

July 1, 2018

ASSEMBLY BILL NO. 4202

To the General Assembly:

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

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

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

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

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

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

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

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

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

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

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

- Page 10, Section 4, Line 30: Delete "(B)" and insert "(iii)"
- Page 10, Section 4, Line 31: Delete "2019" and insert "2018"
- Page 10, Section 4, Line 33: After "paid" insert "or deemed paid"
- Page 10, Section 4, Line 36: Before "Entire" insert "(B)"
- Page 10, Section 4, Line 38: After "paid" insert "or deemed paid"
- Page 10, Section 4, Line 42: After "section." insert "(C) To the extent a subsidiary received dividends from other subsidiaries and included those dividends in its entire net income for the purposes of determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the taxpayer receiving those same dividends from the subsidiary shall exclude those dividends from its entire net income based on the subsidiary's allocation factor used by the subsidiary in determining its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)."
- Page 10, Section 4, Line 43: Delete "There" and insert "For privilege periods before the effective date of P.L. ____, c. (pending before the Legislature as this bill, there"
- Page 11, Section 4, Line 9: Delete "exclusions" and insert "exclusion"
- Page 11, Section 4, Line 10: Delete "paragraphs'" and insert "paragraph"
- Page 11, Section 4, Line 10: After "(4)" delete "and (5)"
- Page 11, Section 4, Line 17: After "in" delete "exclusions in paragraphs (4) and (5)" and insert "exclusion in paragraph (4)"
- Page 12, Section 4, Line 9: After "to" insert ",or would have been subject to tax if doing business in this State,"
- Page 12, Section 4, Line 14: After "to" insert ",or would have been subject to tax if doing business in this State,"

Page 14, Section 4, Line 47-48:

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

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

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

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

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

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

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

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

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

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

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

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

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

Page 15, Section 4, Line 1-4:

Delete in their entirety

Page 16, Section 4, Line 44:

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

(1) As used in this subsection:

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

Legislature as this bill).

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

"UNOL" means the unabsorbed portion of net operating loss as calculated under paragraph (6) of subsection (k) of this section as such paragraph was in effect for

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

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

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

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

this section allocated to this state.

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

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

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

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

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

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

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

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

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

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

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

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

of this State or another jurisdiction;

(3) whose business includes providing, directly and indirectly, insurance or reinsurance covering the risks of its parent, members of its affiliated group, or both; and
(4) 50% or less of whose gross receipts for the privilege period consist of premiums from arrangements that constitute insurance for federal income tax purposes.

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

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

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

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

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

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

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

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

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

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

Page 16, Section 5, Line 47:

Delete "5." and insert "4."

Page 18, Section 5, Line 20:

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

Page 19, Line 10:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Period Beginning In Calendar Year:	Domestic Corporation Minimum Tax:	Foreign Corporation Minimum Tax:
1994	\$50	\$100
1995	\$150	\$200
1996	\$200	\$200
1997	\$200	\$200
1998	\$200	\$200
1999	\$200	\$200
2000	\$200	\$200
2001	\$210	\$210

and for calendar years 2002 through 2005 the minimum tax for all taxpayers shall be \$500, and for calendar year 2006 through

calendar year 2011 the minimum tax for all corporations, and for privilege periods beginning in calendar year 2012 and thereafter the minimum tax for corporations that are not New Jersey S corporations shall be based on the New Jersey gross receipts[, as defined for the purposes of this section pursuant to section 7 of P.L.2002, c.40 (C.54:10A-5a),] of the taxpayer pursuant to the following schedule:

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$500
\$100,000 or more but less than \$250,000	\$750
\$250,000 or more but less than \$500,000	\$1,000
\$500,000 or more but less than \$1,000,000.....	\$1,500
\$1,000,000 or more	\$2,000

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

New Jersey Gross Receipts:	Minimum Tax:
Less than \$100,000	\$375
\$100,000 or more but less than \$250,000	\$562.50
\$250,000 or more but less than \$500,000	\$750
\$500,000 or more but less than \$1,000,000.....	\$1,125
\$1,000,000 or more	\$1,500

provided however, that for a taxpayer that is a member of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, and whose group has total payroll of \$5,000,000 or more for the privilege period, the minimum tax shall be \$2,000 for the privilege period.

