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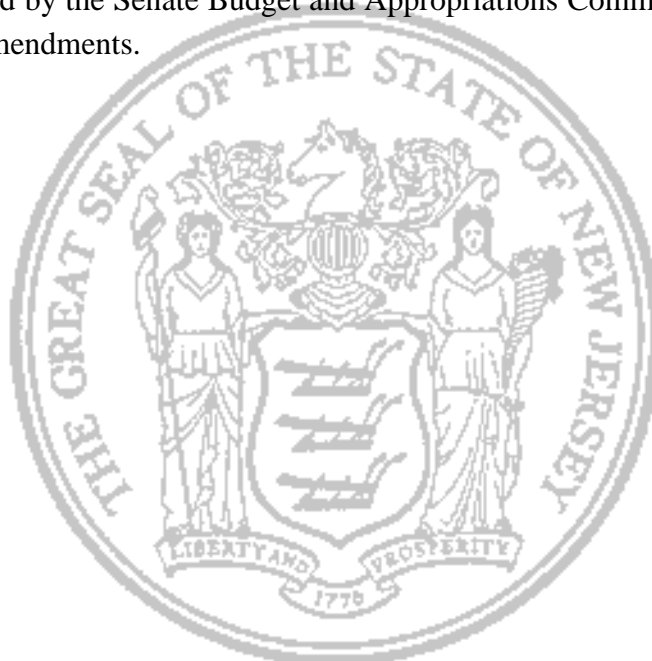
Senator Greenstein

SYNOPSIS

Requires members of unitary business groups to file combined reports of corporation business tax.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 6, 2016, with amendments.



1 AN ACT requiring members of unitary business groups to file
2 combined reports of corporation business tax, supplementing and
3 amending P.L.1945, c.162, amending P.L.1987, c.76, ¹and
4 P.L.2011, c.25,¹ and repealing sections 5 and 30 of P.L.2002,
5 c.40.

6
7 1. (New section) As used in P.L.1945, c.162 (C.54:10A-1 et
8 seq.):

9 ¹ “Combinable captive insurance company” means an entity that
10 is treated as an association taxable as a corporation under the
11 federal Internal Revenue Code:

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

16 that is licensed as a captive insurance company under the laws of
17 this State or another jurisdiction;

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

21 50 percent or less of whose gross receipts for the privilege period
22 consist of premiums from arrangements that constitute insurance for
23 federal income tax purposes. For purposes of this section,
24 “affiliated group” has the same meaning as that term is given by
25 section 1504 of the federal Internal Revenue Code (26 U.S.C.
26 s.1504), except that the term “common parent corporation” in that
27 section is deemed to mean any person, as defined in section 7701 of
28 the federal internal revenue code (26 U.S.C. s.7701) and references
29 to “at least eighty percent” in section 1504 of the federal Internal
30 Revenue Code are to be read as “fifty percent or more;” section
31 1504 of the federal Internal Revenue Code shall be read without
32 regard to the exclusions provided for in subsection (b) of that
33 section; “premiums” includes consideration for annuity contracts
34 and excludes any part of the consideration for insurance,
35 reinsurance, or annuity contracts that do not provide bona fide
36 insurance, reinsurance, or annuity benefits; and “gross receipts”
37 includes the amounts included in gross receipts for purposes of
38 paragraph (15) of subsection (c) of section 501 of the federal
39 Internal Revenue Code (26 U.S.C. s. 501), except that those
40 amounts also include all premiums.¹

41 “Combined group” means the group of corporations that are
42 engaged in a unitary business.

43 “Common ¹**[ownership]** control¹” means that more than 50
44 percent of the voting control of each member of a combined group

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted June 6, 2016.

1 is directly or indirectly owned by a common owner or owners,
2 either corporate or noncorporate, whether or not the owner or
3 owners are members of the combined group.

4 “Managerial member” means the managerial member selected
5 pursuant to section 5 of P.L. , c. (C.) (pending before the
6 Legislature as this bill).

7 “Member” means a corporation that is a part of a combined
8 group.

9 “Nontaxable member” means a member that is not subject to tax
10 pursuant to the Corporation Business Tax Act (1945), P.L.1945,
11 c.162 (C.54:10A-1 et seq.) ¹and is not a corporation exempted from
12 the tax pursuant to section 3 of P.L.1945, c.162 (C.54:10A-3)
13 except for a combinable captive insurance company¹.

