

CHAPTER 320
(CORRECTED COPY)

AN ACT establishing an elective pass-through entity business alternative income tax and allowing a corresponding refundable gross income tax credit and corporation business tax credit, supplementing Title 54A of the New Jersey Statutes and amending N.J.S.54A:4-1 and P.L.1993, c.173.

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

C.54A:12-1 Short title.

1. This act shall be known and may be cited as the “Pass-Through Business Alternative Income Tax Act.”

C.54A:12-2 Definitions relative to pass-through entity business alternative income tax.

2. As used in P.L.2019, c.320 (C.54A:12-1 et al.):

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

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

“Limited liability company” means an entity organized pursuant to the “Revised Uniform Limited Liability Company Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or prior law providing for the formation of a limited liability company in this State, or formed as a limited liability company under similar statutes of other states, that is classified as a partnership or an S Corporation for purposes of federal income tax law.

“Member” means a shareholder of an S corporation; a partner in a general, limited, or limited liability partnership; or a member of a limited liability company.

“Partnership” means a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on in this State.

“Pass-through business alternative income tax” means the tax set forth in subsection b. of section 3 of P.L.2019, c.320 (C.54A:12-3).

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

“Share of distributive proceeds” means the portion of distributive proceeds attributable to a member of a pass-through entity in a taxable year.

“Taxable year” means the same as in N.J.S.54A:1-2.

“Taxed at the business entity level” means taxed pursuant to an election made under P.L.2019, c.320 (C.54A:12-1 et al.).

C.54A:12-3 Election to pay pass-through business alternative income tax.

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

b. Each pass-through entity that makes an election for a taxable year pursuant to this section shall annually report to each of its members, for the taxable year, the member's share of distributive proceeds.

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

(2) The tax imposed on a pass-through entity pursuant to this section shall be determined in accordance with the following table with respect to the sum of each member's share of distributive proceeds attributable to the pass-through entity for the taxable year.

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

If the sum of each member's share of distributive proceeds attributable to the pass-through entity is:

The tax is:

Not over \$250,000.00.....	5.675% of the sum of distributive proceeds
Over \$250,000.00 but not over \$1,000,000.00.....	\$14,187.50 plus 6.52% of the excess over \$250,000.00
Over \$1,000,000.00 but not over \$5,000,000.00.....	\$63,087.50 plus 9.12% of the excess over \$1,000,000.00
Over \$5,000,000.00	\$427,887.50 plus 10.9% of the excess over \$5,000,000.00.

c. The amount of pass-through business alternative income tax due from a pass-through entity in a taxable year shall be exclusive of any amount of tax due and paid by the pass-through entity pursuant to the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), during any privilege period, except as otherwise provided in P.L.2019, c.320 (C.54A:12-1 et al.).

(1) A pass-through entity which elects to pay the pass-through business entity income tax shall be included in a combined group, as defined in subsection (z) of section 4 of P.L.1945, c.162 (C.54:10A-4), and file a New Jersey combined return pursuant to the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et seq.). A pass-through entity which elects to pay the pass-through business entity income tax shall be excluded from a combined group, as defined in subsection (z) of section 4 of P.L.1945, c.162 (C.54:10A-4), and from filing a New Jersey combined return pursuant to the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et seq.) if the pass-through entity meets the following: (a) all of the members of the pass-through entity are taxpayers otherwise liable for the tax under the "New Jersey Gross Income Tax Act," N.J.S.A.54A:1-1 et seq., and (b) no business entity taxed as a

corporation under the Corporation Business Tax Act, P.L.1945, c.162 (C.54:10A-1 et seq.), has a direct, indirect, beneficial, or constructive ownership or control of the pass-through entity.

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

d. Pass-through entities whose members have made the business alternative income tax election shall file an entity tax return and make payments on or before the 15th day of the third month following the close of each entity's taxable year for federal income tax purposes. A pass-through entity shall make estimated entity tax payments on or before the 15th day of each of the fourth month, sixth month, and ninth month of the taxable year and on or before the 15th day of the first month succeeding the close of the taxable year.

C.54A:12-4 Powers of director for administration.

4. a. For the purpose of administration of P.L.2019, c.320 (C.54A:12-1 et al.), the director shall have those powers as the director deems necessary to apply to a pass-through entity subject to P.L.2019, c.320 (C.54A:12-1 et al.), for the reporting, payment, collection, administration, and enforcement of the tax imposed pursuant to P.L.2019, c.320 (C.54A:12-1 et al.), as may be applicable to the collection, administration, and enforcement of the New Jersey gross income tax provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the "New Jersey State Uniform Tax Procedure Law," N.J.S.54:48-1 et seq., except as otherwise provided by subsection b. of this section.

b. Taxes collected under the provisions of P.L.2019, c.320 (C.54A:12-1 et al.) shall be deposited by the State Treasurer in the General Fund.

C.54A:12-5 Refundable gross income tax credit.

