

**GROSS INCOME TAX NOTICE**  
**P.L.2011, c.60**  
**ALTERNATIVE BUSINESS CALCULATION DEDUCTION**  
**FOR CERTAIN BUSINESS ENTITIES**  
**CONSOLIDATION AND CARRYFORWARD**  
**(9/15/11)**

The New Jersey Division of Taxation, pending draft regulations, issues this notice to provide preliminary guidance to the public as to the interpretation of P.L.2011, c.60.

Effective for tax years beginning on or after January 1, 2012, P.L.2011, c.60 (N.J.S.A.54A:3-9) establishes an alternative business calculation deduction under the New Jersey Gross Income Tax Act with the intent of giving income tax relief to taxpayers with business losses. The new legislation provides a deduction which uses a calculation that consolidates business income and/or loss and allows taxpayers to carry forward unutilized losses.

The alternative business calculation deduction is provided as a deduction against New Jersey Gross Income on the New Jersey gross income tax return and applies to taxpayers with business income required to be reported in taxable year 2012.

The alternative business calculation deduction is a limited deduction that will not affect the reporting of income in the four qualified categories of business income on the New Jersey gross income tax return. A net loss in one category of gross income still cannot be used to offset income in another category of gross income.

Taxpayers that qualify for the deduction are 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 Act.

The four categories of business income included in the alternative business calculation deduction 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.

To calculate the alternative business calculation deduction, taxpayers who generate income from any of the four types of business categories will offset income with losses from those four categories to determine "alternative business income or loss." Then, taxpayers will subtract alternative business income from regular business income to determine the "business increment" on a schedule and/or worksheet provided with the income tax return.

The new law provides the following new terms:

"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.

"Regular business income" is the sum of net income from the four categories of New Jersey business income: income from (i) proprietorships, (ii) partnerships, (iii) S corporations and (iv) rents, royalties, patents, and copyrights, in accordance with N.J.S.A. 54A, et seq., without intercategory loss netting.

“Alternative business income or loss” is the sum (i) of the sum of the four categories of New Jersey business income and loss computed with intercategory loss netting plus (ii) any allowable loss carryforward.

“Loss carryforward” is an alternative business loss to the extent it is not utilized in the current tax year.

For purposes of determining the business increment, if, after consolidation and netting, there is an alternative business loss, taxpayers must use zero as alternative business income in the calculation. The alternative business loss is the carryforward amount included in the subsequent year’s calculation. Taxpayers may carryforward business-related losses during each of the 20 taxable years following the alternative business loss’ taxable year.

A deduction is allowed against a taxpayer’s New Jersey Gross Income in an amount equal to 50% of the business increment, subject to the following five-year phase-in of the applicable percentage.

For tax years beginning in:	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016 &amp; after</u>
% of business increment:	10%	20%	30%	40%	50%

Once fully implemented, a taxpayer’s regular business income may not be reduced by more than 50% in determining taxable income. In addition, a taxpayer may still be eligible for a *Koch* basis adjustment for the sale of a partnership interest.

## EXAMPLES

### EXAMPLE #1

**Determining the deductible portion of the business increment and 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:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Partnership ABC	(\$600)	\$1,000	(\$800)	(\$700)	\$900

### YEAR 1

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership ABC	<u>(600)</u>	<u>0</u>
Total	<u>(600)</u>	<u>0</u>

### **Loss Carryforward to Year 2**

**(600)**

Business Increment (RBI - ABI)

0

(Note: If ABI is negative, use zero)

Year 1 phase-in percentage

10%

**Alternative Business**

**Increment Deduction**

**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 alternative business calculation deduction in this year is zero because the deduction cannot reduce regular business income by more than 10%. 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**

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership ABC	1,000	1,000
Loss Carryforward	<u>(600)</u>	
Total	<u>400</u>	<u>1,000</u>

**Loss Carryforward to Year 3**

**0**

Business Increment (RBI - ABI)

600

Year 2 phase-in percentage

20%

**Alternative Business**

**Increment Deduction**

**120**

The amount reportable as distributive share of partnership income on Jim's return is \$1,000. Jim's alternative business calculation deduction in this year is \$120 which represents 20% of the savings from the carryforward of unused losses. Since Jim has alternative business income this year, there is no loss carryforward to Year 3.