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

17 “Tax haven” means a jurisdiction that, during the privilege
18 period, has no or only nominal effective tax on relevant income
19 and:

20 a. has laws or practices that prevent effective exchange of
21 information for tax purposes with other governments on taxpayers
22 benefiting from the tax regime;

23 b. has a tax regime which lacks transparency. A tax regime
24 lacks transparency if the details of legislative, legal, or
25 administrative provisions are not open and apparent or are not
26 consistently applied among similarly situated taxpayers, or if the
27 information needed by tax authorities to determine a taxpayer’s
28 correct tax liability, such as accounting records and underlying
29 documentation, is not adequately available;

30 c. facilitates the establishment of foreign-owned entities
31 without the need for a local substantive presence or prohibits these
32 entities from having any commercial impact on the local economy;

33 d. explicitly or implicitly excludes the jurisdiction’s resident
34 taxpayers from taking advantage of the tax regime’s benefits or
35 prohibits enterprises that benefit from the regime from operating in
36 the jurisdiction’s domestic market; or

37 e. has created a tax regime which is favorable for tax
38 avoidance, based upon an overall assessment of relevant factors,
39 including whether the jurisdiction has a significant untaxed offshore
40 financial or other services sector relative to its overall economy.

41 ¹“Tax haven” does not include a jurisdiction that has entered into
42 a comprehensive income tax treaty with the United States.¹

43 “Unitary business” means a single economic enterprise that is
44 made up either of separate parts of a single business entity or of a
45 commonly controlled group of business entities that are sufficiently
46 interdependent, integrated, and interrelated through their activities
47 so as to provide a synergy and mutual benefit that produces a
48 sharing or exchange of value among them and a significant flow of

1 value among the separate parts. “Unitary business” shall be
2 construed to the broadest extent permitted under the Constitution of
3 the United States. Any business conducted by a partnership shall be
4 treated as the business of the partners, whether the partnership
5 interest is directly held or indirectly held through a series of
6 partnerships, to the extent of a partner’s distributive share of the
7 partnership’s income, regardless of the magnitude of the partner’s
8 ownership interest or its distributive share of partnership income.
9 Two corporations under common control are engaged in a unitary
10 business if the first corporation is engaged, directly or indirectly, in
11 a unitary business with a partnership that is owned, directly or
12 indirectly, by the second corporation, regardless of the magnitude
13 of the second corporation’s ownership interest in the partnership or
14 its distributive or any other share of partnership income.

15

16 2. (New section) A taxable member of a combined group shall
17 determine its entire net income from the unitary business as its
18 share of the allocated income of the combined group in accordance
19 with a combined report made pursuant to this section and section 3
20 of P.L. , c. (C.) (pending before the Legislature as this bill).

21 The entire net income from the unitary business of a combined
22 group is the sum of the entire net incomes of each taxable member
23 and each nontaxable member of the combined group derived from
24 the unitary business, which shall be determined as follows:

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

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

1 on any reasonable basis consistently applied on a year-to-year or
2 entity-by-entity basis.

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

7 d. All dividends paid by one member to another member of the
8 combined group shall be eliminated from the income of the
9 recipient.

10 e. Except as otherwise provided by regulation, business income
11 from an intercompany transaction among members of the same
12 combined group shall be deferred in a manner similar to the deferral
13 under 26 C.F.R. s.1.1502-13. Upon the occurrence of either of the
14 following events, deferred business income resulting from an
15 intercompany transaction among members of a combined group
16 shall be restored to the income of the seller and shall be included in
17 the combined group's net income as if the seller had earned the
18 income immediately before the event:

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

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

31 f. A charitable expense incurred by a member of a combined
32 group shall, to the extent allowable as a deduction pursuant to
33 section 170 of the federal Internal Revenue Code (26 U.S.C. s.170),
34 be subtracted first from the combined group's net income, subject to
35 the income limitations of that section applied to the entire business
36 income of the group. A charitable deduction disallowed under the
37 foregoing rule, but allowed as a carryover deduction in a subsequent
38 year, shall be treated as originally incurred in the subsequent year
39 by the same member and the rules of this section shall apply in the
40 subsequent year in determining the allowable deduction for that
41 year.