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

(g) Provided however, that for privilege periods beginning on or after January 1, 2001 but before January 1, 2002 the franchise tax

annually assessed to and paid by a taxpayer:

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

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

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

(i) (Deleted by amendment, P.L.2008, c.120)

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

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

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

(2) 10% of the basic research payments for the privilege period determined in accordance with section 41 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.41[, as in effect on June 30, 1992, and provided that subsection (h) of 26 U.S.C. s.41 relating to termination shall not apply]. Provided however, that the terms "qualified research expenses," "base amount," "qualified organization base amount period," "basic research" and any other terms determined by the Director of the Division of Taxation to affect the calculation of the credit shall include only expenditures for research conducted in this State.

b. No credit shall be allowed under section 42 of P.L.1987, c.102 (C.54:10A-5.3), or under the "Manufacturing Equipment and Employment Investment Tax Credit

Act," P.L.1993, c.171 (C.54:10A-5.16 et al.), or under P.L.1993, c.170 (C.54:10A-5.4 et seq.), for property or expenditures for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section.

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

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

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

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

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

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

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

6. The portion of a taxpayer's entire net worth to be used as a measure of the tax imposed by subsection (a) of section 5 of P.L.1945, c.162 (C.54:10A-5), and the portion of its entire net income to be used as a measure of the tax imposed by subsection (c)

of section 5 of P.L.1945, c.162 (C.54:10A-5), shall be determined by multiplying such entire net worth and entire net income, respectively, by an allocation factor which is the property fraction, plus twice the sales fraction plus the payroll fraction and the denominator of which is four, and which, for privilege periods beginning on or after January 1, 2012, is the sum of the portions of the property fraction, the sales fraction, and the payroll fraction determined in accordance with the following schedule:

for privilege periods beginning on or after January 1, 2012 but before January 1, 2013, 15% of the property fraction plus 70% of the sales fraction plus 15% of the payroll fraction, for privilege periods beginning on or after January 1, 2013 but before January 1, 2014, 5% of the property fraction plus 90% of the sales fraction plus 5% of the payroll fraction, and for privilege periods beginning on or after January 1, 2014, 100% of the sales fraction, except as the director may determine pursuant to section 8 of P.L.1945, c.162 (C.54:10A-8), that is:

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

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

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

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

(3) (Deleted by amendment.)

(4) [services performed within the State,] (i) sales of services, if the benefit of the service is received at a location in this State. If the benefit of the service is received both at a location within and outside this State, the portion of the sale that is allocated to this State is based on the percentage of the total value of the benefit of the service received at a location in this State or a reasonable approximation to the total value of the benefit of the service received in all locations both within and outside this State; (ii) if the state or states of assignment of services under subparagraph (i) of this paragraph cannot be determined for a customer who is an individual that is not a sole proprietor, the benefit of the service is deemed to be received at the customer's billing address; (iii) if the state or states of assignment of services under subparagraph (i) cannot be determined for a customer, except for a customer under subparagraph (ii) of this paragraph, the benefit of the service is deemed to be received at the location from which the services were ordered in the customer's regular course of operations. If the location from which the services were ordered in the customer's regular course of operations cannot be determined, the benefit of the service is deemed to be received at the customer's billing address,

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

(6) all other business receipts (excluding dividends excluded from entire net income by paragraph (1) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4)) earned within the State, divided by the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, services, rentals, royalties and all other business receipts, whether within or without the State.

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

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

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

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

b. For purposes of this subsection:

"Asset management services" means the rendering of investment advice, making determinations as

to when sales and purchases are to be made, or the selling or purchasing of assets, and related activities;

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

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

"Registered securities or commodities broker or dealer" means a broker or dealer registered as such by the federal Securities and Exchange Commission or the federal Commodities Futures Trading Commission.