5. a. Except as otherwise provided in paragraph (3) of subsection b. of section 3 of P.L.2019, c.320 (C.54A:12-3), a taxpayer shall be allowed a refundable gross income tax credit, pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., if the taxpayer is a member of a pass-through entity that elects to owe and pay the pass-through business alternative income tax determined pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3) for the taxable year.

For each pass-through entity of which the taxpayer is a member, the amount of the credit shall equal the member's pro rata share of the tax paid pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3), which credit shall be applied against the gross income tax liability of the member in the taxable year.

b. The credit allowed by this section shall be available after the application of all other credits allowed by law and claimed by the taxpayer in the taxable year.

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

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

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

C.54:10A-5.22 Election as a New Jersey S corporation.

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

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

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

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

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

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

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

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

C.54:10A-5.23 Requirements for New Jersey S corporation.

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

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

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

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

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

Resident credit for tax of another state.

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

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

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

(d) No credit shall be allowed for the amount of any taxes paid or accrued for the taxable year on or measured by profits or income imposed on or paid on behalf of a person other than the taxpayer, whether or not the taxpayer may be held liable for the tax.

(e) Readjustment of the tax of another state or political subdivision thereof--if the taxpayer is allowed credit under this section for more or less of the tax of another state or

political subdivision thereof than he is finally required to pay, the taxpayer shall send notice of the difference to the director who shall redetermine the tax for any years affected regardless of any otherwise applicable statute of limitations.

(f) A resident taxpayer shall be allowed a credit against the tax otherwise due under this act for the amount of any tax that the director determines is substantially similar to the tax imposed pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3), for the taxable year, by another state of the United States or political subdivision of such state, or by the District of Columbia, with respect to the direct and indirect distributive proceeds from a pass-through entity, which distributive proceeds are also subject to tax under this act. A credit allowed pursuant to this subsection shall not exceed what would have been allowed if the income was taxed at the individual level and not taxed at the entity level.

For purposes of this subsection, "distributive proceeds" and "pass-through entity" mean the same as those terms are used in section 2 of P.L.2019, c.320 (C.54A:12-2).

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

C.54A:5-9 S corporation tax exemption.

11. Except as otherwise provided by P.L.2019, c.320 (C.54A:12-1 et al.), an S corporation as such shall not be subject to the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., but the S corporation income, dividends, and gain of a shareholder of an S corporation shall be subject to the tax, and the tax shall be imposed on the shareholder's pro rata share, whether or not distributed, of the S corporation income for its taxable year ending within or with the shareholder's taxable year.

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

C.42:1A-18 Partnership obligations; liability of partners.

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

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

c. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under subsection b. of section 47 of this act.

C.54:10A-5.43 Tax credit for certain corporate member.

11. Where the pass-through entity, which pays the pass-through business alternative income tax, is owned by both corporate members and non-corporate members, the corporate member shall be allowed a tax credit against the surtax imposed pursuant to section 1 of P.L.2018, c.48 (C.54:10A-5.41) or the tax imposed under paragraph (1) of subsection c. of section 5 of P.L.1945, c.162 (C.54:10A-5), if the corporate member is a member of a pass-through entity that elects to owe and pay the pass-through business alternative income tax

determined pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3) for the taxable year; provided, however, the credit shall not reduce the corporate member's tax liability below the statutory minimum imposed under subsection e. of section 5 of P.L.1945, c.162 (C.54:10A-5). Any excess credit shall be carried over for a period of up to 20 privilege periods.

a. For each pass-through entity of which the corporate member is a member, the amount of the credit shall equal the member's share of the tax paid pursuant to section 3 of P.L.2019, c.320 (C.54A:12-3), which credit shall be applied against the surtax or corporation business tax liability of the member during the member's privilege period.

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

c. If the pass-through entity is unitary with both the corporate member and the member's combined group filing a New Jersey combined return for which the corporate member is included as a member, within the meaning of subsection (dd) of section 4 of P.L.1945, c.162 (C.54:10A-4) and section 23 of P.L.2018, c.48 (C.54:10A-4.11), the credit shall be shareable for the purposes of subsection i. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and allowed to reduce the total surtax and total corporation business tax liability of the combined group but not the below the aggregate statutory minimum tax of the taxable members of the combined group.

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

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

f. For the purposes of this section:

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

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

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

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

C.54A:12-6 Pass-through entity owned by corporate and non-corporate members.

12. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the director may, immediately, upon filing with

the Office of Administrative Law, prescribe forms and adopt regulations that the director deems necessary to administer the provisions of this act, which regulations shall be effective for a period not to exceed 360 days following enactment of P.L.2019, c.320 (C.54A:12-1 et al.) and may thereafter be amended, adopted, or readopted by the director in accordance with the requirements of P.L.1968, c.410.

13. This act shall take effect immediately and shall apply to taxable years of pass-through entities beginning on or after January 1, 2020.

Approved January 13, 2020.