42 g. Gain or loss from the sale or exchange of capital assets,
43 property described by paragraph (3) of subsection (a) of section
44 1231 of the federal Internal Revenue Code (26 U.S.C. s.1231) and
45 property subject to an involuntary conversion shall be removed
46 from the net income of each member of a combined group and shall
47 be included in the combined group's net income as follows:

1 (1) For each class of gain or loss, whether short-term capital,
2 long-term capital, gain or loss described in section 1231 of the
3 federal Internal Revenue Code (26 U.S.C. s.1231), or gain or loss
4 from involuntary conversions, all members' business gain and loss
5 for the class shall be combined, without netting among such classes,
6 and each class of net business gain or loss shall be apportioned to
7 each member using the member's allocation factor determined
8 pursuant to section 3 of P.L. , c. (C.) (pending before the
9 Legislature as this bill).

10 (2) Any resulting income or loss apportioned to this State, as
11 long as the loss is not subject to the limitations of section 1211 of
12 the federal Internal Revenue Code (26 U.S.C. s.1211), of a taxable
13 member produced by the application of paragraph (1) of this
14 subsection shall then be applied to all other income or loss of that
15 member apportioned to this State. Any resulting loss of a member
16 apportioned to this State that is subject to the limitations of section
17 1211 of the federal Internal Revenue Code (26 U.S.C. s.1211) shall
18 be carried forward by that member and shall be treated as short-
19 term capital loss apportioned to this State and incurred by that
20 member for the year for which the carryover applies.

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

27
28 3. (New section) A taxable member of a combined group shall
29 determine its allocation factor for determining its share of the
30 income of the combined group, as determined pursuant to the
31 provisions of section 2 of P.L. , c. (C.) (pending before the
32 Legislature as this bill), pursuant to section 6 of P.L.1945, c.162
33 (C.54:10A-6); provided however:

34 a. In computing its denominator for the sales fraction, the
35 taxable member shall use the combined group's denominator for
36 that fraction. In computing the numerator of its sales fraction, each
37 taxable member shall include in its numerator its share of sales of
38 nontaxable members assigned to this State, as provided in
39 subsection b. of this section.

40 b. Sales assignable to this State of each nontaxable member,
41 determined pursuant to section 6 of P.L.1945, c.162 (C.54:10A-6)
42 as if it were a taxable member, shall be aggregated. Each taxable
43 member of the combined group shall include in the numerator of its
44 sales fraction a portion of the aggregate receipts assignable to this
45 State of nontaxable members based on a ratio, the numerator of
46 which is that taxable member's sales assigned to this State, without
47 regard to this subsection, and the denominator of which is the

1 aggregate receipts assignable to this State of all the taxable
2 members of the combined group, without regard to this subsection.

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

6
7 4. (New section) a. The managerial member of a combined
8 group may elect to have the combined group determined on a
9 “water’s edge” basis. If the election is made, each taxable member
10 shall determine its share of the allocated income of the combined
11 group on a water’s edge basis under which each member shall take
12 into account the incomes and allocation factors of only the
13 following members of the combined group:

14 (1) each member incorporated in the United States, or formed
15 under the laws of the United States or any state;

16 (2) each member, wherever incorporated or formed, if 20
17 percent or more of its sales fraction during the privilege period are
18 assigned to the United States; ¹ [and] ¹

19 (3) each member that is doing business in a jurisdiction that is
20 determined by the director to be a tax haven for the privilege
21 period, unless ¹ [it is proven to the satisfaction of the director by
22 clear and convincing evidence that the member’s business activity
23 in the tax haven is entirely outside the scope of the laws, provisions,
24 and practices that cause the jurisdiction to meet the definition of a
25 tax haven] the member is incorporated in a tax haven for a
26 legitimate business purpose; and

27 (4) For a combined group that determines its net income or loss
28 on a water’s edge basis, an item of income of a corporation that is
29 organized outside of the United States shall not be included in the
30 net income of the combined group to the extent that the item is
31 exempt from United States federal income tax by virtue of a federal
32 income tax treaty. Any items of expense and apportionment factors
33 related to that item of exempt income shall be excluded in the
34 determination of net income of the combined group to the extent
35 provided in regulations issued by the director. However, that item
36 of exempt income shall be taken into account to determine whether
37 the corporation is included in the water’s edge group under
38 paragraph (2) of this subsection. If a corporation organized outside
39 of the United States is included in a water’s edge combined group
40 and has an item of income that is exempt from United States federal
41 income tax by virtue of a federal tax treaty, the corporation shall be
42 considered to be included in the combined group under paragraph
43 (2) of this subsection only with regard to any items of income
44 described in that paragraph that are not exempt, taking into account
45 items of expense and apportionment factors associated with those
46 items of non-exempt income to the extent provided by regulations
47 issued by the director. Nothing in this paragraph shall prevent the
48 director from adjusting, pursuant to section 5 of P.L.2002, c.40

1 (C.54:10A-4.4), section 10 of P.L.1945, c.162 (C.54:10A-10), or
2 any other provision of law, any deduction claimed by the payer for
3 amounts that are excluded from the net income of the combined
4 group's under this paragraph. The director may require the
5 reporting of the amounts of excluded income and the documentation
6 of any claimed treaty exemption as conditions to be met by a payer
7 claiming a deduction of those payments¹.

