v. A full cost accounting of the project, including total construction**, the feasibility study used to determine the construction costs,** and decommissioning costs;

vi. Two years of audited financial statements, including accompanying financial notes to these statements, of the applicant and/or parent company in US GAAP. If not in US GAAP, the applicant shall provide an opinion from an accounting firm that attests to the financial statements and accompanying financial notes and the strength of the applicant and/or parent company and has provided professional qualifications that demonstrate that expertise; and

vii. Audited financial statements for two years, in US GAAP, including accompanying financial notes to these statements, for key projects suppliers including, but not limited to, the turbine manufacturer and EPC contractor. If not in US GAAP, the applicant shall provide opinions from an accounting firm that attests to the financial statements, including accompanying financial notes to these statements, and the strength of the key project suppliers and has provided professional qualifications that demonstrate that expertise;

4. The proposed method of financing the project, which includes:

i. (No change.)

ii. Evidence such as: a letter of intent to offer credit from credible financiers; a letter of commitment from equity investors; and/or a guarantee from an investment grade party;

Recodify existing ii.-iv. as **iii.-v.** (No change in text.)

5. Documentation to demonstrate that the developer has applied for all current eligible State and Federal grants, rebates, tax credits**,** and programs available to offset the cost of the project or provide tax advantages.

i.-ii. (No change.)

iii. The applicant shall commit that the cost difference in the event that changes in the project reduces or eliminates tax benefits, or tax benefits do not materialize for any reason including changes in tax laws, will not be made up by ratepayers**, suppliers, or providers**.

iv. (No change.)

6.-8. (No change.)

9. A decommissioning plan for the project including provisions for financial assurance for decommissioning [as required by the] **and which complies with any** applicable State and Federal [governmental entities] **statutes and/or regulations**.

i.-ii. (No change.)

iii. The applicant shall commit that any decommissioning costs in excess of the anticipated costs stated in the application shall not be made up by ratepayers, suppliers, or providers;

10.-11. (No change.)

12. A proposed OREC pricing method and schedule for the Board to consider.

i.-vi. (No change.)

vii. **The** OREC pricing [on an actual renewable premium basis would represent a project's revenue requirement, taking into consideration tax credits and other subsidies, minus the actual value of spot energy market prices and/or capacity prices;] **method shall represent the calculation of the price based on the total revenue requirements of the project over a 20-year period including the cost of equipment, financing, taxes, construction, operation, and maintenance, offset by any state or Federal tax or production credits and other subsidies or grants. The value of the electricity and related capacity payments associated with the ORECs shall not be deducted when calculating the OREC price**.

viii. OREC pricing proposals shall specify:

(1) Total equipment, construction, operation, and maintenance costs of the project;

(2) Tax credits, subsidies, or grants the project will qualify for;

(3) Debt service costs and return on equity assumptions;

(4) Taxes and depreciation assumptions;

(5) The nameplate capacity of the project;

(6) The expected energy output of the project;

(7) The assumed capacity factor and the number of ORECs to be produced by the project; and

(8) The price per OREC (megawatt hours (MWh)) necessary to make the project commercially viable.

ix. The value of electric energy, capacity payments, and any other environmental attributes or other benefits shall be returned to ratepayers. Such other benefits include, but are not limited to, tax credits, subsidies, grants, or other funding not previously identified in the application and not included in the calculation of the OREC price submitted to the Board. To the extent that the project produces energy revenues exceeding those associated with the sale of ORECs, the applicant may propose that it retain up to 25 percent of the incremental energy revenues, but not any other environmental attributes or other benefits, with the remainder to be returned to ratepayers. The annual amount of revenues from whatever source expected to be generated by the project shall be reflected in the revenue plan;

13.-14. (No change.)

15. All applicants must [establish a $100,000 escrow account and submit proof of that escrow account with the application] **place a minimum of $125,000 on deposit with the State** to [pay] **reimburse the Board** for **the costs of** consultants and other costs associated with the review of the application.

[i. The applicant shall immediately notify Board staff in the event the escrow drops below 25 percent of the initial escrow value.]

[ii.] **i.** Board staff will direct the applicant, if appropriate, to place an additional amount [into escrow] **on deposit with the State**, based upon the current and expected costs associated with the application review **and related administrative proceedings**.

[iii.] **ii.** Failure to replenish the [escrow] account to the level required by Board staff [with] **within** 10 days of notification will serve to render the application incomplete and toll the time for review. [; and]

iii. Subsequent to approval of a qualified offshore wind facility, the successful applicant may, at the direction of Board staff, be required to place additional amounts on deposit with the State for the purpose of reimbursing the Board for costs related to regulatory review of the project, including, but not limited to, consulting services, oversight, inspections, and audits; and

16. (No change.)

(b) (No change.)

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Gross Income Tax
Exclusions and Deductions

Proposed New Rule: N.J.A.C. 18:35-2.8

Authorized By: Michael Bryan, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54A:3-9.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-118.

Submit comments by October 19, 2012 to:

Mitchell Smith
Assistant Chief, Regulatory Services Branch
Division of Taxation
50 Barrack Street
PO Box 269
Trenton, NJ 08695-0269

The agency proposal follows:

Summary

P.L. 2011, c. 60, enacted as N.J.S.A. 54A:3-9 establishes an alternative business calculation in the New Jersey Gross Income Tax Act with the intent of giving income tax relief to taxpayers with business losses. The new legislation, effective beginning tax year January 1, 2012, provides an adjustment to taxable income, which uses a calculation that consolidates business income and/or loss and allows taxpayers to carryforward unutilized business losses. The Division proposes a rule that seeks to define, explain, and illustrate the alternative business calculation for New Jersey gross income tax purposes.