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

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

b. Where (1) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (2) any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by or through another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss or net income, the director may include in the entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction. The director may require any person or corporation to submit such information under oath or affirmation, or to permit such examination of its books, papers and documents, as may be necessary to enable the director to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not such person or corporation is subject to the tax imposed by this act.

c. [The entire net income of a taxpayer exercising its franchise in this State that is a member of an affiliated group or a controlled group pursuant to section 1504 or 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1504 or 1563, shall be determined by eliminating all payments to, or charges by, other members of the affiliated or controlled group in excess of fair compensation in all inter-group transactions of any kind. Notwithstanding the elimination of all inter-group transactions in excess of fair compensation, if the taxpayer cannot demonstrate by clear and convincing evidence that a report by a taxpayer discloses the true earnings of the taxpayer on its business carried on in this State, the director may, at the director's discretion, require the taxpayer to file a

consolidated return of the entire operations of the affiliated group or controlled group, including its own operations and income to the extent permitted under the Constitution and statutes of the United States. The director shall determine the true amount of entire net income earned by the taxpayer in this State. The consolidated entire net income of the taxpayer and of the other members of its affiliated group or controlled group shall be allocated to this State by use of the applicable allocation formula that the director requires pursuant to P.L.1945, c.162 (C.54A:10A-1 et seq.) be used by the taxpayer. The return shall include in the allocation formula the property, payrolls, and sales of all corporations for which the return is made. The director may require a consolidated return under this section without regard to whether the other members of the affiliated or controlled group, other than the taxpayer, are or are not exercising their franchises in this State.

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

The member of an affiliated group or a controlled group shall incorporate in its return required under this section information needed to determine under this section its taxable entire net income, and shall furnish any additional information the director requires, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. A taxpayer shall furnish any additional information requested within 30 days after it is demanded, subject to the penalties of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq. (Deleted by amendment, P.L. _____, C. (pending before the Legislature as this bill)).

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

(a) The director may by [general rule] regulation or by special notice require any taxpayer to submit copies or pertinent extracts of its federal income tax returns, or of any other tax return [made to] filed with any agency of the federal government,

or of this or any other state, or of any statement or registration made pursuant to any state or federal law pertaining to securities or securities exchange regulation.

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

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

<u>Page 19, Section 7, Line 25:</u>	Delete "7." and insert "11."
<u>Page 19, Section 8, Line 44:</u>	Delete "8." and insert "12."
<u>Page 20, Section 9, Line 17:</u>	Delete "9." and insert "13."
<u>Page 20, Section 10, Line 40:</u>	Delete "10." and insert "14."
<u>Page 21, Section 11, Line 1:</u>	Delete "11." and insert "15."
<u>Page 21, Section 12, Line 13:</u>	Delete "12." and insert "16."
<u>Page 21, Line 37:</u>	<p>Insert new sections 17-25:</p> <p>"17. (New section) A taxable member of a combined group shall determine its entire net income from the unitary business as its share of the entire net income of the combined group in accordance with a combined unitary tax return made pursuant to this section and sections 17 through 21 of P.L. , c. (C.) (pending before the Legislature as this bill). The entire net income from the unitary business of a combined group is the sum of the entire net incomes of each taxable member and each nontaxable member of the combined group derived from the unitary business, which shall be determined as follows:</p> <p>a. For a member incorporated in the United States, the income included in income of the combined group shall be the member's entire net income otherwise determined pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.).</p> <p>b. For a member not incorporated in the United States, the income to be included in the entire net income of the combined group shall be determined from a profit and loss statement that shall be prepared for each foreign branch or corporation in the currency in which the books of account of the branch or corporation are regularly maintained, adjusted to conform it to the accounting principles generally accepted in the United States for the presentation of those statements and further adjusted to take into account any book-tax differences required by federal or State law. The profit and loss statement of each foreign member of the</p>

combined group and the allocation factors related thereto, whether United States or foreign, shall be translated into or from the currency in which the parent company maintains its books and records on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis. Income shall be expressed in United States dollars. In lieu of these procedures and subject to the determination of the director that the income to be reported reasonably approximates income as determined under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), income may be determined on any reasonable basis consistently applied on a year-to-year or entity-by-entity basis.

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

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

d. All dividends paid by one member to another member of the

combined group shall be eliminated from the income of the recipient.