8 b. A water's edge election is effective only if made on a timely-
9 filed, original return for a privilege period by the managerial
10 member of the combined group. The election is binding for, and
11 applicable to, the privilege period for which it is made and for the
12 10 immediately succeeding privilege periods.

13 ¹[c. The director shall publish a list of jurisdictions that the
14 director determines to be tax havens for relevant privilege
15 periods.]¹

16
17 5. (New section) a. If the combined group has a common
18 parent corporation and that common parent corporation is a taxable
19 member, the managerial member shall be the common parent
20 corporation. In other cases, the combined group shall select a
21 taxable member as its managerial member or, in the discretion of
22 the director or upon failure of the combined group to select its
23 managerial member, the director shall designate a taxable member
24 of the combined group as managerial member.

25 b. A combined group shall file a combined unitary tax return
26 under this section in the form and manner prescribed by the
27 director. The managerial member of the combined group shall file
28 the combined unitary tax return on behalf of the taxable members of
29 the combined group and each taxable member of the combined
30 group shall include a copy of the combined unitary tax return with
31 its own final return. The director may by regulation allow or
32 require the managerial member to file taxable member returns, file
33 taxable member extensions for filing, pay taxable member
34 liabilities, receive taxable member findings, assessments, and
35 notices, make and receive taxable member claims, or file taxable
36 member protests and appeals.

37 c. The privilege period for which the group shall file shall be
38 determined as the privilege period of the managerial member. If a
39 member of a combined group has a different fiscal or calendar
40 accounting period from the group privilege period, that member
41 with a different period shall report amounts from its return for its
42 fiscal or calendar accounting year that ends during the group
43 privilege period.

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

1 additions to tax due from any taxable member under P.L.1945,
2 c.162 (C.54:10A-1 et seq.).

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

11

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

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

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

32 (a) That portion of its entire net worth as may be allocable to
33 this State as provided in section 6, multiplied by the following
34 rates: 2 mills per dollar on the first \$100,000,000.00 of allocated net
35 worth; 4/10 of a mill per dollar on the second \$100,000,000.00;
36 3/10 of a mill per dollar on the third \$100,000,000.00; and 2/10 of a
37 mill per dollar on all amounts of allocated net worth in excess of
38 \$300,000,000.00; provided, however, that with respect to reports
39 covering accounting or privilege periods set forth below, the rate
40 shall be that percentage of the rate set forth in this subsection for
41 the appropriate year:

42 Accounting or Privilege 43 Periods Beginning on or 44 after:	The Percentage of the Rate to be Imposed Shall be:
45 April 1, 1983	75%
46 July 1, 1984	50%
47 July 1, 1985	25%
48 July 1, 1986	0

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

2 (c) (1) For a taxpayer that is not a New Jersey S corporation, 3
3 1/4% of its entire net income that is not entire net income from a
4 unitary business reported on a combined return or such portion
5 thereof as may be allocable to this State as provided in section 6 of
6 P.L.1945, c.162 (C.54:10A-6), plus its allocated share of entire net
7 income from a unitary business determined as provided by sections
8 2 and 3 of P.L. , c. (C. and)(pending before the
9 Legislature as this bill), plus such portion thereof as is specifically
10 assigned to this State as provided in section 5 of P.L.1993, c.173
11 (C.54:10A-6.1); provided, however, that with respect to reports
12 covering accounting or privilege periods or parts thereof ending
13 after December 31, 1967, the rate shall be 4 1/4%; and that with
14 respect to reports covering accounting or privilege periods or parts
15 thereof ending after December 31, 1971, the rate shall be 5 1/2%;
16 and that with respect to reports covering accounting or privilege
17 periods or parts thereof ending after December 31, 1974, the rate
18 shall be 7 1/2%; and that with respect to reports covering privilege
19 periods or parts thereof ending after December 31, 1979, the rate
20 shall be 9%; provided however, that for a taxpayer that has entire
21 net income of \$100,000 or less for a privilege period and is not a
22 partnership the rate for that privilege period shall be 7 1/2% and
23 provided further that for a taxpayer that has entire net income of
24 \$50,000 or less for a privilege period and is not a partnership the
25 rate for that privilege period shall be 6 1/2%.