P.L. 2011, c. 60 allows residents, nonresidents, part-year residents, part-year nonresidents, estates, and trusts with income or loss derived in one or more of the four categories of business income specified under the Gross Income Tax Act to utilize the adjustment. The four categories of income (1. net profits from business; 2. net gains or net income derived from or in the form of rents, royalties, patents, and copyrights; 3. distributive share of partnership income; and 4. net pro rata share of S corporation income) are all included in the alternative business calculation. In accordance with the Gross Income Tax Act, a net loss in one category of gross income cannot be used to offset income in another category of gross income.

The Act also establishes four new terms. Those terms are "business increment," "regular business income," "alternative business income or loss," and "alternative business loss carryforward." The proposed rule defines these terms and explains how the four categories of business income are used to determine a taxpayer's alternative business calculation and sets forth examples to illustrate the provisions of the new rule.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement.

Social Impact

The proposed rule will have an impact on all residents, nonresidents, part-year residents, part-year nonresidents, estates, and trusts with business income and/or loss. Through the adjustment, taxpayers with business income will be able to net business income against business losses in the same category, so long as the income and losses arise within the conduct of the business. The proposed rule will allow taxpayers an adjustment to taxable income. The proposed rule will have a beneficial effect on taxpayers who derive income from different types of business entities by allowing them to offset gains from one type of business with losses from another and carryforward unutilized business related losses for a period of 20 years.

Economic Impact

The Division anticipates that this rule will provide tax savings over five years beginning in tax year 2012 for taxpayers who incur business related losses by allowing businesses to net losses against income in future taxable years. The proposed rule will have a beneficial effect on taxpayers who derive income from different types of business entities by allowing them to offset gains from one type of business with losses from another and carryforward the business related loss for a period of 20 years. The alternative business calculation will provide an adjustment to taxable income, which will benefit taxpayers, by providing an economic benefit of tax savings.

Federal Standards Statement

The proposed rule does not contain any requirements that exceed those imposed by Federal law. The rule reflects an administrative policy of the Division of Taxation that is not subject to any Federal regulatory requirement or standards.

Jobs Impact

The Division does not anticipate that any jobs will be generated or lost as a result of the proposed rule.

Agriculture Industry Impact

The proposed rule will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed rule applies to small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The alternative business calculation set forth in N.J.S.A. 54A:3-9 applies to taxpayers who generate income from different types of business entities and allows them to offset gains from one type of business with losses from another while permitting taxpayers to carryforward unutilized business-related losses for a period of up to 20 taxable years. The proposed new rule does not impose any reporting, recordkeeping, or compliance requirements on small businesses. Professional services will not be required to comply with the new rule. However, since the proposed new rule is derived from legislation amending the statute on which the rule is based, taxpayers may wish to consult with tax professionals to ascertain whether the legislation will be relevant to their specific tax situation.

The Division, consistent with its mission, reviews its rule proposals with a view to minimize the impact of its rules on small businesses to the extent possible. The mission of the Division is to administer the State's tax laws uniformly, equitably, and efficiently, to maximize State revenues to support public services and to ensure that voluntary compliance with the taxing statutes is achieved without being an impediment to economic growth.

Housing Affordability Impact Analysis

The proposed rule would not result in a change in the average costs associated with housing. The proposed rule has no impact on any aspect of housing because it deals with the netting of income of New Jersey Gross Income Tax.

Smart Growth Development Impact Analysis

The proposed rule would not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed rule has nothing to do with housing production, either within Planning Area 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposed rule deals with the netting of income of New Jersey Gross Income Tax.

Full text of the proposed new rule follows:

SUBCHAPTER 2. EXCLUSIONS AND DEDUCTIONS

18:35-2.8 Alternative business calculation

(a) For tax years beginning on or after January 1, 2012, N.J.S.A. 54A:3-9 establishes an alternative business calculation under the New Jersey Gross Income Tax Act (Act) with the intent of giving tax relief to gross income taxpayers with business losses. The Act provides an adjustment to taxable income, which uses a calculation that consolidates business income and or/loss and allows taxpayers to carryforward unutilized business losses.

(b) The alternative business calculation applies to residents, nonresidents, part-year residents, part-year nonresidents, estates, and trusts with income or loss derived in one or more of the four categories of business income specified under (c) below.

(c) The four categories of business income determined pursuant to N.J.S.A. 54A:5-1b., d., k., and p. and N.J.A.C. 18:35-1.1, 1.3, and 1.5, included in the alternative business calculation are:

1. Net profits from business;

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

3. Distributive share of partnership income; and

4. Net pro rata share of S corporation income.

(d) The alternative business calculation does not affect the reporting of income in the four qualified categories of business income on the New Jersey gross income tax return.

1. A net loss in one category of gross income cannot be used to offset income in another category of gross income.

(e) For the purposes of this section the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

1. "Regular business income" (for computing the alternative business calculation only) is the sum of net income from the four types of business income categories set forth in (c) above and in accordance with N.J.S.A. 54A:5-2.

