

STATEMENT

This bill amends the Corporation Business Tax Act by:

- clarifying the requirements for mandatory default combined returns and elective combined returns;
- clarifying the research and development credit;
- clarifying the treatment of net operating losses that were part of a merger or acquisition;
- clarifying the minimum tax;
- clarifying the dividends received exclusion;
- clarifying the tax base for combined groups and separate return filers;
- clarifying the net operating loss carryover transfer program for new or expanding emerging technology and biotechnology companies;
- adding a corporation business tax credit for certain dividends paid, in place of the current tiered dividend exclusion in order to simplify the reduction of double taxation;
- clarifying that certain banking corporations must transition to, or are permitted to transition to, a fiscal return filing basis;
- clarifying the treatment of the international banking facility in relation to combined groups;
- clarifying return requirements for all corporation business taxpayers; and
- requiring the Director of the Division of Taxation to modernize and simplify return requirements for certain returns.

The bill makes numerous corrections and revisions to clarify and simplify various aspects of the changes that were enacted as part of P.L.2018, c.48 and P.L.2018, c.131. Those laws, among other things, mandated mandatory unitary combined returns on a water's-edge basis if no election for an affiliated group basis filing or world-wide group basis filing had been made. The laws also changed the application of the net operating losses from pre-allocation (called pre-apportionment in other states) to post-allocation (called post-apportionment in other states), updated the research and development credit, and amended the dividend received exclusion.

The bill requires, or permits, certain banking corporations to transition to a fiscal reporting basis as opposed to the historic calendar year basis, which will also help simplify reporting and returns.

The bill corrects a citation in subsubparagraph (ii) of subparagraph (A) of paragraph 5 of subsection (k) of N.J.S.A.54:10A-4 so that it cites the subsubparagraph instead of the whole subsection.

The bill prospectively repeals the dividend exclusion for certain subsidiaries receiving dividends from other subsidiaries and replaces it with a credit to simplify the reduction of double taxation of tiered dividends. The bill prospectively adds a new subparagraph which treats a combined group as one taxpayer to simplify and make the application of the dividend exclusion more consistent. This may result in more dividends and deemed dividends qualifying for the 95 percent exclusion, but it will also ensure that the dividend exclusion is more accurately calculated.

The bill makes technical corrections and clarifies the minimum tax and the application of the tax rates under P.L.2018, c.48 and P.L.2018, c.131. In addition to being taxed on the income from the combined group, the bill clarifies that the income from the separate activities will only be taxed if the member independently has nexus with New Jersey. This is in line with United States Supreme Court jurisprudence on the unitary business principle and combined groups. Additionally, the bill clarifies that the rate applies to taxable net income plus the non-operational income specifically assigned by statute to New Jersey. The bill also clarifies that the minimum tax is imposed on taxable members of the combined group, i.e. members with nexus with New Jersey.

To provide for further simplification and modernization, the bill requires taxpayers to include a copy of their federal return rather than it be included at the director's discretion. This requirement is part and parcel with the requirement mandated by this bill that the director simplify and modernize the 2020 corporation business tax returns. Currently there are four different returns: CBT-100, BFC-1, CBT-100U, and CBT-100S.

The bill requires that for the 2020 returns, the director must create a new simplified standardized return for separate return filers, combined return filers, banking corporations, and financial corporations, but the CBT-100S for New Jersey S Corporations that do not elect to be included on a combined return will be maintained. This is in line with other states who require submission of the federal return, which facilitates simpler and more standardized corporate tax returns. The bill also amends the due date of the returns in order to facilitate the modernization and simplification of the returns. In addition, there will be transitional returns for banking corporations.

To simplify and clarify various aspects of combined reporting, the bill specifically makes it clear that various provisions of the federal Internal Revenue Code rules and regulations apply regardless of how the members file, provided that such provisions are consistent with the Corporation Business Tax Act.

The bill amends the New Jersey research and development credit (N.J.S.A.54:10A-5.24) to make it consistent with the Division of Taxation's position that as part of the changes under P.L.2018, c.48, amounts paid or incurred by the taxpayer in carrying on any trade or business of the taxpayer during the privilege period (including as contributions) to an energy research consortium for energy research also qualify as a basic research payment, since according to some practitioners it had been ambiguous.

The bill further amends the New Jersey research and development credit to allow certain expenses of a taxpayer that is a qualified small business that had optionally taken a federal payroll research and development credit in lieu of the regular corporate income tax credit to qualify for the New Jersey credit. New Jersey does not have a research payroll credit and these qualified small business taxpayers would otherwise be penalized as a result of the mechanics of the federal Internal Revenue Code (26 U.S.C. s.41(h) and 26 U.S.C. s.3111(f)) merely because the federal research payroll credit is a quicker option meant to help small businesses continue developing their research.

The bill extends the treatment of a combined group as one taxpayer to several other areas. Consistent with the unitary business principle which originally stems from railroad property valuation cases in the 1860's and subsequently extended to taxation of multistate businesses and to combined reporting by the United States Supreme Court over the past century, the bill extends the unitary treatment to certain intercompany transfers that would

be subject to the realty transfer fee, the controlling interest transfer tax, and certain bulk sales notification requirements.

Lastly, the bill ensures that the joint net operating loss carryover transfer program for new or expanding emerging technology and biotechnology companies continues (N.J.S.A.54:10A-4.2 and N.J.S.A.34:1B-7.42a). Because of the changes that were part of P.L.2018, c.48 and P.L.2018, c.131, the citation in that program to paragraph (6) of subsection (k) of N.J.S.A.54:10A-4 is not accurate for net operating losses and prior net operating losses conversion carryover. Net operating loss carryovers are now calculated and applied on a post-allocation basis pursuant to subsection (u), (v), and (w) of N.J.S.A.54:10A-4. Changing the citation to reference prior net operating loss conversion carryover as well as net operating loss carryover ensures that the program in N.J.S.A.54:10A-4.2 and N.J.S.A.34:1B-7.42a continues and the transferred amount is calculated properly. The bill also makes a change to permit the sale of prior net operating loss conversion carryover between members of a combined group at arm's length price as part of the program in N.J.S.A.54:10A-4.2 and N.J.S.A.34:1B-7.42a.