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

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

34 (ii) For a taxpayer that has entire net income in excess of
35 \$100,000 for the privilege period, for privilege periods ending on or
36 after July 1, 1998, but on or before June 30, 2001, the rate shall be
37 2%,

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

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

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

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

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

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

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

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

40	Period Beginning	Domestic	Foreign
41	In Calendar Year	Corporation	Corporation
42		Minimum Tax	Minimum Tax
43	1994	\$ 50	\$100
44	1995	\$100	\$200
45	1996	\$150	\$200
46	1997	\$200	\$200
47	1998	\$200	\$200
48	1999	\$200	\$200

1	2000	\$200	\$200
2	2001	\$210	\$210

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

12	New Jersey Gross Receipts:	Minimum Tax:
13	Less than \$100,000	.....\$500
14	\$100,000 or more but	
15	less than \$250,000	..... \$750
16	\$250,000 or more but	
17	less than \$500,000	..... \$1,000
18	\$500,000 or more but	
19	less than \$1,000,000	..... \$1,500
20	\$1,000,000 or more	..... \$2,000

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

27	New Jersey Gross Receipts:	Minimum Tax:
28	Less than \$100,000	.....\$375
29	\$100,000 or more but	
30	less than \$250,000	..... \$562.50
31	\$250,000 or more but	
32	less than \$500,000	..... \$750
33	\$500,000 or more but	
34	less than \$1,000,000	..... \$1,125
35	\$1,000,000 or more	..... \$1,500

36 provided however, that for a taxpayer that is a member of an
 37 affiliated group or a controlled group pursuant to section 1504 or
 38 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
 39 s.1504 or 1563, and whose group has total payroll of \$5,000,000 or
 40 more for the privilege period, the minimum tax shall be \$2,000 for
 41 the privilege period.

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

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

4 (1) that is a limited liability company or foreign limited liability
5 company classified as a partnership for federal income tax purposes
6 shall be the amount determined pursuant to the provisions of section
7 3 of P.L.2001, c.136 (C.54:10A-15.6); or

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

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

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

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

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

42 b. Where (1) any taxpayer conducts its activity or business
43 under any agreement, arrangement or understanding in such manner
44 as either directly or indirectly to benefit its members or
45 stockholders, or any of them, or any person or persons directly or
46 indirectly interested in such activity or business, by entering into
47 any transaction at more or less than a fair price which, but for such
48 agreement, arrangement or understanding, might have been paid or

1 received therefor, or (2) any taxpayer, a substantial portion of
2 whose capital stock is owned either directly or indirectly by or
3 through another corporation, enters into any transaction with such
4 other corporation on such terms as to create an improper loss or net
5 income, the director may include in the entire net income of the
6 taxpayer the fair profits which, but for such agreement, arrangement
7 or understanding, the taxpayer might have derived from such
8 transaction. The director may require any person or corporation to
9 submit such information under oath or affirmation, or to permit
10 such examination of its books, papers and documents, as may be
11 necessary to enable the director to determine the existence, nature
12 or extent of an agreement, understanding or arrangement to which
13 this section relates, whether or not such person or corporation is
14 subject to the tax imposed by this act.

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

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

45 The member of an affiliated group or a controlled group shall
46 incorporate in its return required under this section information
47 needed to determine under this section its taxable entire net income,
48 and shall furnish any additional information the director requires,

1 subject to the penalties of the State Uniform Tax Procedure Law,
2 R.S.54:48-1 et seq. A taxpayer shall furnish any additional
3 information requested within 30 days after it is demanded, subject
4 to the penalties of the State Uniform Tax Procedure Law,
5 R.S.54:48-1 et seq.】 (Deleted by amendment, P.L. , c.)
6 (pending before the Legislature as this bill)
7 (cf: P.L.2002, c.40, s.10)
8

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

11 14. (a) The director may by general rule or by special notice
12 require any taxpayer to submit copies or pertinent extracts of its
13 federal income tax returns, or of any other tax return made to any
14 agency of the federal government, or of this or any other state, or of
15 any statement or registration made pursuant to any state or federal
16 law pertaining to securities or securities exchange regulation.