2. "Alternative business income or loss" is the sum of the net income or net loss sustained in the four types of business income categories set forth in (c) above plus any allowable alternative business loss carryforward.

3. "Business increment" is the excess of regular business income over alternative business income. When computing the business increment, alternative business income cannot be less than zero.

4. "Alternative business loss carryforward" is an alternative business loss to the extent it is not utilized in the current tax year.

(f) To compute the alternative business calculation, taxpayers subtract alternative business income from regular business income to determine the business increment.

1. If, after consolidation and netting, there is an alternative business loss, taxpayers must use zero as alternative business income for the alternative business calculation.

(g) An adjustment is allowed against a taxpayer's New Jersey taxable income in an amount equal to 50 percent of the business increment, subject to the following five-year phase-in of the applicable percentage:

For tax years beginning:	2012	2013	2014	2015	2016 & after
Percent of business increment:	10%	20%	30%	40%	50%

(h) A nonresident taxpayer will compute the alternative business calculation using the income in the everywhere column of the nonresident return. The income reported in the New Jersey source column will not be included in the alternative business calculation.

(i) Part-year residents shall prorate income in accordance with the New Jersey Gross Income Tax Act. The alternative business calculation shall be calculated utilizing the business income/(loss) reported on the part-year resident and/or nonresident return.

(j) An alternative business loss sustained by a taxpayer for any taxable year beginning on or after 2012 becomes an alternative business loss carryforward.

1. For the purpose of calculating an alternative business loss carryforward, taxable year shall mean the accounting period covered by the taxpayer's return.

2. The alternative business loss carryforward is carried to each of the subsequent taxable years and is reduced in such subsequent year by the amount of the alternative business income.

3. The alternative business loss carryforward may not be carried back to any taxable year preceding the year of the loss.

4. The alternative business loss carryforward for any taxable year beginning on or after January 1, 2012 shall be permitted as an alternative business loss carryforward, reduced in accordance with (j)2 above, to each of the 20 taxable years following the year of loss.

(k) The alternative business calculation will have no effect on basis in determining income or loss arising from the disposition or sale of a business asset, interest, or stock in a business entity held by a gross income taxpayer.

1. As used in this subsection, "business asset" means the underlying property utilized in the business as described in N.J.S.A. 54A:5-1b. and d.

2. As used in this subsection, "Business entity" means any business or commercial venture that is organized as an S corporation or partnership or any business or commercial venture that is classified as a partnership for Federal income tax purposes.

(l) The provisions of this section are illustrated by the following examples:

Example 1: Determining the portion of the business increment used as an adjustment to taxable income and alternative business loss carryforward amount for a taxpayer with one business entity.

Jim is a full-year New Jersey resident. Jim's only source of business-related income/(loss) is from New Jersey Partnership ABC. His distributive share of partnership income is as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Partnership ABC	($600)	$1,000	($800)	($700)	$900

Year 1	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	0	(600)
Total	0	(600)
Alternative Business		
Loss Carryforward to Year 2		(600)
Business Increment (RBI - ABI)		0
	(Note: If ABI is negative, use zero)	
Year 1 phase-in percentage		10%
Taxable Income Adjustment		0

The amount reportable as distributive share of partnership income on Jim's return is -0- since losses are not recognized on the New Jersey return. Jim's taxable income adjustment in this year is zero because the adjustment cannot reduce regular business income by more than 10 percent. Since Jim has an alternative business loss, this amount becomes the loss carryforward to be included in Year 2 calculation of alternative business income/(loss).

Year 2	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	1,000	1,000
Alternative Business		
Loss Carryforward		(600)
Total	1,000	400
Alternative Business		
Loss Carryforward to Year 3		0
Business Increment (RBI - ABI)		600
Year 2 phase-in percentage		20%
Taxable Income Adjustment		120

The amount reportable as distributive share of partnership income on Jim's return is $1,000. Jim's taxable income adjustment in this year is $120.00, which represents 20 percent of the savings from the carryforward of unused losses. Since Jim has alternative business income this year, there is no alternative business loss carryforward to Year 3.

Year 3	Reportable Regular Business Income (RBI)	Alternative Business Income/ (Loss) (ABI)
Partnership ABC	0	(800)
Alternative Business		
Loss Carryforward		0
Total	0	800
Alternative Business		
Loss Carryforward to Year 4		(800)
Business Increment (RBI - ABI)		0
	(Note: If ABI is negative, use zero)	
Year 3 phase-in percentage		30%
Taxable Income Adjustment		0

The amount reportable as distributive share of partnership income on Jim's return is -0- since losses are not recognized on the New Jersey return. Jim's taxable income adjustment in this year is zero because the adjustment cannot reduce regular business income by more than 30 percent. Since Jim has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 4 calculation of alternative business income/(loss).

Year 4	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	0	(700)
Alternative Business		

Loss Carryforward		(800)
Alternative Business		
Loss Carryforward to Year 5		(1,500)
Business Increment (RBI - ABI)		0
	(Note: If ABI is negative, use zero)	
Year 4 phase-in percentage		40%
Taxable Income Adjustment		0

The amount reportable as distributive share of partnership income on Jim's return is -0- since losses are not recognized on the New Jersey return. Jim's taxable income adjustment in this year is zero because the adjustment cannot reduce regular business income by more than 40 percent. Since Jim has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 5 calculation of alternative business income/(loss).

