

54:10A-12

LEGISLATIVE HISTORY CHECKLIST

NJSA: S4:10A-12

(Corporation
franchise taxes be
personal debt of
taxpayer, be
recoverable in
actions of law)

LAWS OF: 1947

CHAPTER: 51

Bill No: A57

Sponsor(s): McCay

Date Introduced: March 17, 1947

Committee: Assembly: Corporations

Senate: Taxation

Amended during passage: Yes OCR/SCS enacted

Date of Passage: Assembly: March 24, 1947

Senate: April 14, 1947

Date of Approval: April 15, 1947

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: No

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: Yes

Hearings: No

(Over)

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1947

New Jersey. Commissions on
State Tax Policy.
 Second report. Part II:
Corporation Business
Tax Act. Trenton, 1947

ASSEMBLY, No. 57

STATE OF NEW JERSEY

INTRODUCED MARCH 17, 1947

By Mr. McCAY

Referred to Committee on Corporations

AN ACT to amend and supplement an act entitled "An act to provide for the imposition of a franchise tax upon certain corporations and for the distribution of the proceeds thereof, repealing sections 54:13-1 through 54:13-8 and chapter thirty-two-A of Title 54 of the Revised Statutes, and making an appropriation for the administration of such tax," approved April thirteenth, one thousand nine hundred and forty-five (P. L. 1945, c. 162).

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

1 1. Section sixteen of the act of which this act is amendatory is amended
2 to read as follows:

3 16. The tax imposed by this act shall [constitute a lien on all of the
4 taxpayer's property and franchises] be a personal debt of the taxpayer on
5 and after January first of the year in which it is due and payable, and all
6 interest, penalties, and costs of collection which thereafter fall due or accrue
7 shall be added to and become a part of such [lien] debt, recoverable in any
8 court of competent jurisdiction in an action at law in the name of the State
9 of New Jersey; provided, that the amount of the tax and the [lien.] right
10 and interest of the State in or for the tax levied by or assessed pursuant to this
11 act against any taxpayer for the privilege year one thousand nine hundred
12 and forty-seven shall not be finally determined, take effect, or vest until the
13 fifteenth day of April in that year.

1 2. As an additional remedy, the commissioner may issue to the Clerk
2 of the Supreme Court of the State of New Jersey a certificate stating the
3 amount of the taxpayer's indebtedness under this act and describing the lia-
4 bility, and thereupon the clerk shall immediately enter upon his record of
5 docketed judgments such certificate and duly index the same, which from
6 the time of such docketing shall have the same force and effect as a judg-
7 ment obtained in the Supreme Court of the State of New Jersey.

1 3. The Clerk of the Supreme Court shall be entitled to receive for dock-
2 eting such certificate fifty cents (\$0.50), and for a certified transcript of such
3 docket fifty cents (\$0.50). If the amount set forth in said certificate as a
4 debt shall be modified or reversed by any court, the Clerk of the Supreme
5 Court shall, when an order of modification or reversal is filed, enter in the
6 margin of the docket opposite the entry of the judgment the word "modi-
7 fied" or "reversed," as the case may be, and the date of such modification
8 or reversal.

1 4. The taxpayer, or any other person having an interest in the prop-
2 erty upon which the debt is a lien, may deposit the amount claimed in the
3 certificate with the Clerk of the Supreme Court of New Jersey, together with
4 fifty dollars (\$50.00) to cover interest and the costs of court, or in lieu of
5 depositing the amount in cash, may give a bond to the State of New Jer-
6 sey in double the amount claimed in the certificate, and file the same with
7 the Clerk of the Supreme Court. Said bond shall have such surety and shall
8 be approved in the manner now required by section 2:27-369 of the Revised
9 Statutes.

1 5. After the deposit of said money or the filing of said bond, the tax-
2 payer or any other person having an interest in the said property, may
3 review the legality or validity of the indebtedness or the amount thereof by
4 certiorari, and the said deposit of cash shall be as security for and the bond
5 shall be conditioned to prosecute the certiorari with effect and to pay and
6 satisfy, if the debt be sustained, the amount adjudged by the court and all
7 interest and costs.