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

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

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

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

under section 170 of the federal Internal Revenue Code, 26 U.S.C. s.170, but allowed as a carryover deduction in a subsequent privilege period, shall be treated as originally incurred in the subsequent year by the same member and the provisions of this section shall apply in the subsequent privilege period in determining the allowable deduction for that privilege period.

g. A prior net operating loss conversion carryover incurred by a member of a combined group shall be deducted from the entire net income or loss allocated to this state pursuant to section 18 of P.L. , c. (C.) (pending before the Legislature as this bill) as follows:

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

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

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

h. A net operating loss carryover incurred by a member of a combined group shall be deducted from entire net income or loss allocated to this state pursuant to section 18 of P.L. , c. (C.) (pending

before the Legislature as this bill) as follows:

(1) For privilege periods beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 21 of P.L. , c. (C.) (pending before the Legislature as this bill), if the computation of a combined group's entire net income allocated to this state results in a net operating loss, a taxable member of such group may carry over the net operating loss allocated to this state, as calculated under this section and sections 2 and 3 of P.L. , c. (C.) (pending before the Legislature as this bill), and shall be deductible from entire net income derived from the unitary business in a future privilege period to the extent that the carryover and deduction is otherwise consistent with subsection (v) of section 4 of P.L.1945, c.162 (C.54:10A-4)

(2) Where a taxable member of a combined group has a net operating loss carryover derived from a loss incurred by a combined group in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill), then the taxable member may share the net operating loss carryover with other taxable members of the combined group if such other taxable members were members of the combined group in the privilege period that the loss was incurred. Any amount of net operating loss carryover that is deducted by another taxable member of the combined group shall reduce the amount of net operating loss carryover that may be carried over by the taxable member that originally incurred the loss.

(3) Where a taxable member of a combined group has a net operating loss carryover derived

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

(4) A net operating loss carryover shall not include any net operating loss incurred during any privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 and 20 of P.L. , c. (C.) (pending before the legislature as this bill).

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

(1) If a taxable member of a combined group earns a tax credit in a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill), then the taxable member may share the credit with other taxable members of the combined group. Any amount of credit that is utilized by another taxable member of the combined group shall reduce the amount of credit carryover that may be carried over by the taxable member that originally earned the credit. If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning on or after the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill), then the taxable member may share the carryover

credit with other taxable members of the combined group.

(2) If a taxable member of a combined group has a tax credit carryover derived from a privilege period beginning prior to the first day of the initial privilege period for which a combined unitary tax return is required under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill), then the taxable member may share the carryover credit with other taxable members of the combined group.

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

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

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

k. Nothing in this section shall apply to:

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

eligible by the Commissioner of Banking and Insurance pursuant to section 11 of P.L.1960, c.32 (C.17:22-6.45) to insure risks within this State that is not a combinable captive insurance company. Notwithstanding a provision, if any, to the contrary in this section, the income of an insurance company that is not a combinable captive insurance company, the allocation or apportionment of income related thereto and the apportionment factors of an insurance company that is not a combinable captive insurance company shall not be included in a combined unitary tax return filed under this section and sections 18 through 20 of P.L. , c. (C.) (pending before the Legislature as this bill). In addition, the dividend exclusion provisions of paragraph (5) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) relating to dividends paid by insurance companies to non-insurance companies included in the unitary group shall not be affected by P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

18. (New section) A taxable member of a combined group shall determine its allocation factor for determining its share of the entire net income of the combined group, as determined pursuant to the provisions of section 17 of P.L. , c. (C.) (pending before the Legislature as this bill), pursuant to sections 6 through 8 of P.L.1945, c.162 (C.54:10A-6 through 54:10A-8); provided however:

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

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

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

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

19. (New section) a. A combined group shall file a combined unitary tax return under this section in the form and manner prescribed by the director. The managerial member of the combined group shall file the combined unitary tax return on behalf of the taxable members of the combined group and shall pay the tax on behalf of such taxable members. The managerial member is authorized to file taxable member returns, file taxable member extensions for filing, pay taxable member liabilities, receive taxable member findings, assessments, and notices, make and receive taxable member claims, or

file taxable member protests and appeals.

b. The privilege period for which the group shall file shall be determined as the privilege period of the managerial member. If a member of a combined group has a different fiscal or calendar accounting period from the group privilege period, that member with a different period shall report amounts from its return for its fiscal or calendar accounting year that ends during the group privilege period, provided no such reporting of amounts shall be required of such member until its first privilege period beginning on or after the first day of the initial privilege period of the managerial member for which a combined unitary tax return is required under sections 17 through 20 of P.L. , c. (C. and) (pending before the Legislature as this bill).