Year 5	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	900	900
Alternative Business		
Loss Carryforward		(1,500)
Total	900	(600)
Alternative Business		
Loss Carryforward to Year 6		600
Business Increment (RBI - ABI)		900
	(Note: If ABI is negative, use zero)	
Year 5 phase-in percentage		50%
Taxable Income Adjustment		450

The amount reportable as distributive share of partnership income on Jim's return is $900.00. Jim's taxable income adjustment in this year is $450.00, which represents 50 percent of the savings from the carryforward of unused losses. Since Jim has alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 6 calculation of alternative business income/(loss).

Example 2: Determining the portion of the business increment used as an adjustment to taxable income and alternative loss carryforward amount for a taxpayer with business income less than business losses in a five-year period.

Harry is a New Jersey resident. Harry is a partner in New Jersey Partnership ABC and has a New Jersey rental property. His distributive share of partnership income/(loss) and rental income/(loss) are as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Partnership ABC	$1,000	$2,000	$4,000	$5,000	$6,000
NJ Rental Activity	($5,000)	($4,000)	($4,000)	($3,000)	($2,000)

Year 1	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	1,000	1,000
NJ Rental Activity		(5,000)
Total	1,000	(4,000)
Alternative Business		
Loss Carryforward to Year 2		(4,000)
Business Increment (RBI - ABI)		1,000
	(Note: If ABI is negative, use zero)	
Year 1 phase-in percentage		10%
Taxable Income Adjustment		100

The amount reportable as distributive share of partnership income on Harry's return is $1,000. The amount of rental income reportable on Harry's return is -0- since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is $100.00, which represents 10 percent of the savings from netting between the business income categories. Since Harry has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 2 calculation of alternative business income/(loss).

Year 2	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	2,000	2,000
NJ Rental Activity		(4,000)
Alternative Business		
Loss Carryforward		(4,000)
Total	2,000	(6,000)
Alternative Business		
Loss Carryforward to Year 3		(6,000)
Business Increment (RBI - ABI)		2,000
	(Note: If ABI is negative, use zero)	
Year 2 phase-in percentage		20%
Taxable Income Adjustment		400

The amount reportable as distributive share of partnership income on Harry's return is $2,000. The amount of rental income reportable on Harry's return is -0- since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is $400.00, which represents 20 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since Harry has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 3 calculation of alternative business income/(loss).

Year 3	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	4,000	4,000
NJ Rental Activity		(4,000)
Alternative Business		
Loss Carryforward		(6,000)
Total	4,000	(6,000)
Alternative Business		
Loss Carryforward to Year 4		(6,000)
Business Increment (RBI - ABI)		4,000
	(Note: If ABI is negative, use zero)	

Year 3 phase-in percentage	30%
Taxable Income Adjustment	1,200

The amount reportable as distributive share of partnership income on Harry's return is $4,000. The amount of rental income reportable on Harry's return is -0- since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is $1,200, which represents 30 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since Harry has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 4 calculation of alternative business income/(loss).

Year 4	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership ABC	5,000	5,000
NJ Rental Activity		(3,000)
Alternative Business Loss Carryforward		(6,000)
Total	5,000	(4,000)
Alternative Business Loss Carryforward to Year 5		(4,000)
Business Increment (RBI - ABI)		5,000
(Note: If ABI is negative, use zero)		
Year 4 phase-in percentage		40%
Taxable Income Adjustment		2,000

The amount reportable as distributive share of partnership income on Harry's return is $5,000. The amount of rental income reportable on Harry's return is -0- since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is $2,000, which represents 40 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since Harry has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 5 calculation of alternative business income/(loss).

Year 5	Reportable Regular Business Income (RBI)	Alternative Business Income/ (Loss) (ABI)
Partnership ABC	6,000	6,000
NJ Rental Activity		(2,000)
Alternative Business Loss Carryforward		(4,000)
Total	6,000	0
Alternative Business Loss Carryforward to Year 6		0
Business Increment (RBI - ABI)		6,000
Year 5 phase-in percentage		50%
Taxable Income Adjustment		3,000

The amount reportable as distributive share of partnership income on Harry's return is $6,000. The amount of rental income reportable on Harry's return is -0- since losses are not recognized on the New Jersey return. Harry's taxable income adjustment in this year is $3,000, which represents 50 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since Harry has alternative business income of zero, there is no alternative business loss carryforward to Year 6.

Example 3: Determining the portion of the business increment used as an adjustment to taxable income and alternative business loss carryforward amount for a taxpayer with business income more than business losses in a five-year period.

John is a New Jersey resident. John is a partner in New Jersey Partnership DEF and has a New Jersey rental property. His distributive share of partnership income/(loss) and rental income/(loss) are as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5
Partnership DEF	$1,000	$2,000	$4,000	$5,000	$6,000
NJ Rental Activity	($5,000)	($3,000)	($2,000)	($1,000)	($1,000)

Year 1	Reportable Regular Business Income (RBI)	Alternative Business Income/Loss (ABI)
Partnership DEF	1,000	1,000
NJ Rental Activity		(5,000)
Total	1,000	(4,000)
Alternative Business Loss Carryforward to Year 2		(4,000)
Business Increment (RBI - ABI)		1,000
(Note: If ABI is negative, use zero)		
Year 1 phase-in percentage		10%
Taxable Income Adjustment		100

The amount reportable as distributive share of partnership income on John's return is $1,000. The amount of rental income reportable on John's return is -0- since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is $100.00, which represents 10 percent of the savings from netting between the business income categories. Since John has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 2 calculation of alternative business income/(loss).