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

28 (c) Each taxpayer filing a return that is a member of 【an
29 affiliated group or a controlled group pursuant to section 1504 or
30 1563 of the federal Internal Revenue Code of 1986, 26 U.S.C.
31 s.1504 or 1563】 a combined group shall, upon the request of the
32 director and 90 days' notice thereof, disclose in its return for the
33 privilege period the amount of all inter-member costs or expenses,
34 including but not limited to management fees, rents, and other
35 services, for the privilege period. If the taxpayer acquires products
36 or services from another member of its 【affiliated group or
37 controlled】 combined group, which it re-sells or otherwise uses to
38 generate revenue, the taxpayer shall, upon the request of the
39 director and 90 days' notice thereof, disclose the amount of revenue
40 generated from those products or services. The director shall
41 promulgate rules and procedures for the manner of disclosure. A
42 failure to file such a disclosure shall be deemed the filing of an
43 incomplete tax return, subject to the penalties of the State Uniform
44 Tax Procedure Law, R.S.54:48-1 et seq.
45 (cf: P.L.2002, c.40, s.11)
46

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

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

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

12

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

15 12. a. Each captive insurance company that is not a combinable
16 captive insurance company as defined by section 1 of P.L. , c.
17 (C.)(pending before the Legislature as this bill) shall pay to the
18 Director of the Division of Taxation in the Department of the
19 Treasury, on or before March 1 of each year, a tax at the rate of .38
20 of one percent on the first \$20,000,000 and .285 of one percent on
21 the next \$20,000,000 and .19 of one percent on the next
22 \$20,000,000 and .072 of one percent on each dollar thereafter on
23 the direct premiums collected or contracted for on policies or
24 contracts of insurance written by the captive insurance company
25 during the year ending December 31 next preceding, after deducting
26 from the direct premiums subject to the tax the amounts paid to
27 policyholders as return premiums, which shall include dividends on
28 unabsorbed premiums or premium deposits returned or credited to
29 policyholders; except that no tax shall be due or payable as to
30 considerations received for annuity contracts.

31 b. Each captive insurance company shall pay to the Director of
32 the Division of Taxation in the Department of the Treasury, on or
33 before March 1 of each year, a tax at the rate of .214 of one percent
34 on the first \$20,000,000 of assumed reinsurance premium, and .143
35 of one percent on the next \$20,000,000 and .048 of one percent on
36 the next \$20,000,000 and .024 of one percent of each dollar
37 thereafter. However, no tax under this subsection applies to
38 premiums for risks or portions of risks which are subject to taxation
39 on a direct basis pursuant to subsection a. of this section. No tax
40 under this subsection shall apply in connection with the receipt of
41 assets in exchange for the assumption of loss reserves and other
42 liabilities of another insurer under common ownership and control
43 if the transaction is part of a plan to discontinue the operations of
44 the other insurer, and if the intent of the parties to the transaction is
45 to renew or maintain the business with the captive insurance
46 company.

47 c. The annual minimum aggregate tax to be paid by a captive
48 insurance company calculated under subsections a. and b. of this

1 section shall be \$7,500, and the annual maximum aggregate tax
2 shall be \$200,000. The maximum aggregate tax to be paid by a
3 sponsored captive insurance company shall apply to each protected
4 cell only and not to the sponsored captive insurance company as a
5 whole.

6 d. (1) A captive insurance company shall, on or before March 1
7 of each year, file with the commissioner an annual tax return,
8 signed and sworn to by an officer of the company, or by its United
9 States manager, if a company of a foreign country, in the form and
10 containing matters as may be necessary for carrying out the
11 provisions of this section.

12 (2) A captive insurance company shall pay the balance of any
13 tax due under this section based on the company's business during
14 the preceding calendar year and make an installment payment in an
15 amount equal to one-half of the tax payable under this section on
16 the company's business done during the preceding calendar year.

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

20 e. Two or more captive insurance companies under common
21 ownership and control shall be taxed as though they were a single
22 captive insurance company.

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

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

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

33 g. The tax provided for in this section shall constitute all taxes
34 collectible under the laws of this State from any captive insurance
35 company, and a captive insurance company shall not pay taxes
36 pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.).

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

42 i. The tax provided for by this section shall only apply to the
43 branch business of a branch captive insurance company. ¹
44 (cf: P.L.2011, c.25, s.12)

45
46 ¹**[10.] 11.** Sections 5 and 30 of P.L.2002, c.40 (C.54:10A-4.4
47 and 54:10A-18.1) are repealed.

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18

1 ¹**[11.]** 12.¹ This act shall take effect immediately and apply to
2 privilege periods ending after its date of enactment.