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

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

e. For purposes of this section:
(1) Any notice shall be sent to the managerial member of the combined group at the last known address of the managerial member as indicated on either the last

filing required or made under this Chapter or a subsequent electronic or written notice provided by the managerial member under rules prescribed by the director;

(2) The director may, at the director's sole discretion: (a) make any deficiency assessment against either the managerial member or a taxable member of the combined group; (b) refund or credit any overpayment to either the managerial member or a taxable member of the combined group; (c) require any payment to be made by electronic funds transfer; and (d) require the combined unitary tax return to be electronically filed. f. The director shall promulgate rules and regulations necessary to carry out the provisions of this section.

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

21. (New section) a. Determination of Managerial Member. If the combined group has a common parent corporation within the meaning of the Corporation Business Tax Act (1945), P.L.1945,

c.162 (C.54:10A-1 et seq.), and that common parent corporation is a taxable member of the corporate group, the managerial member shall be the common parent corporation. In other cases, the combined group shall select a taxable member as its managerial member or, in the discretion of the director or upon failure of the combined group to select its managerial member, the director shall designate a taxable member of the combined group as managerial member. Once the election of the managerial member is made, the election shall be binding for 10 successive privilege periods, except as otherwise provided for by the director.

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

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

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

e. If a combined group is eligible to elect the managerial member of the combined group,

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

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

g. For privilege periods beginning on and after January 1, 2019 a combined group must file a mandatory combined return. However, if privilege periods of the members of the combined group differ, the first mandatory combined return for the combined group shall be required for the privilege period of the managerial member.

h. The members of a combined group shall notify the director within 90 days of a change in the combined group where a member dissolves, a merger of any kind occurs, a member withdraws from the group, a member ceases doing business, a member of the group is acquired by a third party not in the group, or additional members enter group which are required to be included.

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

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

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

(2) refund or credit any overpayment to either the

managerial member or a taxable member of the combined group;
(3) require any payment to be made by electronic funds transfer; and
(4) require the mandatory combined return to be filed electronically.

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

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

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

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

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

b. A world-wide election or an affiliated group election is effective only if made on a timely filed, original return for a privilege period by the managerial member of the combined

group. Such election is binding for, and applicable to, the privilege period for which it is made and for the five immediately succeeding privilege periods. Provided however, the election can be revoked prior to the expiration of the binding period by written request to the Director of Taxation for reasonable cause including but not limited to a substantial change in ownership, members of the combined group or principal business, or changes in tax law, regulation or policy.

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

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

23. (New section) Following the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), no penalties or interest shall accrue for underpayment of tax for the provisions of P.L. , c. (C.) (pending before the Legislature as this bill) applying retroactively to tax years beginning on or after January 1, 2017, that create an additional tax liability due to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill), provided, however, the additional payments must be made by either the second next estimated payment subsequent to the enactment of P.L. , c. (C.) (pending before the Legislature as this bill), by December 31, 2018 for tax years beginning on or after January 1, 2017, or by the first estimated payment due after January 1, 2019 for tax years beginning on or after

January 1, 2018. In the first tax year that a mandatory combined return is due pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), no penalties or interest shall accrue due to underpayment that may result from the switch from separate returns to mandatory combined returns, and any overpayment by a member of the combined group from the prior tax year will be credited as an overpayment of the tax owed by the combined group, credited toward future estimated payments by the combined group.