Year 2	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership DEF	2,000	2,000
NJ Rental Activity		(3,000)
Alternative Business Loss Carryforward		(4,000)
Total	2,000	(5,000)
Alternative Business Loss Carryforward to Year 3		(5,000)
Business Increment (RBI - ABI)		2,000
(Note: If ABI is negative, use zero)		
Year 2 phase-in percentage		20%
Taxable Income Adjustment		400

The amount reportable as distributive share of partnership income on John's return is $2,000. The amount of rental income reportable on John's return is -0- since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is $400.00, which represents 20 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since John has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 3 calculation of alternative business income/(loss).

Year 3	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership DEF	4,000	4,000
NJ Rental Activity		(2,000)
Alternative Business Loss Carryforward		(5,000)
Total	4,000	(3,000)
Alternative Business Loss Carryforward to Year 4		(3,000)
Business Increment (RBI - ABI)		4,000
(Note: If ABI is negative, use zero)		
Year 3 phase-in percentage		30%
Taxable Income Adjustment		1,200

The amount reportable as distributive share of partnership income on John's return is $4,000. The amount of rental income reportable on John's return is -0- since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is $1,200, which represents 30 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since John has an alternative business loss, this amount becomes the alternative business loss carryforward to be included in Year 4 calculation of alternative business income/(loss).

Year 4	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership DEF	5,000	5,000
NJ Rental Activity		(1,000)
Alternative Business Loss Carryforward		(3,000)
Total	5,000	1,000
Alternative Business Loss Carryforward to Year 5		0
Business Increment (RBI - ABI)		4,000
(Note: If ABI is negative, use zero)		
Year 4 phase-in percentage		40%
Taxable Income Adjustment		1,600

The amount reportable as distributive share of partnership income on John's return is $5,000. The amount of rental income reportable on John's return is -0- since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is $1,600, which represents 40 percent of the savings from netting between the business income categories and the carryforward of unused losses. Since John has alternative business income this year, there is no alternative business loss carryforward to Year 5.

Year 5	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership DEF	6,000	6,000
NJ Rental Activity		(1,000)
Alternative Business Loss Carryforward		0
Total	6,000	5,000
Alternative Business Loss Carryforward to Year 6		0
Business Increment (RBI - ABI)		1,000
Year 5 phase-in percentage		50%
Taxable Income Adjustment		500

The amount reportable as distributive share of partnership income on John's return is $6,000. The amount of rental income reportable on John's return is -0- since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is $500.00, which represents 50 percent of the savings from netting between the business income categories. Since John has alternative business income this year, there is no alternative business loss carryforward to Year 6.

Example 4: Determining the portion of the business increment used as an adjustment to taxable income and alternative business loss carryforward amount and credit for taxes paid to other jurisdictions for a taxpayer with three business entities.

Tom is a full-year New Jersey resident with a filing status of single. Tom is a partner in Partnership A with income of $300,000, Partnership B with a loss of ($100,000) and a shareholder in S Corporation Z with a loss of ($50,000). The income from Partnership A is also subject to tax by New York.

Determining the Taxable Income Adjustment:

	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership A	300,000	300,000
Partnership B	(100,000)	(100,000)
S Corporation Z	0	(50,000)
Total	200,000	150,000
Alternative Business Loss Carryforward		0
Business Increment (RBI - ABI)		50,000
Year 1 phase-in percentage		10%
Taxable Income Adjustment		5,000

The amount reportable as distributive share of partnership income on Tom's return is $200,000. The amount reportable as net pro rata share of S corporation income on Tom's return is -0- since losses are not recognized on the New Jersey return. Tom's taxable income adjustment in this year is $5,000, which represents 10 percent of the savings from netting between the business income categories. Since Tom has alternative business income, there is no alternative business loss carryforward to Year 2.

Determining the Credit for Taxes Paid to Other Jurisdictions:

	Income Subject to Tax		
	New Jersey	New York	Income Taxed by Both

Partnership A	300,000	300,000	300,000
Partnership B	(100,000)		(100,000)
S Corporation Z	0		
Income Subject to Tax Before			
Exemptions and Deductions	200,000	300,000	200,000
Less Exemptions	(1,000)		
Taxable Income	199,000		
Less Taxable Income			
Adjustment	(5,000)		
New Jersey Taxable Income	194,000		
Tax	10,232	21,153	14,101
Numerator of the credit calculation			200,000
Credit Allowed			10,232

Since the total partnership income taxed by New Jersey is less than the amount taxed by New York, the numerator of the credit calculation is limited to $200,000, which is the amount of income taxed by both jurisdictions. The credit allowed is limited to the $10,232 of New Jersey tax paid on the $200,000 of partnership income since this amount is less than the $14,101 of New York taxes paid on the same income.

Example 5: Determining the portion of the business increment used as an adjustment to taxable income and the alternative business loss carryforward amount for a taxpayer with multiple interests in partnerships where there is also a disposition of one of the partnership interests.