1 6. Upon the deposit of said money or the filing of the said bond with
2 the Clerk of the Supreme Court, all proceedings on such judgment shall be
3 stayed until the final determination of the cause, and the moneys so depos-
4 ited shall be subject to the lien of the indebtedness and costs and interest
5 thereon, and the lands, tenements, and hereditaments of said debtor shall
6 forthwith be discharged from the lien of the State of New Jersey and no
7 execution shall issue against the same by virtue of said judgment.

1 7. This act shall take effect immediately.

STATEMENT

The purpose of this act is to relieve the property of the corporations affected by P. L. 1945, chapter 162, from a lien which is entirely secret and largely indeterminable, on all of the property, real and personal, of these corporations; and which will make it impossible for any such corporation to convey a good title to any real or any personal property owned by it. The provisions of this bill correspond with the provisions of section 43:21-14 of the Unemployment Compensation Act as amended by chapter 307, laws of 1945.

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ASSEMBLY, No. 57

STATE OF NEW JERSEY

INTRODUCED MARCH 17, 1947

By Mr. McCAY

Referred to Committee on Corporations

AN ACT to amend and supplement an act entitled "An act to provide for the imposition of a franchise tax upon certain corporations and for the distribution of the proceeds thereof, repealing sections 54:13-1 through 54:13-8 and chapter thirty-two-A of Title 54 of the Revised Statutes, and making an appropriation for the administration of such tax," approved April thirteenth, one thousand nine hundred and forty-five (P. L. 1945, c. 162).

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

1 1. Section sixteen of the act of which this act is amendatory is amended
2 to read as follows:

3-4 16. The tax imposed by this act shall be a personal debt of the taxpayer on
5 and after January first of the year in which it is due and payable, and all
6 interest, penalties, and costs of collection which thereafter fall due or accrue
7 shall be added to and become a part of such debt, recoverable in any
8 court of competent jurisdiction in an action at law in the name of the State
9 of New Jersey; *provided*, that the amount of the tax and the right and
10 interest of the State in or for the tax levied by or assessed pursuant to this
11 act against any taxpayer for the privilege year one thousand nine hundred
12 and forty-seven shall not be finally determined, take effect, or vest until the
13 fifteenth day of April in that year.

1 2. As an additional remedy, the commissioner may issue to the Clerk
2 of the Supreme Court of the State of New Jersey a certificate stating the
3 amount of the taxpayer's indebtedness under this act and describing the lia-
4 bility, and thereupon the clerk shall immediately enter upon his record of
5 docketed judgments such certificate and duly index the same, which from
6 the time of such docketing shall have the same force and effect as a judg-
7 ment obtained in the Supreme Court of the State of New Jersey.

1 3. The Clerk of the Supreme Court shall be entitled to receive for dock-
2 eting such certificate fifty cents (\$0.50), and for a certified transcript of such
3 docket fifty cents (\$0.50). If the amount set forth in said certificate as a
4 debt shall be modified or reversed by any court, the Clerk of the Supreme
5 Court shall, when an order of modification or reversal is filed, enter in the
6 margin of the docket opposite the entry of the judgment the word "modi-
7 fied" or "reversed," as the case may be, and the date of such modification
8 or reversal.

1 4. The taxpayer, or any other person having an interest in the prop-
2 erty upon which the debt is a lien, may deposit the amount claimed in the
3 certificate with the Clerk of the Supreme Court of New Jersey, together with
4 fifty dollars (\$50.00) to cover interest and the costs of court, or in lieu of
5 depositing the amount in cash, may give a bond to the State of New Jer-
6 sey in double the amount claimed in the certificate, and file the same with
7 the Clerk of the Supreme Court. Said bond shall have such surety and shall
8 be approved in the manner now required by section 2:27-369 of the Revised
9 Statutes.