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

27. a. Notwithstanding any provision of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4) or of the federal Internal Revenue Code, including but not limited to 26 U.S.C. s.381 or any successor or equivalent provision, that permits a corporation to use the net operating losses of another for federal income tax purposes following certain transactions, including but not limited to those qualifying as reorganizations under the provisions of subparagraph (A), (C), (D), (F) or (G) of paragraph (1) of subsection (a) of section 368 of the federal Internal Revenue Code, 26 U.S.C. s.368, a net operating loss for a privilege period ending after June 30, 1984, may be carried over and allowed as a deduction only by the corporation that sustained the loss; provided, however, that in the case of a merger of two or more corporations pursuant to statute of this State or any other jurisdiction, the net operating loss may be carried over only by the corporation that sustained the loss and that is also the surviving corporation following the merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation. [No net operating loss shall be allowed as a deduction by a corporation resulting from a consolidation pursuant to statute of this State or of any other jurisdiction.]

b. Subsection a. of this section shall not apply between members of a combined group reported on a combined return in New Jersey,

or between members of a commonly owned group reported on the elective combined return in New Jersey.

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

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

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

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

(1) taxes based on income;

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

outside the reasonable control of the violator; and

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

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

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

For the tax year 1976, any taxpayer with a tax liability under this subsection, or under the "Tax on Capital Gains and Other Unearned Income Act," P.L.1975, c.172 (C.54:8B-1 et seq.), shall not be subject to payment of an amount greater than the amount he would have paid if either return had covered all

capital transactions during the full tax year 1976; provided, however, that the rate which shall apply to any capital gain shall be that in effect on the date of the transaction. To the extent that any loss is used to offset any gain under P.L.1975, c.172, it shall not be used to offset any gain under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

The term "net gains or income" shall not include gains or income derived from obligations which are referred to in clause (1) or (2) of N.J.S.54A:6-14 of this act or from securities which evidence ownership in a qualified investment fund as defined in section 2 of P.L.1987, c.310 (C.54A:6-14.1). [The term "net gains or income" shall not include gains or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251).] The term "net gains or net income" shall not include gains or income from transactions to the extent to which nonrecognition is allowed for federal income tax purposes. The term "sale, exchange or other disposition" shall not include the exchange of stock or securities in a corporation a party to a reorganization in pursuance of a plan of reorganization, solely for stock or securities in such corporation or in another corporation a party to the reorganization and the transfer of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation if immediately after the exchange such person or persons are in control of the corporation. For purposes of this clause, stock or securities issued for services shall not be considered as issued in return for property.

For purposes of this clause, the term "reorganization" means--

- (i) A statutory merger or consolidation;
- (ii) The acquisition by one corporation, in exchange solely for all or part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring

corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition);

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

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

(v) A recapitalization;

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

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

(viii) A transaction otherwise qualifying under subclause (i) shall not be disqualified by reason of the fact that stock of a corporation (referred to in this subclause as the "controlling corporation") which before the merger was in control of the merged corporation is used in the transaction, if after the transaction, the corporation surviving the merger holds substantially all of its properties and of the properties

of the merged corporation (other than stock of the controlling corporation distributed in the transaction); and in the transaction, former shareholders of the surviving corporation exchanged, for an amount of voting stock of the controlling corporation, an amount of stock in the surviving corporation which constitutes control of such corporation.

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

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

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

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

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

f. Dividends. "Dividends" means any distribution in cash or property made by a corporation, association or business trust that is not an S corporation, (1) out of accumulated earnings and profits, or (2) out of earnings and profits of the year in which such dividend is paid and any distribution in cash or property made by an S corporation, as specifically determined pursuant

to section 16 of P.L.1993, c.173 (C.54A:5-14).

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

g. Gambling winnings.

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

i. Income in respect of a decedent.

j. Amounts distributed or withdrawn from an employee trust attributable to contributions to the trust which were excluded from gross income under the provisions of chapter 6 of Title 54A of the New Jersey Statutes, amounts rolled over from an IRA, as defined pursuant to subsection (a) of section 408 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.408, that is not a Roth IRA, as defined pursuant to subsection b. of section 2 of P.L.1998, c.57 (C.54A:6-28) to an IRA that is a Roth IRA, and pensions and annuities except to the extent of exclusions in N.J.S.54A:6-10 hereunder, notwithstanding the provisions of N.J.S.18A:66-51, P.L.1973, c.140, s.41 (C.43:6A-41), P.L.1954, c.84, s.53 (C.43:15A-53), P.L.1944, c.255, s.17 (C.43:16A-17), P.L.1965, c.89, s.45 (C.53:5A-45), R.S.43:10-14, P.L.1943, c.160, s.22 (C.43:10-18.22), P.L.1948, c.310, s.22 (C.43:10-18.71), P.L.1954, c.218, s.32 (C.43:13-22.34), P.L.1964, c.275, s.11 (C.43:13-22.60), R.S.43:10-57, P.L.1938, c.330, s.13 (C.43:10-105), R.S.43:13-44, and P.L.1943, c.189, s.5 (C.43:13-37.5).