Bob moved into New Jersey in 2016 and is a partner in three partnerships, Partnerships A, B, and C. His beginning New Jersey basis in each of the partnerships is his ending Federal basis prior to moving to New Jersey. His distributive share of partnership income/(loss) for tax years 2016 through 2020 is as follows:

	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020
Partnership A	$10,000	$10,000	$10,000	$10,000	$10,000
Partnership B	$10,000	$10,000	$10,000	$10,000	$10,000
Partnership C	($20,000)	($40,000)	($5,000)	($60,000)	

In tax year 2019 Bob sells his interest in Partnership C for $150,000.

Year 2016	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	0	0
Business Increment (RBI - ABI)	0	(Note: If ABI is negative, use zero)
Phase-in percentage	0.50	
Taxable Income Adjustment	0	

Calculation of New Jersey Partnership Basis:

Partnership A

Beginning Federal Basis	20,000
Current Year Income	10,000
Ending New Jersey Basis	30,000

Partnership B

Beginning Federal Basis	20,000
Current year income	10,000
Ending New Jersey Basis	30,000

Partnership C

Beginning Federal Basis	200,000
Current Year Usable Loss	(20,000)
Ending New Jersey Basis	180,000

Note: Only losses used by Partnership C in reporting Regular Business Income reduce New Jersey basis each year.

Year 2017	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	0	(20,000)
Business Increment (RBI - ABI)	0	(Note: If ABI is negative, use zero)
Phase-in percentage	0.50	
Taxable Income Adjustment	0	
Alternative Business Loss Carryforward to 2018		(20,000)

Calculation of New Jersey Partnership Basis:

Partnership A

Beginning New Jersey Basis	30,000
Current Year Income	10,000
Ending New Jersey Basis	40,000

Partnership B

Beginning New Jersey Basis	30,000
Current year income	10,000
Ending New Jersey Basis	40,000

Partnership C

Beginning New Jersey Basis	180,000
Current Year Usable Loss	(20,000)
Ending New Jersey Basis	160,000

Note: Only losses used by Partnership C in reporting Regular Business Income reduce New Jersey basis each year.

Year 2018	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	15,000	15,000
Alternative Business Loss Carryforward		(20,000)
		(5,000)
Business Increment (RBI - ABI)	15,000	(Note: If ABI is negative, use zero)
Phase-in percentage	0.50	
Taxable Income Adjustment	7,500	
Alternative Business Loss Carryforward to 2019		(5,000)

Calculation of New Jersey Partnership Basis:

Partnership A

Beginning New Jersey Basis	40,000
Current Year Income	10,000
Ending New Jersey Basis	50,000

Partnership B

Beginning New Jersey Basis	40,000
Current year income	10,000
Ending New Jersey Basis	50,000

Partnership C

Beginning New Jersey Basis	160,000
Current Year Usable Loss	(5,000)
Ending New Jersey Basis	155,000

Note: Only losses used by Partnership C in reporting Regular Business Income reduce New Jersey basis each year.

Year 2019	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	0	(40,000)
Alternative Business Loss Carryforward		(5,000)
		(45,000)
Business Increment (RBI - ABI)	0	(Note: If ABI is negative, use zero)
Phase-in percentage	0.50	
Taxable Income Adjustment	0	
Alternative Business Loss Carryforward to 2020		(45,000)

Calculation of New Jersey Partnership Basis:

Partnership A

Beginning New Jersey Basis	50,000
Current Year Income	10,000
Ending New Jersey Basis	60,000

Partnership B

Beginning New Jersey Basis	50,000
Current year income	10,000
Ending New Jersey Basis	60,000

Partnership C

Beginning New Jersey Basis	155,000
Current Year Usable Loss	(20,000)
Ending New Jersey Basis	135,000

Taxpayer is disposing of his interest in Partnership C for $150,000.

Calculation of Gain or Loss on Disposition:

Sales Price	150,000
New Jersey Basis	135,000
New Jersey Gain on Disposition	15,000

The taxpayer's New Jersey basis is not affected by any previously reported taxable income adjustment or alternative business loss carryforward. The alternative business loss carryforward is not reduced when there is a disposition of an entity.

Year 2020	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	20,000	20,000
Alternative Business Loss Carryforward		(45,000)
		(25,000)
Business Increment (RBI - ABI)	20,000	(Note: If ABI is negative, use zero)
Phase-in percentage	0.50	
Taxable Income Adjustment	10,000	
Alternative Business Loss Carryforward to 2021		(25,000)

Calculation of New Jersey Partnership Basis:

Partnership A

Beginning New Jersey Basis	60,000
Current Year Income	10,000
Ending New Jersey Basis	70,000

Partnership B

Beginning New Jersey Basis	60,000
Current year income	10,000
Ending New Jersey Basis	70,000

Example 6: Determining the portion of the business increment used as an adjustment to taxable income and alternative business loss carryforward amount for a nonresident taxpayer with businesses both inside and outside of New Jersey.

John is a single taxpayer that has always been a nonresident of New Jersey with business income and loss earned both inside and outside of New Jersey. His distributive share of partnership income and rental income/(loss) are as follows:

	Year 1		Year 2		Year 3	
	Income		Income		Income	
	Everywhere	NJ Sources	Everywhere	NJ Sources	Everywhere	NJ Sources
Partnership A	$40,000	$40,000	$25,000	$25,000	$45,000	$45,000
Partnership B	$30,000		$15,000		$15,000	
Non-NJ Rental Loss	($20,000)		($50,000)		($35,000)	

YEAR 1:

Determining the Taxable Income Adjustment:

	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	70,000	70,000
Rental Income	0	(20,000)
Total	70,000	50,000
Alternative Business Loss Carryforward to Year 2		0
Business Increment (RBI - ABI)		20,000
		(Note: If ABI is negative, use zero)
Year 1 phase-in percentage		10%
Taxable Income Adjustment		2,000

The amount reportable as distributive share of partnership income in the Income Everywhere column is $70,000 and the amount reported in the NJ column is $40,000. The amount reportable as net income from rents is zero since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is $2,000, which represents 10 percent of the savings from the netting between the business income categories in the Income Everywhere column **only**. Since John has alternative business income, there is no alternative business loss carryforward to Year 2.

Determining the New Jersey Tax:

	Income Everywhere (Column A)	NJ Income (Column B)
Gross Income	70,000	40,000
Total Exemption Amount	(1,000)	
Taxable Income Adjustment	(2,000)	
Taxable Income	67,000	
Tax on Taxable Income	2,211	
Income percentage		
(Col. B Gross Income/Col. A Gross Income)	57.14%	
New Jersey Tax		
(Tax on Taxable Income x Income percentage)	1,263	

YEAR 2:

Determining the Taxable Income Adjustment:

	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	40,000	40,000
Rental Income	0	(50,000)
Total	40,000	(10,000)
Alternative Business		
Loss Carryforward to Year 3		(10,000)
Business Increment (RBI – ABI)		40,000
		(Note: If ABI is negative, use zero)
Year 2 phase-in percentage		20%
Taxable Income Adjustment		8,000

The amount reportable as distributive share of partnership income in the Income Everywhere column is $40,000 and the amount reported in the NJ column is $25,000. The amount reportable as net income from rents is zero since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is $8,000, which represents 20 percent of the savings from the netting between the business income categories in the Income Everywhere column **only**. Since John has an alternative business loss, this amount becomes the loss carryforward to be included in Year 2 calculation of alternative business income/(loss).

Determining the New Jersey Tax:

	Income Everywhere (Column A)	NJ Income (Column B)
Gross Income	40,000	25,000
Total Exemption Amount	(1,000)	
Taxable Income Adjustment	(8,000)	
Taxable Income	31,000	
Tax on Taxable Income	473	
Income percentage		
(Col. B Gross Income/Col. A Gross Income)	62.50%	
New Jersey Tax		
(Tax on Taxable Income x Income percentage)	296	

YEAR 3:

Determining the Taxable Income Adjustment:

	Reportable Regular Business Income (RBI)	Alternative Business Income/(Loss) (ABI)
Partnership Income	60,000	60,000
Rental Income	0	(35,000)
Alternative Business Loss		(10,000)
Carryforward		
Total	60,000	15,000
Alternative Business		
Loss Carryforward to Year 3		0
Business Increment (RBI - ABI)		45,000
		(Note: If ABI is negative, use zero)
Year 3 phase-in percentage		30%
Taxable Income Adjustment		13,500

The amount reportable as distributive share of partnership income in the Income Everywhere column is $60,000 and the amount reported in the NJ column is $45,000. The amount reportable as net income from rents is zero since losses are not recognized on the New Jersey return. John's taxable income adjustment in this year is $13,500, which represents 30 percent of the savings from the netting between the business income categories in the Income Everywhere column **only**. Since John has alternative business income, there is no alternative business loss carryforward to Year 4.

Determining the New Jersey Tax:

	Income Everywhere (Column A)	NJ Income (Column B)
Gross Income	60,000	45,000
Total Exemption Amount	(1,000)	
Taxable Income Adjustment	(13,500)	
Taxable Income	45,500	
Tax on Taxable Income	1,021	
Income percentage		
(Col. B Gross Income / Col. A Gross Income)	75.00%	
New Jersey Tax		

(Tax on Taxable Income x Income percentage)	766

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Regulations of the Election Law Enforcement Commission

Campaign Cost Index Adjustments

Proposed Amendments: N.J.A.C. 19:25-1.7, 4.4, 4.5, 8.4, 8.6, 8.6A, 8.8, 8.9, 8.10, 9.2, 9.3, 9.4, 9.4A, 12.7, 12.8A, 14.4, and 17.3

Authorized By: Election Law Enforcement Commission, Jeffrey M. Brindle, Executive Director.

Authority: N.J.S.A. 19:44A-6.

Calendar Reference: June 18, 2012 at 44 N.J.R. 1800(b).

Proposal Number: PRN 2012-114.

The sitting New Jersey Election Law Enforcement Commission (Commission) will conduct a **public hearing** concerning this proposal on Tuesday, September 11, 2012 at 11:15 A.M. at:

Election Law Enforcement Commission
Edward J. Farrell Memorial Conference Room
28 West State Street, 12th Floor
Trenton, New Jersey

Persons wishing to testify are requested to reserve time to speak by contacting Administrative Assistant Elbia L. Zeppetelli at (609) 292-8700 no later than Tuesday, September 4, 2012.