1 5. After the deposit of said money or the filing of said bond, the tax-
2 payer or any other person having an interest in the said property, may
3 review the legality or validity of the indebtedness or the amount thereof by
4 certiorari, and the said deposit of cash shall be as security for and the bond
5 shall be conditioned to prosecute the certiorari with effect and to pay and
6 satisfy, if the debt be sustained, the amount adjudged by the court and all
7 interest and costs.

1 6. Upon the deposit of said money or the filing of the said bond with
2 the Clerk of the Supreme Court, all proceedings on such judgment shall be
3 stayed until the final determination of the cause, and the moneys so depos-
4 ited shall be subject to the lien of the indebtedness and costs and interest
5 thereon, and the lands, tenements, and hereditaments of said debtor shall
6 forthwith be discharged from the lien of the State of New Jersey and no
7 execution shall issue against the same by virtue of said judgment.

1 7. This act shall take effect immediately.

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SENATE COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 57

STATE OF NEW JERSEY

ADOPTED APRIL 14, 1947

AN ACT to amend and supplement "An act to provide for the imposition of a franchise tax upon certain corporations and for the distribution of the proceeds thereof, repealing sections 54:13-1 through 54:13-8 and chapter thirty-two-A of Title 54 of the Revised Statutes, and making an appropriation for the administration of such tax," approved April thirteenth, one thousand nine hundred and forty-five (P. L. 1945, c. 162).

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

1 1. Section twelve of the act of which this act is amendatory is amended
2 to read as follows:

3 12. (a) No corporation organized under the laws of this State shall be
4 dissolved by the action of the stockholders or by the decree of any court,
5 nor shall any such corporation liquidate or distribute any assets in disso-
6 lution or liquidation to its stockholders until all corporation franchise taxes,
7 fees, penalties and interest imposed upon said corporation, in accordance
8 with the provisions of this act or of chapters thirteen or thirty-two-A of
9 Title 54 of the Revised Statutes, shall have been fully paid.

10 (b) No corporation organized under any law of this State or organized
11 under any law of any other State, district, territory or country may merge
12 or consolidate under any law of this State until all taxes, fees, penalties
13 and interest imposed upon said corporation, in accordance with the provi-
14 sions of this act or of chapters thirteen or thirty-two-A of Title 54 of the
15 Revised Statutes, shall have been fully paid.

16 (c) No foreign corporation which employs or owns capital or property
17 in this State or which has obtained authority from this State to transact
18 business in this State may liquidate or distribute such assets in dissolution
19 or liquidation to its stockholders or surrender such authority and withdraw
20 from this State until all taxes, fees, penalties and interest imposed upon
21 said corporation, in accordance with the provisions of this act or of chap-
22 ters thirteen or thirty-two-A of Title 54 of the Revised Statutes, shall have
23 been fully paid.

24 (d) No certificate of dissolution or withdrawal shall be issued by the
25 Secretary of State and no certificate of merger shall be filed with him and
26 no decree of dissolution shall be signed by any court until there shall have
27 been filed with the Secretary of State or with the court, as the case may
28 be, the certificate of the commissioner evidencing the payment by the cor-
29 poration in question of all such taxes, fees, penalties and interest. The com-
30 missioner shall be entitled to receive as a fee the sum of five dollars (\$5.00)
31 for the issuance of said certificate. Application for such certificate shall be
32 in such form as may be prescribed by the commissioner.

33 (e) Any officer or director of any corporation who shall distribute or
34 cause to be distributed any assets in dissolution or liquidation to the stock-
35 holders without having first paid all corporation franchise taxes, fees, pen-
36 alties and interest imposed upon said corporation, in accordance with the
37 provisions of this act or of chapters thirteen or thirty-two-A of Title 54 of
38 the Revised Statutes, shall be personally liable for said unpaid taxes, fees,
39 penalties and interest to the extent of the value of the assets so distributed.
40 The amount of such personal liability shall be recoverable in any court of
41 competent jurisdiction in an action in debt in the name of the State, and the
42 commissioner shall have such additional remedies for the enforcement and
43 collection thereof as may be available under any other law of this State.