**YEAR 3**

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership ABC	(800)	0
Loss Carryforward	<u>0</u>	
Total	<u>(800)</u>	<u>0</u>

**Loss Carryforward to Year 4**

**(800)**

Business Increment (RBI - ABI)

0

(Note: If ABI is negative, use zero)

Year 3 phase-in percentage

30%

**Alternative Business**

**Increment Deduction**

**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 alternative business calculation deduction in this year is zero because the deduction cannot reduce regular business income by more than 30%. Since Jim has an alternative business loss, this amount becomes the loss carryforward to be included in Year 4 calculation of alternative business income/(loss).

**YEAR 4**

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership ABC	(700)	0
Loss Carryforward	<u>(800)</u>	
<b>Loss Carryforward to Year 5</b>	<b>(1,500)</b>	
Business Increment (RBI - ABI)	0	(Note: If ABI is negative, use zero)
Year 4 phase-in percentage	<u>40%</u>	
<b>Alternative Business Increment Deduction</b>	<b>0</b>	

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 alternative business calculation deduction in this year is zero because the deduction cannot reduce regular business income by more than 40%. Since Jim has an alternative business loss, this amount becomes the loss carryforward to be included in Year 5 calculation of alternative business income/(loss).

**YEAR 5**

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

The amount reportable as distributive share of partnership income on Jim's return is \$900. Jim's alternative business calculation deduction in this year is \$450 which represents 50% of the savings from the carryforward of unused losses. Since Jim has alternative business loss, this amount becomes the loss carryforward to be included in Year 6 calculation of alternative business income/(loss).

## EXAMPLE #2

### Determining the deductible portion of the business increment and 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:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
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

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership ABC	1,000	1,000
NJ Rental Activity	<u>(5,000)</u>	
Total	<u>(4,000)</u>	<u>1,000</u>

#### **Loss Carryforward to Year 2**

**(4,000)**

Business Increment (RBI - ABI)  
Year 1 phase-in percentage

1,000  
10%

(Note: If ABI is negative, use zero)

#### **Alternative Business Increment Deduction**

**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 alternative business calculation deduction in this year is \$100 which Represents 10% of the savings from netting between the business income categories. Since Harry 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

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership ABC	2,000	2,000
Rental Activity	(4,000)	
Loss Carryforward	<u>(4,000)</u>	
Total	<u>(6,000)</u>	<u>2,000</u>

<b>Loss Carryforward to Year 3</b>	<b>(6,000)</b>	
Business Increment (RBI - ABI)	2,000	(Note: If ABI is negative, use zero)
Year 2 phase-in percentage	<u>20%</u>	
<b>Alternative Business Increment Deduction</b>	<b>400</b>	

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 alternative business calculation deduction in this year is \$400 which represents 20% 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 loss carryforward to be included in Year 3 calculation of alternative business income/(loss).

### YEAR 3

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership ABC	4,000	4,000
Rental Activity	(4,000)	
Loss Carryforward	<u>(6,000)</u>	
Total	<u>(6,000)</u>	<u>4,000</u>

<b>Loss Carryforward to Year 4</b>	<b>(6,000)</b>	
Business Increment (RBI - ABI)	4,000	(Note: If ABI is negative, use zero)
Year 3 phase-in percentage	<u>30%</u>	
<b>Alternative Business Increment Deduction</b>	<b>1,200</b>	

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 alternative business calculation deduction in this year is \$1,200 which represents 30% 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 loss carryforward to be included in Year 4 calculation of alternative business income/(loss).

### YEAR 4

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership ABC	5,000	5,000
Rental Activity	(3,000)	
Loss Carryforward	<u>(6,000)</u>	
Total	<u>(4,000)</u>	<u>5,000</u>

<b>Loss Carryforward to Year 5</b>	<b>(4,000)</b>	
Business Increment (RBI - ABI)	5,000	(Note: If ABI is negative, use zero)
Year 4 phase-in percentage	<u>40%</u>	
<b>Alternative Business Increment Deduction</b>	<b>2,000</b>	

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 alternative business calculation deduction in this year is \$2,000 which represents 40% 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 loss carryforward to be included in Year 5 calculation of alternative business income/(loss).