Submit written comments by September 19, 2012 to:

Michelle R. Levy, Esq., Associate Legal Director
Election Law Enforcement Commission
P.O. Box 185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

Statutory changes to the Campaign Reporting Act enacted in 1989 require that the Commission "establish an index reflecting the changes occurring in the general level of prices of particular good and services . . . directly affecting the overall costs of election campaigning in this State" see N.J.S.A. 19:44A-7.1b. The Commission must apply that index to adjust on a quadrennial basis various statutory components of the gubernatorial public financing program; see N.J.S.A. 19:44A-7.1c.

In 1993 amendments to the Act, the Governor and Legislature directed the Commission to adjust the limits and thresholds pertaining to non-gubernatorial candidates, committees, and political party entities for campaign cost inflation in the same manner as it adjusts the gubernatorial limits and thresholds; see P.L. 1993, c. 65 and N.J.S.A. 19:44A-7.2.

Legislation enacted in 2004 further amended the Act, leaving in place the automatic adjustment of thresholds and limits pursuant to the Gubernatorial Public Financing Program and the thresholds applicable to non-gubernatorial candidates and committees, but directed the Commission only to recommend changes for the contribution limits relating to non-gubernatorial candidates, political committees, continuing political committees, political party committees, and legislative leadership committees; see P.L. 2004, c. 28 and N.J.S.A. 19:44A-7.3. The Commission's recommendations can be found in the Commission's 2013 Cost Index Report, issued July 2012.

At this time, adjustments to the following thresholds in the Campaign Reporting Act, applicable to non-gubernatorial candidates, candidate committees, joint candidates committees, political committees, continuing political committees, political party committees, legislative leadership committees, and other entities, are required: the political committee reporting threshold, the continuing political committee reporting threshold, the joint candidates committee Sworn Statement (Form A-2) reporting thresholds, the candidate committee Sworn Statement (Form A-1) reporting threshold, thresholds for 48-hour notice reporting of contributions and expenditures, the threshold for reporting of independent expenditures, and the maximum penalty amounts, which may be imposed by the Commission pursuant to N.J.S.A. 19:44A-20.1 and 22; see N.J.S.A. 19:44A-7.2, as amended by P.L. 2004, c. 28, § 2, and P.L. 2004, c. 174, § 1.

Calculation of the Inflationary Adjustment

Applying the methodology first described in the Commission's June, 1988 "Gubernatorial Cost Analysis Report," and employed in 1992, 1996, 2000, 2004, and 2008 for the gubernatorial public financing program, and in 1996, 2000, 2004, and 2008 for non-gubernatorial candidates and committees, the Commission has determined that costs relevant to campaigning in New Jersey have risen in the period following the 2009 gubernatorial general election and has applied an index of 11.7 percent to the various limits and thresholds required to be adjusted.

Determination of the index for 2013 required analysis of the campaign expenditures of the 2009 gubernatorial general election campaigns as N.J.S.A. 19:44A-7.1b requires that the index be weighted according to the impact in the preceding general election for the offices of Governor and of Lieutenant Governor of the various categories of campaign expenditures. Using expenditure information reported by the 2009 gubernatorial general election campaigns, the Commission concluded that 80 percent of 2009 general election expenditures were associated with communication of the candidates' message to voters. The remaining 20 percent of 2009 general election expenditures was spent administering the campaigns, that is, on candidate travel, food and beverage, fundraising, election night activities, compliance, telephone, personnel, and other administrative costs.

As it did in its 1992, 1996, 2000, 2004, and 2008 calculation of campaign cost changes, the Commission relied on established indices to evaluate the change in costs during the period between the 2009 and 2013 elections in two expenditure categories: mass communication costs and other campaign costs/administration.

Mass Communication Costs

In the past, the Commission has relied upon media cost data compiled by Universal McCann, Inc., New York City. This year, the Commission obtained data from MagnaGlobal of New York City, a McCann affiliate. The percentage increase is derived from the cost-per-thousand indices. These indices measure the change in the cost of advertising targeted to reach 1,000 individuals in the New York and Philadelphia media markets. The index is projected to increase by 12.37 percent between base years 2008-2011; see Cost-Per-Thousand Mass Communication Percentage Increases, Table 6 (July 2012).

Other Campaign Costs/Administration

The change in all other campaign costs was calculated using United States Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) data relevant to New Jersey. The Commission used CPI data from the base year 2009 through December 2011, with mathematically projected inflationary increases for 2012 based upon the first four months of 2012. Statistics from the BLS for the purposes of this analysis involve data compiled for two geographic regions: New York/New Jersey (NY/NJ), and Pennsylvania/New Jersey (PA/NJ). The 2009 through 2012 inflationary number is 8.7 percent for NY/NJ and 9.4 percent for PA/NJ; see "Consumer Price Index for All Urban Consumers Monthly Index Number for December" (July, 2012), citing the United States Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, Monthly Index Numbers through April 2012. In order to determine the percentage increase in the CPI to be used in calculating the Campaign Cost Index for 2013, the percentage change in the two regional numbers was then weighted at a ratio of two-to-one to reflect the larger population of the NY/NJ region, by doubling 8.7 percent (NY/NJ) to 17.3, which is then added to 9.4 percent (PA/NJ), which equals 26.7 percent. Finally, the 26.7 percent number was divided by three to yield a weighted CPI of 8.9 percent. Therefore, the consumer price increase for New Jersey to be used in calculating the Campaign Cost Index for 2013 is 8.9 percent.