



[CLICK HERE](#) to return to the home page

N.J. Stat. Ann, Sections 54A:12-1 to 54A:12-6

54A:12-1 Short title.

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

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.).

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.

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.

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.

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.