1 2. Section sixteen of the act of which this act is amendatory is amended
2 to read as follows:

3 16. For the privilege year one thousand nine hundred and forty-seven
4 and thereafter, the tax imposed by this act shall constitute a lien on all of the

5 taxpayer's property and franchises on and after January first of the year
6 next succeeding the privilege year in which it is due and payable, and all in-
7 terest, penalties and costs of collection which fall due or accrue shall be
8 added to and become a part of such lien.

1 3. (a) Upon the receipt of a written application accompanied by the
2 fee provided for in subsection (b) of this section, the commissioner shall
3 issue to the applicant a certificate certifying with respect to the corporation
4 or corporations listed for certification in the application either that there are
5 no liens in favor of the State for corporation franchise taxes due pursuant
6 to the provisions of this act or of chapters thirteen or thirty-two-A of Title
7 54 of the Revised Statutes or that there are such liens as may be stated in
8 such certificate or such other status as the commissioner's records may dis-
9 close.

10 (b) The fee for a certificate issued pursuant to this section shall be one
11 dollar (\$1.00) for each corporation listed in the application for which a cer-
12 tificate is requested.

13 (c) The commissioner may prescribe the form of the application and
14 may require that it shall contain a concise and reasonably definite descrip-
15 tion of the property and of the type of transaction in connection with which
16 the application is made as well as such other pertinent information as he
17 may deem necessary.

18 (d) Any person who shall acquire for a valuable consideration an interest
19 in lands, covered by such a certificate in reliance thereon, shall hold such in-
20 terest free from any lien held by the State for unpaid corporation franchise
21 taxes due pursuant to the provisions of this act or of chapters thirteen or
22 thirty-two-A of Title 54 of the Revised Statutes and not shown on such cer-
23 tificate.

1 4. The commissioner upon written application made to him and upon the
2 payment of a fee of five dollars (\$5.00), may release any property from the
3 lien of any tax, interest or penalty imposed upon any corporation in accord-
4 ance with the provisions of this act or of chapters thirteen or thirty-two-A of

5 Title 54 of the Revised Statutes, or of any certificate, judgment or levy pro-
6 cured by him; *provided*, payment be made to the commissioner of such sum
7 as he shall deem adequate consideration for such release or deposit be made
8 of such security or such bond be filed as the commissioner shall deem proper
9 to secure payment of any debt evidenced by any such tax, interest, penalty,
10 certificate, judgment or levy, the lien of which is sought to be released, or
11 provided the commissioner is satisfied that payment of the tax is otherwise
12 provided for. The application for such release shall be in such form as shall
13 be prescribed by the commissioner and shall contain an accurate description
14 of the property to be released together with such other information as the
15 commissioner may require. Such release shall be given under the seal of the
16 commissioner, and may be recorded in any office in which conveyances of real
17 estate may be recorded.

1 5. When a corporation franchise tax return shall have been duly filed in
2 accordance with the provisions of this act or of chapters thirteen or thirty-
3 two-A of Title 54 of the Revised Statutes, no tax shall be assessable or
4 payable after ten years from the date of such filing or after one year from
5 the effective date hereof, whichever is later. The commissioner is hereby au-
6 thorized to cancel all assessments of taxes, interest and penalties, the col-
7 lection of which is barred by the limitations herein provided and to destroy
8 returns and records relating thereto which are rendered useless by the pro-
9 visions of this act. Nothing herein contained, however, shall affect the rights
10 of the State (a) under any certificate of debt, decree or judgment for taxes,
11 interest and penalties duly recorded with the Clerk of the Supreme Court, or
12 with any county clerk; or (b) to assess and enforce collection of any tax,
13 interest and penalties pursuant to the terms of any bond or other agreement
14 securing the payment of such tax, interest and penalties.

1 6. This act shall take effect immediately.