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

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

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

n. Alimony and separate maintenance payments to the extent that such payments are required to be made under a decree of divorce or separate maintenance but not

including payments for support of minor children.

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

p. Net pro rata share of S corporation income [, excluding the gain or income derived from the sale or assignment of a tax credit transfer certificate pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section 10 of P.L.2014, c.63 (C.34:1B-251)]."

Page 21, Section 13, Line 38:

Delete "13." and insert "26."

Page 22, Section 14, Line 27:

Delete "14." and insert "27."

Page 22, Section 15, Line 40:

Delete "15." and insert "28."

Page 23, Line 3:

Insert new sections 29-31:

29. Section 10. Section 12 of P.L.2011, c.25 (C.17:47B-12) is amended to read as follows:

12. a. Each captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall pay to the Director of the Division of Taxation in the Department of the Treasury, on or before March 1 of each year, a tax at the rate of .38 of one percent on the first \$20,000,000 and .285 of one percent on the next \$20,000,000 and .19 of one percent on the next \$20,000,000 and .072 of one percent on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders; except that no tax shall be due or payable as to considerations received for annuity contracts.

b. Each captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall pay to the Director of the Division of Taxation in the Department of the Treasury, on or

before March 1 of each year, a tax at the rate of .214 of one percent on the first \$20,000,000 of assumed reinsurance premium, and .143 of one percent on the next \$20,000,000 and .048 of one percent on the next \$20,000,000 and .024 of one percent of each dollar thereafter. However, no tax under this subsection applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection a. of this section. No tax under this subsection shall apply in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer, and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

c. The annual minimum aggregate tax to be paid by a captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) calculated under subsections a. and b. of this section shall be \$7,500, and the annual maximum aggregate tax shall be \$200,000. The maximum aggregate tax to be paid by a sponsored captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall apply to each protected cell only and not to the sponsored captive insurance company as a whole.

d. (1) A captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) shall, on or before March 1 of each year, file with the commissioner an annual tax return, signed and sworn to by an officer of the company, or by its United States manager, if a company of a foreign country, in the form and containing matters as may be necessary for carrying out the provisions of this section.

(2) A captive insurance company that is not a combinable captive insurance company as

defined by section 1 of P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill) shall pay the balance of any tax due under this section based on the company's business during the preceding calendar year and make an installment payment in an amount equal to one-half of the tax payable under this section on the company's business done during the preceding calendar year.

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

e. Two or more captive insurance companies that are not combinable captive insurance companies as defined by section 1 of P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill) under common ownership and control shall be taxed as though they were a single captive insurance company.

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

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

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

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

h. The tax provided for by this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on

a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

i. The tax provided for by this section shall only apply to the branch business of a branch captive insurance company that is not a combinable captive insurance company as defined by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill).

(cf: P.L.2011, c.25, s.12)

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

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

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

Page 23, Section 16, Line 4:

Delete "16." and insert "32."

Page 23, Section 16, Line 4:

After "immediately" delete ". Sections 2 and 3 shall" and insert "but section 1 shall be effective for tax years beginning on and after January 1, 2018, sections 2 and 3 are retroactive to January 1, 2017, and the remaining sections shall apply to tax years beginning on and after January 1, 2018, provided however that the provisions of this act related to combined reporting and market based sourcing shall apply to tax years beginning on and after January 1, 2019. Section 36 shall be effective for tax years

beginning on and after January 1,
2019.”

Page 23, Section 16, Lines 5-8:

Delete in their entirety

[seal]

Respectfully,

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor