through entity, which distributive
18 proceeds are also subject to tax under this act.

19 For purposes of this subsection, "distributive proceeds" and
20 "pass-through entity" mean the same as those terms are used in
21 section 2 of P.L. , c. (C.) (pending before the Legislature
22 as this bill).

23 (cf: P.L.1993, c.173, s.7)

24

25 9. Section 11 of P.L.1993, c.173 (C.54A:5-9) is amended to read
26 as follows:

27 11. **[An]** Except as otherwise provided by P.L. , c. (C.)
28 (pending before the Legislature as this bill), an S corporation as
29 such shall not be subject to the tax imposed by the "New Jersey
30 Gross Income Tax Act," N.J.S.54A:1-1 et seq., but the S
31 corporation income, dividends, and gain of a shareholder of an S
32 corporation shall be subject to the tax, and the tax shall be imposed
33 on the shareholder's pro rata share, whether or not distributed, of the
34 S corporation income for its taxable year ending within or with the
35 shareholder's taxable year.

36 (cf: P.L.1993, c.173, s.11)

37

38 10. Section 15 of P.L.1993, c.173 (C.54A:5-13) is amended to
39 read as follows:

40 15. For purposes of **[this act]** the "New Jersey Gross Income
41 Tax Act," N.J.S.54A:1-1 et seq., if a shareholder of an S
42 corporation is both a resident and a nonresident of this State during
43 any taxable year, the shareholder's pro rata share of the S
44 corporation income allocated to this State and S corporation income
45 not allocated to this State for the taxable period shall be further
46 prorated between the shareholder's periods of residence and
47 nonresidence during the taxable period, in accordance with the
48 number of days in each period. Any prorated amount of S

1 corporation income determined pursuant to this section shall also
2 apply to determinations of income for purposes of the assessment of
3 the pass-through business alternative income tax, pursuant to
4 P.L. , c. (C.) (pending before the Legislature as this bill).
5 (cf: P.L.1993, c.173 s.15)

6
7 11. (New section) The director shall adopt, pursuant to the
8 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
9 seq.), and immediately upon filing with the Office of
10 Administrative Law, rules and regulations necessary to effectuate
11 the purposes of P.L. , c. (C.) (pending before the
12 Legislature as this bill), which shall be effective for a period not to
13 exceed 360 days following enactment of P.L. , c. (C.)
14 (pending before the Legislature as this bill) and may thereafter be
15 amended, adopted, or readopted by the director in accordance with
16 the requirements of P.L.1968, c.410.

17
18 12. This act shall take effect immediately and shall apply to
19 taxable years of pass-through entities beginning on or after January
20 1, 2019.

21 22 23 STATEMENT

24
25 This bill, the “Pass-Through Business Alternative Income Tax
26 Act,” establishes an elective entity-level tax to be paid by pass-
27 through businesses and provides an offsetting credit to taxpayers
28 who receive income from a pass-through business.

29 Pass-through businesses are partnerships, New Jersey limited
30 liability companies that are not taxed as incorporated entities by the
31 State, and New Jersey S corporations. These entities are called
32 pass-through businesses because, generally, the profits are passed
33 directly through the business to the owners, and tax is assessed and
34 levied on the owners' individual tax returns.

35 The bill creates an optional entity-level tax on pass-through
36 businesses. Specifically, and at the election of the business, the tax
37 is levied on a pass-through business that has at least one partner,
38 shareholder, or member (collectively, “member”) that is a natural
39 person and owes New Jersey gross income tax on income,
40 dividends, and gain received from the pass-through business, and
41 sourced to the State, in the tax year (the “distributive proceeds”).
42 To calculate the amount of tax due, the pass-through business is
43 first required to determine the amount of distributive proceeds that
44 each member receives from the business in the tax year. Then, each
45 member’s pro rata share of the distributive proceeds is multiplied
46 by the highest marginal rate under the New Jersey gross income tax,
47 which is 10.75% (the “taxed share”). Finally, the pass-through
48 business adds together each member’s taxed share to determine the

1 business's pass-through business alternative income tax liability for
2 the tax year. However, if a member does not owe gross income tax
3 in a tax year, or the liability is less than \$1, then that member's
4 amount of distributive proceeds is disregarded for purposes of
5 calculating the pass-through tax liability for the tax year.

6 For a business that chooses to pay the pass-through tax in a tax
7 year, the bill provides a refundable gross income tax credit that is
8 available to taxpayers who are members of the pass-through
9 business. Specifically, the amount of this credit is equal to that
10 member's taxed share, multiplied by 89.25%. However, if a
11 member does not owe gross income tax in a tax year, or the liability
12 is less than \$1, then that member is prohibited from claiming the tax
13 credit that is available under this bill for the tax year, since that
14 member's pro rata share of distributive proceeds was disregarded
15 for purposes of determine the tax liability.

16 The Director of the Division of Taxation in the Department of
17 the Treasury is authorized to develop and promulgate rules,
18 regulations, procedures, and forms for the administration and
19 collection of the tax, including but not limited to the payment
20 schedule, and the tax credit provided by this bill.

21 Pass-through businesses may be small and medium-sized,
22 privately owned entities that operate for federal and state personal
23 income tax purposes as pass-through entities and not actual income
24 tax paying entities. For each of these entities, the taxable income is
25 reported on the member's personal tax return, and taxes are paid by
26 the individual. The ability of these individuals to deduct these
27 personal state income tax payments are now restricted as federal
28 personal itemized deductions to no more than \$10,000 per year, but
29 are not capped for businesses to use as unlimited business expenses
30 that can reduce the income passed on to their individual members.
31 This bill establishes a new tax and individual tax credit that will
32 preserve, at the business level, an uncapped offset against taxable
33 income, and that business income offset will credit the individual
34 taxpayer for their individual liability attributable to that income
35 derived from the pass-through business.

36 The bill takes effect immediately and applies to taxable years of
37 pass-through entities beginning on or after January 1, 2019.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3246

STATE OF NEW JERSEY

DATED: MARCH 18, 2019

The Assembly Appropriations Committee reports favorably Senate Bill No. 3246 (1R).

Senate Bill No. 3246 (1R), the “Pass-Through Business Alternative Income Tax Act,” establishes an elective entity-level tax that may be paid by pass-through businesses, and provides an offsetting credit to taxpayers who receive income from a pass-through business that elect to pay the tax.

Pass-through businesses are partnerships, New Jersey limited liability companies that are not taxed as incorporated entities by the State, and New Jersey S corporations. These entities are called pass-through businesses because, generally, the profits are passed directly through the business to the owners, and tax on the business’s income is assessed and levied on the owners’ individual gross income tax returns.

This bill creates an optional entity-level tax on pass-through businesses. Specifically, at the election of the business, the tax is levied on a pass-through business that has at least one partner, shareholder, or member (collectively, “member”) that owes New Jersey gross income tax on income, dividends, and gain received from the pass-through business, and sourced to the State, in the tax year (the “distributive proceeds”). To calculate the amount of tax due, the pass-through business is first required to determine the amount of distributive proceeds that each member receives from the business in the tax year. Then, each member’s pro rata share of the distributive proceeds is multiplied by: (i) 5.525 percent, if the distributive proceeds of the pass-through business are less than \$250,000 in the tax year; (ii) 6.37 percent, if the distributive proceeds are between \$250,000 and \$1 million; (iii) 8.97 percent, if the distributive proceeds are between \$1 million and \$3 million; and (iv) 10.75 percent, if the distributive proceeds are more than \$3 million (the “taxed share”). Finally, the pass-through business adds together each member’s taxed share to determine the business’s pass-through business alternative income tax liability for the tax year. However, if a member does not owe gross income tax in a tax year on distributive proceeds, or the liability is less than \$1, then that member’s amount of distributive proceeds is disregarded for purposes of calculating the pass-through tax liability for the tax year.

For a business that opts to pay the pass-through tax in a tax year, the bill provides a refundable gross income tax credit that is available to taxpayers who are members of the pass-through business, irrespective of whether the taxpayer is a natural person, business entity, or estate or trust. Specifically, the amount of this credit is equal to that member's taxed share. However, if a member does not owe gross income tax in a tax year on distributive proceeds, or the liability is less than \$1, then that member cannot claim the tax credit that is available under this bill for the tax year, since that member's pro rata share of distributive proceeds was disregarded for purposes of determining the tax liability. This credit may only be claimed by a qualifying taxpayer after the application of all other credits allowed by law.

The Director of the Division of Taxation in the Department of the Treasury is authorized to develop and promulgate rules, regulations, procedures, and forms for the administration and collection of the tax, including but not limited to the payment schedule, the tax credit provided by the bill, and for the application of the credit relative to tax liabilities of estates and trusts.

Pass-through businesses may be small and medium-sized, privately owned entities that operate for federal and State personal income tax purposes as pass-through entities. For each of these entities, the taxable income is reported on the member's personal tax return, and taxes are paid by the individual. The ability of these individuals to deduct these personal state income tax payments are now restricted as federal personal itemized deductions to no more than \$10,000 per year, but are not capped for businesses to use as unlimited business expenses that can reduce the income passed on to their individual members. This bill establishes a new tax and individual tax credit that will preserve, at the business level, an uncapped offset against taxable income, and that business income offset will credit the individual taxpayer for their individual liability attributable to that income derived from the pass-through business.

The bill takes effect immediately and is retroactive to taxable years of pass-through entities beginning on or after January 1, 2018.

As reported, this bill is identical to Assembly Bill No. 4807, as amended and reported by the committee on this date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the bill will be revenue neutral, but the State may incur an initial expenditure increase related to the administration of the new tax. The permissive nature of the bill precludes the OLS from quantifying these impacts.

To the extent that pass-through entities elect to pay the pass-through entity alternative business tax, the revenue will shift from the Property Tax Relief Fund to the General Fund.

The bill provides a tax credit equal to a member's pro rata share of the tax liability incurred from the entity-level tax, which can then be applied against the member's gross income tax liability. This tax credit is provided to offset a member's gross income tax liability on the member's pro rata share of distributive proceeds of the pass-through entity since the pass-through entity would be paying the entity-level tax on those proceeds.

The OLS further notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through entity alternative business tax, which the department may be able to absorb within its existing budget.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3246

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2019

The Assembly Appropriations Committee reports favorably and with committee amendments Senate Bill No. 3246 (1R).

This bill, the “Pass-Through Business Alternative Income Tax Act,” establishes an elective entity-level alternative income tax to be paid by pass-through businesses and provides an offsetting credit to taxpayers who receive income from a pass-through business.

For a business that opts to pay the pass-through business alternative income tax, the bill provides a refundable gross income tax credit that is available to taxpayers who are members of the pass-through business. In the case of a corporation that owns a pass-through business opting to pay the pass-through business alternative income tax, the bill provides a corporation business tax credit which, if unused, may be carried forward for up to 20 years.

The bill takes effect immediately and applies to taxable years of pass-through entities beginning on or after January 1, 2020.

As amended and reported by the committee, Senate Bill No. 3246 (1R) is identical to Assembly Bill No. 4807 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) change the rates of tax a pass-through entity will pay under the bill to as follows:

Pass-Through Entity Income	Tax Rate
First \$250,000	5.675%
Amount between \$250,000 and \$1 million	6.52%
Amount between \$1 million and \$5 million	9.12%
Amount over \$5 million	10.9%

(2) allow a corporation business tax credit to offset the elective tax paid by a pass-through business owned by a corporation;

(3) redefine which entities are considered pass-through entities;

(4) makes changes related to the administration of the bill; and

(5) change the effective date so that the first tax year the elective pass-through business entity income tax will be in effect is 2020.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the bill will be revenue neutral, but the permissive nature of the bill precludes the OLS from quantifying the impact.

To the extent that pass-through entities elect to pay the pass-through business alternative income tax, revenue will shift from the Property Tax Relief Fund to the General Fund. Gross income tax collections are constitutionally dedicated to the Property Tax Relief Fund, but the bill requires collections from the pass-through business alternative income tax be deposited into the State's General Fund. The bill allows for a tax credit equal to a member's share of pass-through entity tax paid by the pass-through entity. A member can then apply the tax credit to offset its gross income tax or corporation business tax liability, since the pass-through entity would be paying the entity-level tax on those proceeds.

The OLS notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through business alternative income tax, which the department may be able to absorb within its existing budget.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3246

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3246, with committee admendments.

Senate Bill No. 3246, as amended, the “Pass-Through Business Alternative Income Tax Act,” establishes an elective entity-level tax that may be paid by pass-through businesses, and provides an offsetting credit to taxpayers who receive income from a pass-through business that elect to pay the tax.

Pass-through businesses are partnerships, New Jersey limited liability companies that are not taxed as incorporated entities by the State, and New Jersey S corporations. These entities are called pass-through businesses because, generally, the profits are passed directly through the business to the owners, and tax on the business’s income is assessed and levied on the owners' individual gross income tax returns.

This bill creates an optional entity-level tax on pass-through businesses. Specifically, at the election of the business, the tax is levied on a pass-through business that has at least one partner, shareholder, or member (collectively, “member”) that owes New Jersey gross income tax on income, dividends, and gain received from the pass-through business, and sourced to the State, in the tax year (the “distributive proceeds”). To calculate the amount of tax due, the pass-through business is first required to determine the amount of distributive proceeds that each member receives from the business in the tax year. Then, each member’s pro rata share of the distributive proceeds is multiplied by: (i) 5.525 percent, if the distributive proceeds of the pass-through business are less than \$250,000 in the tax year; (ii) 6.37 percent, if the distributive proceeds are between \$250,000 and \$1 million; (iii) 8.97 percent, if the distributive proceeds are between \$1 million and \$3 million; and (iv) 10.75 percent, if the distributive proceeds are more than \$3 million (the “taxed share”). Finally, the pass-through business adds together each member’s taxed share to determine the business’s pass-through business alternative income tax liability for the tax year. However, if a member does not owe gross income tax in a tax year on distributive proceeds, or the liability is less than \$1, then that member’s amount of distributive proceeds is disregarded for purposes of calculating the pass-through tax liability for the tax year.

For a business that opts to pay the pass-through tax in a tax year, the bill provides a refundable gross income tax credit that is available to taxpayers who are members of the pass-through business, irrespective of whether the taxpayer is a natural person, business entity, or estate or trust. Specifically, the amount of this credit is equal to that member's taxed share. However, if a member does not owe gross income tax in a tax year on distributive proceeds, or the liability is less than \$1, then that member cannot claim the tax credit that is available under this bill for the tax year, since that member's pro rata share of distributive proceeds was disregarded for purposes of determining the tax liability. This credit may only be claimed by a qualifying taxpayer after the application of all other credits allowed by law.

The Director of the Division of Taxation in the Department of the Treasury is authorized to develop and promulgate rules, regulations, procedures, and forms for the administration and collection of the tax, including but not limited to the payment schedule, the tax credit provided by the bill, and for the application of the credit relative to tax liabilities of estates and trusts.

Pass-through businesses may be small and medium-sized, privately owned entities that operate for federal and State personal income tax purposes as pass-through entities. For each of these entities, the taxable income is reported on the member's personal tax return, and taxes are paid by the individual. The ability of these individuals to deduct these personal state income tax payments are now restricted as federal personal itemized deductions to no more than \$10,000 per year, but are not capped for businesses to use as unlimited business expenses that can reduce the income passed on to their individual members. This bill establishes a new tax and individual tax credit that will preserve, at the business level, an uncapped offset against taxable income, and that business income offset will credit the individual taxpayer for their individual liability attributable to that income derived from the pass-through business.

The bill takes effect immediately and is retroactive to taxable years of pass-through entities beginning on or after January 1, 2018.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) revise the tax rate; previously the rate was 10.75 percent for all pass-through entities, and the amendments provide that the rate is as follows:

Pass-Through Entity Income, per Taxable Year	Tax Rate
Under \$250,000	5.525%
Under \$1 million, but at least \$250,000	6.37%
Under \$3 million, but at least \$1 million	8.97%
\$3 million and above	10.75%

(2) remove the requirement that a taxpayer be a ‘natural person’ in order to receive the gross income tax credit under the bill, thereby permitting natural persons, business entities, and estates and trusts to be eligible to receive the corresponding pass-through credit;

(3) increase the amount of the gross income tax credit under the bill, from 89.25 percent to 100 percent;

(4) provide that the gross income tax credit may only be claimed by a qualifying taxpayer after the application of all other credits allowed by law;

(5) make the bill retroactive to taxable years beginning on and after January 1, 2018; and

(6) make technical corrections to add two omitted words and update an internal cross-reference.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the bill will be revenue neutral, but the State may incur an initial expenditure increase related to the administration of the new tax. The permissive nature of the bill precludes the OLS from quantifying these impacts.

To the extent that pass-through entities elect to pay the pass-through entity alternative business tax, the revenue will shift from the Property Tax Relief Fund to the General Fund.

The bill provides a tax credit equal to a member’s pro rata share of the tax liability incurred from the entity-level tax, which can then be applied against the member’s gross income tax liability. This tax credit is provided to offset a member’s gross income tax liability on the member’s pro rata share of distributive proceeds of the pass-through entity since the pass-through entity would be paying the entity-level tax on those proceeds.

The OLS further notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through entity alternative business tax, which the department may be able to absorb within its existing budget.

CORRECTED COPY
LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3246
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: JANUARY 4, 2019

SUMMARY

- Synopsis:** Establishes elective pass-through business alternative income tax and allows refundable gross income tax credit for taxpayers earning income from pass-through businesses in taxable year.
- Type of Impact:** Annual State expenditure increase. Possible annual shift of State revenue from Property Tax Relief Fund to General Fund.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2019 and Thereafter</u>
State Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) anticipates that the bill will be revenue-neutral to the State, but the State may incur an annual expenditure increase related to the administration of the new elective pass-through business alternative income tax. The permissive nature of the bill precludes the OLS from quantifying these impacts.
- To the extent that pass-through entities elect to pay the pass-through business alternative income tax, State revenue will shift from the Property Tax Relief Fund to the General Fund.
- The bill provides a tax credit equal to a member's pro rata share of the tax liability incurred from the entity-level tax, which can then be applied against the member's gross income tax liability. This tax credit is provided to offset a member's gross income tax liability on the member's pro rata share of distributive proceeds of the pass-through entity since the pass-through entity would be paying the entity-level tax on those proceeds.
- The Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through business alternative income tax, which the department may be able to absorb within its existing budget.

BILL DESCRIPTION

This bill permits a pass-through business, at its election, to shift the obligation to pay New Jersey tax on the business' New Jersey income from the members of the business to the business. Doing so will preserve the full deductibility under federal tax laws of New Jersey income taxes paid on the pass-through business' New Jersey income. The bill responds to the federal "Tax Cuts and Jobs Act" of 2017, which newly limits to \$10,000 the annual deductibility of State and local tax payments under the federal personal income tax for individual taxpayers, while retaining the unrestricted deductibility of State and local tax payments for businesses. In general, members of a pass-through entity report the entity's taxable income on their income tax returns.

The bill establishes two instruments to effect the optional shift of the New Jersey income tax payment obligation from members of a pass-through business to the business, an optional entity-level tax on pass-through businesses and an offsetting gross income tax credit for members of pass-through businesses making that election.

Specifically, at the election of the business, the tax is levied on a pass-through business that has at least one partner, shareholder, or member that owes New Jersey gross income tax on income received from the pass-through business, and sourced to the State, in the tax year (the "distributive proceeds"). To calculate the amount of tax due, the pass-through business is first required to determine the amount of distributive proceeds that each member receives from the business in the tax year. Then, each member's pro rata share of the distributive proceeds is multiplied by: (i) 5.525 percent, if the distributive proceeds of the pass-through business are less than \$250,000 in the tax year; (ii) 6.37 percent, if the distributive proceeds are between \$250,000 and \$1 million; (iii) 8.97 percent, if the distributive proceeds are between \$1 million and \$3 million; and (iv) 10.75 percent, if the distributive proceeds are more than \$3 million (the "taxed share"). Finally, the pass-through business adds together each member's taxed share to determine its pass-through business alternative income tax liability for the tax year. However, if a member's tax liability is less than \$1, then that member's amount of distributive proceeds is disregarded for purposes of calculating the pass-through tax liability.

The bill provides a refundable gross income tax credit to members of a pass-through business that opts to pay the pass-through tax. The amount of this credit is equal to that member's pro rata taxed share, provided that the credit is not available for members whose pro rata taxed share is less than \$1. The credit may only be claimed by a qualifying taxpayer after the application of all other credits allowed by law.

The Division of Taxation in the Department of the Treasury is to develop and promulgate rules, regulations, procedures, and forms for the administration of the tax and tax credit.

The bill applies to taxable years of pass-through entities beginning on or after January 1, 2018.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the bill will be revenue-neutral to the State, but the State may incur

an annual expenditure increase related to the administration of the new pass-through business alternative income tax. The permissive nature of the bill precludes the OLS from quantifying these impacts.

A pass-through entity, with at least one member who is liable pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., may elect to pay an entity-level tax on the sum of each member’s pro rata share of distributive proceeds attributable to the pass-through entity for the taxable year. The bill provides a tax credit equal to a member’s pro rata share of the tax liability incurred from the entity-level tax, which can then be applied against the member’s gross income tax liability. This tax credit is provided to offset a member’s gross income tax liability on the member’s pro rata share of distributive proceeds of the pass-through entity since the pass-through entity would be paying the entity-level tax on those proceeds.

The OLS notes that to the extent that pass-through entities elect to pay the pass-through business alternative income tax, State revenue will shift from the Property Tax Relief Fund to the General Fund.

The OLS further notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through business alternative income tax, which the department may be able to absorb within its existing budget.

Section: Revenue, Finance and Appropriations

*Analyst: Jordan M. DiGiovanni
Revenue Analyst*

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

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

ASSEMBLY, No. 4807

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED DECEMBER 10, 2018

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman ANTHONY M. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Establishes elective pass-through business alternative income tax and allows refundable gross income tax credit for taxpayers earning income from pass-through businesses in taxable year.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2018)

1 AN ACT establishing an elective pass-through business alternative
2 income tax and allowing a refundable gross income tax credit for
3 taxpayers earning income from pass-through businesses,
4 supplementing Title 54A of the New Jersey Statutes and
5 amending N.J.S.54A:4-1 and P.L.1993, c.173.

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. (New section) This act shall be known and may be cited as
11 the “Pass-Through Business Alternative Income Tax Act.”

12
13 2. (New section) As used in P.L. , c. (C.) (pending
14 before the Legislature as this bill):

15 “Distributive proceeds” means the income, dividends, and gain
16 of a pass-through entity, derived from or connected with sources
17 within the State, and upon which tax is imposed and due on a
18 member of the pass-through entity pursuant to the “New Jersey
19 Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in a taxable year.

20 “Member” means a natural person who is a shareholder of a New
21 Jersey S corporation; a partner in a general, limited, or limited
22 liability partnership; or a member of a New Jersey limited liability
23 company.

24 “New Jersey limited liability company” means an entity
25 organized pursuant to the “Revised Uniform Limited Liability
26 Company Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law
27 providing for the formation of a limited liability company in this
28 State that, pursuant to section 92 of P.L.2012, c.50 (C.42:2C-92), is
29 classified as a partnership.

30 “New Jersey S corporation” means the same as that term is used
31 in subsection (p) of section 4 of P.L.1945, c.162 (C.54:10A-4).

32 “Partnership” means a syndicate, group, pool, joint venture, or
33 other unincorporated organization, through or by means of which
34 any business, financial operation, or venture is carried on in this
35 State, and which is not, within the meaning of P.L. , c. (C.)
36 (pending before the Legislature as this bill), a trust or estate or a
37 corporation.