### YEAR 5

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership ABC	6,000	6,000
Rental Activity	(2,000)	
Loss Carryforward	<u>(4,000)</u>	
Total	<u>0</u>	<u>6,000</u>

<b>Loss Carryforward to Year 6</b>	<b>0</b>
Business Increment (RBI - ABI)	6,000
Year 5 phase-in percentage	<u>50%</u>
<b>Alternative Business Increment Deduction</b>	<b>3,000</b>

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 alternative business calculation deduction in this year is \$3,000 which represents 50% 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 loss carryforward to Year 6.

### **EXAMPLE #3**

#### **Determining the deductible portion of the business increment and 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:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
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**

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

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 return. John's alternative business calculation deduction in this year is \$100 which represents 10% of the savings from netting between the business income categories. 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).

**YEAR 2**

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

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 alternative business calculation deduction in this year is \$400 which represents 20% 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 loss carryforward to be included in Year 3 calculation of alternative business income/(loss).

**YEAR 3**

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

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 alternative business calculation deduction in this year is \$1,200 which represents 30% of the savings from netting netting between the business income categories and the carryforward of unused losses. Since John has an alternative business loss, this amount becomes the loss carryforward to be included in Year 4 calculation of alternative business income/(loss).

**YEAR 4**

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

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 alternative business calculation deduction in this year is \$1,600 which represents 40% 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 loss carryforward to Year 5.

**YEAR 5**

	Alternative Business Income / (Loss) <u>(ABI)</u>	Reportable Regular Business Income <u>(RBI)</u>
Partnership DEF	6,000	6,000
Rental Activity	(1,000)	
Loss Carryforward	<u>0</u>	
Total	<u>5,000</u>	<u>6,000</u>
<b>Loss Carryforward to Year 6</b>	<b>0</b>	
Business Increment (RBI - ABI)	1000	
Year 5 phase-in percentage	<u>50%</u>	
<b>Alternative Business Increment Deduction</b>	<b>500</b>	

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 alternative business calculation deduction in this year is \$500 which represents 50% of the savings from netting between the business income categories. Since John has alternative business income this year, there is no loss carryforward to Year 6.

**EXAMPLE #4**

**Determining the deductible portion of the business increment, loss carryforward 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 and Partnership B and a shareholder in S Corporation Z. The income from Partnership A is also subject to tax by New York.

**Determining the Alternative Business Calculation Deduction:**

	Alternative Business Income / (Loss) <u>(ABI)</u>	Regular Business Income <u>(RBI)</u>
Partnership A	300,000	300,000
Partnership B	(100,000)	(100,000)
S Corporation Z	<u>(50,000)</u>	<u>0</u>
Total	<u>150,000</u>	<u>200,000</u>
<b>Loss Carryforward</b>	<b>0</b>	
Business Increment (RBI - ABI)	50,000	

Year 1 phase-in percentage	<u>10%</u>
<b>Alternative Business Increment Deduction</b>	<b>5,000</b>

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 alternative business calculation deduction in this year is \$5,000 which represents 10% of the savings from netting between the business income categories. Since Tom has alternative business income, there is no loss carryforward to Year 2.

**Determining the Credit for Taxes Paid to Other Jurisdictions:**

	Income Subject to Tax		Income Taxed by <u>Both</u>
	<u>New Jersey</u>	<u>New York</u>	
Partnership A	300,000	300,000	300,000
Partnership B	(100,000)		(100,000)
S Corporation Z	<u>0</u>		
Income Subject to Tax Before Exemptions and Deduction	200,000	300,000	200,000
Less Exemptions	(1,000)		
Less Alternative Business Calculation Deduction	<u>(5,000)</u>		
New Jersey Taxable Income	194,000		
Tax	10,232	21,153	14,101
Numerator of the credit calculation			<b>200,000</b>
Credit allowed			<b>10,232</b>

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 tax paid on the same income.