38 “Pass-through entity” means a partnership, a New Jersey S
39 corporation, or a New Jersey limited liability company, with at least
40 one member who is liable for tax on distributive proceeds pursuant
41 to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
42 in a taxable year.

43 “Pro rata share of distributive proceeds” means the portion of
44 distributive proceeds attributable to a member of a pass-through
45 entity in a taxable year.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Taxable year" means the same as that term is used in section 12
2 of P.L.1993, c.173 (C.54A:5-10).

3

4 3. (New section) a. A pass-through entity with at least one
5 member who is liable pursuant to the "New Jersey Gross Income
6 Tax Act," N.J.S.54A:1-1 et seq., for tax on that member's pro rata
7 share of distributive proceeds of the pass-through entity in a taxable
8 year may elect to be liable for, and pay, a pass-through business
9 alternative income tax in the taxable year.

10 b. (1) Each pass-through entity that makes an election for a
11 taxable year pursuant to this section shall report to each of its
12 members, for the taxable year, the member's pro rata share of
13 distributive proceeds.

14 (2) The tax imposed on a pass-through entity pursuant to this
15 section shall be equal to the sum of: each member's pro rata share
16 of distributive proceeds attributable to the pass-through entity for
17 the taxable year, multiplied by 10.75%.

18 (3) If a member's proportionate share of New Jersey gross
19 income tax liability for the taxable year, after the application of any
20 credits, deductions, or exemptions, is an amount equal to or less
21 than \$1, then that member's pro rata share of distributive proceeds
22 shall be disregarded for purposes of determining the tax pursuant to
23 this section; provided, however, that the member shall not be
24 eligible to claim a credit pursuant to section 5 of P.L. ,
25 c. (C.) (pending before the Legislature as this bill) for the
26 taxable year.

27 c. The amount of pass-through business alternative income tax
28 due from a pass-through entity in a taxable year shall be exclusive
29 of any amount of tax due and paid by the pass-through entity
30 pursuant to the "Corporation Business Tax Act (1945)," P.L.1945,
31 c.162 (C.54:10A-1 et seq.), during any privilege period, except as
32 otherwise provided in P.L. , c. (C.) (pending before the
33 Legislature as this bill).

34 d. The director shall set the schedule and procedures for the
35 payment of pass-through business alternative income tax.

36

37 4. (New section) a. For the purpose of administration of
38 P.L. , c. (C.) (pending before the Legislature as this bill),
39 the director shall have those powers as the director deems necessary
40 to apply to a pass-through entity subject to P.L. , c. (C.)
41 (pending before the Legislature as this bill), for the reporting,
42 payment, collection, administration, and enforcement of the tax
43 imposed pursuant to P.L. , c. (C.) (pending before the
44 Legislature as this bill), as may be applicable to the collection,
45 administration, and enforcement of the New Jersey gross income
46 tax provided in the "New Jersey Gross Income Tax Act,"
47 N.J.S.54A:1-1 et seq., except as otherwise provided by subsection
48 b. of this section.

1 b. Taxes collected under the provisions of P.L. ,
2 c. (C.) (pending before the Legislature as this bill) shall be
3 deposited by the State Treasurer in the General Fund.

4
5 5. (New section) a. Except as otherwise provided in paragraph
6 (3) of subsection b. of section 3 of P.L. , c. (C.) (pending
7 before the Legislature as this bill), a taxpayer shall be allowed a
8 refundable gross income tax credit, pursuant to the "New Jersey
9 Gross Income Tax Act," N.J.S.54A:1-1 et seq., if the taxpayer is a
10 member of a pass-through entity that elects to owe and pay the
11 pass-through business alternative income tax determined pursuant
12 to section 3 of P.L. , c. (C.) (pending before the Legislature
13 as this bill) for the taxable year.

14 For each pass-through entity of which the taxpayer is a member,
15 the amount of the credit shall equal the member's pro rata share of
16 the tax paid pursuant to section 3 of P.L. , c. (C.) (pending
17 before the Legislature as this bill) multiplied by 89.25%, which
18 credit shall be applied against the gross income tax liability of the
19 member in the taxable year.

20 b. The order of priority in which the credit allowed by this
21 section and any other credits allowed by law may be taken shall be
22 as prescribed by the director.

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

29
30 6. Section 3 of P.L.1993, c.173 (C.54:10A-5.22) is amended to
31 read as follows:

32 3. a. A corporation may elect, in accordance with the
33 provisions of this section, to be a New Jersey S corporation. In
34 order for an election to be valid, the corporation and each of its
35 shareholders on the day on which the election is made (hereinafter
36 "initial shareholders") must consent to such election and the
37 jurisdictional requirements of becoming a New Jersey S
38 corporation. The form of the election and consent to jurisdictional
39 requirements and the place for filing shall be as prescribed by the
40 Director of the Division of Taxation.

41 b. Each initial shareholder and the corporation shall consent to
42 the following jurisdictional requirements:

43 (1) That this State shall have the right and jurisdiction to tax and
44 collect the tax on each shareholder's S corporation income as
45 defined pursuant to section 12 of P.L.1993, c.173 (C.54A:5-10) and,
46 if applicable, the pass-through business alternative income tax
47 pursuant to P.L. , c. (C.) (pending before the Legislature as
48 this bill);

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

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

18 c. A corporation may make an election to become a New Jersey
19 S corporation with respect to an accounting or privilege period for
20 which the corporation is or will be an S corporation. The election
21 for an accounting or privilege period, along with the consents to
22 jurisdictional requirements, shall be filed within one calendar
23 month of the time at which a federal S corporation election would
24 be required if such accounting or privilege period were a "taxable
25 year" for which a federal S corporation election were to be made
26 pursuant to section 1362 of the federal Internal Revenue Code of
27 1986, 26 U.S.C. s.1362. Such elections may only be revoked
28 pursuant to subsection d. of this section. Such election shall
29 terminate immediately upon the corporation's failure to satisfy the
30 definition of a New Jersey S corporation pursuant to paragraph (p)
31 of section 4 of P.L.1945, c.162 (C.54:10A-4).

32 d. A corporation may revoke an election pursuant to this
33 section on or before the last day of the first accounting or privilege
34 period to which the election would otherwise apply.

35 (cf: P.L.1993, c.173, s.3)

36

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

39 4. a. With respect to each of its shareholders that is not an
40 initial shareholder, a New Jersey S corporation shall satisfy the
41 requirements of either paragraph b. or c. of this section.

42 b. Deliver a consent to the jurisdictional requirements as set
43 forth in subsection b. of section 3 of P.L.1993, c.173 (C.54:10A-
44 5.22).

45 c. Make payments to the Director of the Division of Taxation
46 on behalf of each nonconsenting shareholder in an amount equal to
47 the shareholder's pro rata share of S corporation income allocated to
48 this State, as defined pursuant to section 12 of P.L.1993, c.173

1 (C.54A:5-10), reflected on the corporation's return for the
2 accounting or privilege period, multiplied by the maximum tax
3 bracket rate provided under N.J.S.54A:2-1 in effect at the end of the
4 accounting or privilege period. The payments shall be made no
5 later than the time for filing of the return for the accounting or
6 privilege period. The director may, by regulation, require that
7 amounts estimated to be equal to the liability expected to be due
8 pursuant to this subsection be withheld from any distribution made
9 to a nonconsenting 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 period.
21 In such case, the corporation shall have the right, but not the
22 obligation, to recover payments made by the corporation pursuant to
23 this subsection from each nonconsenting shareholder. The
24 corporation shall not be liable for the pass-through business
25 alternative income tax pursuant to P.L. , c. (C.) (pending
26 before the Legislature as this bill) relative to collections made in a
27 taxable year for such nonconsenting members.

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

29

30 8. N.J.S.54A:4-1 is amended to read as follows:

31 54A:4-1. Resident credit for tax of another state. (a) A
32 resident taxpayer shall be allowed a credit against the tax otherwise
33 due under this act for the amount of any income tax or wage tax
34 imposed for the taxable year by another state of the United States or
35 political subdivision of such state, or by the District of Columbia,
36 with respect to income which is also subject to tax under this act,
37 except as provided by subsections (c) and (d) of this section.

38 (b) The credit provided under this section shall not exceed the
39 proportion of the tax otherwise due under this act that the amount of
40 the taxpayer's income subject to tax by the other jurisdiction bears
41 to his entire New Jersey income.

42 (c) No credit shall be allowed against the tax otherwise due
43 under this act for the amount of any income tax or wage tax
44 imposed for the taxable year on S corporation income allocated to
45 this State.

46 (d) No credit shall be allowed for the amount of any taxes paid
47 or accrued for the taxable year on or measured by profits or income

1 imposed on or paid on behalf of a person other than the taxpayer,
2 whether or not the taxpayer may be held liable for the tax.

3 (e) Readjustment of the tax of another state or political
4 subdivision thereof--if the taxpayer is allowed credit under this
5 section for more or less of the tax of another state or political
6 subdivision thereof than he is finally required to pay, the taxpayer
7 shall send notice of the difference to the director who shall
8 redetermine the tax for any years affected regardless of any
9 otherwise applicable statute of limitations.

10 (f) A resident taxpayer shall be allowed a credit against the tax
11 otherwise due under this act for the amount of any tax that the
12 director determines is substantially similar to the tax imposed
13 pursuant to section 2 of P.L. , c. (C.) (pending before the
14 Legislature as this bill), for the taxable year, by another state of the
15 United States or political subdivision of such state, or by the
16 District of Columbia, with respect to the direct and indirect
17 distributive proceeds from a pass-through entity, which distributive
18 proceeds are also subject to tax under this act.

19 For purposes of this subsection, "distributive proceeds" and
20 "pass-through entity" mean the same as those terms are used in
21 section 2 of P.L. , c. (C.) (pending before the Legislature
22 as this bill).

23 (cf: P.L.1993, c.173, s.7)

24

25 9. Section 11 of P.L.1993, c.173 (C.54A:5-9) is amended to
26 read as follows:

27 11. **[An]** Except as otherwise provided by P.L. , c. (C.)
28 (pending before the Legislature as this bill), an S corporation as
29 such shall not be subject to the tax imposed by the "New Jersey
30 Gross Income Tax Act," N.J.S.54A:1-1 et seq., but the S
31 corporation income, dividends, and gain of a shareholder of an S
32 corporation shall be subject to the tax, and the tax shall be imposed
33 on the shareholder's pro rata share, whether or not distributed, of the
34 S corporation income for its taxable year ending within or with the
35 shareholder's taxable year.

36 (cf: P.L.1993, c.173, s.11)

37

38 10. Section 15 of P.L.1993, c.173 (C.54A:5-13) is amended to
39 read as follows:

40 15. For purposes of **[this act]** the "New Jersey Gross Income
41 Tax Act," N.J.S.54A:1-1 et seq., if a shareholder of an S
42 corporation is both a resident and a nonresident of this State during
43 any taxable year, the shareholder's pro rata share of the S
44 corporation income allocated to this State and S corporation income
45 not allocated to this State for the taxable period shall be further
46 prorated between the shareholder's periods of residence and
47 nonresidence during the taxable period, in accordance with the
48 number of days in each period. Any prorated amount of S

1 corporation income determined pursuant to this section shall also
2 apply to determinations of income for purposes of the assessment of
3 the pass-through business alternative income tax, pursuant to
4 P.L. , c. (C.) (pending before the Legislature as this bill).
5 (cf: P.L.1993, c.173 s.15)
6

7 11. (New section) The director shall adopt, pursuant to the
8 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
9 seq.), and immediately upon filing with the Office of
10 Administrative Law, rules and regulations necessary to effectuate
11 the purposes of P.L. , c. (C.) (pending before the
12 Legislature as this bill), which shall be effective for a period not to
13 exceed 360 days following enactment of P.L. , c. (C.)
14 (pending before the Legislature as this bill) and may thereafter be
15 amended, adopted, or readopted by the director in accordance with
16 the requirements of P.L.1968, c.410.
17

18 12. This act shall take effect immediately and shall apply to
19 taxable years of pass-through entities beginning on or after January
20 1, 2019.
21

22 STATEMENT

23
24
25 This bill, the “Pass-Through Business Alternative Income Tax
26 Act,” establishes an elective entity-level tax to be paid by pass-
27 through businesses and provides an offsetting credit to taxpayers
28 who receive income from a pass-through business.

29 Pass-through businesses are partnerships, New Jersey limited
30 liability companies that are not taxed as incorporated entities by the
31 State, and New Jersey S corporations. These entities are called
32 pass-through businesses because, generally, the profits are passed
33 directly through the business to the owners, and tax is assessed and
34 levied on the owners' individual tax returns.

35 The bill creates an optional entity-level tax on pass-through
36 businesses. Specifically, and at the election of the business, the tax
37 is levied on a pass-through business that has at least one partner,
38 shareholder, or member (collectively, “member”) that is a natural
39 person and owes New Jersey gross income tax on income,
40 dividends, and gain received from the pass-through business, and
41 sourced to the State, in the tax year (the “distributive proceeds”).
42 To calculate the amount of tax due, the pass-through business is
43 first required to determine the amount of distributive proceeds that
44 each member receives from the business in the tax year. Then, each
45 member’s pro rata share of the distributive proceeds is multiplied
46 by the highest marginal rate under the New Jersey gross income tax,
47 which is 10.75% (the “taxed share”). Finally, the pass-through
48 business adds together each member’s taxed share to determine the

1 business's pass-through business alternative income tax liability for
2 the tax year. However, if a member does not owe gross income tax
3 in a tax year, or the liability is less than \$1, then that member's
4 amount of distributive proceeds is disregarded for purposes of
5 calculating the pass-through tax liability for the tax year.

6 For a business that chooses to pay the pass-through tax in a tax
7 year, the bill provides a refundable gross income tax credit that is
8 available to taxpayers who are members of the pass-through
9 business. Specifically, the amount of this credit is equal to that
10 member's taxed share, multiplied by 89.25%. However, if a
11 member does not owe gross income tax in a tax year, or the liability
12 is less than \$1, then that member is prohibited from claiming the tax
13 credit that is available under this bill for the tax year, since that
14 member's pro rata share of distributive proceeds was disregarded
15 for purposes of determine the tax liability.

16 The Director of the Division of Taxation in the Department of
17 the Treasury is authorized to develop and promulgate rules,
18 regulations, procedures, and forms for the administration and
19 collection of the tax, including but not limited to the payment
20 schedule, and the tax credit provided by this bill.

21 Pass-through businesses may be small and medium-sized,
22 privately owned entities that operate for federal and state personal
23 income tax purposes as pass-through entities and not actual income
24 tax paying entities. For each of these entities, the taxable income is
25 reported on the member's personal tax return, and taxes are paid by
26 the individual. The ability of these individuals to deduct these
27 personal state income tax payments are now restricted as federal
28 personal itemized deductions to no more than \$10,000 per year, but
29 are not capped for businesses to use as unlimited business expenses
30 that can reduce the income passed on to their individual members.
31 This bill establishes a new tax and individual tax credit that will
32 preserve, at the business level, an uncapped offset against taxable
33 income, and that business income offset will credit the individual
34 taxpayer for their individual liability attributable to that income
35 derived from the pass-through business.

36 The bill takes effect immediately and applies to taxable years of
37 pass-through entities beginning on or after January 1, 2019.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4807

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4807, with committee amendments.

As amended, Assembly Bill No. 4807, the “Pass-Through Business Alternative Income Tax Act,” establishes an elective entity-level tax to be paid by pass-through businesses and provides an offsetting credit to taxpayers who receive income from a pass-through business.

Pass-through businesses are partnerships, New Jersey limited liability companies that are not taxed as incorporated entities by the State, and New Jersey S corporations. These entities are called pass-through businesses because, generally, the profits are passed directly through the business to the owners, and tax is assessed and levied on the owners' individual tax returns.

This bill creates an optional entity-level tax on pass-through businesses. Specifically, at the election of the business, the tax is levied on a pass-through business that has at least one partner, shareholder, or member (collectively, “member”) that owes New Jersey gross income tax on income, dividends, and gain received from the pass-through business, and sourced to the State, in the tax year (the “distributive proceeds”). To calculate the amount of tax due, the pass-through business is first required to determine the amount of distributive proceeds that each member receives from the business in the tax year. Then, each member’s pro rata share of the distributive proceeds is multiplied by: (i) 5.525 percent, if the distributive proceeds of the pass-through business are less than \$250,000 in the tax year; (ii) 6.37 percent, if the distributive proceeds are between \$250,000 and \$1 million; (iii) 8.97 percent, if the distributive proceeds are between \$1 million and \$3 million; and (iv) 10.75 percent, if the distributive proceeds are more than \$3 million (the “taxed share”). Finally, the pass-through business adds together each member’s taxed share to determine the business’s pass-through business alternative income tax liability for the tax year. However, if a member does not owe gross income tax in a tax year on distributive proceeds, or the liability is less than \$1, then that member’s amount of distributive proceeds is disregarded for purposes of calculating the pass-through tax liability for the tax year.

For a business that opts to pay the pass-through tax in a tax year, the bill provides a refundable gross income tax credit that is available to taxpayers who are members of the pass-through business, irrespective of whether the taxpayer is a natural person, business entity, or estate or trust. Specifically, the amount of this credit is equal to that member's taxed share. However, if a member does not owe gross income tax in a tax year on distributive proceeds, or the liability is less than \$1, then that member cannot claim the tax credit that is available under this bill for the tax year, since that member's pro rata share of distributive proceeds was disregarded for purposes of determining the tax liability. This credit may only be claimed by a qualifying taxpayer after the application of all other credits allowed by law.

The Director of the Division of Taxation in the Department of the Treasury is authorized to develop and promulgate rules, regulations, procedures, and forms for the administration and collection of the tax, including but not limited to the payment schedule, the tax credit provided by the bill, and for the application of the credit relative to tax liabilities of estates and trusts.

Pass-through businesses may be small and medium-sized, privately owned entities that operate for federal and State personal income tax purposes as pass-through entities. For each of these entities, the taxable income is reported on the member's personal tax return, and taxes are paid by the individual. The ability of these individuals to deduct these personal state income tax payments are now restricted as federal personal itemized deductions to no more than \$10,000 per year, but are not capped for businesses to use as unlimited business expenses that can reduce the income passed on to their individual members. This bill establishes a new tax and individual tax credit that will preserve, at the business level, an uncapped offset against taxable income, and that business income offset will credit the individual taxpayer for their individual liability attributable to that income derived from the pass-through business.

The bill takes effect immediately and applies to taxable years of pass-through entities beginning on or after January 1, 2018.

As amended and reported by the committee, Assembly Bill No. 4807 is identical to Senate Bill No. 3246 (1R), as also reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) revise the tax rate; previously the rate was 10.75 percent for all pass-through entities, and the amendments provide that the rate is as follows:

Pass-Through Entity Income, per Taxable Year	Tax Rate
Under \$250,000	5.525%
Under \$1 million, but at least \$250,000	6.37%
Under \$3 million, but at least \$1 million	8.97%
\$3 million and above	10.75%

(2) remove the requirement that a taxpayer be a ‘natural person’ in order to receive the gross income tax credit under the bill, thereby permitting natural persons, business entities, and estates and trusts to be eligible to receive the corresponding pass-through credit;

(3) increase the amount of the gross income tax credit under the bill, from 89.25 percent to 100 percent;

(4) provide that the gross income tax credit may only be claimed by a qualifying taxpayer after the application of all other credits allowed by law;

(5) make the bill retroactive to taxable years beginning on and after January 1, 2018; and

(6) make technical corrections to add two omitted words and update an internal cross-reference.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the bill will be revenue neutral, but the State may incur an initial expenditure increase related to the administration of the new tax. The permissive nature of the bill precludes the OLS from quantifying these impacts.

To the extent that pass-through entities elect to pay the pass-through entity alternative business tax, the revenue will shift from the Property Tax Relief Fund to the General Fund.

The bill provides a tax credit equal to a member’s pro rata share of the tax liability incurred from the entity-level tax, which can then be applied against the member’s gross income tax liability. This tax credit is provided to offset a member’s gross income tax liability on the member’s pro rata share of distributive proceeds of the pass-through entity since the pass-through entity would be paying the entity-level tax on those proceeds.

The OLS further notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through entity alternative business tax, which the department may be able to absorb within its existing budget.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4807

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 12, 2019

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 4807 (1R).

This bill, the “Pass-Through Business Alternative Income Tax Act,” establishes an elective entity-level alternative income tax to be paid by pass-through businesses and provides an offsetting credit to taxpayers who receive income from a pass-through business.

For a business that opts to pay the pass-through business alternative income tax, the bill provides a refundable gross income tax credit that is available to taxpayers who are members of the pass-through business. In the case of a corporation that owns a pass-through business opting to pay the pass-through business alternative income tax, the bill provides a corporation business tax credit which, if unused, may be carried forward for up to 20 years.

The bill takes effect immediately and applies to taxable years of pass-through entities beginning on or after January 1, 2020.

As amended and reported by the committee, Assembly Bill No. 4807 (1R) is identical to Senate Bill No. 3246 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) change the rates of tax a pass-through entity will pay under the bill to as follows:

Pass-Through Entity Income	Tax Rate
First \$250,000	5.675%
Amount between \$250,000 and \$1 million	6.52%
Amount between \$1 million and \$5 million	9.12%
Amount over \$5 million	10.9%

(2) allow a corporation business tax credit to offset the elective tax paid by a pass-through business owned by a corporation;

(3) redefine which entities are considered pass-through entities;

(4) makes changes related to the administration of the bill; and

(5) change the effective date so that the first tax year the elective pass-through business entity income tax will be in effect is 2020.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the bill will be revenue neutral, but the permissive nature of the bill precludes the OLS from quantifying the impact.

To the extent that pass-through entities elect to pay the pass-through business alternative income tax, revenue will shift from the Property Tax Relief Fund to the General Fund. Gross income tax collections are constitutionally dedicated to the Property Tax Relief Fund, but the bill requires collections from the pass-through business alternative income tax be deposited into the State's General Fund. The bill allows for a tax credit equal to a member's share of pass-through entity tax paid by the pass-through entity. A member can then apply the tax credit to offset its gross income tax or corporation business tax liability, since the pass-through entity would be paying the entity-level tax on those proceeds.

The OLS notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through business alternative income tax, which the department may be able to absorb within its existing budget.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4807

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: MARCH 29, 2019

SUMMARY

- Synopsis:** Establishes elective pass-through business alternative income tax and allows refundable gross income tax credit for taxpayers earning income from pass-through businesses in taxable year.
- Type of Impact:** Indeterminate expenditure increase related to administration of new tax. Possible shift of revenue from Property Tax Relief Fund to General Fund.
- Agencies Affected:** Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2019 and Thereafter</u>
State Net Revenue Impact	Potential increase in net revenue
State Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) anticipates that the bill will be revenue neutral, but the State may incur an initial expenditure increase related to the administration of the new tax. The permissive nature of the bill precludes the OLS from quantifying these impacts.
- To the extent that pass-through entities elect to pay the pass-through entity alternative business tax, revenue will shift from the Property Tax Relief Fund to the General Fund.
- The bill provides a tax credit equal to a member's pro rata share of the tax liability incurred from the entity-level tax, which can then be applied against the member's gross income tax liability. This tax credit is provided to offset a member's gross income tax liability on the member's pro rata share of distributive proceeds of the pass-through entity since the pass-through entity would be paying the entity-level tax on those proceeds.
- The OLS further notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through entity alternative business tax, which the department may be able to absorb within its existing budget.

BILL DESCRIPTION

This bill creates an optional entity-level tax on pass-through businesses. Specifically, at the election of the business, the tax is levied on a pass-through business that has at least one partner, shareholder, or member (collectively, “member”) that owes New Jersey gross income tax on income, dividends, and gain received from the pass-through business, and sourced to the State, in the tax year (the “distributive proceeds”). To calculate the amount of tax due, the pass-through business is first required to determine the amount of distributive proceeds that each member receives from the business in the tax year. Then, each member’s pro rata share of the distributive proceeds is multiplied by: (i) 5.525 percent, if the distributive proceeds of the pass-through business are less than \$250,000 in the tax year; (ii) 6.37 percent, if the distributive proceeds are between \$250,000 and \$1 million; (iii) 8.97 percent, if the distributive proceeds are between \$1 million and \$3 million; and (iv) 10.75 percent, if the distributive proceeds are more than \$3 million (the “taxed share”). Finally, the pass-through business adds together each member’s taxed share to determine the business’s pass-through business alternative income tax liability for the tax year. However, if a member does not owe gross income tax in a tax year on distributive proceeds, or the liability is less than \$1, then that member’s amount of distributive proceeds is disregarded for purposes of calculating the pass-through tax liability for the tax year.

For a business that opts to pay the pass-through tax in a tax year, the bill provides a refundable gross income tax credit that is available to taxpayers who are members of the pass-through business, irrespective of whether the taxpayer is a natural person, business entity, or estate or trust. Specifically, the amount of this credit is equal to that member’s pro rata taxed share. However, if a member does not owe gross income tax in a tax year on distributive proceeds, or the liability is less than \$1, then that member cannot claim the tax credit that is available under this bill for the tax year, since that member’s pro rata share of distributive proceeds was disregarded for purposes of determining the tax liability. This credit may only be claimed by a qualifying taxpayer after the application of all other credits allowed by law.

The Director of the Division of Taxation in the Department of the Treasury is authorized to develop and promulgate rules, regulations, procedures, and forms for the administration and collection of the tax, including but not limited to the payment schedule, the tax credit provided by the bill, and for the application of the credit relative to tax liabilities of estates and trusts.

Pass-through businesses may be small and medium-sized, privately owned entities that operate for federal and State personal income tax purposes as pass-through entities. For each of these entities, the taxable income is reported on the member’s personal tax return, and taxes are paid by the individual. The ability of these individuals to deduct these personal state income tax payments are now restricted as federal personal itemized deductions to no more than \$10,000 per year, but are not capped for businesses to use as unlimited business expenses that can reduce the income passed on to their individual members. This bill establishes a new tax and individual tax credit that will preserve, at the business level, an uncapped offset against taxable income, and that business income offset will credit the individual taxpayer for their individual liability attributable to that income derived from the pass-through business.

The bill takes effect immediately and is retroactive to taxable years of pass-through entities beginning on or after January 1, 2018.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the bill will be revenue neutral, but the State may incur an initial expenditure increase related to the administration of the new tax. The permissive nature of the bill precludes the OLS from quantifying these impacts.

A pass-through entity, with at least one member who is liable pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., may elect to pay an entity-level tax on the sum of each member’s pro rata share of distributive proceeds attributable to the pass-through entity for the taxable year. The bill provides a tax credit equal to a member’s pro rata share of the tax liability incurred from the entity-level tax, which can then be applied against the member’s gross income tax liability. This tax credit is provided to offset a member’s gross income tax liability on the member’s pro rata share of distributive proceeds of the pass-through entity since the pass-through entity would be paying the entity-level tax on those proceeds.

The OLS notes that to the extent that pass-through entities elect to pay the pass-through entity alternative business tax, revenue will shift from the Property Tax Relief Fund to the General Fund.

The OLS further notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through entity alternative business tax, which the department may be able to absorb within its existing budget.

Section: Revenue, Finance and Appropriations

*Analyst: Jordan M. DiGiovanni
Revenue Analyst*

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

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

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4807

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: DECEMBER 18, 2019

SUMMARY

- Synopsis:** Establishes elective pass-through entity business alternative income tax and allows corresponding refundable gross income tax and corporation business tax credit.
- Type of Impact:** Indeterminate expenditure increase related to administration of new tax. Potential shift of revenue from Property Tax Relief Fund to General Fund.
- Agencies Affected:** Department of the Treasury

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2020 and Thereafter</u>
State Revenue Impact	Shift between State funds
State Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) anticipates that the bill will be revenue neutral, but the permissive nature of the bill precludes the OLS from quantifying these impacts.
- To the extent that pass-through entities elect to pay the pass-through business alternative income tax, revenue will shift from the Property Tax Relief Fund to the General Fund.
- The bill allows for a tax credit equal to a member's share of pass-through entity tax paid by the pass-through entity. A member can then apply the tax credit to offset its gross income tax or corporation business tax liability, since the pass-through entity would be paying the entity-level tax on those proceeds.
- The OLS notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through business alternative income tax, which the department may be able to absorb within its existing budget.

BILL DESCRIPTION

This bill, the “Pass-Through Business Alternative Income Tax Act,” establishes an elective entity-level alternative income tax to be paid by pass-through businesses and provides an offsetting credit to taxpayers who receive income from a pass-through business.

For a business that opts to pay the pass-through business alternative income tax, the bill provides a refundable gross income tax credit that is available to taxpayers who are members of the pass-through business. In the case of a corporation that owns a pass-through business opting to pay the pass-through business alternative income tax, the bill provides a corporation business tax credit which, if unused, may be carried forward for up to 20 years.

The bill takes effect immediately and applies to taxable years of pass-through entities beginning on or after January 1, 2020.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the bill will be revenue neutral, but the permissive nature of the bill precludes the OLS from quantifying the impact.

To the extent that pass-through entities elect to pay the pass-through business alternative income tax, revenue will shift from the Property Tax Relief Fund to the General Fund. Gross income tax collections are constitutionally dedicated to the Property Tax Relief Fund, but the bill requires collections from the pass-through business alternative income tax be deposited into the State’s General Fund. The bill allows for a tax credit equal to a member’s share of pass-through entity tax paid by the pass-through entity. A member can then apply the tax credit to offset its gross income tax or corporation business tax liability, since the pass-through entity would be paying the entity-level tax on those proceeds.

The OLS notes that the Division of Taxation in the Department of the Treasury may incur increased costs to implement and administer the pass-through business alternative income tax, which the department may be able to absorb within its existing budget.

Section: Revenue, Finance and Appropriations
Analyst: Jordan M. DiGiovanni
Revenue Analyst
Approved: Frank W. Haines III
Legislative Budget and Finance Officer

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

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

Governor Murphy Takes Action on Legislation

01/13/2020

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

A268 (Kean, Egan, Holley/Singer, Gopal) - "P.I.C.K. Awareness Act"; authorizes issuance of special support recovery license plates.

A790 (Andrzejczak, Land, Mosquera, Mukherji, Downey, Zwicker, Mazzeo/Connors, Singleton) - "Combat to College Act"; grants priority course registration to military service members and veterans attending public institutions of higher education.

A791 (Andrzejczak, Land, Mosquera, Danielsens, Mukherji, Downey, Zwicker/Van Drew, Brown) - Requires institution of higher education to award appropriate credit for student's military service.

A1212 (McKeon, Gusciora, Vainieri Huttel/Sweeney, Smith, Bateman, Greenstein) - Clarifies intent of P.L.2007, c.340 regarding NJ's required participation in Regional Greenhouse Gas Initiative.

A1305 (Greenwald/Rice) - Renames Mountainview Youth Correctional Facility as "William H. Fauver Youth Correctional Facility."

A1576 (Conaway, Giblin/Vitale) - Requires certain health care facilities to provide, and employees to receive, annual influenza vaccination.

A1582 (Conaway, Moriarty, Mosquera, Benson, Pinkin, Giblin, Quijano/Weinberg, Ruiz) - Establishes "Dietetics and Nutrition Licensing Act".

A1991 (Sumter, Munoz, Mukherji/Singer, Gordon) - Requires students at institutions of higher education to receive immunization for meningitis in accordance with recommendations of Advisory Committee on Immunization Practices.

A3101 (Egan Jones, Benson, Land/Singleton) - Increases minimum annual amounts for appropriation for certain arts, historical heritage, and tourism purposes from hotel and motel occupancy fee revenues.

[Copy of Statement](#)

A3160 (Lampitt, Giblin, Murphy/Beach) - Permits cosmetology and hairstyling school clinics to charge certain fees for services rendered to general public.

A3832 (Mukherji, McKnight, Chiaravalloti/Cryan, Stack) - Authorizes municipal tax levy through public question for certain purposes; clarifies ability of local government entities to issue non-recourse bonds; appropriates \$100,000.

A4493 (Pinkin, Conaway, Vainieri Huttel/Vitale) - Authorizes expedited partner therapy, under which sexual partners or patients diagnosed with sexually transmitted disease are treated without prior clinical examination.

A4608 (Zwicker, Downey/Weinberg, Kean) - " Applied Behavior Analyst Licensing Act."

A4710 (Lampitt, Zwicker, Vainieri Huttel/Beach,Turner) - "Strengthening Gifted and Talented Education Act"; establishes school district responsibilities in educating gifted and talented students.

A5037 (Pintor Marin, Speight, Vainieri Huttel/Andrzejczak, Greenstein) - Enhances penalties related to counterfeit drugs.

A5091 (McKeon, Vainieri Huttel, Pinkin/Pou, Singleton) - Establishes "Safeguarding Against Financial Exploitation Act."

A5263 (Tully, Armato/Corrado) - Requires four-year public institution of higher education to award college credits to firefighters for certain courses completed at county fire academies.

A5277 (DeAngelo, Houghtaling/Greenstein) - Eliminates term limits for members of State Board of Examiners of Master Plumbers and State Board of Examiners of Heating, Ventilating, Air Conditioning and Refrigeration Contractors.

A5624 (Pintor Marin, Munoz, Lampitt/Weinberg, Corrado) - Requires that State employee serve as Equal Employment Opportunity and Affirmative Action officer for gubernatorial transitions.

A5625 (Pintor Marin, Munoz, Lampitt/Weinberg, Corrado) - Requires payment of expenses related to background investigations for certain gubernatorial transition positions.

A5628 (Pintor Marin, Munoz, McKnight/Weinberg, Corrado) - Requires Civil Service Commission establish standardize recordkeeping and retention requirements with regard to unclassified State employees.

[Copy of Statement](#)

A5631 (Pintor Marin, Munoz, Pinkin/Weinberg, Corrado) - Specifies certain requirements for State agency review of complaint of workplace discrimination.

[Copy of Statement](#)

A5632 (Pintor Marin, Munoz, Reynolds-Jackson/Weinberg) - Requires certain public employees receive additional training to manage harassment or discrimination complaints.

A5917 (Chiaravalloti, McKnight/Cunningham, Weinberg) - Expands DOH oversight of hospital finances.

A6007 (McKeon/Pou) - Requires insurers and insurance groups to submit corporate governance annual disclosure to DOBI Commissioner.

S463 (Singer, Greenstein/Dancer, Calabrese, DeAngelo) - Provides for voluntary contributions by taxpayers on gross income tax returns for Meals on Wheels.

S538 (Oroho, Stack/Wirths, Vaineri Huttie, Bucco) - Allows long term tax exemption extension for certain low-income housing.

S775 (Cunningham, Sacco/Sumter, Caride, Vainieri Huttie) - Establishes Tuition Aid Grant Study Commission to examine New Jersey's Tuition Aid Grant Program and make recommendations regarding improvements to program.

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Governor Murphy Takes Action on Legislation

01/13/2020

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

A268 (Kean, Egan, Holley/Singer, Gopal) - "P.I.C.K. Awareness Act"; authorizes issuance of special support recovery license plates.

A790 (Andrzejczak, Land, Mosquera, Mukherji, Downey, Zwicker, Mazzeo/Connors, Singleton) - "Combat to College Act"; grants priority course registration to military service members and veterans attending public institutions of higher education.

A791 (Andrzejczak, Land, Mosquera, Danielsens, Mukherji, Downey, Zwicker/Van Drew, Brown) - Requires institution of higher education to award appropriate credit for student's military service.

A1212 (McKeon, Gusciora, Vainieri Huttel/Sweeney, Smith, Bateman, Greenstein) - Clarifies intent of P.L.2007, c.340 regarding NJ's required participation in Regional Greenhouse Gas Initiative.

A1305 (Greenwald/Rice) - Renames Mountainview Youth Correctional Facility as "William H. Fauver Youth Correctional Facility."

A1576 (Conaway, Giblin/Vitale) - Requires certain health care facilities to provide, and employees to receive, annual influenza vaccination.

A1582 (Conaway, Moriarty, Mosquera, Benson, Pinkin, Giblin, Quijano/Weinberg, Ruiz) - Establishes "Dietetics and Nutrition Licensing Act".

A1991 (Sumter, Munoz, Mukherji/Singer, Gordon) - Requires students at institutions of higher education to receive immunization for meningitis in accordance with recommendations of Advisory Committee on Immunization Practices.

A3101 (Egan Jones, Benson, Land/Singleton) - Increases minimum annual amounts for appropriation for certain arts, historical heritage, and tourism purposes from hotel and motel occupancy fee revenues.

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A3160 (Lampitt, Giblin, Murphy/Beach) - Permits cosmetology and hairstyling school clinics to charge certain fees for services rendered to general public.

A3832 (Mukherji, McKnight, Chiaravalloti/Cryan, Stack) - Authorizes municipal tax levy through public question for certain purposes; clarifies ability of local government entities to issue non-recourse bonds; appropriates \$100,000.

A4493 (Pinkin, Conaway, Vainieri Huttel/Vitale) - Authorizes expedited partner therapy, under which sexual partners or patients diagnosed with sexually transmitted disease are treated without prior clinical examination.

A4608 (Zwicker, Downey/Weinberg, Kean) - " Applied Behavior Analyst Licensing Act."

A4710 (Lampitt, Zwicker, Vainieri Huttel/Beach,Turner) - "Strengthening Gifted and Talented Education Act"; establishes school district responsibilities in educating gifted and talented students.

A5037 (Pintor Marin, Speight, Vainieri Huttel/Andrzejczak, Greenstein) - Enhances penalties related to counterfeit drugs.

A5091 (McKeon, Vainieri Huttel, Pinkin/Pou, Singleton) - Establishes "Safeguarding Against Financial Exploitation Act."

A5263 (Tully, Armato/Corrado) - Requires four-year public institution of higher education to award college credits to firefighters for certain courses completed at county fire academies.

A5277 (DeAngelo, Houghtaling/Greenstein) - Eliminates term limits for members of State Board of Examiners of Master Plumbers and State Board of Examiners of Heating, Ventilating, Air Conditioning and Refrigeration Contractors.

A5624 (Pintor Marin, Munoz, Lampitt/Weinberg, Corrado) - Requires that State employee serve as Equal Employment Opportunity and Affirmative Action officer for gubernatorial transitions.

A5625 (Pintor Marin, Munoz, Lampitt/Weinberg, Corrado) - Requires payment of expenses related to background investigations for certain gubernatorial transition positions.

A5628 (Pintor Marin, Munoz, McKnight/Weinberg, Corrado) - Requires Civil Service Commission establish standardize recordkeeping and retention requirements with regard to unclassified State employees.

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A5631 (Pintor Marin, Munoz, Pinkin/Weinberg, Corrado) - Specifies certain requirements for State agency review of complaint of workplace discrimination.

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A5632 (Pintor Marin, Munoz, Reynolds-Jackson/Weinberg) - Requires certain public employees receive additional training to manage harassment or discrimination complaints.

A5917 (Chiaravalloti, McKnight/Cunningham, Weinberg) - Expands DOH oversight of hospital finances.

A6007 (McKeon/Pou) - Requires insurers and insurance groups to submit corporate governance annual disclosure to DOBI Commissioner.

S463 (Singer, Greenstein/Dancer, Calabrese, DeAngelo) - Provides for voluntary contributions by taxpayers on gross income tax returns for Meals on Wheels.

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